

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC-2018-0142]

Backfitting, Forward Fitting, and Issue Finality Guidance

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft NUREG-1409, "Backfitting Guidelines," Revision 1. This draft 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 and Handbook 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests."

DATES: Submit comments by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by 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 NRC 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.

- **Mail comments to:** Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

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. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID **NRC-2018-0142** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2018-0142**.

- **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:** 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.

B. Submitting Comments

Please include Docket ID **NRC-2018-0142** in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

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, “Licenses, Certifications, and Approvals for Nuclear Power Plants.”

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, approval, 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 necessary or provide a substantial safety enhancement; (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.

The NRC has drafted NUREG-1409, “Backfitting Guidelines,” Revision 1 (ADAMS Accession No. ML18109A498), to be consistent with recent updates to Management Directive and Handbook 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,” dated September 20, 2019 (ADAMS Accession No. ML19177A390). NUREG-1409, Revision 1, would supersede NUREG-1409, 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,” or the 10 CFR part 52 issue finality provisions. NUREG-1409, Revision 1, would address all the backfitting and issue finality regulations and policies and the forward fitting policies. The NRC’s intent in revising NUREG-1409 is to ensure consistency in implementing backfitting, forward fitting, and issue finality requirements across the NRC.

III. Public Meeting

The NRC will conduct a public meeting to describe the draft NUREG and answer questions from the public. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC’s public meeting Web site at least 10 calendar days before the meeting. Stakeholders should monitor the NRC’s public meeting Web site for information about the public meeting at: <https://www.nrc.gov/public-involve/public-meetings/index.cfm>.

Dated at Rockville, Maryland, this ##st day of March 2020.

For the Nuclear Regulatory Commission.

Craig G. Erlanger, Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

SUBJECT: FEDERAL REGISTER NOTICE TO SOLICIT PUBLIC COMMENT ON
DRAFT NUREG-1409, "BACKFITTING GUIDELINES," REVISION 1,
DATED

ADAMS Accession No. ML18177A385

***Via email**

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| OFFICE | NRR/DORL/LPLII-1/PM | NRR/DORL/LSL3/LA* | OGC (NLO)* |
| NAME | AKlett | JBurkhardt | MSpencer |
| DATE | 01/28/2020 | 01/29/2020 | 01/28/2020 |
| OFFICE | NRR/DORL/LPL4/BC* | NRR/DORL/D | |
| NAME | JDixon-Herrity | CErlanger | |
| DATE | 01/29/2020 | 1/31/2020 | |

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