

June 27, 2017

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

FROM: K. Steven West, Chairman */RA/*
Committee to Review Generic Requirements

SUBJECT: COMMITTEE TO REVIEW GENERIC REQUIREMENTS RESPONSE
TO TASKING RELATED TO IMPLEMENTATION OF AGENCY
BACKFITTING AND ISSUE FINALITY REQUIREMENTS AND
GUIDANCE

In response to your memorandum of June 22, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16133A575), the U.S. Nuclear Regulatory Commission (NRC) Committee to Review Generic Requirements (CRGR, or the committee) assessed the agency's implementation of backfitting and issue finality requirements and guidance as applied across agency programs, including the adequacy and effectiveness of existing NRC requirements, guidance, training, and knowledge management (KM). In addition, in response to your memorandum of December 15, 2016 (ADAMS Accession No. ML16344A004), the CRGR also considered agency actions taken after your original tasking, such that the CRGR's assessment would comprehensively address all currently understood challenges and opportunities regarding backfitting and issue finality. Two notable actions fell within the scope of your supplemental tasking:

1. Your decision to reverse, under appeal from Exelon, a compliance backfit of Byron Station, Units 1 and 2 (Byron), and Braidwood Station, Units 1 and 2 (Braidwood) (ADAMS Accession No. ML16243A067).
2. Commission direction to the staff to be "familiar with and operate in a manner consistent with" an Office of the General Counsel analysis about consideration of costs when considering the compliance exception to the backfit rule, and the use of the compliance exception to mandate consistency with General Design Criteria (ADAMS Accession No. ML16334A462). This direction is summarized in a publicly available memorandum to CRGR from the NRC Solicitor (ADAMS Accession No. ML16355A258).

In your supplemental tasking, you also directed the committee to review its charter (ADAMS Accession No. ML110620618) against the results of its assessment, and determine if any scope or process changes are warranted.

CONTACT: K. Steven West, NSIR/CRGR
301-287-3734

This memorandum and its enclosure, "Report of the Committee to Review Generic Requirements on its Assessment of the U.S. Nuclear Regulatory Commission's Implementation of Backfitting and Issue Finality Requirements and Guidance," dated June 27, 2017 (ADAMS Accession No. ML17174B161) constitute the CRGR's response to your tasking. The report details the scope and methodology of the committee's comprehensive assessment and documents the committee's findings, the corrective actions that are currently underway, and the committee's recommendations for further action.

External stakeholders representing industry told the CRGR that they are concerned about inappropriate use of the compliance exception by the staff to justify facility-specific backfits, as well as the potential for our inspection and oversight activities to result in inappropriate backfits. With the exception of the compliance backfit for Byron and Braidwood, which was overturned on appeal, the CRGR did not identify any instance of inappropriate backfits. However, based on industry feedback and the totality of what it found during its assessment, the committee concluded that opportunities exist to improve backfitting practices. The corrective actions that are currently underway and recommended will improve oversight by NRC senior managers and first-line-supervisors, will enhance engagement and oversight by CRGR, will improve staff knowledge, skills, and abilities associated with backfitting and generic requirements, and will result in more consistency in identification and treatment of potential backfitting issues. Of the in-process actions and recommendations, the committee expects that broad communication of the new Commission direction, increased management involvement, and improved training and developmental activities will yield the greatest improvements in performance and consistency.

In the near term, the committee recommends that you take three actions:

1. Make the enclosed CRGR report publicly available.
2. Issue interim guidance on the new Commission direction on backfitting to be used by the staff pending publication of the in-process updates of Management Directive (MD) 8.4, "Management of Facility-Specific Backfitting and Information Collection" (ADAMS Accession No. ML12059A460) and NUREG-1409, "Backfitting Guidelines" (ADAMS Accession No. ML032230247).
3. Require NRC managers and staff with backfitting and issue finality responsibilities to attend backfit initial "reset" training.

In the mid-term, the CRGR will propose an update to its charter that reflects fact of life changes, enhancements in its role in certain backfitting activities, and added rigor to its annual and 5-year assessments; and will continue working with the Office of the Chief Human Capital Officer to develop a comprehensive, role-based backfit training program. In the long-term, the CRGR recommends that you direct an effectiveness review of the corrective actions taken in response to this CRGR assessment as part of the CRGR's next 5-year assessment of facility-specific and generic backfitting. With your approval, the CRGR will continue to work with you and the staff to implement the other corrective actions and recommendations included in its report.

In your memorandum of June 9, 2016, you asked the CRGR to answer a number of questions. The CRGR considered your questions in its review. The CRGR's responses are summarized below:

Requirements, Guidance, and Criteria

1. Are the guidance, procedures, and responsibilities still effective, clear, and current?

Answer: The CRGR believes that the current guidance and procedures for formal backfitting reviews have generally been effective. However, updates are needed to improve the effectiveness and clarity of the overall process. A coordinated update will help to ensure consistency of the guidance and articulation of associated responsibilities.

2. Should there be separate sets of guidance for generic versus plant-specific backfits?

Answer: The CRGR believes that a single high-level guidance document that covers both facility-specific backfitting and generic requirements and backfitting would promote efficiency and improve consistency. In the enclosed report, the CRGR recommends that the staff revise MD 8.4 to include guidance on generic requirements and backfitting.

3. How consistently are [the guidance and procedures] being implemented across the agency?

Answer: Updates to the suite of agency guidance and procedures for backfitting are needed to improve clarity, consistency and effectiveness, to incorporate the new Commission direction on backfitting, and to address lessons learned from the Byron and Braidwood backfit appeal. These updates are underway. In addition, the CRGR recommends that the offices with backfitting responsibilities work together to achieve consistent and standardized implementing procedures.

4. Based on the review of NUREG-1409 and MD 8.4, are the office implementing procedures adequate, needed, and consistent with agencywide guidance?

Answer: MD 8.4 and NUREG-1409 are critical controlling documents. The CRGR found that current implementing procedures are generally consistent with MD 8.4 and NUREG-1409. Looking forward, the CRGR concluded that implementing procedures would still be needed, and that the current procedures will need to be updated after the updates to MD 8.4 and NUREG-1409 are published. The CRGR also recommends that the offices with backfitting responsibilities work together to achieve more consistent and standardized implementing procedures. To ensure alignment, CRGR will review and approve all agency and office-level guidance and procedures associated with facility-specific and generic backfitting before they are implemented.

5. Are our backfit assessments providing the appropriate level of rigor and the appropriate clarity and consistency as defined in the Principles of Good Regulation?

Answer: The CRGR did not find material weaknesses or “fatal flaws” in the backfitting assessments it has reviewed. However, since the CRGR concluded that the current guidance and implementing procedures need to be updated and improved and that the available training needs to be updated and strengthened, it did not conduct a detailed historical review of backfit assessments. Looking forward, the committee believes that completing the corrective actions that are currently underway and that it recommended will improve management and staff knowledge, skills, and abilities associated with backfitting and generic requirements and will help ensure the appropriate level of rigor, clarity and consistency in backfit assessments.

Backfit Training**1. Does training currently exist related to the backfit rule, guidance, and procedures, and is it required as part of any formal qualification program?**

Answer: Backfitting requirements are discussed at a high level in several formal qualification manuals; however, training is generally broad and not role-based. The training should be more strongly focused on the particular roles and duties of the involved staff. The CRGR concluded that there is a need for enhanced, updated, and more in-depth training and periodic developmental activities, especially for those in inspector and reviewer roles.

2. If training is available, is it sufficient for staff members to acquire the skills and competencies required to implement NRC's backfitting requirements?

Answer: The backfitting training currently available to all staff in iLearn is not sufficient for staff to implement the backfit rule. CRGR concluded that initial qualification, periodic refresher training, ongoing developmental activities, and KM tools need to be strengthened and more focused on the practical application of backfitting guidance to individual staff members' roles and duties. The CRGR also concluded that the training should provide staff with sufficient understanding to recognize and appropriately address potential backfit situations. As detailed in the enclosed report, the development of such training is underway.

3. Are all of the appropriate staff taking the available training?

Answer: CRGR did not note any groups of staff who were inappropriately left out of required training. However, since the CRGR concluded that the available training needs to be updated and strengthened, it did not conduct a detailed historical review of training participation. Going forward, all offices that employ inspectors, license reviewers, or other individuals involved in backfitting and generic requirements should ensure that initial qualification, periodic refresher training requirements and developmental activities provide sufficient emphasis on backfitting commensurate with their specific roles. Senior managers and first-line supervisors should also complete appropriate training commensurate with their roles and responsibilities.

The CRGR is available to address any comments or questions, and to provide any other assistance needed.

Enclosure: As stated

SUBJECT: COMMITTEE TO REVIEW GENERIC REQUIREMENTS RESPONSE TO TASKING RELATED TO IMPLEMENTATION OF AGENCY BACKFITTING AND ISSUE FINALITY REQUIREMENTS AND GUIDANCE

Dated: June 27, 2017.

DISTRIBUTION: M. Johnson
 F. Brown
 Office Directors
 T. Clark
 T. Inverso
 J. Bowen
 L. Cupidon
 M. Sampson
 T. Bloomer
 C. Araguas
 S. Moore
 J. Monninger
 B. McDermott
 L. Wert
 A. Boland
 E. Hackett
 E. Williamson
 K. West
 J. Golder
 M. Lombard
 P. Holahan
 F. Peduzzi
 S. Cochrum

ADAMS Accession No.: ML17174A625 (Package)

***via email**

OFC	NMSS	NRO	NRR	Region II	RES	RES	OGC	NSIR
NAME	SMoore	JMonninger	BMcDermott	LWert	ABoland	EHackett	EWilliamson	KSWest
DATE	06/26/17*	06/26/17*	06/26/17*	06/26/17*	06/26/17*	06/26/17*	06/26/17*	06/27/17