

# NRC INSPECTION MANUAL

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## MANUAL CHAPTER 0330

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### GUIDANCE FOR NRC REVIEW OF LICENSEE DRAFT DOCUMENTS

#### 0330-01 PURPOSE

To provide guidance for staff review and handling of licensee draft documents which have been provided to the NRC for review and comment, or in preparation for or during an inspection of licensee or vendor activities to avoid a real or perceived appearance of impropriety.

#### 0330-02 DEFINITIONS

02.01 Draft Document. A preliminary written document, sketch, or drawing. A document is considered to be a draft while it is being developed and reviewed. It ceases to be a draft only when it has been approved by responsible management and issued as a final document.

02.02 Non-record Documentary Material. Documentary material such as unofficial copies of documents that are kept for convenience or reference, or reference stocks of publications and processed documents, and library or museum material intended solely for reference or exhibition. Background information is considered non-record documentary material provided it does not form the basis of an inspection find or enforcement action.

02.03 NRC Record. Any record obtained or created by the NRC that is required for the conduct of government business. NRC records include any book, paper, map, photograph, brochure, punch card, magnetic tape, sound recording, pamphlet, slide, motion picture, video tapes, or other documentary material, regardless of form or characteristics. An NRC record does not include an object or article such as a structure, furniture, a tangible exhibit or model, a vehicle or a piece of equipment. Case law developed under the Freedom of Information Act (FOIA) defines an agency record as one which is (1) created or obtained by an agency; and (2) under agency control.

#### 0330-03 RESPONSIBILITIES

03.01 Office Directors and Regional Administrators. Provide for the establishment of internal procedures in accordance with

existing policies, guidance, and regulatory requirements for the review and handling of licensee or vendor draft documents given to the NRC for review and comment, or as the result of inspection activities.

03.02 Regional and Headquarters Division Directors and Headquarters Branch Chiefs and Project Directors. Ensure that subordinate managers and staff are

cognizant of, and adhere to, the policies and guidance in this inspection manual chapter (IMC) and internal policies and procedures relative to the review and handling of draft licensee documents and information.

03.03 Regional Branch Chiefs and Headquarters Section Chiefs. Ensure that their staff is cognizant of, adheres to, and implements the policies and guidance contained in this IMC and internal policies and procedures relative to the review and handling of draft licensee documents and information.

03.04 Regional and Headquarters Inspection Staff. Maintain a working knowledge of, and adhere to, the policy and guidance identified in this IMC and other internal policies and procedures related to reviewing licensee draft documents in preparation for or during an inspection.

#### 0330-04 POLICY AND GUIDANCE

04.01 General. As a regulatory agency, the NRC staff has the obligation of overseeing licensee activities to ensure they are being conducted safely and in compliance with conditions of a license and with the regulations and orders of the Commission. In the course of conducting regulatory activities, licensees may request staff review and comment on draft licensee documents before they are formally submitted to the agency. A review or discussion of a draft document by the NRC would be inappropriate if the review would have the real or perceived appearance of impropriety or of giving more of an advantage to one licensee than to another. The decision whether it is proper for the NRC to review a draft of a particular licensee document should be based solely on the need for the NRC to review the draft in carrying out its regulatory obligations.

In preparation for or during inspections, only documents that have gone through the licensee's or vendor's required review and approval process should normally be requested. Manual chapter 0620, "Inspection Documents and Records," provides additional guidance for requesting licensee documents. Concerns relative to documentation that has not gone through a licensee's or vendor's required review and approval process are discussed below.

- a. If such documents or analyses do not exist, the licensee or vendor may feel compelled to generate them to satisfy the inspector's request. This could impose a backfit as well as an unnecessary burden on the licensee or vendor if there is no regulatory requirement for the documents or analyses requested. See Management Directive 8.34, "NRC Program for Management of Plant-Specific Backfitting of Nuclear Power Plants."
- b. It is difficult to determine what kinds of technical questions can be asked of the licensee or vendor with respect to the information contained in a draft or uncontrolled document because draft documents can usually be readily changed. In addition, responses to the questions asked may

represent not the position of the licensee or vendor, but the personal opinion of the licensee or vendor employee who drafted the document.

- c. The review or discussion of a draft document could have the real or perceived appearance of impropriety such as the inspector acting as an advisor for or consultant to the licensee.
- d. Rarely can inspection results be inferred or enforcement action taken on information contained in draft documents.

#### 04.02 Specific Guidance

- a. Any document obtained from a licensee which the licensee indicates is a draft, should be clearly marked and handled as such.
- b. It is the Commission's policy to address all matters of safety in public. Consequently, it is the Commission's policy generally that any document, including those labeled "drafts," considered by the staff in reaching a regulatory decision should generally be placed in the appropriate docket file and the Public Document Room (PDR). IMC 0620, "Inspection Documents and Records," provides guidance for controlling documents and information obtained in preparation for or during inspection.
- c. Consistent with this chapter, NRC review of drafts of the following licensee, applicant, or vendor enforcement-related documents, would be improper:
  - 1. Licensee documents arguing that violations did not occur.
  - 2. Licensee documents arguing the appropriateness of sanctions imposed on it; e.g., civil penalties.
  - 3. Licensee documents arguing whether or not an order should be imposed.
  - 4. Responses to 50.54(f) letters and similar requests for information specifically requested under oath or affirmation (excluding appropriate technical licensing documents).
- d. In other cases, an examination of draft documents from a licensee, applicant, or vendor which the NRC desires and which is in the interest of the NRC in carrying out its public health and safety responsibilities as contrasted to purely assisting the licensee, may be proper. Included in this category are draft documents that:
  - 1. Could assist an inspection or an assessment of corrective actions.
  - 2. Could form the basis for a confirmatory order.

3. Could form the basis for a settlement agreement.

04.03 Additional Guidance. The review of draft background information relative to an area of inspection does not necessarily require the inspector to retain the draft documents unless the document itself will be the basis of or will be needed to support a finding. IMC 0620 provides additional guidance on the handling of documents or information obtained in preparation for or during an inspection. Examples on when to retain or to dispose of draft documents follows:

- a. Early in an inspection the inspector reviews a draft procedure change to verify that changes committed to in response to a violation are being incorporated.

The inspector does not need to retain the draft procedure change since it was only used as background information. When issued, the final procedure will form a basis for finding that the corrective actions in response to the violation have been completed.

- b. During an in field observation of work in progress on an electrical modification the inspector reviews the related mark-up drawings and proposed procedure changes to be sure appropriate modification and work control procedures are being followed. No discrepancies were identified by the inspector relating to control of the modification or work.

The inspector does not need to retain the mark-up drawings or proposed procedure change. These documents provided the inspector with the background necessary to assess the licensee's adherence to the appropriate modification and work controls.

- c. During a similar situation to example 2 above, the inspector notes that the mark-up drawing (draft) indicates that the as-installed configuration of the modification violates electrical separation requirements. The electrical separation requirement violation is confirmed by direct observation by the inspector.

The draft mark-up drawings should be retained by the inspector since, in conjunction with the inspector's direct observation, they provide the basis for an inspection finding and enforcement action. In addition, it is questionable whether the draft mark-up drawings would be retrievable from the licensee in the future.

- d. The inspector reviews an electrical analyses under development by the licensee's engineering organization as part of the assessment on the quality of the licensee's corrective action process.

The inspector does not need to retain the analyses under development since the focus of the inspection was on the process used by the licensee in performing the analyses, not

the results of the analyses.

0330-05 REFERENCES

Inspection Manual Chapter 0620, "Inspection Documents and Records"

NRC Management Directive 8.34, "NRC Program for Management of Plant-Specific Backfitting of Nuclear Power Plants"

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