

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC-2018-0142]

Backfitting, Forward Fitting, and Issue Finality Guidance

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG-1409, “Backfitting Guidelines,” Revision 1. This NUREG provides guidance on the implementation of the backfitting and issue finality provisions of the NRC’s regulations and the NRC’s forward fitting policy in accordance with Management Directive (MD) and Directive Handbook 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests.”

DATES: NUREG-1409, Revision 1 is available on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Please refer to Docket ID NRC-2018-0142 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 <https://www.regulations.gov> and search for Docket ID NRC-2018-0142. Address questions about Docket IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@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 <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, 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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via e-mail at pdr.resource@nrc.gov or call 1-800-397-4209 or 301-415-4737 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Reed, telephone: 301-415-1462, e-mail: Timothy.Reed@nrc.gov; or Audrey Klett, telephone: 301-415-0489, e-mail: Audrey.Klett@nrc.gov. Both are staff of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The Commission updated its backfitting and issue finality policies and established forward fitting policies in MD 8.4, dated September 20, 2019 (ADAMS Accession No. ML18093B087). Based on the Commission positions in MD 8.4, the NRC staff revised NUREG-1409, "Backfitting Guidelines," Revision 0 (ADAMS Accession No. ML032230247), which was issued in 1990 and did not address the backfitting requirements in 10 CFR part 70, "Domestic Licensing of Special Nuclear Material," 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High Level Radioactive Waste, and Reactor-Related Greater Than Class C

Waste,” or 10 CFR part 76, “Certification of Gaseous Diffusion Plants,” the issue finality provisions in 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” or the Commission’s forward fitting policies. NUREG-1409, Revision 1, addresses all the backfitting and issue finality regulations and policies and the forward fitting policies and supersedes NUREG-1409, Revision 0. The NRC’s intent in issuing NUREG-1409, Revision 1, is to ensure consistency in implementing backfitting and issue finality requirements and forward fitting policies across the NRC.

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. Backfitting is an integral part of the regulatory process and may be needed when the NRC staff addresses safety or security issues. The NRC would only take a backfitting action after conducting a formal, systematic review to ensure that the action is defined and justified. This process ensures discipline, predictability, and optimal use of NRC and licensee resources. The backfitting requirements are located in title 10 of the *Code of Federal Regulations* (10 CFR) sections 50.109, “Backfitting,” 70.76, “Backfitting,” 72.62, “Backfitting,” and 76.76, “Backfitting.” Provisions analogous to the backfitting requirements, referred to as issue finality provisions, are set forth in 10 CFR part 52.

Forward fitting 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 interpretation must result in, generally, a change to the licensee’s systems, structures, components, design, procedures, or organization.

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 the following: (a) regulatory stability, by ensuring that the changes the NRC makes are subject to a thorough review before being implemented; (b) reasoned and informed NRC decisionmaking, by requiring the proposed action be properly justified; and (c) transparency of NRC decisionmaking, by requiring that the NRC document and make publicly available its analyses and evaluations.

II. Additional Information

The NRC issued draft NUREG-1409, Revision 1 (ADAMS Accession No. ML18109A498) for a 60-day public comment period on March 23, 2020 (85 FR 16278). The NRC extended the comment period to July 22, 2020, on May 15, 2020 (85 FR 29358) because of the Coronavirus Disease 2019 (COVID-19) public health emergency. On April 28, 2020, the NRC held a Category 3 public meeting to discuss the draft NUREG with stakeholders. The meeting summary is available at ADAMS Accession No. ML20141L770. The NRC provided stakeholders with additional information about the draft NUREG to facilitate informed comments on the draft NUREG. The NRC received 13 comment submittals (with approximately 250 individual comments) from the public, licensees, industry interest groups, and NRC staff. Summaries of the comments and the staff responses to the comments are available in ADAMS under Accession No. ML21006A435.

Based on the comments, the NRC made significant changes to draft NUREG-1409. The NRC added guidance to facilitate effective communications between licensees and the NRC to ensure that the communications policy in MD 8.4 is implemented properly. This guidance also enables licensees and NRC staff to

exchange information to resolve issues involving potential backfits or forward fits. In the area of forward fitting, the staff revised the definitions of “direct nexus” and “essential,” which may result in fewer impositions on licensing requests being justified as forward fits; rather, the NRC staff may need to justify impositions as backfits. The NRC also added generic forward fitting scenarios to explain how to apply these new definitions. The NRC 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 orders and disputing violations.

III. Congressional Review Act

This NUREG 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, Forward Fitting, and Issue Finality

NUREG-1409, Revision 1 does not constitute backfitting as defined in 10 CFR 50.109 and as described in MD 8.4, constitute forward fitting as that term is defined and described in MD 8.4, or affect the issue finality of any approval issued under 10 CFR

part 52. Applicants and licensees are not required to comply with the guidance in the NUREG.

Dated: <**INSERT** date of digital signature>.

For the Nuclear Regulatory Commission.

Andrea D. Veil, Acting Director,
Office of Nuclear Reactor Regulation.

SUBJECT: FEDERAL REGISTER NOTICE OF ISSUANCE OF NUREG-1409,
"BACKFITTING GUIDELINES," REVISION 1, DATED

ADAMS Accession No. ML21006A436

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DATE	01/29/2021	01/07/2021	02/14/2021
OFFICE	NRR/DORL/LPL4/BC	NRR/DORL/D	NRR/D (Acting)
NAME	JDixon-Herrity	CErlanger	AVeil
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