

NUCLEAR REGULATORY COMMISSION

[NRC-2021-0194]

**Guidance for Implementation of 10 CFR 50.59, “Changes, Tests and Experiments,”
At Non-Power Production or Utilization Facilities**

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Regulatory Guide (RG) 2.8 (Revision 0), Guidance for Implementation of 10 CFR 50.59, “Changes, Tests and Experiments,” at Non-Power Production or Utilization Facilities. This RG describes an approach that is acceptable to the NRC staff to meet the regulatory requirements, “Changes, tests and experiments,” at a non-power production and utilization facility, as defined in RG 2.8.

DATES: Revision 0 to RG 2.8 is available on **February 25, 2022**.

ADDRESSES: Please refer to Docket ID **NRC-2021-0194** 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 Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2021-0194**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@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 email 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:** You may examine and purchase copies of public documents, by appointment, at the NRC’s Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

Revision 0 to RG 2.8 and the regulatory analysis may be found in ADAMS under Accession Nos. ML22020A292 and ML21243A104, respectively.

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FOR FURTHER INFORMATION CONTACT: Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301-415-3104, email: Michael.Eudy@nrc.gov and Duane Hardesty, Office of Nuclear Reactor Regulation, telephone: 301-415-3724, email: Duane.Hardesty@nrc.gov. Both are staff members of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a new guide in the NRC’s “Regulatory Guide” series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the

agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

RG 2.8 was issued with a temporary identification of Draft Regulatory Guide, DG-DG-2007 (ADAMS Accession No. ML21243A103).

II. Additional Information

The NRC published a notice of the availability of DG-2007 in the *Federal Register* on November 23, 2021 (86 FR 66464) for a 30-day public comment period. The public comment period closed on December 23, 2021. Public comments on DG-2007 and the staff responses to the public comments are available under ADAMS under Accession No. ML22020A296.

III. Congressional Review Act

This RG 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

The NRC staff may use this RG as a reference in its regulatory processes, such as licensing, inspection, or enforcement. However, the NRC staff does not intend to use the guidance in this RG to support NRC staff actions in a manner that would constitute backfitting as that term is defined in Section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests." However, the backfitting provisions in 10 CFR 50.109, do not apply to Part 50 licensees other than power reactors. The regulatory basis for 10 CFR 50.109 was expressed solely in terms of nuclear power reactors. The NRC's Advanced Notice

of Proposed Rulemaking, Policy Statement, Proposed Rules, and Final Rules for amendments to 10 CFR 50.109 in the 1980s involved only nuclear power reactors. As a result, the NRC has not applied 10 CFR 50.109 to research reactors, testing facilities, and other non-power facilities licensed under 10 CFR Part 50 (e.g., “Final Rule; Clarification of Physical Protection Requirements at Fixed Sites”). In a 2012 final rule concerning non-power reactors, the NRC stated, “The NRC has determined that the backfit provisions in 10 CFR 50.109 do not apply to test, research, or training reactors because the rulemaking record for 10 CFR 50.109 indicates that the Commission intended to apply this provision to only power reactors, and NRC practice has been consistent with this rulemaking record” (“Final Rule; Requirements for Fingerprint-Based Criminal History Records Checks for Individuals Seeking Unescorted Access to Non-Power Reactors”).

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC’s public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the “Regulatory Guide” series.

Dated: February 22, 2022.

For the Nuclear Regulatory Commission.

/RA/

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