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## UNITED STATES NUCLEAR REGULATORY COMMISSION

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DRAFT NUREG-1409, "BACKFITTING GUIDELINES,"

REVISION 1 CATEGORY 3 PUBLIC MEETING

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TUESDAY

APRIL 28, 2020

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The public meeting convened via teleconference, at 1:00 p.m., Audrey Klett, facilitating.

NRC PRESENT

AUDREY KLETT, NRR/DORL

HOWARD BENOWITZ, OGC

SCOTT BURNELL, OPA

JAMES DOWNS, NMSS

CRAIG ERLANGER, NRR/DORL

TIM REED, NRR/DORL

FRED SCHOFER, NMSS

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ALSO PRESENT

JERRY BONANNO, NEI, Public Participant

WILLIAM HORIN, Winston & Strawn, Public  
Participant

MAGGIE STAIGER, NEI, Public Participant

DARANI REDDICK, Exelon, Public Participant

DAN STENGER, Hogan Lovells, Public Participant

JASON ZORN, Exelon, Public Participant

P-R-O-C-E-E-D-I-N-G-S

1:01 p.m.

MS. KLETT: I'd like to welcome everybody to this public meeting to discuss draft NUREG-1409 Revision 1 titled "Backfitting Guidelines."

My name is Audrey Klett. I'm a project manager in NRC's Division of Operating Reactor Licensing, or DORL.

Also with me are Tim Reed, a senior project manager at DORL, Howard Benowitz, an attorney in the Office of the General Counsel, Fred Schofer, a cost analyst in NRC's Office of Nuclear Material Safety and Safeguards, or NMSS, and James Downs, a project manager in NMSS.

This is a Category 3 public meeting which means that this meeting is intended to maximize discussions with the public to facilitate an exchange of information.

Public participation is actively sought at this type of meeting and the public may ask questions throughout the meeting at designated times.

The meeting presentation slides from which Tim and I will be presenting can be found in NRC's Agencywide Documents Access and Management System, or ADAMS, at accession number ML20100L as in Lima 462.

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Again, that number is ML20100L462.

Draft NUREG-1409 can also be found in ADAMS at accession number ML18109A as in alpha 498. Again, that number is ML18109A498.

As you may be aware the NRC is currently operating in a maximum telework status where the majority of us are working remotely and individually calling in to this meeting.

We recognize this configuration presents unique challenges, but we will do the best we can.

I need to cover a few logistical matters first and then I'll turn it over to Mr. Craig Erlanger, the director of NRC's Division of Operating Reactor Licensing for opening remarks.

Okay, I'm on slide 2 for those following along with the presentation slides. Today's meeting is being recorded and transcribed, and the recording and transcription will be made publicly available after the meeting.

The meeting will also be moderated such that participants will have their phones muted until we reach the portions of the meeting where they can ask questions of the NRC staff.

The NRC will stop periodically throughout the presentation to open the lines for questions and

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answers for about 10 minutes depending on the topic.

Then if there is any time after the presentation we will stay on the call for any other questions.

If you would like to ask a question please request the monitor to place you in a queue. Also, given that we are limited for time I ask that you keep questions to a maximum of one to two minutes to allow others to ask questions.

Given the number of participants in this meeting we are going to forego individual introductions and instead I would ask that as a person speaks they first introduce themselves each time they speak, providing their name and affiliation.

Questions not related to NUREG-1409 will not be addressed at this meeting. However, you can reach out to NRC's Office of Public Affairs by submitting a question via NRC's public website using the About NRC tab, then selecting Contact Us. The NRC's public website also has information about NRC's response to COVID-19 for those interested in that topic.

Okay, I'm now on slide 3 for those following along with the presentation slides. As mentioned, this meeting is intended to provide

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stakeholders with additional information about the draft NUREG guidance.

Stakeholders can ask us questions. However, this meeting is not for the NRC to formally respond to any comments or feedback. There is guidance in the Federal Register notice that's listed on the slide on how to go about providing formal comments.

The easiest way to submit comments is to use the regulations.gov website. If you want the NRC to formally respond to any comments or feedback then please provide your comments via the instructions in the Federal Register notice.

Also, any comments you provide during this meeting if you wish to do so will not be added to the formal comments we receive in response to the Federal Register notice.

The due date in the Federal Register notice will be moved out by 60 days so the public will have additional time to respond. And this is in recognition of the impacts from the COVID-19 public health emergency. A notice specifying the new due date should be issued within about a week or two.

So, before we go further I would like to offer Craig Erlanger, the director of NRC's Division

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of Operating Reactor Licensing, an opportunity for opening remarks.

MR. ERLANGER: Thank you, Audrey. As Audrey has said this is Craig Erlanger. I would like to thank you for attending this meeting. We greatly appreciate your participation.

Draft NUREG-1409 is the culmination of lessons learned, practical experience, and new policy direction to improve NRC's processes with respect to imposing new requirements.

It's very important to have a clear understanding of both backfit and forward fit. They are important to ensure the safe use of nuclear material by NRC licensees, and it allows the NRC to impose new requirements when justified by the safety and security impacts.

Backfitting also needs to be considered during many other NRC processes. The revised policy and this NUREG are intended to keep NRC focus on those issues having a significant safety or security impact so risk significance will play a key role in backfit and forward fit decisions.

Your participation today and feedback are very important and can help us improve this guidance.

Therefore, I highly encourage stakeholders to provide

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comments using the instructions which you can find in the Federal Register notice.

With that I'm going to turn the meeting back over to Audrey and that concludes my opening remarks. Thank you.

MS. KLETT: Thank you, Craig. Again, this is Audrey Klett, NRC. And I am now on slide 4 for those following along with the presentation slides.

So just to baseline some of the stakeholders who may not be familiar with the NRC's efforts regarding backfitting in recent years the NRC has undertaken since 2016 an extensive effort to enhance and improve the rigor and discipline for implementing its backfitting and issue finality regulations.

This has included the entire NRC, all of the major offices and regions, the staff, the Committee to Review Generic Requirements and the Commission. This effort used the lessons learned from backfitting actions and legal cases and led to the development of improved policy in the form of Management Directive 8.4 titled "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests."

This has also led to new training and

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recently the establishment of an internal NRC backfitting and forward fitting community of practice with experts from the major offices just to name a few of the major activities that occurred.

One of the most important tasks of this effort is the development of guidance to implement backfitting, issue finality, and forward fitting, and that is where draft NUREG-1409 fits into the overall picture.

This guidance as stated on this slide is intended to implement and align with Management Directive 8.4. At a high level then probably two of the biggest drivers for the revision to the draft NUREG are, first, the current NUREG is 30 years old, dated from 1990, and the staff has identified the need to expand its scope beyond the backfitting regulations in Part 50 so that it also includes guidance for the backfitting requirements in Part 70, 72, and 76.

Additionally, the Commission has put in place issue finality requirements which follow the same principles as backfitting, but are applied to final decisions made as part of the Part 52 licensing process, referred to as issue finality. So the NUREG needed to be revised to address those other requirements.

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Secondly, the recent September 2019 issuance of Management Directive 8.4 is the more important driver as the NUREG must align and implement the Commission policy and guidance in that management directive which captures the recent lessons learned and the efforts that have been ongoing since 2016, and the new forward fitting policy.

As we go through the draft NUREG we will highlight the more significant changes, but we may be able to go into a lot of detail -- but we may not be able to go into a lot of detail on the draft guidance in the time allowed today.

At various points throughout the presentation we will stop and provide stakeholders an opportunity to ask questions. So feel free to ask questions. This presentation is really simply a means to walk through the draft guidance at a high level and thereby support the interaction today.

And again, the objective of this meeting is that stakeholders have additional understanding of the draft guidance.

Now I'm on slide 5 for those following along with the presentation. The slide is basically a table of contents for the draft NUREG. It lays out the structure of the document.

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The NUREG starts with an overview of backfitting, forward fitting, and issue finality in chapter 1, and then the next two chapters, 2 and 3, are really the heart of the document, chapter 2 being backfitting and issue finality guidance, and chapter 3 discussing the forward fit policy and guidance.

After that chapter 4 discusses the process for addressing appeals of NRC backfitting decisions which is expanded to allow for appeals related to forward fitting.

Then we have chapter 5 that provides a high-level discussion of the relationship of backfitting and forward fitting to other NRC processes. As Craig mentioned, backfitting and forward fitting touch on or interface with many different processes. So this chapter is intended to discuss and clarify those interfaces to help prevent the NRC staff from inadvertent backfitting or forward fitting.

The remainder of the document is the record and documentation requirements, references, and finally a set of appendices that are intended to assist the staff that are using the guidance at a more day-to-day implementation level.

So before we get into the substantive

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discussion I'm going to stop here to see if anybody has questions at this point about the public comment period or the overall layout of the NUREG.

For the operator, I don't know if you may need to explain the process again for asking the question?

OPERATOR: We will now begin our question and answer session. If you would like to ask a question please press star-1 from your phone and speak your name clearly when prompted. If you would like to withdraw your question please press star-2.

Again, if you would like to ask a question please press star-1 from your phone. One moment as we wait for any questions. At this time we currently have no questions in queue.

MS. KLETT: Okay, thank you. Okay, for those following along in the presentation I'm now on slide 6. So the NUREG begins in section 1.1 by describing the relevant regulations, terminology, policies, and processes associated with backfitting, forward fitting and issue finality.

In large measure this chapter sets the table and supports the guidance in the rest of the NUREG. While the more important details will be discussed in the specific chapters in this

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presentation, and in this presentation there are several notable aspects of chapter 1 that I would like to mention.

First, this chapter discussed what are backfitting and issue finality, and that is a good place to start today to baseline everyone. So in section 1.2 backfitting is discussed, and it is explained as occurring when the NRC imposes new or changed regulatory requirements, or staff interpretations of the regulations or requirements on nuclear power reactor licensees, certain nuclear power reactor applicants, or select nuclear materials licensees, in other words, an imposition on existing license holders.

Backfitting is an integral part of the regulatory process and may be needed when the staff addresses safety or security issues. A backfitting action should only occur after the NRC conducts a formal systematic review to ensure that the action is defined and justified. This process is intended to ensure discipline, predictability, and optimal use of NRC and licensee resources.

The backfitting requirements are found in NRC's regulations in Part 50 at Section 50.109, in Part 70 at Section 70.76, and in Part 72 at Section

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72.62, and Part 76 at Section 76.76.

Section 1.2.6 of the NUREG discusses that provisions analogous to the backfitting requirements referred to as issue finality provisions are set forth in Part 52. The issue finality provisions are very similar to backfitting requirements, in some cases identical, but are applied to Part 52 decisions and approvals. In other words, once the Part 52 approvals are made and then to change them the issue finality provision must be followed.

So backfitting and issue finality provide stability to licensing and approvals, and before the NRC can change any approvals it must follow the backfitting requirements and policy.

This section also discusses some of the high-level concepts important for backfitting, and even forward fitting, such as where requirements are found, that is the license, the orders, the regulation, and what we mean when we talk about staff position interpreting the Commission's regulations. That discussion can be found in sections 1.2.1 and 1.2.2.

This section of the NUREG also discusses how backfitting provisions are implemented in terms of the backfit analysis which is the default

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justification for backfits, and the exceptions to performing a backfit analysis that can be invoked, and the order in which these exceptions should be considered.

The key here is that adequate protection exceptions are considered first because the NRC must impose an adequate protection requirement to comply with the Atomic Energy Act as amended. That is, the NRC does not have discretion on that.

And we would consider if compliance backfit is possible. Before these exceptions apply, the staff would document the justification in a documented evaluation. However, if none of these exceptions apply then the staff would perform a backfit analysis to determine if a substantial increase in overall protection warrants backfitting. Also, generic and facility specific backfitting actions are discussed in this section.

Next is section 1.3. This discusses forward fitting which occurs when the NRC conditions its approval of a licensee initiated request for a licensing action on the licensee's compliance with a new or modified requirement, or staff interpretation of a requirement that the licensee did not request.

The new or modified requirement or staff

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interpretation must result in generally a change to the licensee's system, structures, components, design approval procedures or organization.

Similar to backfitting, the NRC may take a forward fitting action only after conducting a formal systematic review to ensure that the action is defined and justified.

Forward fitting applies to a situation where the licensee has initiated the action, asking for an NRC approval. So in this sense it is an imposition on an approval going forward, not on the current license.

Another important difference is that there are no regulations governing forward fitting. Instead, it is governed by the Commission's policy in Management Directive 8.4.

We will discuss backfitting and forward fitting in more detail a little bit later in this presentation, but forward fitting was not discussed in the main body of the 1990 version of the NUREG. So this is an area where a significant change occurs in the draft guidance.

Section 1.4 discusses that all backfitting and forward fitting is to be risk informed. And this is implementing the Commission's policy on the use of

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probabilistic risk assessment for this application, and reflects the emphasis in Management Directive 8.4.

Section 1.5 of the NUREG is the section on communications and emphasizes the importance of following the discipline guidance if the staff is seeking to issue a backfit or forward fit, and the importance of preventing inadvertent backfitting or forward fitting.

Said another way, the NRC staff is not to verbally convey an expectation that can be interpreted as backfitting or forward fitting by a licensee outside of, or as a workaround to, or prior to first working through and following the backfitting and forward fitting processes and supporting guidance. So this section is intended to help implement the communication policy in Management Directive 8.4.

Section 1.6 discusses that the authority for processing backfits and forward fits rests with NRR and NMSS because these actions are fundamentally impositions that result in changes to the licensing bases. And these offices, NRR and NMSS, have responsibility for the licensing basis. But of course the regions will likely be a key partner in supporting backfitting efforts.

So that's the overview of chapter 1. I

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will stop here to see if there are any questions with this overview. NRC Operator, can you queue up any questions?

OPERATOR: If you would like to ask a question please press star-1 from your phone. Again, if you would like to ask a question please press star-1 from your phone. We currently have one question. One moment. Our guest did not record their name. Your line is now open. You may ask your question, your line is now open. You did not record your name.

Yes, your line is now open. Please check your mute button.

MR. STENGER: Oh hi, Operator. This is Dan Stenger with the law firm of Hogan Lovells. Can you hear me?

MS. KLETT: Yes, we can hear you.

MR. STENGER: Oh, thank you. Sorry about that. A couple of questions on the first section, not to get us off track or anything. I wanted to ask about section 1.2.4 on administrative exemptions and what's intended there.

I think that's something that's very rarely ever been used so I don't know that we necessarily need to have that enshrined in guidance, but just wanted to raise a question about that.

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Another question I had was back on the section about inspection reports, 1.2.2.2. That seems to suggest that where an inspection report looks at a particular program of a licensee and makes no findings that that does not necessarily create a staff position as to the adequacy of that program. I wonder if you could comment on that. I'm not sure I'm reading that section correctly. Anyway, those were my questions.

MR. REED: Hi, this is Tim Reed from the NRC. I'll try to -- I'll start off the discussion of the administrative exemption you mentioned.

I think as you're probably well aware backfitting is not something that's actually built into the Atomic Energy Act. It's in the implementing regulations. And as such it's -- the Commission can if it chooses to administratively exempt itself on the backfitting requirement.

As you said, if -- I'm aware it's only been done I think twice in history. It's a very rare occurrence. But it is something that is available. You're right, we do have it in there. In fact, when we move through this presentation after going through the backfitting I won't even mention that.

I think it's important personally to have it in the guidance. It's available, but it's

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something that's very unlikely to ever be used. I'll let Howard Benowitz from the Office of General Counsel chime in after me. Howard?

MR. BENOWITZ: Thanks, Tim. Howard Benowitz, NRC. Yes, I really don't have anything to add. We do mention it in the NUREG very briefly because in the history of backfitting that's how often it's been used, very briefly.

It is part of backfitting though so it warrants -- we believe it warrants inclusion, but just -- but not a lot of discussion.

MR. REED: I think though a second part of the question if I'm recalling, you mentioned the inspection reports, the way we write up inspection reports. I'm trying to find the exact language, but essentially inspection is not a -- is a sampling process fundamentally.

When you do an inspection you're obviously not checking everything. You go back sometimes and inspect the same areas over. Typically when you write an inspection report you don't want to say something that would be definitive of an admission that says the licensee is in compliance because really that would be kind of a stretch beyond what you're actually doing in inspection space.

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So I think what we have there is really kind of a guidance on how better to do that. And I'll leave it at that. I don't know, Audrey, if you want to chime in after me.

MS. KLETT: Thanks, Tim. I think you covered that well. We were just trying to emphasize a way to prevent inadvertent backfitting in inspection reports. So again it's just for the inspector to comment on whether or not they identified any non-compliances which is the typical practice today.

MR. STENGER: Okay. Thank you for those responses. Appreciate it.

(Simultaneous speaking.)

MS. KLETT: I'm sorry, was it the operator?

OPERATOR: Yes. As a reminder if you have a question please press star-1 and speak your name clearly when prompted. We have another guest with another question that did not record their name. Your line is now open. If you could please check your mute button. You did not record your name. Your line is now open. Our next question comes from Gary Birding.

Your line is now open. Our next question comes from Gary Birding. Your line is now open. If you could please check your mute button.

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MS. KLETT: NRC Operator, we're going to move on to the next presentation assuming Gary -- we don't hear from Gary. Okay, this is Audrey Klett, NRC. I'm going to now turn the presentation over to Tim Reed to discuss the next major topics in the NUREG. Tim?

MR. REED: Thanks, Audrey. I'm on slide 7. Gary, if your question -- we can try to catch up to you a little later in this. But I plan to go through first chapter 2, backfitting and issue finality, that's what I'll do first. Then I'll follow that up with forward fitting.

So, Audrey used the term "backfit" to apply to backfits in issue finality. We do that in the draft guidance and I expect I'll probably do that for the next several slides. Audrey actually mentioned already that they're both built on the exact same concepts. That's why we use backfit to describe both of those.

The draft guidance, the way we've structured the draft guidance in the NUREG, it is basically to follow through the way you actually screen and justify a backfitting action, a possible backfitting action. So we thought this would make for better ease of use and more practical for the staff

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member to use and that's the way we structured it. And I'll follow through basically that same approach here going through these slides as a way to walk through it.

So we started with question 1. By the way, the first three questions I'll use are really just questions to screen actions out of backfitting before we get into the more substantive process.

The first question being is the proposed action excluded from the backfitting issue finality provisions. And what we're getting to here is whether -- it basically just screens immediately out for reasons of having absolutely no substantive safety or security impact, or whether in fact it's something which the NRC has no discretionary authority to change. In other words, it's a law that we must implement. That would be something we would not apply backfit to, as two examples.

Generally anything that doesn't have a direct nexus or direct link to public health and safety or the common defense and security would in fact also be screened out here and probably also would not meet the definition of backfitting which I'll get to here in a second.

This would include some of the more

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substantive requirements that in fact do have a considerable impact. I don't know if licensees recognize this, but nonetheless would not fit within backfitting. And I'm talking about, for example, records collection requirements and reporting requirements.

These are obviously very important for us as regulators to actually do what we do, accomplish our mission, that they don't fall within backfitting.

Of course, if you guys are familiar with rulemaking you'll know that we do this through rulemaking and there's a lot of discipline and processes that govern rulemaking and most significantly it's done under the Administrative Procedures Act.

So, all of our actions don't fit within backfitting. So this is one way to screen them out immediately. Next question there.

The second question then is really asking whether a proposed action is something that affects an entity that fits within the scope of backfitting and issue finality. It's another concept. We don't apply backfitting and issue finality to all our licensees. In fact, if you go into the draft NUREG you look at pages 2.3, 2.4 you'll see a list of entities,

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licensees and basically Part 52 final decisions as was select material licensees who this applies to.

Like I said, they're principally power reactors. Power reactors licensed under Part 50, power reactors licensed under Part 52, final decisions and approvals under Part 52, that's issue finality, and then a select set of materials licensees as you see listed there on those two pages.

So unless the backfitting action that you're contemplating applies to one of those entities it will screen out immediately on question 2.

There's one more screening question. That's on the next slide. And let me go to that quickly. That's question 3.

And this really is taking the definition and taking it in discrete components. So if you were to go into, for example, 50.109, that's the backfitting requirements in Part 50 for power reactors and you go into paragraph A1 and you took that language and you broke it into discrete parts you would get pretty much what I'm walking through here.

You have to ask yourself is this either a new or changed requirement. In other words, is it amended, revised, or modified NRC requirement that you're contemplating on imposing, or is it in fact a

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new or changed staff interpretation of an existing NRC requirement. Those are two ways you can backfit people using that.

And are you imposing the requirement? And this may seem obvious, but if a licensee were to voluntarily adopt the new thing it's not an imposition. So you have to actually be imposing it.

And then imposing it must result in an impact, and what's that? Well, it has to result in a modification or addition to the structure, systems, or components of the entity's facility, the design of that entity's facility. That's not limited to design certs -- including design, but also goes to design certs, manufacturing licensees, standard design approvals for example in the Part 52 space.

If it impacts the procedures or organization for designing, constructing, or operating an entity's facility that would meet the definition.

So, essentially what you've got to do is you've got to actually impose this thing and it has to have that impact on the facility, the design and operation of a facility.

So then finally it has to occur basically at a certain point in time. And that's what the provisions of 51.09(a)(1) go to. If you look at

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51.09(a)(1)(i) through (vii) basically those specify the times and simply put those are when the person actually holds a license.

So I heard it put one time, I think it's a very good way of looking at backfit. Backfit is really best described as changing the rules of the game after the game has started. In this case after your licensee has been granted a license by the Commission, backfitting is essentially imposing a new requirement on that licensee. So they have to hold that license and that's what those dates really are going to, are we after those points in time.

So again, three questions to screen out as I pointed out before. Is it something new? It screens out as question 1. Question 2, does it screen out because it doesn't affect an entity that falls within these issue finality or backfitting protections. And finally, does it meet the actual definition. So those first three questions, if you get through those questions then you actually go into the substantive requirements of the backfitting provisions which we'll walk through here in a second.

But before I do that I went through a lot of -- actually quite a bit there quite fast. Let me come to full stop, and Operator, see if there's

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anybody on the line who wishes to participate. Thanks. Operator, you'll probably have to remind them how to queue up their questions I guess.

OPERATOR: Again, if you would like to ask a question please press star-1 from your phone. If you would like to ask a question please press star-1 from your phone. Our first question comes from Jerry Bonanno. Your line is now open.

MR. BONANNO: Good afternoon. This is Jerry Bonanno from NEI. First I'd like to say thanks to the NRC for the opportunity to interact on NUREG-1409. I know we're trying to keep the comments short so I won't go into a lot of background, but I appreciate all the work that's been done and look forward to providing comments on the document.

So Tim, I had kind of one maybe comment -- and I realize we'll have to submit these in writing -- and then one question on questions 1 and 2.

So question 1, it talks about is the proposed action excluded from backfitting and issue finality provisions. So, this is more of a comment and a consideration.

When we looked at that section one thing that we were focused on is avoiding any -- really any overstatements when we're categorically excluding

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actions from the backfitting requirements. And really, that any kind of exclusion from the backfitting process should be primarily based on application of the definition of backfitting.

So first and foremost, does it meet the definition of backfitting or not. And also, just to stress that if there are multiple reasons why something wouldn't be -- wouldn't fall into or be treated as a backfit that the staff just be clear that they don't -- whether it's because they don't think that that proposed action meets the definition of backfitting, or whether it's for some other regulatory, policy, or legal reason. So that's just a comment on question 1.

And then I actually had a question related to question 2. So that discussion in section 2 that you talked about seemed pretty straightforward to us.

Where I ran into a little bit of a -- or what gave me a little bit of pause is when there's a section, I think it's on page 2-6 that talks about situations where the regulatory action would affect both licenses that are covered by a backfitting provision and licenses that aren't.

It steps through a process to figure out how the backfitting rule would or wouldn't apply in

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that situation. And I was wondering -- we'll probably provide some comments on that. I think there's maybe a simpler way to get to the answer on that question.

But there's a pretty complex explanation in there on how you figure that out. I was just wondering is that something that the staff -- is that the staff's current view on how that would work, or is that rooted in kind of how this has been done in the past. If it is, are there any examples and kind of regulatory history or past guidance or anything that we could look at to see how that determination has been made in the past? So thanks.

MR. REED: Thanks, Jerry. We appreciate your perspective there. Definitely provide that perspective on ways to improve the section with regard to both questions. I really greatly appreciate it.

So, with regard to that, the last part there, that is reflective of real life experience. In fact, Howard can definitely go through it with you.

Sometimes when we get -- and that's really rulemaking space typically where you get into the situation where you have something like a power reactor holds multiple licenses first of all. Some of those licensees' licenses get backfitting protection, some don't. They may have a Part 30 license, a Part

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50, et cetera, et cetera.

And we may have a broad-based set of rulemaking requirements that stretch across multiple parts. And you're right, it can get very complex. Howard took a shot at trying to describe that to help people out as they get into that.

My guess is from a practical perspective if somebody comes across that they're probably going to call for help pretty early on. But we wanted to give them at least something to get them on the right set of rails before they came in calling us.

And I think most times, and Howard will correct me if I'm wrong, I think this is going to be more in rulemaking space so that it will probably be addressed adequately through that process. But I'll stop there and see if Howard wants to add anything.

MR. BENOWITZ: Howard Benowitz, NRC. Thanks, Tim. This is -- it's a complicated issue. It's something that we've had on our plate for several years through internally we're trying to explain a situation where -- and typically it is rulemaking like Tim said, where we have a rulemaking that affects multiple types of licensees. Say a rulemaking under Part 74, or 73 on physical security, 74 on material control and accounting where you might have a power

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reactor licensee, or a fuel cycle facility, and a fuel cycle facility, or maybe a Part 30 or 40 licensee that's not a power reactor or fuel cycle facility. Something that, again, that would affect multiple types of licensees.

And then you have the question of well, some of them have -- there's a backfitting provision that applies to them. Some don't have a backfitting provision that applies to them. What's fair.

Do we want to treat our licensees with sort of the same level of fairness, and do we apply backfitting for one set of licensees but not the other. What about a power reactor licensee that has a Part 50, 30, and 40, and 70 license within their Part 50 license, or Part 52 license? Because they wear multiple hats so to speak. And if they're wearing one hat there's a backfitting provision for them under Part 50. But if the new proposed or final rule is really impacting them as a materials licensee because of their Part 30 or 40 license in the way they handle certain material as opposed to being a production and utilization facility under Part 50.

It's really the new requirement affects them because of their material license should there be a backfitting provision applicable to them in that

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situation and what's fair?

And so this is our attempt to walk through a process of asking these types of questions. And like Tim said, if there's an easier, simpler way to do it we welcome the input. But it doesn't happen often, but it does happen occasionally in certain rulemakings, more often than not it's in rulemaking, and we do have to ask ourselves these questions.

MR. BONANNO: Okay. Thanks. I appreciate that explanation. And yes, I agree it is rare. One example that I know of that I think about whenever this comes up is the Part 20 rulemaking in the early nineties which applied kind of across the board to different types of licensees. But I appreciate the explanation.

MR. REED: Thanks, Jerry. Any other questions, Operator?

OPERATOR: We currently have no questions in queue.

MR. REED: I guess I want to move on to a more substantive provision. So I'm going to move to slide 9. So, at this point if you've gotten through the first three essentially you have a substantive safety or security issue, you're affecting an entity that falls within backfitting or issue finality, and

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you met the definition of backfitting which as Jerry pointed out is somewhat redundant with those safety questions as a matter of fact.

But now you're in backfitting space. You've crossed the Rubicon, if you will, with backfitting. So you have to work yourself through the backfitting provisions.

So, you basically have -- and Audrey actually mentioned this already in the beginning. We have the default approach which is a backfit analysis and we also have the safe -- have exceptions. And they're all backfits of our own positions if you can invoke or justify any of them.

But the exceptions are really exceptions to performing the backfit analysis. And we have a set of adequate protection exceptions. We have a set of non-compliance criteria. And so we work through it in that order. I'll walk through these in the next couple of slides.

Both of the exceptions that we have, we document that in what's called document evaluation. And of course a backfit is a backfit analysis. It's a much more substantive effort. So, let's go to the next slide and start talking about slide 10 about the exceptions themselves.

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So question 4A then is asking, first, whether one or both of the adequate protection exceptions apply. And Audrey also mentioned this at the very beginning too, why do we do this. Well, we consider it as the first priority in this order because the Atomic Energy Act of '54, 1954 as amended requires the Commission to put in place requirements that address matters that involve adequate protection.

It obviously requires us when we license use and material to provide reasonable protections to protect the public health and safety, and to ensure the common defense and security. So we do that with the license and we do it every time when we change licenses.

And it's something that we have to do. And if you have a chronic condition that creates an inadequate protection challenge, or a condition of undue risk the Commission doesn't have discretion not to do it. In other words, it couldn't ask our licensee to voluntarily address it. The Atomic Energy Act alone requires the Commission to put in place requirements. So that's why it's considered as a first priority.

The draft guidance also discusses the concept of adequate protection. And it's not

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quantitative or qualitatively defined. And that's been the case since -- since the backfitting provisions went into place.

And there's a very good discussion if you're interested in the 1988 statement of considerations for the provisions in Part 50 and 51.09. So if you go there you'll find a very good discussion of adequate protection.

It does mean the same thing as undue risk, in other words providing reasonable assurance of adequate protection of public health and safety is a way to ensure no undue risk to public health as being the same thing. That's not too helpful, but they are equivalent.

It is limited to human health effects. So, when we say public health and safety it does mean exactly that. It's limited to human health effects from radiological releases and does not include the economic impacts that may ensue downstream of that.

So adequate protection and justification - - Audrey also mentioned this as well as forward fitting -- must be risk-informed. And we do risk informing -- we provide -- we inform these decisions with all quantitative and qualitative risk information we have to bring to bear on it.

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It's a policy decision. So it's obviously something we did show risk pretty clearly in Management Directive 8.4.

Another real important concept that we built into the guidance in this part of the draft guidance is that identification of undue risk must be demonstrated despite the existing licensee's compliance with all governing requirements. And what am I talking about here?

The licensee that was given a license was given it with a basically determination that given all the requirements in place in its license, the license conditions, tech specs and regulations themselves, that they must be not only in compliance with that regulatory framework that there would in fact be reasonable assurance, okay, of adequate protection of public health and safety.

So what you have to do is if you're saying there's an undue risk to a condition as existing probably because you have new information, new insights, whatever it might be, you have to overcome that presumption. You have to prove that condition exists despite the fact that the licensee is in full compliance with licensing requirements.

In my book, if the licensee is not in

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compliance that's an inspection and enforcement issue.

That's not what we're talking about here. We're talking about the need to have a new requirement put in place to address these conditions of undue risk.

If we get to the point where we're saying okay, we need to invoke that adequate protection exception to impose a new requirement because there's undue risk we must also prepare an imminent threat analysis at the same time. And in fact, this is probably literally the first thing we'd consider in practical reality.

And that's really asking whether immediate action is necessary. Adequate protection does not always mean there's an imminent hazard. What am I saying here. You can have adequate protection and if you have a condition that could develop over time. And in my experience this is typically something like say an intergranular stress corrosion cracking issue that might develop over a long period of time. And for folks familiar with reactor vessel requirements this was in fact the case for this requirement to be put in place.

But if there is something that is a very significant safety issue and it takes immediate action. And of course, the Commission will issue an

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immediately effective order to address that in accordance with the imminent threat analysis.

Another very important concept about adequate protection is that these provisions must be implemented without consideration of cost. This is a big factor in why the rules actually formed its current version in 1988. And that is again, the Commission doesn't have discretion here. It has to put in requirements to address the condition of undue risk and it will.

Now, we can consider cost if there's multiple ways of doing it and we have cost assessments supporting analysis. And typically as an agency that uses reg analysis in this situation we probably would have some cost information to form that decision. And if we have multiple ways we may have cost information for each of those ways and we probably would select the most cost effective way, frankly, if we were to select one, if we don't provide full flexibility to the licensee.

But were we to choose one and not choose the most cost effective way then we would have to justify why we did that. Again, don't forget adequate protection is going to put in place requirements. Cost isn't being used to stop that. It will happen,

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but it could be informing that decision.

That's a real quick overview of the adequate protection provisions. Let me go through the compliance exception and I'll come to full stop. Let me see here. So let's go to the next slide. That's 4B. And that is slide number 11.

So the compliance exception is where you go next if you can't invoke the adequate protection provision. And that is a little different than other backfitting provisions. As you probably -- if you look through the draft guidance there's a lot of very good guidance that's now in the draft NUREG and it reflects the guidance that was a policy. In fact, it was put in Management Directive 8.4.

This was really developed since we've undertaken this huge effort really since -- in the last four years, starting in 2016 to enhance significantly the discipline with which we're doing our backfitting. So compliance was a big beneficiary of it. We have a lot of good guidance to improve the Management Directive. So we're reflecting a lot of guidance in the draft NUREG also.

So what does this actually allow us to do?

It actually allows the NRC to fix a mistake that we made when we approved something. Now, what's

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interesting about compliance is that the requirement, whether it resides in a license, a license condition, a tech spec, or in the regulations, or an order, okay, the requirement is not the problem. The requirement is perfectly fine.

What we're changing is the means by which the licensee meets that requirement. That was something that the NRC reviewed and approved and made a mistake. A mistake may have in fact been our mistake, or may have been a mistake that was caused by the licensee or a third party, but notwithstanding that we made the mistake and so we can go back and reverse that mistake using the compliance exception. So that's what this is designed to do.

Notwithstanding that of course the constraints of the application of this now are pretty significant as they should be. To put it in layman's terms, basically what you can do if you want to change one of these mistakes is only use the information that was known at the time of approval.

Now what am I saying there? In terms of using -- what the true meaning -- intent of the regulations that apply. You can't use a different meaning or an expanded meaning of those requirements.

You have to use what was known in practice at the

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time in terms of the means of approval. You could not use a new technique or new insights not available at the time.

So, in a sense if you were to think about it you could imagine yourself in a time tunnel, and you look back at a time frame in the room so to speak and you say would if I fix this mistake if I'd known what I know now. Knowing your regulations apply the correct understanding, knowing basically the standards and ways it was addressed would I fix it.

And if you would fix it then this is what this compliance exception would allow you to do. In other words, what you can't do is use new insights, new understandings, new information that was not known at the time.

Anybody who follows nuclear power knows that we've learned a lot over 50 and 60 years, and this is something that happens, and we have big learnings, and we put in new requirements for these situations. But those don't fit under compliance. They typically are either adequate protection actions, or they're substantial difference protection actions under -- in other words different provisions of backfitting.

Compliance is limited in terms of what we

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can do. So that's a very important concept. That guidance is built in there. Another final point I'd like to make and then I'll stop and let folks participate here is that now compliance backfits are to be supported with cost estimates.

That's an explicit part of the policy now.

It's not to say we didn't do it in the past. We do recognize as with almost all our actions that divert resources of licensees, but now this is explicitly built in for the policy.

And of course, for folks who follow along closely there's some history. This is actually a result of an indication involving another federal agency. And it's to ensure basically that we're in compliance with the Administrative Procedures Act.

So our compliance provision using the exception criteria has been improved significantly both in the management directive and in the draft NUREG guidance that we have here in chapter 2. So that's an awful lot. I apologize for that, going through at a high level, but I want to give people an opportunity to participate, give the maximum time to you folks. So, I'll stop there, Operator, and see if folks participating, if they want to participate have them do so. Thanks.

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OPERATOR: Again, if you would like to ask a question please press star-1 from your phone. Again if you would like to ask a question please press star-1 from your phone. Our first question comes from Darani Reddick. Your line is now open.

MS. REDDICK: Hi, thanks. This is Darani Reddick from Exelon. Appreciate the opportunity to comment and thank the staff for all of the hard work you all have done. This is a really significant revision to the NUREG so we're looking at it closely, but appreciate all that you've put into it.

And thank you, Tim, for your explanations of the exceptions to the backfit rule. That's very helpful. I do have a couple of high-level comments about the exceptions. We'll flesh all of this out in detail in NEI's comments, but I guess I would say at a high level, you know, Tim, you talked about the priority that the adequate protection exception takes.

And I think we would benefit from some discussion on the relationship between the adequate protection exception and the compliance exception in instances where the two may overlap. The way the draft NUREG is written it suggests that the two are entirely mutually exclusive, and I think that could lead to some challenges in implementation space. So

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that's one area that we may be looking for more clarity on.

And then secondly with respect to the compliance exception, and this is also stated in the slides that you're presenting. It seems that the staff is using the terms "mistake of fact" and "mistake in error," that those are being used interchangeably. And clearly the mistake of fact is the term that's used in the regulatory history for the rulemaking.

So, just a comment that we'll put in our written comments, but we would suggest using mistake of fact consistently to avoid any confusion or unnecessary broadening of the term in practice. Or, if not, ensuring that all those terms are defined the way they were intended in the original rulemaking.

So, thank you for the opportunity to comment and again we'll have more detail in our written comments. Thanks.

MR. REED: Thanks very much, Darani. First of all, outstanding comments there and hopefully you'll provide that. That will be very helpful. If we can clarify the distinction between the two that's definitely true.

Obviously there's an adequate protection

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and there's an overlap with compliance protections, adequate protection is going to rule obviously because of the significance. So that would be I think a very significant improvement.

I won't speak to the actual language that we use. I probably can't do justice to it. I don't know if Howard wants to discuss anything on that, but I'm sure he welcomes the comment. Howard, do you want to talk about our language in terms of mistake or error?

MR. BENOWITZ: Well, thanks, Tim, for asking me that. I was going to ask Darani first, you mentioned about -- if you have any examples, not necessarily real ones, but theoretical examples of how adequate protection and compliance exceptions could overlap please include those in your comments. That would help us to understand your perspective. Obviously we all have different perspectives and so that would be great.

And mistake of fact, thank you for, again, thank you for highlighting that and we will take a closer look at that. I don't know that there was intent to use different terms to mean different things. I think there is a -- historically there may have been some inconsistencies. And the -- but that

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doesn't mean that we need to continue that trend. And so thank you and look forward to your comments.

MS. REDDICK: Thank you. We'll provide that detail in the comments.

MR. REED: Thanks, Howard. I know -- obviously we try to be careful. Whether we accomplish that or not I don't know, but yes, that would be an outstanding comment to provide. Thanks. Any other comments or folks that want to interact on this portion of the presentation?

OPERATOR: We currently have no questions. Thank you.

MR. REED: All right. I will move on then. Thanks. So we'll go to the next slide then. So we got past 4A and 4B. So we decided that -- assume that we have a substantive issue. It's not something that screens out. It affects one of these entities on an issue finality or backfit. It met the definition of backfit in terms of its impact on the design of the facility.

We tried to go through the actual substantive criteria right now. It doesn't rise to the level of undue risk because of inadequate protection, for example. It's not resolved by mistaken approval in the past.

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So where are we now? We're actually at the default backfit provision really, the one that's typically what is done. That's called a backfit analysis. So that's where question 5 goes. And that's slide 12.

So, this question is really asking does the proposed backfitting action constitute a cost justified substantial increase in the overall protection of public health and safety for the common defense and security.

The first point I want to make is that this is a two-part question. The first question being does the proposed action result in substantial additional protection in its overall protection of public health and safety, or common defense and security.

And you actually answer yes to that. If you don't answer yes there it's a full stop. You don't go further into the cost. If you do answer yes, then you keep moving on and you do the cost and you try to show that the cost of the direct and indirect are justified in view of that using our dollar to person-REM conversion factor.

So, I'm making the point of this being a two-step process because typically a confusion that

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comes about, a very common confusion is to confuse backfit analysis and regulatory analysis. And backfit analysis is a tougher standard and it was designed to be a tougher standard.

It also did say an increase in safety, or even if significant increase it's a substantial increase. And they use the word overall of protection because you have to put yourself essentially in the seat of the external stakeholders, the public, and ask yourself would they see a change in this risk.

So, sometimes we get proposed actions that may improve an aspect of plant performance that may prove very substantial. But in fact, the overall performance because it's not improved in terms of risk to the external stakeholders because in fact let's say the risk is dominated by another aspect of the risk like fire, or external events, and not internal events for example, just to throw out an example. So that's what overall means.

It's got to go to the bottom line and be a benefit to the public health and safety. That's what overall protection means.

So this is -- we have guidance in terms of what substantial means. Typically, almost all my experience in this regard has been -- these actions

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are most almost all done under rulemakings. And so they're generally generic in nature and we have this guidance and it's probably unfortunately contributed to some of the confusion. It's actually our regulatory analysis guidelines in NUREG/BR-0058 which I think shortly will be coming out in Revision 5.

So if you were to go into section 2 of that NUREG you'd find quite a bit of detail and discussion on what substantial is and how you can make a judgment on what substantial is.

I might add that fundamentally it's going to be a subjective determination, a policy determination. It's going to be fully risk-informed.

Notwithstanding the -- I think there's very good guidance in there of how you might be informed with regard to whether it meets safety goals or health objectives. That's very good stuff in there.

But nonetheless I think that's what you have to meet in terms of substantive or an increase of overall protection. Again, cost must be justified. You do a two-step process right here.

I've gone through that there. There's an awful lot we could talk about. I think us folks that know backfitting, we could talk really for quite a long time on this aspect of it. I will stop there and

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just give people an opportunity to chime in now and ask questions rather than have me take up the time. So Operator, if somebody wants to participate please open the lines. Thanks.

OPERATOR: And if you would like to ask a question please press star-1 from your phone. If you would like to ask a question please press star-1 from your phone. Our first question comes from Jason Zorn. Your line is now open.

MR. ZORN: Thank you. Can you hear me okay?

MR. REED: Sure can, Jason. Thanks.

MR. ZORN: Hey, Tim. This is Jason Zorn from Exelon. Just a question about the relationship between the cost justified substantial safety enhancement and adequate protection.

In chapter 2 it talks about -- I think it was on page 2-19. It talks about -- if the effect of the substantial safety enhancement analysis really looks at the plant as a whole, the protection as a whole I think is what it says. But there's not really a discussion in the NUREG about whether or not this kind of philosophy applies equally to adequate protection in the sense of does the NRC look at whether or not adequate protection is provided

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(telephonic interference) in the individual part of the regulation or the license, or is it really assessing the totality of the plant. Does the totality of the measures in place at the plant provide adequate protection versus the one specific line in a regulation or whatever it comes from. So I guess that's kind of a question and a comment.

MR. REED: Thanks. So that would be something -- it sounds like a good area to improve from your suggestion. I think that's where you're going with that. And it sounds like an outstanding comment to provide.

I mentioned the -- when I did the adequate protection about overcoming the presumption. And the presumption is overcoming the presumption that is a reasonable adequate protection in place through compliance with all the governing requirements in place.

And so we need to think about. When you're talking about all the governing requirements in place that would be a very broad consideration. So again, it would have to be an undue risk on the public based on everything in place. So it would need to be overall also, but I think you're correct. I don't think we did a good enough job in probably describing

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that. So that would be something that would be an outstanding comment to provide. I don't know if anybody else wants to chime in. I'm doing a lot of the talking. Go ahead.

MR. ZORN: No, I do not.

MR. REED: Okay. So yes, that's a great comment, Jason. I think -- was that the only part of your comment? I think I missed another part of it.

MR. ZORN: No, that was the gist of it. Just in terms of the consistency between backfit analysis and adequate protection exceptions. I feel like there might have been statements in the past from the Commission about adequate protection, about it being assessed as the whole, not the single individual part. But it doesn't come to mind exactly where that's been said, but it seems like if that is the philosophy it just wasn't reflected in the NUREG as far as I could tell. So thanks for your response. I definitely will be providing written comments.

(Simultaneous speaking.)

MR. REED: Go ahead.

MR. BENOWITZ: Sorry. Howard Benowitz, NRC. I think -- we do have something in there. I guess it may not be carried forward throughout the document about looking at the totality of the plant as

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opposed to a certain SSC for instance.

I thought that's where you had started. We had said it in one place and maybe not another, but I think what Tim is saying is that we'll take another look at that and look for consistency to ensure that these analyses or the documented evaluation, whatever, for the type of backfitting action looks at -- we provide a consistent process for the staff to follow.

And that's the purpose of the NUREG, or one of the purposes, is to ensure that the staff has a standard process to follow in each of these cases. So thank you, Jason, for that.

MR. REED: Yes. Just to try to chime in, I think where Jason's -- I'm not sure, but it just causes me to think about. I've had issues and I'm sure you have also and others where somebody will say hey, tech spec, for example, one specific requirement they're not meeting and therefore it's adequate protection.

And the answer is tech specs are very, very important, obviously, some of the most important requirements we have in place. But because you don't meet a tech spec or I'd say because there's a single provision in the regulations that perhaps may not be the best, for example, ECCS or 50.46 it does not mean

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there's a condition of undue risk.

A condition of undue risk is only when you have to overcome the presumption of all requirements in place at the time during compliance, that condition exists notwithstanding a full compliance. So it does get to that. It does mean the totality of everything.

And obviously as we mentioned it's got to be fully risk-informed.

MR. ZORN: Thanks, Tim.

MR. REED: Sure. Absolutely.

OPERATOR: We currently have no questions in queue.

MR. REED: Okay. So let's see. That was slide 12. So that finishes the backfitting portion. We're going to move on to forward fitting. That's chapter 3 in the draft NUREG and that's -- I'm on slide 13 for folks following along.

Forward fitting terminology. That may seem new to folks. The concept is actually not new. If you were to go back and when this NUREG, the current NUREG-1409 was issued in 1990 if you were to turn to Appendix D in NRC Manual 0514 you actually find the concept buried in there.

It was actually called backfitting back then, but it basically is applied to the same concept.

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Over the years we've come up with this terminology. In fact, it was in 2010 I believe it came about, forward fitting. As the terminology in these situations and of course the policy that we have in place today reflects -- put in place in September of last year is a much improved policy if you will, updated policy on how to address these situations.

The forward fitting terminology is useful whenever we're trying to distinguish it from what we refer to in traditional backfitting space. So this chapter again is there to address forward fitting.

Some of the key concepts I'll hit upon here in a little bit, and this was important, I think probably more important than most of what I'll talk about.

Management Directive 8.4 did a lot of really good stuff in terms of defining forward fitting actually, but what it didn't do is it didn't define the scope of licensees and applicants to which forward fitting would apply. And we do that in the draft NUREG. So I want to point that out to folks.

And we define that -- or propose to define that in the draft NUREG as the same set of entities that it would impact for the issue finality. And that probably will become quite obvious as we walk through

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this definition as to why we did that. A lot of it is actually identical in terms of language we're using to backfitting. So it makes sense that we would apply it to the same set of entities.

So, this slide 13, what it really does is it kind of makes that forward fitting definition which was in the management directive into six discrete pieces. And if you walk through that, each discrete piece to see whether in fact you fall within forward fitting, that's kind of the idea here.

So, number one being, first of all it's got to be a voluntary licensing request. And what does that mean? There's two important concepts here.

One, you have to be a license holder, and two, you have to be making a request to the NRC.

A licensee would request the NRC really if it needs approval on something, whether that's a license amendment, exemption relief request, whatever it is, but that's a voluntary licensing request. And that's the way you enter into forward fit. And if you are in that domain, in the regulatory domain, then you're not in forward fit.

And why do I say that? Well, inspection, for example, a very important thing that we do as regulators doesn't fit within forward fit. There's no

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voluntary request from a licensee for approval from NRC in that interaction. It's simply inspecting the licensing basis as it is. So that's one example where forward fit would not fit.

Another would be rulemaking. Rulemaking, we would not have a forward fitting involved there because it's not involved with a voluntary request from a licensee. It's putting in place new regulations generically and those regulations themselves might have some sort of a request from the licensee put in place, but itself, the rulemaking itself doesn't involve forward fits -- of course it does involve backfits in many cases as I think most folks are well aware. So voluntary licensing request is the first key concept here.

I mentioned -- important again that the scope of the provisions are as we've defined them here in draft guidance, the same set of entities that are applied to backfitting and issue finality. So, we actually, I think it's pretty clear throughout this. We license a lot of people, a lot of different licensees, and a whole lot of different materials licensees, and they get a lot of processes applied to those when we do something new in terms of those issues, but they don't get backfitting.

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And so this is only the same set of power reactor licensees and applicants as far as Part 52 and those select material licensees that were identified before. Same set.

The staff action must be -- now, the next two provisions are really going to be exactly the same as backfitting. It must be a new or change requirement that you're contemplating imposing as the forward fit, or a new interpretation of the existing requirement. That's the exact same thing as a backfit.

In terms of the actual impact of the imposition, again, exactly the same. It's got to affect the structure, systems and components of the facility's design, the operation and procedures design for the certain operations of the facility. Again, that's identical to a backfit.

So, finally, there's got to be a condition of approval of a voluntary licensing request. So you're doing this, you're imposing it as a condition of approval and actually that's simply in my view under overlaps with number six, obviously if it's an imposition the licensee didn't voluntarily offer it. So that's why it's an imposition.

So really, in a sense I think it's

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probably a better way to understand forward fitting. It's really a backfit imposed on a voluntary licensing request. That's probably the simplest way to understand it. So that's the definition if you will walking through the six aspects. Let me go to the next slide and then after that I believe I'll come to a full stop.

So the management directive outlined the policy on this. It structured it around three different sets of criteria.

First, you have to have a direct nexus between whatever it is, this imposition, if it's a new requirement, new staff position that you're contemplating imposing on the licensing request, that subject matter has to have a direct nexus to the request.

This is pretty straightforward. I think, for example, we have an example I believe in the draft guidance. I think it's emergency diesel generator, looks like a tech spec amendment, and you want to -- there's something wrong with the tech spec amendment, but you also want to impose as a condition something to do with security. It has absolutely nothing to do with the voluntary request.

That clearly has no direct nexus. That

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would fail on the forward fit provision right there. So it's got to be -- the subject matter has to have a direct nexus. And that could be somewhat challenging.

Sometimes the nuance -- there could be nuances in terms of whether something truly applies or doesn't apply. But in general I think that's readily understandable.

The second key criterion that you have to satisfy is that your position, whatever it is you're planning on conditioning this approval on must be essential to our determination of its acceptability. So when we walk through that we have -- we review license amendments, exemptions, relief requests, and each of those has a little bit different language in terms of how we -- our findings that we make.

In our cases they'll have public health and safety components of security either directly or indirectly. We're required obviously to do that. But sometimes they'll also have some other provisions in there, like for example, to ensure that there's continued compliance with all governing requirements.

That would be a case for a licensing amendment.

So, in other words you have to show that this forward fit that you're contemplating is essential for us to actually approve it. Now, if you

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can't show it's essential you won't make forward fit.

Also, the practical reality is we probably would not approve it obviously. So this is an interesting circumstance where we take the policy and we work it down to a practical implementation standpoint. If you can't get through essential it's likely that this is an opportunity for the NRC staff to communicate, and communicate in a constructive and open and neutral way with the licensee to convey -- to basically exchange information they should use - I should not use the word convey - - so in fact they understand where we're at and why we couldn't make that finding.

If you go through Management Directive 8.4 you'll find some -- in fact Audrey mentioned it in the beginning, some clear guidance about not conveying a forward fit, and not conveying backfits verbally. So we have to follow these processes before we do that.

So this is an exchange of information that enables licensees to understand where we're at and for the licensee then to take action under their own volition. I think that serves everybody's interests the best. They can decide whether they want to change it, amend it, withdraw it.

They can decide to elect to allow the NRC to impose the forward fit if they wish. All these are

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options. But the key I think here is to have a good communication and I think this will probably be the best way to go forward in using this forward fit policy.

If we have to address additional information, if we have a request for additional information, for example, we need more information to make our finding again, then we're in an area where we need to be careful. We don't want to convey in that kind of interaction anything to the licensee in terms of what it needs to do. Rather we need to say this is the information we need and again, let the licensee provide that information and give full flexibility to the licensee.

So, if you get through direct nexus and you get through essential the next part of the structure if you will, the forward fit structure in the policy is to have a process for forward fit.

And this is where we basically reflect the management directive here in the draft guidance. We have several different cost scenarios that we talk about. This can get a little bit complex here. I'll just try to hit it at a high level.

There has to be a cost estimate in some form. Typically if you're looking at a something

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that's a first of kind review and there's nothing in place, there's no reg guide in place, there's no previous cost information, then it would be simply a cost estimate to support the forward fit for that application.

If there is something in existence, and I'll go to the other end of the spectrum. Let's say there is reg guides. Let's say there's more than one version of a reg guide in place and we want to forward fit the licensee's voluntary request to require them to do a later version.

This would be the most difficult cost estimate. This would be a full site specific regulatory analysis that would have to support that forward fit.

And if it's in other circumstances where I'd like to say a reg guide replaced something previously that reg guide should have had a reg analysis to support the replacement, and then that generic reg analysis could be adapted to the site specific cost estimate to support the forward fit that is being contemplated to be imposed.

So, and all these fit within -- these all have to be done in what we call a forward fitting analysis, or what we're calling in our draft guidance

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a forward fitting analysis. And that's how we -- the language we're using to describe that.

So, again, these two slides, we worked through the definition and six discrete elements that you have to meet for there to be a forward fit. And then once you get into that you have to structure, you've got to meet the direct nexus, you've got to show that your end position is essential, and then ultimately you have to have some sort of cost associated with that to inform that decision.

Again, this is chapter 3. It's a very quick walkthrough. I'll stop here and see if the folks here want to participate, ask questions. So Operator, you can open the lines. Thanks.

OPERATOR: If you would like to ask a question please press star-1 from your phone. Again, if you would like to ask a question please press star-1 from your phone. One moment as we wait for any questions. Our first question comes from Jerry Bonanno. Your line is now open.

MR. BONANNO: Hi, this is Jerry Bonanno from NEI. Can you guys hear me okay?

MR. REED: Yes, we sure can. Thanks, Jerry.

MR. BONANNO: Okay. So, this is obviously

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a chapter we're paying a lot of attention to, and to understand the nexus between -- you know, this is actually implementing guidance, but what was in 8.4. So we're spending a lot of time on this chapter really with a focus on trying to see if we can come up with some suggestions to maybe, again, simplify things.

It's a new -- in its current form to us it's a new concept. So just a few maybe questions or comments. I know there are some other people probably in the queue on this section.

But so I just took note of your discussion, Tim, of the direct nexus portion of the test. That was a section I think that is more straightforward. But one of the things we picked up on when we read through the document was that, you know, the example that's given for direct nexus is a pretty clear case.

And so one of the things we were thinking through is that's kind of a general relevancy example where the two things are just completely -- one, the requirement on the height of the fence is just completely irrelevant to the diesel generator request.

And so we're just trying to think through whether there's a more precise way to describe what that test really means. So that's more a comment and just to

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give you guys a heads up on things that we're thinking about.

The second question or comment that I have, these are more comments, again just aimed at filling you all in on where we are and what we're thinking about. The essentiality portion of the test I think is a little tougher to apply. I definitely understood the discussion in the draft, and using the kind of standard depending on what kind of request is pending, it's just -- I think that presents some interesting issues because like you mentioned in some regards that can come pretty close to adequate protection and/or ensuring compliance.

But what we're thinking hard about is some concrete examples of how that would happen and how we would work through these questions. Because it seems to me if you're talking about a forward fit and you run up against, for example, a LAR, a license amendment request, and you're trying to figure out, okay, I can't really approve this not so much because of a health and safety implications but because of the compliance implications.

We're kind of presuming there would have to be something about the change to the licensing basis that you're requesting that creates an actual

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compliance issue if the staff were to approve that without the proposed forward fit.

So it seems like probably a pretty narrow set of circumstances where you'd run into that problem. But that's just kind of a little bit of an example of some of the things we're trying to think through with respect to how these tests would be applied.

And then the other thing I'll just mention at this point. I'm not sure whether we'll have these types of comments or not, but we're pretty aware of the history like you mentioned and Audrey went over of how this all came out and realized that your charge here is to implement what was in 8.4, but did also note in the paper that if there are policy issues raised that those could at least be flagged with a potential resolution when this stuff goes back up to the Commission.

I don't know whether we'll have any of those kind of comments, but I'm presuming if we do they would probably fall into the forward fitting area. So we'll do our best to make those clear and explicit. So, I think I'll stop there.

MR. REED: Thanks, Jerry. That's a lot of good suggestions there from my take on it. I think

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more subtle, more nuanced examples would be a great idea for the direct nexus. Anything you can provide concrete in terms of how you might work through essential in terms of if you guys were thinking somewhat like that would be a great help too.

And I believe -- if we do get to a point where we do have policy issues then obviously we're going to have the Commission weigh in on this thing and that would require that this be a vote paper in the end and you're right. But we'll see where all that goes. Appreciate all that input.

I'll say this to everybody. We really want good comments. And the more you get into details in the comments and how you would actually fix the document, and how you would make the document basically conform to your ideas, that would be greatly appreciated. So thanks very much. Do we have any other comments on the line?

OPERATOR: Our next question comes from Ms. Reddick. Your line is now open.

MS. REDDICK: Hi. Thanks. This is Darani Reddick from Exelon again. I would just second Jerry's comments with respect to the forward fitting section.

I think there's a lot for us to digest here, that you know, since it's the first time we're really seeing

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this level of detailed guidance.

I am interested, and I found it interesting in the NUREG, the draft NUREG, the discussion, and Tim, you just talked about this, about the forward fitting concept having originally been called a backfit and been considered a backfit. So I'm still sort of working through that, but I think there are some fundamental questions about the treatment of a forward fit as anything different than a backfit given its regulatory history.

That said, I think I would just focus on one element of what Jerry commented on with the essentiality test. I think there are a lot of questions with respect to how essentiality is any different than adequate protection. And some of the language in the draft NUREG that caught my attention, I think it mentions that a forward fit can be imposed in situations where the staff's preference is for a licensee to do something else.

I think we have some questions with respect to how a staff preference really meets the essentiality test. If it's necessary to make that regulatory finding for the approval isn't it related to adequate protection, and if so, what is the staff's preference. What is the role of the staff's

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preference.

So, that's just another area where I think additional granularity and examples will help flesh that out. But that's all. Thank you.

MR. REED: Thank you. Can't say exactly - - if we're getting to essential and as you're reading it somewhat the same as we are that if it's truly essential in terms of reasonable assurance and adequate protection of public health and safety obviously the staff's not going to approve the request as an approval. It won't allow an approval to create the condition of undue risk.

And so that's why I was talking about the communication and maybe getting the results that way.

Otherwise, we could condition that approval. Yes, I think you're thinking along the lines that we are also. Thanks.

MR. BENOWITZ: This is Howard Benowitz of NRC. I just wanted to respond to that because I was curious when Darani mentioned the word "preference." I just did a search and I found on page 3-2 where we said other examples of forward fitting include the following and there's something -- an example of where the staff finds its approach preferable to the licensee's requested action.

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Those might meet the definition of forward fitting, but we still have to justify them. The NRC staff would still have to justify them to impose them so don't -- I want to -- and maybe it wasn't presented in the document that way, but these are escalating regulatory commitments since the licensing conditions could meet the definition of forward fitting those elements that Tim had on the first forward fitting slide.

But then we still have to justify them. And that doesn't mean that we can't. So I just -- if that helps clarify then great because that was one of the points of this meeting. But I still would appreciate that comment that we need to clarify that if that was our intent because -- just because the staff finds something -- their approach preferable to what the licensee requested is not enough to justify a forward fit.

MS. REDDICK: Yes, thanks, Howard. And I appreciate that. I think it just comes down to if the two preliminary tests for forward fitting are direct nexus and essential before you even get into the justification portion of it how does staff preference meet the essentiality test before you even do that analytical part. So we'll certainly include that in

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the comments. Thank you.

MR. REED: Are there any other comments at this point?

OPERATOR: We currently have no questions in queue.

MR. REED: Okay. I will move on to the next slide and that would be slide number 15. This is chapter 4. This is a chapter in the draft guidance that addresses the appeal guidance.

Now, our appeals guidance now accommodates both backfitting and forward fitting appeals. This is implementing the policy in Management Directive 8.4 where the appeals was expanded to include both forward fitting and backfitting.

As we note on this slide you can get into an appeals situation fundamentally by two basic ways.

The licensee can conclude basically that even though the NRC did not intend to backfit or forward fit that in fact that has occurred. That's one way.

Or the licensee can conclude that even though the NRC did intend to backfit or forward fit but the NRC did not fully or properly justify that action. So, either one of those ways would be something that could get you -- or as licensee you could use to comment or appeal an action.

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Very similar to the current process this has also got two levels of appeals. The first appeal being an appeal to the office director, either NMSS or NRR to the licensing basis. And then if that appeal is unsatisfactory and they wish to appeal that decision then you can appeal it to the EDO. So that's a similar structure and this chapter provides a lot of details of the exact process.

Another interesting part of the guidance is not in this chapter. It's actually found in section 5.5, but it's when we get in a situation where a licensee might be disputing a violation and appealing a backfit at the same time. This can happen and so we have some guidance of how we would go forth in addressing that in section 5.5.

So with that -- let me see what else I've got here. I don't -- actually I think that's all I really wanted to say on the appeals process and chapter 4. So I'll stop right here and see if there are any questions on this aspect of the draft guidance. Thanks.

OPERATOR: If you would like to ask a question please press star-1 from your phone and speak your name clearly when prompted. Again, if you would like to ask a question please press star-1 from your

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phone. Our next question comes from Jason Zorn. Your line is now open.

MR. ZORN: Thank you. This is Jason Zorn from Exelon again. I've got a few comments regarding the appeals section. A lot of this relates to a large extent to the timing in terms of when appeals get triggered.

And I think the appeal process has worked relatively well for backfitting issues, but now that forward fitting is introduced into the appeal process I think it raises some challenges in terms of when that processes can be triggered by a licensee.

The criteria for filing an appeal in the NUREG talk about imposing, if the staff is imposing an action on the licensee. And then I think Tim, in your slide a few slides ago that talked about the staff imposing it as a condition of the approval. But the practical question is in the context of, for example, a licensing action where an applicant submits an application for a license amendment request the processes through which the staff might suggest that the licensee update its application to comply with the new version of guidance, or new standard might happen.

And there are a bunch of different contexts. You know, it could happen through an RAI, it could happen

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through oral conversations.

And so the question is when is the staff position actually imposed. A strict reading of it could mean that the position isn't imposed until a license amendment request is approved by the staff which in accordance with the NUREG it would have to -- the licensee would have to accept the staff's position on the new position, and then get the approval issued, and then appeal the issuance of the license amendment request approval. But that doesn't really make a lot of logical sense. And if it's not the answer then at what point in time would the opportunity to be triggered.

And as you know, there's a lot of timing issues associated with -- in the guidance about how long you can file an appeal, and when it can be appealed, et cetera. So that's a comment we'll be providing and just to provide additional clarification of that.

Somewhat related to this in terms of timing is that the guidance in a couple of places seems to imply or suggest that there is perhaps an additional I'll call it pre-process. I think at the beginning of chapter 4 it talked about the fact that the licensee -- a licensee can raise a backfit or

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forward issue, quote, "whenever." And then the staff has to disposition that and make a determination on the backfitting or forward fitting, but there's no real clarity on what criteria the staff would use to make that determination, what opportunities the licensee would have to make its case, or to challenge that determination. It just kind of seems a little bit amorphous.

By contrast I would compare it against what NRC recently put into place with the very low-level safety significance issue resolution where the licensee raises an issue through that process and the staff has a concise method to disposition that question before you would get to a formal appeal process where a final decision has been imposed on the licensee. So that's -- just throwing that out there as a contrast to what exists in the NUREG right now.

And then lastly I would just observe that some of the section there is a little bit ambiguous about the relationship between forward fitting and backfitting appeals and the adjudicatory process and enforcement process in terms of other opportunities to challenge that position on a forward fit or backfit. I'm sorry, that was a lot of comments.

MR. REED: I appreciate it, Jason. It

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sounds like you have a lot of -- given a lot of thought to this chapter. Hopefully you can provide those comments and how you address those situations. We would greatly appreciate it as well. Good ideas. Thanks.

MR. ZORN: Thanks, Tim.

OPERATOR: Our next question comes from a guest that did not record their name. Your line is now open and please check your mute button.

MR. STENGER: This is Dan Stenger with Hogan Lovells. That may have been me again not quite recording my name for some reason. But if I may go ahead.

MR. REED: Absolutely. Sure.

MR. STENGER: I'm going to sort of echo what Jason just said. One of the common statements you often hear about the backfitting process with the NRC over the years, or even over the decades now is that licensees never appeal backfitting decisions. And even when they do they (telephonic interference).

I recognize it's not always been those type of situations, but that statement it's not accurate at all. There have been a number of (telephonic interference) in many cases. Licensees have been successful.

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But I think it is true that licensees are very reluctant to use the backfitting appeal process which has essentially been part of the guidance since the beginning, or since 1985. And partly it's kind of (telephonic interference) and a time-consuming process. So (telephonic interference) the last portion which is under chapter 4 where you talk about licensees being able to discuss the applicability of backfitting regulations with the staff whenever the licensees have a concern. And that's a good (telephonic interference). Something that would be maybe prominent in the guidance. I noticed in (telephonic interference) sections you have (telephonic interference) to make something stand out.

But the point is that having an informal process for discussing backfitting issues before you ever have to get to an -- I'll call it a formal appeal is really useful. And you could think of it in terms of like an informal dispute resolution process. Most contracts of any significance will have dispute resolution mechanisms, arbitration, or mediation. (Telephonic interference) informal process where the parties will discuss (telephonic interference) and get (telephonic interference) involved (telephonic interference) the issue and try to (telephonic

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interference) the issue before you have the formal dispute resolution process. That's just (telephonic interference) many decades to have this (telephonic interference) process recognized as something that's accepted.

MR. REED: I appreciate that. It's very thoughtful. First of all, I want you to hopefully provide that comment and any suggestions you might have for how we might put in place something like that in a formal process because as you probably were listening to me in enforcement space I think communication is a way to solve a lot of these issues before -- and in fact this actually goes to what Jason just mentioned too. Before pen goes to paper and we put something in place and a lot of resources start to get expended on both sides. That doesn't serve anyone's interests at all, licensees, NRC, or the public.

So if we can resolve these issues through communication or through other means without going to some formal process I think everybody stands to gain just as a general principle.

Now, we don't have a lot of that obviously in here. If you have ideas on how to do that I'm sure that we all -- we would appreciate that, giving

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consideration on that kind of information. Thanks very much.

MR. STENGER: Great. No, thank you. Appreciate your perspective on that.

OPERATOR: We currently have no questions in queue.

MR. REED: Okay. I believe at this point I'm going to hand it back over to Audrey Klett. She's going to take the next chapter, chapter 5. So, Audrey?

MS. KLETT: Thanks, Tim. Again, this is Audrey Klett, NRC. And I am now on slide 16 for those following along with the presentation.

So chapter 5 of the NUREG is intended to discuss the relationship of backfitting and forward fitting to other regulatory processes. As a practical matter, the interfaces among the various regulatory processes can be complicated so this chapter is intended to help mitigate that complication with respect to backfitting and forward fitting, and hopefully prevent an inadvertent backfitting or forward fitting situation.

Probably the most important interface is that with the licensing basis, specifically what the licensing basis includes. Backfitting and forward

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fitting are processes that impose new requirements or new interpretations of requirements and as a direct result they would change the licensing basis. So this guidance places focus on that interface.

Other major areas or interfaces discussed in this chapter are listed on this slide including inspection and enforcement, generic communications, information requests, regulatory guidance, initial licensing and standard review plans.

These processes should typically not involve backfitting or forward fitting unless those processes are first invoked and the proposed action is justified. For example, the draft NUREG discusses that inspection enforcement should be against -- or to the existing licensing basis. So these activities should not involve backfitting.

The NUREG acknowledges that due to the complexity and ambiguity of some licensing bases it can be challenging to determine whether a specific issue is within the licensing basis and subject to enforcement. And the NUREG refers those matters to another process to resolve prior to entering the backfit process which assumes the licensing basis is understood.

Another example involves information

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requests per 10 CFR 50.54(f) which only requires a licensee to respond, not to change its licensing basis. So although these communications might suggest that licensees consider taking actions these letters should not be used to -- should be used or interpreted to impose any new requirements.

Regulatory guidance usually represents one way to comply with a requirement, but not the only way. A regulatory guide, for example, would typically not be imposed. But if that is the objective of the staff then an additional action such as a rule or an order would likely be necessary following the processes in this NUREG.

If the staff conveys an expectation that the licensee use later guidance in response to a licensing request that is not requesting to use it then this would involve a forward fitting justification and the staff must follow the forward fit process of this NUREG.

Initial licensing is not under either backfitting or forward fitting, but even here if there is an applicable standard review plan and changes are made to that plan those changes should be justified following the same reasoning in forward fitting.

Also, if a reviewer tries to use more

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restrictive acceptance criteria than in an existing standard review plan this would likely be either backfitting or forward fitting depending on the circumstance.

So, this chapter is intended to clear up these interfaces and it covers a lot of territory at a high level. So rather than just go through it in detail I'll just stop here and open this up for discussion. So NRC Operator, can you open up the line for questions?

OPERATOR: Again, if you would like to ask a question please press star-1 from your phone. Again, if you would like to ask a question please press star-1 from your phone. One moment as we wait for any questions. Our first question comes from Bill Horin. Your line is now open.

MR. HORIN: Hi, this is Bill Horin. Can you hear me?

MR. REED: Sure can.

MR. HORIN: All right. Well, thank you very much. I'm with Winston & Strawn and I also have been involved in acting for a number of years and also work with the Nuclear Utility Group on equipment qualification. And we've had some backfitting opportunities for discussion with the staff over the

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last several years related to the program inspections that were first in the EQ program.

And I have just a couple of comments in the inspection section, but I want to -- before I give those comments I want to really express appreciation for the staff and all of you involved, and I know there are a lot of other people involved, for making the effort to do this. I think it's very important. It will be very useful. And you don't have to spend too much time just looking at it and recognize that the staff has spent an awful lot of effort on getting this done and our discussion today is very helpful. I want to extend my appreciation for that.

The specific comment I wanted to focus on is with respect to the inspections. And we have a section, section 5.11 that deals with inspections. And I think it's important that even though these are broken down into little sections, I think this inspection section is very important because that is where many of the issues the licensees face and that we have potential questions with respect to the appropriateness of various staff positions arise.

Certainly licensee submittals are part of that, but also inspections is a source. And I want to caution us to -- in section 5.11 there are discussions

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of kind of some of the dynamics of inspection process as well as whether or not there are -- what the staff is doing or not doing in that inspection process that ends up resulting in what I think is an oversimplification and perhaps incorrect conclusions in that in here there is a comment, there is a statement after going through a discussion of what I think is an oversimplification of the inspection process.

Basically in a statement that says thus, the staff expects that findings or violations documented as part of the NRC's inspection activities would not involve backfitting. I think that is something that comes from the discussion in the paragraph above that as to how the inspection process has worked, and assumptions, and oversimplification assumptions I think on some of the dynamics that take place during the inspection.

So I think we'll want to focus, and we'll be providing additional comments on this as well on those elements of describing what inspections actually entail.

And then also assure that there is a proper burden application of -- on the staff because this is a regulation that applies to the staff.

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Because in that same provision that I just mentioned then the NRC says however, if a licensee concludes that there is a backfit -- I'm just paraphrasing here -- then the licensee can initiate a backfitting appeal.

So I think there's a little burden shifting going on there, perhaps inadvertently, but again I think this is a very important section to have clear as to what the dynamics are in the various inspection contexts. So I'll just leave it at that. You don't have to respond necessarily now. We'll include this in other comments. But again, I want to -- we appreciate -- extend appreciation for the staff's work in this area. And the conversation today has been great.

MR. REED: I'll just say thanks very much.

That's a very well informed perspective. I know you've been involved in these issues for a long time and we certainly appreciate -- I know all of us appreciate anything you have that you can provide us that would improve this section in that discussion would be much, much appreciated. Thanks very much.

MR. HORIN: Thank you.

MS. KLETT: This is Audrey Klett, NRC. I also wanted to add -- and this is in reference to an

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earlier question too about the guidance related to inspections and the staff's position definition.

I think we wanted to clearly differentiate inspection from licensing. So our understanding, inspection focuses on evaluating licensee performance, or their compliance with their licensing basis. So we don't want inspection reports to be making conclusions on the adequacy of a licensing basis which is more of a licensing function. And that gets into the backfitting function. So we were trying to differentiate those roles to ensure the agency and each of the offices are in the right swim lane when it comes to inspection and licensing.

OPERATOR: Our next question comes from Maggie Staiger. Your line is now open.

MS. STAIGER: Thank you. This is Maggie Staiger with NEI. I would first like to thank you Audrey, Tim, and Howard for your explanations on the draft reg guide today as well as the additional time that's been provided to submit comments. We truly appreciate it.

We really appreciate the effort that has gone into this draft revision. Regarding chapter 5 the draft provides a lot of useful information. However, as someone not steeped in backfit and forward

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fit this section is not explicit in how it ties to the backfit, forward fit and the issue finality.

Therefore, the industry will be examining comments to help clarify topics such as staff position and legally binding requirements with regard to their context with the backfit and forward fit.

We will be providing this perspective in our written submitted comments and I just wanted to thank you again for the discussion today and the opportunity to comment.

MS. KLETT: Okay, thank you. Yes, and please submit those comments. We'd appreciate it and we'll review them.

OPERATOR: Our next question comes from Jason Zorn. Your line is now open.

MR. ZORN: Thank you. This is Jason Zorn from Exelon again. I had a specific question or comment related to the discussion of licensing basis in section 5. It comes up in multiple different parts in various forms, but this kind of builds on my comment earlier about the timing and triggering of backfit and forward fit appeals and the potential for a process prior to filing a formal appeal.

Because this is a section that again suggests or implies that there's a preliminary

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process. I'm going to cite specifically to section 5.4 about different views of licensing basis which says the staff should first identify and resolve any differing views about licensing basis through a TAR, the TAR process in 5.2.1 and ensure the licensing basis is understood before beginning a backfitting or forward fitting assessment or pursuing enforcement.

And that's -- I mean, I can't emphasize enough how critical it is to really understand the licensing basis prior to moving forward with any of these processes. And this applies I think both to enforcement and it applies to inspection and licensing because if there can't be agreement on what the basis is then you really can't determine if something is -- a staff position is above and beyond what that licensing basis is, if it's consistent with it, et cetera.

And so getting to a point at which there can be an agreement on -- we all agree on what the licensing basis is before moving forward I think is critical. I think my recommendation which again will be reflected in comments is to provide more clarity on how that disposition process is going to work. Thanks.

MR. REED: Thanks, Jason.

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OPERATOR: We currently have no questions in queue.

MS. KLETT: Okay. This is Audrey Klett, NRC. I'm moving on to slide 17 for those following along. The remaining chapters and appendices of the NUREG covers records and documentation requirements, the references we have for the NUREG and the flow charts, worksheets, and guides for developing backfitting and forward fitting justifications.

I do not plan to go through that information in detail. However, in terms of documentation it is very important to document any backfitting or issue finality or forward fitting actions that we are imposing for issues that are considered for backfitting or forward fitting but are not justified to implement.

It's equally important that when the NRC concludes it cannot proceed with the proposed backfitting or forward fitting action that we document our efforts so as to preclude duplication of efforts should the issue arise again.

The NRC staff office responsible for the proposed backfitting or forward fitting should determine how the decision to reject the action should be documented, whether the existence of this

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documentation should be disclosed to external stakeholders, and whether the documentation should be made available to external stakeholders.

The flow charts, worksheets, and the guides in the appendices are there to help staff use the guidance in this NUREG. We also have as I mentioned before a community of practice to assist the staff with any backfitting or forward fitting questions. So the intent of this guidance is to enable the staff to do a lot of this work on their own before involving other staff.

Moving on to slide 18, as we've said multiple times our intent today was to walk through the draft NUREG, engage with stakeholders, answer any questions, and thereby provide some additional thinking behind the draft guidance, all with the objective to help you with any questions or feedback.

As we said before we are not here to formally address comments. You'll need to submit them in writing per the Fed Reg notice if you want a formal NRC response. And probably the simplest, easiest, and best way is through regulations.gov. The docket is on this slide for you to use.

After the comment period ends the staff will disposition the comments, update the NUREG and

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finalize it with the goal of issuing the final version. We're going to try to issue it by the end of this calendar year, but that may get pushed into early 2021 because of the impacts from the COVID-19 health emergency.

So at this time I'll stop here to see if there are any additional questions. So Operator, can you open the bridge?

OPERATOR: If you would like to ask a question please press star-1 from your phone. One moment as we wait for any questions. We currently have no questions in queue.

MS. KLETT: Okay. With that then I'm going to conclude the meeting. Thank you, everybody, for your participation. Your feedback has been very helpful to us. And with that I would close by requesting that any feedback on the format of this meeting be emailed to me at [audrey.klett@nrc.gov](mailto:audrey.klett@nrc.gov). It's A-U-D-R-E-Y dot K-L-E-T-T @nrc.gov. With that thank you all and this meeting is adjourned.

(Whereupon, the above-entitled matter went off the record at 3:02 p.m.)

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