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UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, D.C. 20555-0001

October 4, 1999

**NRC REGULATORY ISSUE SUMMARY 99-01
REVISIONS TO THE GENERIC COMMUNICATIONS PROGRAM**

ADDRESSEES

All NRC licensees.

INTENT

To inform addressees of actions taken by the staff to improve the agency's generic communications program and its implementation, specifically: (1) more clearly define each generic communications product and the distinctions between the several types of generic communications; (2) require the staff to obtain early senior NRC management acknowledgment of emergent generic issues and require the staff to initiate early interaction with the nuclear power industry when evaluating an issue; (3) implement a tiered approach to generic information requests; (4) develop simplified value-impact assessments when the compliance exception to the backfit rule (10 CFR 50.109) is invoked, in order to present senior management with additional information for making better informed decisions; and (5) use the Headquarters Daily Report to disseminate potentially generic information to licensees and to the public. No specific action or written response is required to this regulatory issue summary.

BACKGROUND INFORMATION

In a report prepared by the Senate Committee on Appropriations titled "Energy and Water Development Appropriation Bill, 1999" (Report 105-206, dated June 5, 1998), it is stated, "(t)he NRC frequently imposes regulatory requirements using informal approaches that circumvent legal requirements for imposing legal requirements.... Those informal practices include: ... generic communications that reactor operators feel obligated to follow...."

The Nuclear Energy Institute (NEI), as a followup to the NRC-sponsored public meeting held on July 17, 1998, to address stakeholder concerns, recommended in a letter dated August 11, 1998, several actions the NRC could take to improve its regulatory processes, including two recommendations related to the generic communications program: (1) more rigorous and broader application of the backfit rule (10 CFR 50.109) and (2) greater recognition of industry programs to avoid duplicative reviews and avoidance of redundancy in generic communications.

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The NRC staff subsequently met two more times with NEI representatives (August 27 and November 3, 1998) in public meetings to discuss industry views on the generic communications program and its implementation. The discussions highlighted four such views: (1) early interaction between the NRC and the nuclear power industry at the formative stage of an emergent issue can be beneficial to both the NRC and the industry in terms of successfully identifying mutually satisfactory resolution approaches and reducing resource burdens; (2) the generic communications products are imprecisely understood (this stems from the perception that current generic communications products do not have a uniquely defined mission, particularly in regard to the lack of distinction between bulletins and generic letters); (3) the frequent requirement for responses under oath or affirmation to gather information without regard for the significance of the issue conveys an unrealistic and unnecessary sense of urgency to gather information; and (4) excessive use of the compliance exception of the backfit rule [10 CFR 50.109(a)(4)(i)] can subvert the discipline intended by the rule. The staff met with NEI on April 22, 1999, in a public meeting to discuss the results of its evaluation.

The staff issued SECY 99-143, "Revisions to the Generic Communications Program," on May 26, 1999, to inform the Commission of the staff's evaluation of the generic communications program. Additional information regarding these improvements is contained in SECY 99-143, which can be accessed on the NRC web site at the following address:

<http://www.nrc.gov/NRC/COMMISSION/SECYS/secy1999-143/1999-143scy.html>

The staff will hold a public meeting at the end of FY 2000 to obtain stakeholder feedback regarding the effectiveness of the improvements.

SUMMARY OF ISSUE

Generic Communications Products

The revised generic communications program will issue four products: bulletins, generic letters, regulatory issue summaries (a new product), and information notices. The program will no longer issue administrative letters. The characteristics of each generic communications product are described next as is the use of the Headquarters Daily Report to disseminate potentially generic information.

Bulletins

Bulletins will continue to be used in much the same way as before; that is, to address significant issues that also have great urgency. Bulletins will now be the only generic communications product that may be designated "urgent." Bulletins will be issued without public comment. A bulletin may request information or action or both and will require a response under oath or affirmation, in keeping with its urgent nature. Bulletins that request action will be reviewed in accordance with backfit requirements. Bulletins for reactor-related issues will always be subject to review by the Committee to Review Generic Requirements (CRGR), but not necessarily before they are issued.

Generic Letters

Generic letters will continue to request information or action or both. Generic letters will be designated "routine." Therefore, the critical difference between bulletins and generic letters is that bulletins will be issued without public comment and generic letters will be published in the *Federal Register* for public comment. Generic letters that request action (versus only requesting information) will be reviewed in accordance with backfit requirements. Generic letters will typically not invoke oath or affirmation requirements unless the NRC has been unable to obtain needed information through other means. The staff will continue to provide the rationale for information requests, justifying the burden relative to the safety significance of the issue as described in the CRGR charter. Generic letters for reactor-related issues will always be subject to CRGR review before they are issued. Generic letters will not be issued without prior staff interaction with the industry and the public.

Regulatory Issue Summaries (New Product)

The NRC communicates with the nuclear industry on a variety of matters for which no response or action is requested. This functional need has previously been met through the use of administrative letters and, in some cases, generic letters. The staff has determined that a new type of generic communication, designated a "regulatory issue summary," would better meet this need. Regulatory issue summaries will be used to (1) document NRC endorsement of the resolution of issues addressed by industry-sponsored initiatives, (2) solicit voluntary licensee participation in staff-sponsored pilot programs, (3) inform licensees of opportunities for regulatory relief, (4) announce staff technical or policy positions not previously communicated to the industry or not broadly understood, and (5) address all matters previously reserved for administrative letters. CRGR will be given the opportunity to review all regulatory issue summaries for reactor-related issues before they are issued.

Information Notices

Information notices will continue to be used to inform the nuclear industry of significant, recently identified, operating experience. Information notices will not convey or imply new requirements or new interpretations, and will not request information or actions. Therefore, CRGR review and a public comment period are not required.

Headquarters Daily Reports

NRC publishes a Headquarters Daily Report to disseminate information to NRC regional offices. The contents of these reports vary, but can include information on licensee events, licensee organizational changes, and staff assessment activities. The staff has found that the Headquarters Daily Report is an effective tool for sending information to licensees and the public regarding potential generic issues that do not warrant a generic communication. The staff also publishes a Headquarters Daily Report when it initiates development of a generic communication with the expectation that interested parties can comment on the proposed generic communication early in the development process. The Headquarters Daily Report is available on the NRC web site at the following address:

<<http://www.nrc.gov/NRR/DAILY/hdr.htm>>

Management of Generic Communications Development

The staff follows rigorous internal procedures regarding the development of generic communications. Bulletins, generic letters, and non-administrative regulatory issue summaries stem from a disciplined process for the identification and tracking of emergent issues to resolution, after the NRC staff receives approval from senior NRC management to pursue a matter. In so doing, a proposed generic communication will be a logical extension of a known staff activity and, equally important, the need for a generic communication and the basis for issuing it will become apparent as the staff proceeds to interact with industry.

For reactor-related issues, the NRC staff will prepare a summary analysis that addresses CRGR review package items as discussed in the CRGR charter. These items are: (1) the proposed generic requirement or staff position, (2) underlying staff documents that support the requirement or position, (3) a limited backfit analysis as defined in 10 CFR 50.109 or a documented evaluation of the basis for invoking the compliance or adequate protection exemption; and (4) an assessment of how the proposed action relates to the Commission's Safety Goal Policy Statement. Item 4 will ensure that the risk implications of the issue are considered by senior management before it approves development of the generic communication.

The NRC staff will indicate whether the issue is a candidate for resolution through an industry initiative. Criteria concerning which issues are appropriate candidates for resolution through industry initiatives are currently being developed as discussed in SECY-99-063, "The Use by Industry of Voluntary Initiatives in the Regulatory Process." It is important to note that issues are concurrently evaluated to determine whether or not some form of regulatory action other than issuance of a generic communication is appropriate. Other regulatory actions could include referral to the Office of Nuclear Regulatory Research (RES) for consideration as a new or revised generic issue, or revision of the inspection program, standard review plan, or standard technical specifications.

Information Requests

On occasion, the staff needs to gather information from licensees to gain a better understanding of the nature and extent of an issue. The staff has several avenues open to obtain this information. Nevertheless, in some situations a generic communication will be the appropriate regulatory vehicle for gathering information.

In the past, the NRC had routinely cited §50.54(f) in generic communications to nuclear reactor licensees in part because of industry criticism that the NRC did not cite the regulations upon which its actions were based. In the more recent past, the industry has expressed concern about the staff's practice of citing §50.54(f) when seeking information. In 10 CFR 50.54(f), the Commission states, in part, that "The licensee shall ... upon request of the Commission, submit ... written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked." The industry has argued that the frequent citation of 10 CFR 50.54(f) to gather information without regard for the significance of the issue conveys an unrealistic and unnecessary sense of urgency to gather information.

The NRC expects that, even if a generic communication to request information is issued without a requirement that responses be submitted under oath or affirmation, licensees will exercise due diligence in responding. Therefore, the staff will restrict citation of oath or affirmation requirements in generic letters to those matters in which the NRC has been unable to obtain needed information from the industry through other means and deems it appropriate to require a response. The staff is still required to develop a rationale for information requests to justify the burden relative to the safety significance of the issue, as described in the CRGR charter. In addition, information collection efforts that affect ten or more respondents are governed by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The law stipulates that Federal agencies must justify to the Office of Management and Budget (OMB) their information collection needs and prepare industry-burden estimates. In this regard, the NRC has obtained approval for information collections associated with 10 CFR regulations.

Use of the Compliance Exception to the Backfit Rule

From a legal perspective, generic communications cannot impose requirements and, therefore, are not backfits; only a rule or order can impose requirements. Nevertheless, the industry has indicated that it feels an obligation to act on any request in generic communications. Recognizing this perceived imposition of burden, the staff is required by internal procedure to treat requested actions for reactor and fuel cycle licensees as potential backfits. Generic communications requesting actions discuss the applicability of any backfit requirements and are reviewed by the CRGR where appropriate.

The backfit rule requires an analysis that demonstrates a substantial increase in safety with justifiable costs for all backfits, except for backfits that are needed for compliance or adequate protection. The staff will perform a simplified value-impact analysis in those cases in which the compliance exception is invoked. The staff is developing such a simplified value-impact assessment technique. Use of this simplified value-impact assessment will support better informed regulatory decisions—whether to issue the generic communication, revise an associated rule, or take some other regulatory action. Emergent issues for which the appropriate corrective actions are not believed to meet the compliance exception to the backfit rule are forwarded to RES for prioritization in accordance with RES Office Letter 1, "Procedure for Identification, Prioritization, Resolution, and Tracking of Generic Issues." In those cases in which adequate protection backfits are identified, backfits will continue to be imposed regardless of the associated impacts, as required by the backfit rule, but will not be imposed through a generic communication.

This regulatory issue summary requires no specific action or written response. If you have any questions about this summary, please contact one of the people listed below under "Contacts."



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Tech Editor review and concurred on August 9, 1999.

*See previous concurrence

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