

POLICY ISSUE INFORMATION

August 26, 2010

SECY-10-0116

FOR: The Commissioners

FROM: James E. Lyons, Chairman
Committee to Review Generic Requirements

SUBJECT: PERIODIC ASSESSMENT OF THE ACTIVITIES OF THE COMMITTEE
TO REVIEW GENERIC REQUIREMENTS FROM JUNE 1, 2009,
THROUGH MAY 31, 2010

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.

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 Material 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 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 8, 1999, that describes the Committee's mission, scope of activities, and operating procedures. RES provides the Committee's technical and administrative support. The CRGR's primary mission 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.

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Such justification must be based on the backfit provisions of 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 NRC's administrative controls for facility-specific backfitting to assess their effectiveness.

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. The Commission subsequently approved the process and criteria 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 13th assessment, which addresses the period from June 1, 2009, through May 31, 2010. Toward that end, this paper discusses the Committee's activities, presents its self-assessment, and summarizes the feedback received from NRC's program offices.

DISCUSSION:

During the current 12-month assessment period, the Committee 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, it 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.

There were no backfits (unintended or otherwise) identified during this assessment period. In addition, the CRGR conducted an internal Committee meeting to discuss CRGR issues. Enclosure 1 summarizes the topics addressed during the Committee's two meetings in the past 12 months.

Committee to Review Generic Requirements Activities

In this assessment period, the CRGR reviewed 11 Regulatory Issue Summaries, 1 Regulatory Guide, and 1 office instruction. All but one of these documents—a proposed Draft Guide sponsored by the Office of Nuclear Reactor Regulation (NRR)—were reviewed informally.

The purpose of these informal reviews was to screen the documents for any potential backfits to ensure that the Committee would formally review only those documents that had backfit potential or dealt with significant issues. For informal reviews, the CRGR Chairman and the CRGR support person reviewed program office proposals and provided them to the other CRGR members. If the CRGR Chairman recommends to the CRGR members that no need exists for a formal review, no further review is performed unless a committee member expresses disagreement with the CRGR Chairman's determination. In some cases, individual

CRGR members raised questions that were resolved by changes to the program office proposal or by providing additional information to the CRGR member. Enclosure 2 summarizes the topics reviewed informally by the CRGR during this assessment period.

As part of its efforts to meet NRC's strategic goals of openness and effectiveness, the CRGR periodically meets with licensees and other agency stakeholders. For example, the CRGR Chairman regularly participates as a panel member in the "Generic Communications and Backfitting" session at the Nuclear Engineering Institute (NEI) Licensing Forum held annually in the Washington, D.C., area. The CRGR Chairman was not invited by NEI this year to participate in the forum. The willingness to participate in meetings and other related discussion with industry (NEI) reflects the Committee's commitment to solicit input from stakeholders regarding the overall effectiveness of NRC's generic backfit management process.

In response to the Office of the Inspector General (OIG) audit of the CRGR, the CRGR met with external stakeholders to discuss and obtain input on the future role of the CRGR. The input from the stakeholders helped to inform the CRGR's recommendation to the EDO as discussed below.

As part of its effort to educate the staff and to ensure mutual understanding between NRC and the industry with regards to CRGR activities and backfitting, the CRGR Chairman gave a presentation titled, "The Role of the Committee to Review Generic Requirements," for the 2010 Regulatory Information Conference. This presentation was well attended by the NRC staff and industry representatives. Various comments from NRC staff and industry participants indicate that the session was well received.

Self Assessment

The CRGR conducted a self assessment to determine its effectiveness in fulfilling the three areas of responsibilities as identified in the CRGR charter. Based on this self assessment, the CRGR concluded that the key areas of responsibilities are being fulfilled adequately. Finally, the CRGR solicited input from NRR, NRO, and NSIR in a memorandum dated June 3, 2010 (Accession No. ML101530636). From those inputs, no significant issues were identified in the CRGR review process.

The CRGR self assessment is detailed below:

1. Area of Responsibility

Ensure that proposed generic backfits to be imposed on the NRC-licensed power reactor and nuclear materials facilities are justified appropriately 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, generic correspondence, and regulatory guidance 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 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 that any impacts of these proposals on 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 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 backfit for this assessment period.

2. Area of Responsibility

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

Discussion

In 2008 the OIG conducted an audit to determine whether the functions of the CRGR are appropriate. The February 2, 2009, audit report titled, "Audit of the Committee to Review Generic Requirements" (OIG-09-A-06) (ADAMS Accession No. ML090330754), recommended that the NRC processes be revised to reflect the way the CRGR has evolved over the years. The CRGR's Action Plan to address the recommendations is discussed in the section below.

In addition to monitoring the overall effectiveness of NRC's generic backfit management process, MD 8.4, "Management of Facility-Specific Backfitting and Information Collection," requires that the CRGR perform an audit every 5 years to review NRC's administrative controls for facility-specific backfitting as part of its regulatory effectiveness responsibility.

For the most part, the staff has some form of available backfit training; however, during the 2008 administrative review, it was identified that a need existed for a structured and comprehensive agencywide Web-based training program. The CRGR is continuing its efforts with HR in developing the agencywide Web-based backfit training program; OGC will provide support. This effort is an item that is included in the Action Plan.

The staff follows 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-400, "Procedures for Controlling the Development of New and Revised Generic Requirements for Power Reactor Licensees;" LIC-503, "Generic Communications Affecting Nuclear Reactor Licensees," etc.

As indicated above, the CRGR considered informally or formally a total of 12 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 ensure that the stakeholder inputs have been taken into consideration.

Based on overall quality of documents submitted to CRGR for review, NRC processes and procedures appear to be effective. Nonetheless, the effectiveness of the revisions to NRC's administrative controls as a result of the OIG audit will be examined during the next periodic 5-year review or in the duration as prescribed in the forthcoming modifications of the CRGR process.

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.

The CRGR conducts informal reviews to screen documents for any potential backfits to ensure that the Committee formally reviews only those documents that have backfit potential or deal with significant issues. For informal reviews, the CRGR Chairman and the CRGR support person reviewed program office proposals and provided them to the other CRGR members. If the CRGR Chairman recommends to the CRGR members that no need exists for a formal review, no further review is performed unless a committee member expresses disagreement with the CRGR Chairman's determination.

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.

Staff Assessment on Value Added

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 NRO, 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, FSME, or RES during this assessment period.

It is noted that although CRGR identified questions and gave comments on proposed documents that required resolution, changes were not seen as being substantial. The process for ensuring backfits are properly justified includes following the guidance and addressing the questions posed in Appendices C and D of the CRGR charter and 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 serves to confirm the effectiveness of the overall process.

The CRGR performed an informal review of NRR Office Instruction, LIC-202, Revision 2, "Procedures for Managing Plant-Specific Backfits and 50.54(f) Information Requests." The review comments improved the quality of the product by ensuring Revision 2 is consistent with the CRGR charter and, by proposing wording revisions, also improved the clarity of LIC-202.

A program office stated that a formal CRGR review of the "Proposed Draft Guide 1218 (Revision 1 to Regulatory Guide 1.205), Risk Informed, Performance-Based Fire Protection for Existing Light Water Nuclear Power Plants" (Accession No. ML091620411) provided the staff confirmation that the proposed revision to Regulatory Guide 1.205 did not impose backfit requirements on licensees. The CRGR identified no significant issues. The schedule impact was roughly 40 staff-hours and a 2-week delay. The staff further stated that the CRGR review provided an unbiased review of staff positions in the regulatory guide.

In general, the program offices stated that the staff expended minimal effort in responding to the CRGR's comments and recommendations. Moreover, the associated costs did not significantly impact the overall schedules and resources beyond those associated with preparing the packages for CRGR review. A program office also stated that the review by a knowledgeable independent panel of NRC senior managers contributes to quality, safety, and security. The staff stated that CRGR feedback provides additional and thoughtful insights that save considerable staff time and resources by ensuring the final documents are of high quality. In addition, the requested CRGR reviews were typically completed within the staff's requested due date.

Status of Recommendations in the Office of the Inspector General Audit

The October 25, 2007, Commission SRM on SECY-07-0134, "Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan," directed the CRGR to analyze its role and "to determine whether the functions of the CRGR are appropriate" with regard to the rulemaking process. The OIG undertook this task and incorporated it into its comprehensive February 2, 2009, audit report titled, "Audit of the Committee to Review Generic

Requirements” (OIG-09-A-06) (ADAMS Accession No. ML090330754). The report provided the following two recommendations:

Recommendation No. 1

Develop, document, implement, and communicate an agencywide process for reviewing backfit issues to ensure that generic backfits are appropriately justified based on NRC regulations and policy.

In its role of providing CRGR support, RES has the lead in coordinating implementation of an Action Plan with the relevant offices and regions. The planned activities are currently envisioned to include at least the following five areas: (1) revise the CRGR Charter, (2) revise Management Directive (MD) 8.4, (3) develop office and regional procedures that are consistent with the revised MD 8.4, (4) develop an agencywide Web-based backfit training program, and (5) document, communicate, and implement an overarching agencywide backfit program.

The CRGR and Office of the General Counsel (OGC), in cooperation with the Office of Human Resources (HR), are working together to establish a centralized agency resource for backfit training. At the present, CRGR and HR are in the process of reviewing and updating a previous draft of an agencywide Web-based backfit training. The next step will be to develop a training module on the overall process and then to develop program-specific modules that can be used by the program offices and regions, as appropriate.

The items identified above have been incorporated into the Action Plan for addressing the recommendations from the OIG audit. The draft Action Plan was revised to incorporate the comments that the program offices and other supporting offices have provided. On July 1, 2010, the CRGR issued the Action Plan to the OEDO for approval.

RES will take the lead to revise the CRGR charter and MD 8.4 to reflect changes in NRC’s organizational responsibilities and backfit program and to address important elements for ensuring effective overarching management of generic and plant-specific backfits. RES also will coordinate the review and concurrence process, interoffice reviews and concurrences, and final issuance of both documents.

These planned activities will document the role of the CRGR and the staff process for ensuring compliance with backfit requirements and procedures that have evolved since the inception of the CRGR. The CRGR will communicate the changes to the staff and verify that the relevant offices and regions have incorporated processes to ensure backfit rules and requirements are followed.

The projected completion date for recommendation No. 1 is January 28, 2011. This date is contingent on office’s and region’s associated resource allocation and scheduling decisions and finalization of the Action Plan.

Recommendation No. 2

Determine what, if any, role the CRGR should perform in NRC’s backfit review process, including whether the CRGR function is still needed.

The CRGR met with the external stakeholders on November 9, 2009, to discuss and obtain input regarding the future role of the CRGR. Subsequently, the Nuclear Energy Institute (NEI) and Strategic Teaming and Resource Sharing (STARS) provided written comments. These documents are available through the Agencywide Documents Access and Management System under Accession Nos. ML100110388 and ML100110402 (NEI memo and enclosure, respectively) and ML100110404 (STARS memo). After review and consideration of these comments, the CRGR developed an approach that provides an outline for the future role of the CRGR. The recommendations were provided to the EDO in a memorandum dated January 28, 2010 (Accession No. ML100270120). The CRGR approach was later approved by the EDO in a March 8, 2010, response.

The CRGR recommended that consistent with Commission direction that the CRGR will not be required to review rulemakings because the rulemaking process has ample checks and balances. As is current practice, regulatory guides will be issued for public comment and reviewed by the CRGR if public comments are submitted regarding backfit. The CRGR Chairman and staff will screen all generic communications to determine if a formal review is necessary. Selected communications (e.g., all bulletins and generic letters, and nonconcurrences regarding backfit) will receive a full CRGR review. Program offices are responsible for meeting the backfit rule and will establish a backfit point of contact for each office. A comprehensive agencywide Web base backfit training program will be developed and office/regional procedures and processes will be updated to reflect changes that include the new CRGR role. Finally, to promote transparency, the CRGR will be available to engage with the industry after engaging the staff originating the document if an unresolved issue regarding backfit still exists.

Subsequent to this and as a response to the February 12, 2010, memo, the OIG concluded that these activities adequately address the recommendation No. 2 in their audit and considered the item closed.

Other CRGR Activities

The CRGR continues to interact with the industry and interested stakeholders in a variety of forums. The Committee provided a session at the 2010 Regulatory Information Conference titled, "The Role of the Committee to Review Generic Requirements," that was well attended by the industry.

The CRGR Chairman and representatives from OGC and NRR plan to give presentations at the NEI Legal Symposium on Backfitting regarding the future of the CRGR and implementation of the backfit rule in September 2010.

The CRGR is considering providing a session focusing on NRC's compliance with the backfit rule when issuing interpretive guidance at the next Regulatory Information Conference in 2011.

CONCLUSION:

The CRGR believes that it has successfully contributed to 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

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regulatory process, and contributed to the accomplishment of NRC's mission by identifying technical, procedural, and legal issues.

/RA/

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Enclosures:

1. Topics Formally Reviewed
2. Topics Informally Reviewed

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Enclosures:

1. Topics Formally Reviewed
2. Topics Informally Reviewed

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