

*Committee to Review
Generic Requirements:
NRC Backfit Controls*



**Union of
Concerned
Scientists**

Citizens and Scientists for Environmental Solutions

David Lochbaum
Director, Nuclear Safety Project
March 29, 2007

Backfit Process

Management Directive 8.4 Objectives:

- To ensure that facility-specific backfits will be communicated to the licensee only if necessary to provide an adequate level of safety and security, or after the required backfit and regulatory analyses/documentated evaluations are completed and approved. (023)
- To ensure that facility-specific¹ backfitting of a nuclear power reactor or materials facility is appropriately justified and documented and to specify that the Executive Director for Operations (EDO) is responsible for ensuring proper implementation of the backfit process. (021)

Backfit Process

Management Directive 8.4 Role of CRGR:

- Periodically conducts audits, typically every 5 years, to assess the effectiveness of the NRC's administrative controls for facility-specific backfitting as part of its regulatory effectiveness responsibility. This task is in addition to monitoring the overall effectiveness of the NRC's generic backfit management process. (a)

Backfit Process

Management Directive 8.4 Provision:

A backfit analysis is not required when— (a)

- A backfit is necessary to bring a facility into compliance with the facility license, rules or Orders of the Commission, or written commitments by the licensee,
- or
- Imposition of a backfit is necessary to ensure that the facility provides adequate protection of public health and safety or common defense and security.

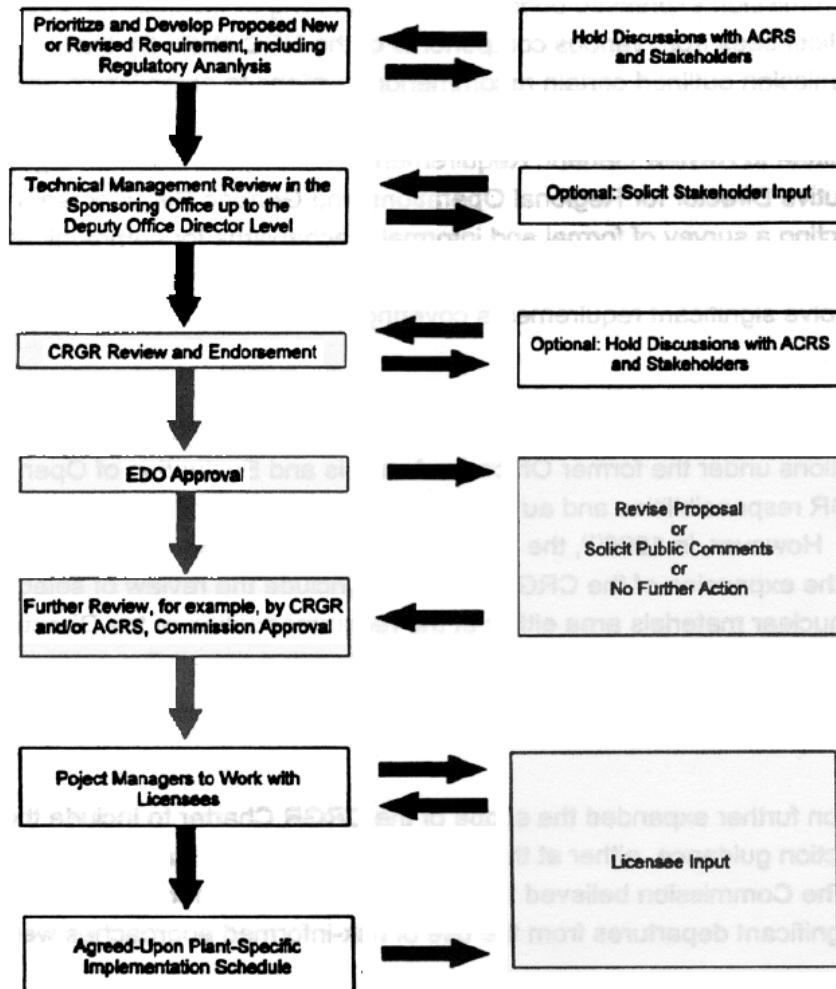
Backfit Process

Management Directive 8.4 Appeal(s):

The licensee may implement the backfit or appeal the backfit determination to the office director or the regional administrator, as appropriate. This is the first level of appeal. If dissatisfied with the decision of the office director or the regional administrator, the licensee may appeal to the EDO, which is the second level of appeal.

Backfit Process

SCHEMATIC REPRESENTATION OF REVIEW OF NEW OR REVISED GENERIC REQUIREMENTS



LIC-400, Rev. 1 outlines the steps NRC takes to ensure licensees get due process before new generic requirements are imposed.

Backfit Process

Backfit regulation and associated NRC procedures protect licensees from unwarranted, unsupported imposition of new or expanded requirements:

- formal, documented analyses
- defined criteria
- multi-layered, formal appeal process

Backing-off Process

And now for something completely different,
the NRC's process for backing off regulations.

Nudge, nudge, wink, wink, say no more, say no more



Nudge, nudge, wink, wink, say no more, say no more

Features Eric Idle and Terry Jones as two strangers who meet in a pub. Idle (playing a younger man) asks Jones (as an older gentlemen) several questions about his relationship with his wife, all bearing hidden sexual innuendo ("Does your wife 'go'?", "is she a sport?", "is she interested in *photography*?", "likes *games*, eh?", etc.), all followed with "Nudge nudge, wink wink, know what I mean, know what I mean, say no more, say no more! A nod's as good as a wink to a blind bat!" from which the older man is supposed to glean the sexual connotations of his questions. Eventually, the older man has had enough and demands that Idle be direct with him ("Are you insinuating something?" "No! No no no no no... yes."), so Idle asks him what it is like to sleep with a lady. ("You've, eh...slept...with a lady?" "Yes." "...What's it like?")

Backing Off

- Blanket enforcement discretion for design errors, latent design issues, fire protection regulation non-compliances, etc.
- Unenforced fire protection “Orders”
- Leisurely-paced generic safety issue implementations w/o interim compensatory measures
- Hot-line NOEDs
- Many, many, many more

Backfitting vs. Backing-Off

	Backfit	Back-off
Regulation	§50.109	§Nope
Management Directive	8.4	Nada
NRR Office Memo	LIC-202 LIC-400	Nary a one
Audits	5-years by CRGR	No CRSBR or CRGR-II*
Appeal	At least two levels	Not so appealing

* Committee to Review Slashed and Burned Requirements or
Committee to Review Guttled Requirements

Backfitting vs. Backing-Off

Backfitting: Regulation-based, procedurally implemented, documented, justified, and due process respectful means of protecting licensees from NRC staff being too conservative.

Backing-off: Ad hoc, arbitrary and/or capricious, undocumented, unjustified, due process lacking means of exposing the public to the NRC staff being too non-conservative (i.e., nudge, nudge, wink, wink, say no more, say no more).

Bottom Line

Licensees have a defined process protecting them from undue backfitting. If licensees don't use any of the appeals they are provided, too bad.

The public has an undefined process protecting them from undue backing off. The public is provided zero appeal opportunities. If reform is needed, here's Square One or Ground Zero or Point A.