[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2015-0241]

Fuel Retrievability in Spent Fuel Storage Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG)-2, Revision 2, "Fuel Retrievability in Spent Fuel Storage Applications." This revision to the guidance was developed to improve regulatory clarity due to uncertain duration of spent fuel storage in an independent spent fuel storage installation (ISFSI). The revision is to provide improved guidance to the staff on the practical implementation of determining whether storage systems are designed to allow ready retrieval of spent fuel.

DATES: This guidance is effective on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Please refer to Docket ID NRC-2015-0241 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to http://www.regulations.gov and search for Docket ID NRC-2015-0241. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact

the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly available documents online in the ADAMS Public Documents collection at http://www.nrc.gov/reading-rm/adams.html. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The final ISG-2, Revision 2, and responses to public comments are available electronically in ADAMS under Accession Nos. ML16117A080 and ML16117A082, respectively.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Emma Wong, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-7091, e-mail: Emma.Wong@nrc.gov and Haile Lindsay, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-0616, e-mail: Haile.Linsday@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC staff has developed ISG-2, Revision 2, "Fuel Retrievability in Spent Fuel Storage Applications," to clarify section 72.122(l) of title 10 of the *Code of Federal Regulations* (10 CFR), Retrievability. By the use of options to meet ready retrieval, this guidance focuses on safety and design bases to allow maximum flexibility to meet retrievability for the longer storage duration. With the increased flexibility in the guidance to meet retrievability, evaluations of the internal components of the cask or canister may no longer be necessary for maintaining the ability to remove the individual fuel assemblies by the use of normal means (e.g., degradation of the internal components such as radiation damage to internal components, depletion of the neutron absorbing material, Boral blistering, fuel degradation, and basket degradation) for the retrievability safety function. However, if these components' intended functions are relied upon for safety, these components would need to be evaluated for those safety functions which may include retrieval of the individual fuel assemblies safely.

II. Public Comments

The NRC issued draft ISG-2, Revision 2 (ADAMS Accession No. ML15239A683) in the *Federal Register* on October 21, 2015 (80 FR 63843), for a 30-day public comment period and received comments from the following sources:

DOCUMENT	ADAMS ACCESSION NO.
Kristopher Cummings (Nuclear Energy Institute (NEI)) dated November 16, 2015	ML15337A082
Robert Einziger, dated November 13, 2015	ML15324A253
Donna Gilmore (San Onofre Safety), dated November 20, 2015	ML15337A007
Patricia Borchmann, dated November 20, 2015	ML15337A010
Marv Lewis, dated November 21, 2015, and November 26, 2015	ML15337A009 ML15337A012
Diane D'Arrigo (Nuclear Information and Resource Service (NIRS)), dated November 20, 2015	ML15337A011
Connecticut Yankee Atomic Power Company, dated November 17, 2015	ML15337A083
Yankee Atomic Electric Company, dated November 17, 2015	ML15337A083
Maine Yankee Atomic Power Company, dated November 17, 2015	ML15337A083
Richard Morgal, dated November 20, 2015	ML15337A084 ML15337A008

The NRC considered these comments in developing the final ISG. Detailed responses to the comments can be found in ML16117A082.

The final ISG-2, Revision 2 is approved for NRC staff and stakeholder use and will be incorporated into the NRC's next standard review plan guidance revision.

III. Congressional Review Act

This ISG is a rule as defined in the Congressional Review Act (§ 5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

This ISG provides guidance to the NRC staff for reviewing an application for an ISFSI license with respect to compliance with the retrievability requirement of 10 CFR 72.122(l). Issuance of the ISG does not constitute backfitting as defined in sections 72.62 and 50.59. Issuance of this ISG is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52 for generally licensed ISFSIs. The staff's position is based upon the following considerations.

1. The ISG does not constitute backfitting, inasmuch as the ISG is internal guidance to the NRC staff.

The ISG provides interim guidance to the staff on how to review an application for NRC's regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either ISFSI or nuclear power plant applicants or licensees are protected under the backfitting provisions in 10 CFR parts 50 or 72, or the issue finality provisions of 10 CFR part 52.

2. Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by the backfitting provisions in sections 72.62 or 50.109, or any issue finality provisions under 10 CFR part 52. This is because neither the backfitting provisions nor the issue finality provisions under

10 CFR part 52—with certain exclusions discussed below—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. However, the matters covered in this ISG are not subject matters or issues for which issue finality protection is provided.

3. The NRC staff has no intention to impose the ISG on existing ISFSI or nuclear power plant licensees either now or in the future (absent a voluntary request for change from the licensee).

The NRC does not intend to impose or apply the positions described in this ISG to existing (already issued) licenses (e.g., ISFSI licenses, operating licenses and combined licenses) absent a voluntary request for a change from the licensee. Hence, the ISG need not be evaluated as if it were a backfit.

Dated at Rockville, Maryland, this 2nd day of June, 2016.

For the Nuclear Regulatory Commission.

/RA/

Bo Pham, Acting Deputy Director
Division of Spent Fuel Management
Office of Nuclear Material Safety
and Safeguards