

## Response to NEI's comment on Section C.2.e of draft RG 1.187 rev. 2

Appendix D Section 4.3.6 arrives at using the term “safety analyses” instead of “FSAR as updated” for purposes of Section 50.59(c)(2)(vi) by reciting several definitions from NEI 96-07 out of context. Through linking these definitions, Appendix D establishes its use of the term “safety analysis” rather than “FSAR, as updated,” and by doing so attempts to change the scope of what needs to be considered for purposes of 50.59(c)(2)(vi). As written, Appendix D would allow certain digital modifications to be installed without obtaining prior NRC approval through a license amendment by narrowing the scope of what licensees would have to evaluate under 50.59(c)(2)(vi). Narrowing the scope of 50.59(c)(2)(vi) could result in a licensee overlooking a malfunction result that must be considered in performing a 50.59 evaluation, i.e., the licensee could expand its operating authority without NRC review.

In its statements of consideration for the 1999 final rule, the Commission stated, “[The purpose of the 10 CFR 50.59 evaluation] is to identify possible changes that might affect the basis for licensing the facility so that any changes that might pose a safety concern are reviewed by NRC to confirm their safety before implementation.”<sup>1</sup> Appendix D states, “if the outcome of the qualitative assessment is not sufficiently low, then the activity may introduce failures that are as likely to happen as those in the UFSAR that can create a possibility for a malfunction of an SSC important to safety with a different results from any previously evaluated in the USFAR.” In these cases, the malfunction must be assumed to occur in the 10 CFR 50.59 evaluation. Because risk is directly related to the likelihood of a malfunction, Appendix D as written would permit a licensee to implement a change that creates the possibility of a malfunction of a risk-significant SSC that may pose a significant safety concern without seeking an amendment.

Appendix D Section 4.3.6 relies on the definition of “safety analyses” in NEI 96-07 section 3.12. “Safety analysis” appears only twice in 50.59: in the definition of a “Departure from a method of evaluation,” and in criterion (viii), which addresses departures from a method of evaluation. Neither that definition nor that criterion is related to criterion (vi), which is the subject of Section 4.3.6. Extending the definition of “safety analysis” to other criteria as a basis for excluding some parts of the FSAR from a 50.59 evaluation is inappropriate. This reasoning takes the definition of 3.12 out of the context where the term is used in 50.59 (i.e., the definition of a “Departure from a method of evaluation,” and in criterion (viii)) and incorrectly applies the definition in the context of 50.59(c)(2)(vi). The NRC staff also notes that the definition in 3.12 admits that “safety analysis” can be found in any chapter of the FSAR; but in any case, the staff does not agree that the definition applies to criterion (vi). These definitions cannot be used to change the scope of criterion (vi) from “FSAR as updated” as stated in the regulation to “safety analysis.” Thus, staff’s exception in the Appendix relies on the regulatory text.

The guidance in Appendix D section 4.3.6 also states that the evaluation for criterion (vi) must assess “the safety analysis result impact to determine if the result is different.” In contrast, 50.59(c)(2)(vi) states that the evaluation must assess the FSAR results impact. This is the fundamental difference between NRC staff and NEI’s perspective, and the basis for NRC staff’s exception in the proposed revision to RG 1.187. The exception provided in the draft regulatory guide aimed to bring Appendix D back to the scope of the evaluation required in the regulation (i.e., the entire FSAR, as updated) rather than the narrower scope contemplated in Appendix D section 4.3.6.

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<sup>1</sup> U.S. Nuclear Regulatory Commission, “Changes, Tests, and Experiments,” *Federal Register*, Vol. 64, No. 191, October 4, 1999, pp. 53584, 53589, 53611.

In sum, the NRC staff disagrees with the argument that replacing “FSAR as updated” with “safety analysis” is consistent with either the interpretation for the other 50.59 criteria or with prior NRC interpretations of criterion (vi).