



POLICY ISSUE

(Notation Vote)

March 31, 2021

SECY-21-0037

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: NUREG-1409, "BACKFITTING GUIDELINES," REVISION 1

PURPOSE:

The purpose of this paper is to notify the Commission of the U.S. Nuclear Regulatory Commission (NRC) staff's intent to publish NUREG-1409, "Backfitting Guidelines," Revision 1 (Enclosure 1). The NRC staff revised and updated NUREG-1409 to be consistent with updates to Management Directive (MD) and Directive Handbook 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests," approved on September 20, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18093B087). The NRC staff also incorporated feedback from comments received on the draft version of NUREG-1409, Revision 1 (ADAMS Accession No. ML18109A498), published in Volume 85 of the *Federal Register* (FR), page 16278 (85 FR 16278), on March 23, 2020.

BACKGROUND:

Backfitting occurs when the NRC imposes new or changed regulatory requirements or staff interpretations of the regulations or requirements on nuclear power reactor licensees, select nuclear power reactor applicants, or select nuclear materials licensees (referred to collectively as "affected entities"). Backfitting is an integral part of the regulatory process and may be needed when the staff addresses safety or security issues. The NRC will take a backfitting after conducting a formal, systematic review to ensure that the action is defined and justified.

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This process ensures discipline, predictability, and the optimal use of NRC and affected entity resources.

The backfitting requirements appear in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.109, "Backfitting," 10 CFR 70.76, "Backfitting," 10 CFR 72.62, "Backfitting," and 10 CFR 76.76, "Backfitting." The NRC sets forth provisions analogous to the backfitting requirements, referred to as issue finality provisions in 10 CFR Part 52, "Licenses, certifications, and approvals for nuclear power plants."

Forward fitting occurs when the NRC conditions its approval of an affected entity-initiated request for a licensing action on the affected entity's compliance with a new or modified requirement or staff interpretation of a requirement that the affected entity did not request. The new or modified requirement or staff interpretation must result in, generally, a change to the affected entity's systems, structures, components, design, procedures, or organization. MD 8.4 contains the Commission's policies on forward fitting.

In accordance with the NRC Principles of Good Regulation and the Administrative Procedure Act, the backfitting rules and policies and the forward fitting policies provide (1) regulatory stability, by ensuring that the changes the NRC makes are subject to a thorough review before being implemented, (2) reasoned and informed NRC decisionmaking, by requiring the proper justification of the proposed action, and (3) transparency of NRC decisionmaking, by requiring that the NRC document and make publicly available its analyses and evaluations.

DISCUSSION:

In July 1990, the staff first published implementation guidelines on the backfitting process in NUREG-1409 (ADAMS Accession No. ML032230247). The staff updated NUREG-1409 (SECY-20-0021, "Draft NUREG-1409, 'Backfitting Guidelines,' Revision 1," dated February 26, 2020 (ADAMS Package Accession No. ML18135A342)), to conform to the revised MD 8.4 and address the backfitting, forward fitting, and issue finality provisions referenced above. The NRC then made the draft Revision 1 to NUREG-1409 available for public comment. The NRC extended the comment period on May 15, 2020 (85 FR 29358), because of the COVID-19 Pandemic. The NRC received 13 comment submittals (with approximately 250 individual comments) from members of the public, licensees, industry interest groups, and the NRC staff. The staff has documented its responses to these comments in a comment response document (Enclosure 2).

Based on the comments, the NRC staff made significant changes to draft NUREG-1409. Enclosure 3 to this SECY is a markup of draft NUREG-1409 that shows each change the staff made and the basis for the change (e.g., a public comment). The staff added guidance to facilitate effective communications between affected entities and the NRC to ensure that the communications policy in MD 8.4 is implemented properly. This guidance also enables affected entities and the NRC staff to exchange information to resolve issues involving potential backfits or forward fits. The staff also reorganized the NUREG's content by grouping similar topics.

In Chapter 2 of NUREG-1409, the staff clarified the application of the backfitting screening questions and relocated the issue finality and independent spent fuel storage installation guidance from Chapter 1. In Chapter 3, the staff revised the definitions of "direct nexus" and "essential," which may result in fewer impositions of new or changed requirements or staff positions on licensing requests being justified as forward fits; rather, the NRC staff may need to justify such impositions as backfits. The staff also added generic forward fitting scenarios to

explain how to apply the new definitions. In Chapter 4, the staff added new guidance for appealing proposed and issued staff actions pursuant to MD 8.4, submitting and processing MD 8.4 appeals, the public's participation in the appeal process, and the relationship of MD 8.4 appeals to requirements in 10 CFR Part 2, "Agency Rules of Practice and Procedure," for appealing orders and contesting violations. In Chapter 5, instead of alphabetically listing the NRC activities that can involve backfitting or forward fitting, the staff grouped these activities under four categories (i.e., licensing, inspection, enforcement, and generic processes) and added guidance on topics not covered in the draft NUREG.

NUREG-1409, Revision 1, will provide agency-level guidelines for backfitting, forward fitting, and issue finality to ensure consistency in understanding and implementation across the NRC. Following publication in the *Federal Register* of the enclosed notice of the issuance of NUREG-1409, Revision 1 (Enclosure 4), the staff will revise office-level or region-level guidance, training, and qualification programs to reflect the revised MD and NUREG.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. This paper does not modify any commitments or resource allocations.

Margaret M. Doane

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Enclosures:

1. NUREG-1409, "Backfitting Guidelines," Revision 1
2. NRC Response to Public Comments on Draft NUREG-1409, Revision 1
3. Tracked Changes to Draft NUREG-1409, Revision 1
4. *Federal Register* notice

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 DATED: March 31, 2021

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