

March 10, 2011

MEMORANDUM TO: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: R. W. Borchardt */RA Michael F. Weber for/*
Executive Director for Operations

SUBJECT: NOTIFICATION OF THE REVISED CHARTER OF THE
COMMITTEE TO REVIEW GENERIC REQUIREMENTS

The purpose of this memorandum is to inform you that as a result of several changes that have occurred at the agency over the last several years, the staff is modifying the charter of the Committee to Review Generic Requirements (CRGR). The modifications will support the CRGR mission to ensure that proposed generic backfits to be imposed on NRC-licensed power reactors, new reactors, and nuclear materials licensees are appropriately justified based on backfit provisions of applicable NRC regulations (e.g., 10 CFR 50.109, 10 CFR 52.39, 10 CFR 52.63, 10 CFR 52.98, 10 CFR 70.76, 10 CFR 72.62, or 10 CFR 76.76), the guidance contained in the Regulatory Analysis Guidelines (NUREG/BR-0058), and the Commission's backfit policy.

The specific changes address the (1) inclusion of three new offices that have been established since the last update to the charter; (2) removal of CRGR review of rulemakings as directed by the Commission in the staff requirements memorandum (SRM) COMNJD-06-0004/COMEXM-06-0006, dated May 31, 2006, located in the Agencywide Documents Access and Management System (ADAMS) (Accession No. ML061510316); and (3) the evolution of the CRGR procedures and processes in response to stakeholder comments and the findings of the Office of the Inspector General (OIG), OIG-09-A-06, "Audit of the Committee to Review Generic Requirements" (ADAMS Accession No. ML090330754). These changes have been incorporated into Revision 8 of the CRGR charter that is enclosed for your information. The specific changes are described below.

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The latest CRGR Charter, Revision 7, was issued on November 7, 1999 (ADAMS Accession No. ML003718374). Since the issuance of that charter, three offices have been formed—the Offices of Nuclear Security and Incident Response (NSIR), New Reactors (NRO), and Federal and State Materials and Environmental Management Programs (FSME). As a result, changes have been made to the charter to include the specific roles and responsibilities of these offices.

In SECY-07-134, the staff proposed several actions that could be taken to streamline the rulemaking process. One action included removing CRGR review from the rulemaking process. That action was approved by the Commission in SRM-SECY-07-134. The charter now specifies that the CRGR will only review rulemakings at the request of the proposing office or as part of a review panel in a formal backfit appeal of a final rule.

The CRGR met with external stakeholders on November 9, 2009, to obtain input regarding the future role of the CRGR. In response to written comments provided by stakeholders (ADAMS Accession Nos. ML100110388, ML100110402, and ML100110404), the staff has developed a review process by which the stakeholders may engage the CRGR if a valid backfit claim has been documented by the stakeholders during the public comment phase. This process is reflected in the revised charter.

As a result of the findings in OIG-09-A-06 and gradual changes to the CRGR that have occurred over several years, the staff reassessed the CRGR's role and responsibilities and associated changes have been made to the charter. For example, the program offices have assumed some of CRGR's duties and, consequently, the CRGR no longer performs the central role in this process. Offices have their own backfitting procedures incorporating both agency backfitting requirements as well as specific CRGR charter requirements. Subsequently, in a January 28, 2010, memorandum to the Executive Director for Operations (EDO) (ADAMS Accession No. ML100270120), the CRGR Chairman recommended that a backfit point of contact (POC) be established in each office and region. These POCs are responsible for their respective office/regional procedures and processes specific to relevant backfit activities.

The above mentioned major changes, along with some minor procedural improvements, necessitate a revision of the existing CRGR charter to more appropriately reflect the process, roles, and responsibilities of the CRGR. Specific changes to the charter are delineated below:

1. The CRGR membership and the CRGR Chairman will continue to be appointed by the EDO. The Committee will have one member each from the Offices of Nuclear Reactor Regulation (NRR), Nuclear Regulatory Research (RES), Nuclear Material Safety and Safeguards (NMSS), and General Counsel (OGC); one of the regions on a rotational basis; and one member each from the program offices formed since the issuance of the last CRGR charter (NSIR, NRO, FSME). The CRGR Chairman will report directly to the EDO about CRGR activities. New CRGR members will be appointed as the need arises, as was the case, for example, with the creation of the three new program offices. RES will continue to provide the technical and administrative support for the CRGR.

2. Except for proposed generic requirements that become immediately effective (e.g., those requiring immediate action by the licensing office because they may involve adequate protection issues), the CRGR will continue to review selected nuclear materials items at the recommendation of the Director of NMSS or the Director of FSME, or at the EDO's request. The CRGR will also continue to review new and revised power-reactor-related regulatory requirements, generic correspondence, and regulatory guidance, as well as selected U.S. Nuclear Regulatory Commission (NRC) staff guidance related to licensing, inspection, assessment, and enforcement that could impose a backfit pertaining to new and operating reactors. Rulemakings will only be reviewed at the request of the proposing office or as directed by the EDO. The CRGR will now review documents for which the non-concurrence process has been evoked related to a backfit issue. The CRGR will continue to formally review Generic Letters and Bulletins and will be available for the review of other documents upon request.
3. The CRGR will continue to review NRC's administrative generic backfit controls to determine if they are sufficient and the staff guidance is comprehensive and clear.
4. The program offices and regional management will ensure that the staff continues to follow the agency's backfit procedures and will maintain a backfit POC who will be responsible for their respective office/regional procedures and processes specific to relevant backfit activities.
5. As part of the Committee's responsibility for monitoring the overall effectiveness of NRC's generic backfit management process, the CRGR members will continue to engage licensees in matters of backfitting while visiting nuclear power reactors and nuclear materials facilities and will hold meetings with stakeholders as appropriate.
6. The CRGR no longer requires the program offices to provide a list of items expected to be submitted for CRGR review and endorsement to the CRGR Chairman because the volume of items requiring CRGR review has diminished.
7. The CRGR now performs "informal" reviews of various generic documents such as Regulatory Issue Summaries. The CRGR technical staff conducts these reviews and provides recommendations to the CRGR Chairman and members. If concerns exist or unintended backfitting requires further discussion, then a "formal" review will entail the staff appearing before the CRGR members in a formal meeting.
8. In the effort to streamline the development and revision of agency regulatory guides, the CRGR will review draft regulatory guides at the request of the staff. However, the staff is required to engage the CRGR if there has been a valid documented backfit claim made during the public comment phase. This interaction may result in a formal CRGR review.
9. The sponsoring division director is no longer required to provide a closeout memorandum to the CRGR indicating agreement with the CRGR recommendations. The discussions within the CRGR meeting are captured by the meeting minutes that document the staff's position. However, in instances of disagreements, the sponsoring division director will submit a memorandum to the EDO for resolution.

10. The CRGR will review requests regarding a backfit claim from external stakeholders to address an unresolved backfit claim raised in the public comment phase of document development pertaining to new or revised generic requirements (this excludes the rulemaking's public comment phase as a review process already exists for the stakeholders to raise backfit issues). In this review process, the CRGR will first engage the staff before any potential public meetings of the CRGR with external stakeholders.
11. The CRGR will continue to perform special tasks upon the EDO's request.

To assess the value and effectiveness of the CRGR activities, the CRGR solicits feedback from the program offices (NRR, NSIR, NRO, NMSS, FSME, and RES) 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. This feedback is regularly reflected in the CRGR annual assessment report.

The process for ensuring that backfits are properly justified includes: (1) following the guidance and addressing the questions posed in specific portions of the CRGR charter, and (2) fulfilling requirements of Management Directive 8.4, "Management of Facility-Specific Backfitting and Information Collection," and others as stated in the various office 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.

Although CRGR routinely raised questions and gave comments on proposed documents that require resolution, the offices did not consider the resulting changes as substantial. However, instances have occurred in which the staff decided to consider a different form of agency communication than was originally intended. In rare cases, the staff withdrew the document from consideration due to unintended backfitting.

In general, the program offices expended minimal effort in responding to the CRGR's comments and recommendations. Moreover, the program offices indicated that the CRGR review process, issues identified by the Committee, and the associated costs did not significantly and adversely impact the overall schedules and resources beyond those associated with preparing the packages for CRGR review. The offices recognize that the review by a knowledgeable independent panel of NRC senior managers contributes to the quality, safety, and security goals of the agency. The CRGR feedback provides additional and thoughtful insights that save considerable staff time and resources and contribute to the quality of the final documents.

In compliance with its CRGR-chartered mission and its role and responsibilities, the CRGR has successfully fostered 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 value to the regulatory process, and contributed to the accomplishment of NRC's mission by identifying technical, procedural, and legal issues.

The Commissioners

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The Committee will continue to seek improvements in its operations and activities through its regular staff interactions.

OGC has no legal objection to this revised charter as written.

Office of Nuclear Regulatory Research has included 0.5 full-time equivalent staff for fiscal year (FY) 2011 Performance Budget and FY 2012 Budget Request. Resources for FY 2013 will be addressed during the FY 2013 Planning, Budgeting, and Performance Management process.

Enclosure:

As stated

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