

# POLICY ISSUE (Information)

September 10, 2007

SECY-07-0157

FOR: The Commissioners

FROM: Luis A. Reyes  
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SUBJECT: PERIODIC ASSESSMENT OF THE ACTIVITIES OF THE COMMITTEE  
TO REVIEW GENERIC REQUIREMENTS FROM JUNE 1, 2006,  
THROUGH MAY 31, 2007

PURPOSE:

The purpose of this paper is to provide the Commission with a periodic assessment of the activities of the Committee To Review Generic Requirements (CRGR or the Committee). This paper does not address any new commitments or resource implications.

SUMMARY:

The CRGR has completed its tenth assessment. This assessment of activities covers the period between June 1, 2006 through May 31, 2007. During this assessment period, the CRGR reviewed various generic communications formally and informally for potential improper or unjustified backfits. In addition, CRGR conducted a public meeting with interested stakeholders to discuss the NRC's backfit controls. Based on comments provided during the public meeting and a subsequent NEI letter with a list of what NEI considered were inappropriately imposed staff actions, the CRGR provided the EDO with its resulting recommendations. The CRGR conducted a self-assessment to determine its effectiveness in fulfilling the key areas of responsibilities. Based on this self-assessment the CRGR concluded that the key areas of responsibilities are adequately being fulfilled. Finally, the CRGR solicited input from the program offices. The input from the program offices did not identify any significant issues in the CRGR review process.

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BACKGROUND:

The CRGR consists of selected senior U.S. Nuclear Regulatory Commission (NRC) managers, drawn from the Offices of the General Counsel (OGC), Nuclear Regulatory Research (RES), Nuclear Reactor Regulation (NRR), Nuclear Materials Safety and Safeguards (NMSS), Nuclear Security and Incident Response (NSIR), Federal and State Materials and Environmental Management Programs (FSME), and New Reactors (NRO), as well as one of the NRC's regional offices on a rotating basis (currently Region II). The CRGR reports to the Executive Director for Operations (EDO), who appoints the Committee chairperson and members.

The CRGR conducts its activities in accordance with Revision 7 of the Committee's charter, dated November 7, 1999, which describes the Committee's mission, scope of activities, and operating procedures. RES provides the Committee's technical and administrative support.

The primary mission of the CRGR is to ensure that no inadvertent backfits are either imposed or implied by proposed new or revised generic requirements for NRC-licensed power reactors and nuclear materials facilities, and that staff-proposed actions are appropriately justified. Such justification must be based on the backfit provisions of the NRC's regulations, Commission guidance and directives, applicable legislative acts, and Executive Orders.

The Committee's primary responsibilities are to recommend to the EDO either approval or disapproval of the staff's proposed generic actions, and to assist the NRC program offices in ensuring consistent implementation of the Commission's backfit regulations, directives, and guidance. The CRGR also participates in periodic meetings with NRC stakeholders, as part of its responsibility for monitoring the overall effectiveness of the agency's generic backfit management process. In addition, the CRGR periodically audits the NRC's administrative controls for facility-specific backfitting to assess their effectiveness.

Finally, in response to the Commission's direction in the staff requirements memorandum (SRM) dated August 21, 1996, the CRGR proposed a process and criteria for use in periodically assessing its own activities. This proposed process and criteria were provided to the Commission in SECY-97-052, "Committee To Review Generic Requirements — Scope of Review and Periodic Review of Activities," dated February 27, 1997, and were subsequently approved by the Commission in an SRM dated April 18, 1997. Accordingly, since 1997, the CRGR has annually evaluated and reported its activities to the Commission. This paper represents the Committee's tenth assessment, which addresses the period from June 1, 2006, through May 31, 2007. Toward that end, this paper discusses the Committee's activities, presents its self-assessment, and summarizes the feedback received from the NRC's program offices.

DISCUSSION:

During the current 12-month assessment period, the CRGR reviewed proposed new or revised generic actions and evaluated their potential for improper or unjustified backfits consistent with the Committee's charter. In doing so, the CRGR also focused on identifying pertinent technical, procedural, policy, and legal issues. In addition, the CRGR continued to support the NRC's transition to less-prescriptive and more-performance-based and risk-informed regulations.

### CRGR Activities

During the current assessment period, the CRGR held seven meetings to review five proposed generic actions, including two rulemakings sponsored by NRR, two final regulatory guides sponsored by NSIR, and one Management Directive (MD) sponsored by RES. In addition, the CRGR conducted five internal Committee discussions. Enclosure 1 summarizes the topics addressed during the Committee's seven meetings in the past year.

To gain efficiency in the review process, the CRGR chairman conducted 23 limited, informal reviews of regulatory issue summaries, regulatory guides, and one NUREG-series report. The purpose of these limited reviews was to screen the documents for any potential backfits, in order to ensure that the Committee would receive for review only those documents that had backfit potential or dealt with significant issues. Enclosure 2 summarizes the topics reviewed by the CRGR chairman during this assessment period.

As part of its efforts to meet the NRC's strategic goals of openness and effectiveness, the CRGR periodically meets with licensees and other agency stakeholders. For example, in the past years, the CRGR chairman participated as a panel member in the "Generic Communications and Backfitting" session at the Nuclear Energy Institute (NEI) Licensing Forum held annually in Baltimore, Maryland. In a panel discussion during these Forums, the CRGR chairman delivers a presentation on the Committee's activities, solicits feedback from Forum participants on the NRC's generic backfit process, and addresses questions posed by the audience. Although the CRGR chairman was not invited during this assessment period, there is an expectation that the CRGR chairman will participate in future NEI Licensing Forums.

Additionally, the CRGR held a public meeting with interested stakeholders on March 29, 2007, to discuss the NRC's backfit controls. [The related summary report is available in the NRC's Agencywide Documents Access and Management System (ADAMS), under Accession No. ML071000038]. This meeting (and other related actions) reflects the Committee's commitment to solicit input from stakeholders regarding the overall effectiveness of the NRC's generic backfit management process, and was designed to followup on concerns raised during the Utility Working Conference, which took place in Amelia Island, Florida, on August 9, 2006. During this conference, a licensee representative raised concerns regarding the CRGR process and some of its actions.

Enclosure 1 (ADAMS Accession No. ML071550242) to the minutes of CRGR Meeting No. 416 (ADAMS Accession No. ML071440434) summarizes the comments provided by the stakeholders representative, NEI, and the Fuel Cycle Facility Forum during the public meeting on March 29, 2007. The comments included suggestions that the CRGR permit the participation of external stakeholders in the CRGR meetings, increase the scope of documents it reviews, and develop an externally available CRGR Web page. In addition, subsequent to the meeting, NEI provided a list of six staff actions that they considered were inappropriately imposed by the staff. While these concerns did not indicate any generic backfit implications, the CRGR considered the issues to obtain insights and incorporated them in its recommendations to the EDO along with the list of six staff actions for disposition to the appropriate responsible offices.

Along with the comments received, the CRGR forwarded its responses, planned actions, and recommendations to the EDO for his consideration and approval. The recommendations included, confirming that the training programs in relevant offices and the Regions include adequate training on MD 8.4, "Management of Facility-specific Backfitting and Information Collection," and the backfit process, reemphasizing the expectation that significant generic documents receive public comment/input before going forward to the final stages, establishing procedural guidance for the CRGR members in obtaining feedback on backfit issues during site visits, and developing an externally available CRGR Web page.

The EDO responded to the CRGR recommendations on August 6, 2007 (ADAMS Accession No. ML071980017), approving all of the CRGR recommendations with some additional associated actions. These actions are: (1) audit the backfit training programs and their implementation; (2) reemphasize to stakeholders that processes are in place to ensure that significant generic documents meet the backfit requirements, policies, or provisions; and (3) include more information on the Web site regarding the issues reviewed and the results attained. These additional actions are consistent with the CRGR current practices and responsibilities as outlined in its charter, MD 8.4 and the Commission policy regarding regulatory effectiveness and openness.

Additionally, the CRGR plans to revise its current charter, dated November 7, 1999, to reflect the addition of the new CRGR members from FSME, NRO, and NSIR, as a result of the agency's recent restructuring.

Finally, the CRGR periodically evaluates the value added by its reviews of the agency's proposed new or revised generic actions, based on a self-assessment of its activities and feedback from the NRC's program offices as discussed below.

### Self-Assessment

The CRGR assesses the value added by its reviews, in terms of effectiveness in fulfilling the following three areas of responsibility identified in the CRGR charter:

(1) Area of Responsibility:

Ensure that proposed generic backfits to be imposed on the NRC-licensed power reactor and nuclear materials facilities are appropriately justified based on backfit provisions of applicable NRC regulations and/or the Commission's backfit policy.

Discussion:

The primary mission of the CRGR is to ensure that no inadvertent backfits are either imposed or implied by proposed new or revised generic requirements for NRC-licensed power reactors and nuclear materials facilities, and that staff-proposed actions are appropriately justified. Such justification must be based on the backfit provisions of the NRC's regulations, Commission guidance and directives, applicable legislative acts, and executive orders. Appendices C and D to the CRGR charter require that all packages submitted for the Committee's review and endorsement must include detailed backfit and regulatory analyses, as appropriate.

During this assessment period, the NRC staff ensured that its proposals were consistent with the backfit provisions of applicable regulations, and any impacts of these proposals on the NRC and/or its licensees were assessed and explained. The staff also followed the Committee's guidance, as outlined in the CRGR charter and associated regulatory requirements, and appropriately identified justifiable backfits and provided the required supporting documents for CRGR review. The Committee confirmed that the documents were in adherence to the applicable NRC regulations and/or the Commission's backfit policy and did not identify any additional backfits.

(2) Area of Responsibility:

Ensure that the NRC processes (in particular, the office and regional directives, procedures, and staff guidance and the technical staff training in NRR, NMSS, NSIR, FSME, and the Regions) are adequate.

Discussion:

MD 8.4 requires that the CRGR perform an audit every 5 years to assess the effectiveness of the NRC's administrative controls for facility-specific backfitting. The audit was not performed this period. The next audit is scheduled for October 2008.

The staff follows the various procedures for generating generic documents such as, MD 8.4, LIC-202, Revision 1, "Managing Plant-Specific Backfits and 50.54(f) Information Requests," LIC-300, "Rulemaking Procedures," LIC-503, "Generic Communications Affecting Nuclear Reactor Licensees," etc. For example, the NSIR sponsored Regulatory Guides 5.69, "Guidance for the Application of the Radiological Sabotage Design-Basis Threat in the Design, Development, and Implementation of a Physical Security Program that Meets 10 CFR 73.55 Requirements (Safeguards)," and 5.70, "Guidance for the Application of the Theft and Diversion Design-Basis Threat in the Design, Development, and Implementation of a Physical Security Program that Meets 10 CFR 73.45 and 73.46 Requirements (Classified)," included a well constructed method of implementation and, as in this example, the proper documentation for supporting the noted backfits.

As indicated above, CRGR considered informally or formally a total of 28 issues. In conducting these reviews, CRGR did not find any evidence of specific flaws that would indicate the existence of a broad systematic failure. The established process and associated procedures result in the proper consideration of any backfits during the development of generic documents and ensures that the stakeholder inputs have been taken into consideration.

Based on overall quality of documents submitted to CRGR for review, the NRC processes and procedures appear to be effective. Nonetheless, the effectiveness of the NRC's administrative controls will be examined in greater detail during the upcoming audit.

(3) Area of Responsibility:

Consider the significance of issues raised by the CRGR, compared to the schedule and resource impacts required to address those issues.

Discussion:

The CRGR continued to provide guidance and consultation to the NRC staff, when needed, to eliminate implications of potential backfits in proposed documents before they were issued for public comment and formal CRGR review. To prevent unnecessary delays, the CRGR also expeditiously scheduled its meetings as requested by the NRC staff, scheduled special meetings to meet the staff's needs, and provided necessary assistance to the staff before the Committee's formal reviews. In addition, when necessary to expedite the endorsement process, the CRGR staff assisted the sponsoring office staff in satisfactorily resolving the Committee's comments. As a result, responding to the Committee's comments and recommendations generally required minimal effort from the sponsoring office staff.

For the current reporting period, the Committee's self-assessment revealed that CRGR reviews were timely, focused on the priority issues, and beneficial to the NRC staff. Interactions with the NRC staff were positive and professional, resulting in constructive feedback and useful insights to ensure product compliance with the applicable backfit provisions.

Feedback from NRC Program Offices

The CRGR continues to seek feedback from the sponsoring offices regarding the value added by the Committee's reviews. The CRGR solicited feedback from NRR, NSIR, and RES, in a memorandum dated June 8, 2007 (ADAMS Accession No. ML071210610), regarding: (1) the value that the CRGR reviews added to the quality of the product; (2) staff efforts expended to address CRGR comments and recommendations; (3) impact on the staff's schedules; and (4) significance of the issues and associated costs in terms of impact on overall schedules and resources. The Committee did not receive any proposals for review from NMSS or FSME during this assessment period.

It is noted that although CRGR identified questions and comments on proposed documents that required resolution, changes were not seen as being substantial by at least one office. The process for ensuring backfits are properly justified includes following the guidance and addressing the questions posed in the Appendices C and D of the CRGR charter, fulfilling MD 8.4 requirements and others as stated in the agency guidance and procedures for generating generic communications. During this process the CRGR interacts with the staff to address questions and concerns regarding the adequacy of the proposed generic document. Therefore, the success of the staff in delivering a product that generally meets expectations is a testament to the effectiveness of the overall process.

The program offices stated that staff expended minimal effort in responding to the CRGR's comments and recommendations, with no significant impact on schedule or resources. However, in one instance, the staff's schedule was slightly delayed because an insufficient quorum prevented the scheduling of an ad hoc CRGR meeting.

Finally, the program offices indicated that the CRGR review process, issues identified by the Committee, and associated costs did not significantly impact the overall schedules and resources, beyond those associated with preparing the packages for CRGR review.

CONCLUSION:

The CRGR believes that it has successfully contributed the necessary staff and industry awareness of the applicable NRC regulations and Commission policy regarding backfits. The self-assessment and program office feedback indicate that the Committee has provided its reviews and evaluations in an efficient and effective manner, added some value to the regulatory process, and contributed to the accomplishment of the NRC's mission by identifying technical, procedural, and legal issues. The Committee will continue to seek improvements in its operations and activities.

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Enclosures:

1. Topics Reviewed by the CRGR  
between June 1, 2006, and  
May 31, 2007
2. Topics Reviewed by the CRGR  
Chairman between June 1, 2006,  
and May 31, 2007

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Enclosures:

1. Topics Reviewed by the CRGR between June 1, 2006, and May 31, 2007
2. Topics Reviewed by the CRGR Chairman between June 1, 2006, and May 31, 2007

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