

July 19, 2017

MEMORANDUM TO: Those on the Attached List

FROM: Victor M. McCree */RA/*
Executive Director for Operations

SUBJECT: TASKING IN RESPONSE TO COMMITTEE TO REVIEW
GENERIC REQUIREMENTS REPORT ON THE U.S. NUCLEAR
REGULATORY COMMISSION'S IMPLEMENTATION OF
BACKFITTING AND ISSUE FINALITY REQUIREMENTS

On June 27, 2017, the Committee to Review Generic Requirements (CRGR) transmitted its report on the U.S. Nuclear Regulatory Commission's (NRC's) implementation of backfitting and issue finality requirements (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17174B161). This memorandum provides my response and directs additional action by both the CRGR and the NRC offices with backfitting and issue finality responsibilities.

First, I would like to thank the CRGR for its thoughtful and thorough year-long effort to evaluate the guidance, training, and knowledge management associated with backfitting and issue finality. In addition to reviewing available agency documentation, the CRGR considered Commission direction, staff perspectives, stakeholder feedback offered at two public meetings, and written comments transmitted to the NRC. I agree with the CRGR that the result is the most comprehensive agency assessment of the NRC's implementation of backfitting requirements to date. Furthermore, the recommended actions will help us resolve safety issues—whether through backfitting or other processes—more consistently, clearly, openly, effectively, and efficiently.

The CRGR recommended that I take three near-term actions.

1. **Make the CRGR report publicly available.**

I agree. The report is enclosed with this memorandum and will be made publicly available at the same time as this memorandum.

2. **Issue a policy announcement on the new Commission direction on backfitting and issue finality.**

I agree. The Commission direction was documented in SRM-COMSECY-16-0020, "Staff Requirements – COMSECY-16-0020 – Revision of Guidance Concerning Cost and Applicability of Compliance Exception to Backfit Rule," dated November 29, 2016,

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(ADAMS Accession No. ML16334A462). The Commission's direction on the compliance exception in backfitting provisions should also be understood to apply to the comparable "issue finality" compliance provisions in Title 10 of the *Code of Federal Regulations*, Part 52. The details of the Office of the General Counsel recommendations that led to this direction are summarized in a publicly available memorandum (ADAMS Accession No. ML16344A004). Consistent with Management Directive 1.1, "NRC Management Directives System," a Yellow Announcement is the appropriate vehicle to communicate policy and guidance before the relevant Management Directive (in this case, Management Directive 8.4, "Management of Facility-specific Backfitting and Information Collection") can be updated.

Therefore, the CRGR is directed to prepare a Yellow Announcement for my signature that communicates both this Commission direction and the availability of the CRGR's report and this memorandum. This Yellow Announcement should be ready for my review by **July 28, 2017**.

3. Require NRC managers and staff with backfitting and issue finality responsibilities to attend backfit "reset" training.

I agree. Training is critical to ensure that employees are well-versed in not just the procedures, but also the regulatory fundamentals necessary to consider novel situations. Near-term training should be conducted with three main objectives:

- a. Emphasize the importance of promptly raising and resolving safety issues, as well as using the processes that are available to support NRC staff in doing so.
- b. Refresh and reinforce key concepts of backfitting and issue finality—important components of our regulatory approach that add discipline and predictability to our decision-making process.
- c. Heighten awareness of recent developments that will result in changes to guidance for considering backfits.

Therefore, I ask the CRGR to lead the development and execution of near-term training, with support from appropriate offices. This training should be led or facilitated by CRGR members, and should be delivered in an expeditious and consistent manner to staff and managers with backfitting and issue finality responsibilities (e.g., technical reviewers, inspectors, project managers, and supervisors). I expect all such individuals at headquarters to have received the training by **January 31, 2018**, beginning with a pilot offering to agency senior managers.

This and other training and knowledge management activities are to be coordinated with and supported by the Office of the Chief Human Capital Officer, both at the working group and management/CRGR level.

The CRGR report also lists CRGR-led actions and recommendations for action by other organizations. I appreciate the CRGR's forward-looking, integrated approach and support the activities as described in the enclosure to this memorandum. These activities are to be integrated and consistent with activities underway in response to Commission direction on backfitting and issue finality. In addition, CRGR proposed to conduct an effectiveness review in conjunction with the next 5-year assessment of backfitting. I agree that such reviews are

important to monitor progress and support durable enhancements; however, the next assessment should be conducted after 3 years, to reflect the importance of completing these actions in a timely, effective manner. The periodicity for future assessments can be evaluated thereafter.

The CRGR report identifies an additional contributing factor to backfit challenges that did not lead to specific actions or recommendations—specifically, on the **retrievability of licensing and design basis information**. Section 4.3.1 of the CRGR report describes “attempts to apply current standards at older plants during inspections and licensing reviews” (page 19) and “the need to fully understand the specific current licensing basis” (page 20). The CRGR recognized the need for clear explanations of the definition of “licensing bases” and “design bases” to be included in the updated training. While foundational understanding of these concepts is essential, the practical implications of easily retrieving such information is not often discussed. For example, the Backfit Appeal Review Panel report referenced by the CRGR (ADAMS Accession No. ML16236A208) references 15 documents key to the panel’s review that were not in ADAMS and needed to be retrieved on microfiche.

As the original licensing decisions that need to be considered in potential backfitting situations retreat further into the past, it is essential that NRC staff have simpler access to docketed information. Therefore, I direct the Office of the Chief Information Officer, in coordination with regulatory offices, to report to me on the current availability of key docketed information categories,* as well as the resource implications of making such information more readily available. This report should indicate where activities to digitize legacy information are already underway or completed. If certain information is formally retained by licensees, the procedures for obtaining such information should be clarified as well. I have therefore added corresponding item 7a to the enclosed list of actions.

Finally, the CRGR report did not identify the resources that will be needed to undertake the actions identified in the report and endorsed in this memorandum. Many actions are already underway. I ask the CRGR, in coordination with the offices responsible for these actions, to report to me the resources needed to complete this work on an expeditious schedule, as well as whether these resources are already budgeted. The add/shed/defer process can then be exercised to assess available and needed resources. I have added corresponding item 7b to the enclosed list of actions.

I request that the responsible offices coordinate with Theresa Clark of my staff by **August 18, 2017**, to establish appropriate due dates for the items in the enclosure with identified lead office assignments. Support office activities are to be coordinated by lead offices accordingly.

Enclosure:
EDO Response to CRGR-Led Actions
and Recommendations

* Examples include revisions to final safety analysis reports, technical specifications, license amendments, safety evaluation reports, and other docketed correspondence.

TASKING IN RESPONSE TO COMMITTEE TO REVIEW GENERIC REQUIREMENTS REPORT ON THE U.S. NUCLEAR REGULATORY COMMISSION'S IMPLEMENTATION OF BACKFITTING AND ISSUE FINALITY REQUIREMENTS DATED JULY 19, 2017.

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ADAMS Accession Number: ML17198C141

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DATE	07/18/17	07/19/17

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EDO Response to CRGR-Led Actions and Recommendations

Topic	Action or Recommendation	EDO Response	Lead Organization(s)
1: Requirements, Guidance, and Criteria (CRGR Report Section 4.1)	1a: Update MD 8.4, NUREG-1409, NUREG/BR-0058.	Agree. Action is currently underway and should be coordinated with actions already tracked (SRM-S14-0087-1 for NUREG/BR-0058 update on qualitative factors and SRM-CMSY16-0020 for guidance update on compliance backfits).	NRR (CRGR approval)
	1b: Update office-level implementing guidance.	Agree. Action should be taken after guidance updates (item 1a) are complete. Implementing guidance should be consistent across regions.	Relevant offices, including NMSS, NRR, NRO, NSIR, OGC,* RES, Region I, Region II, Region III, and Region IV (CRGR approval)
	1c: Review and update the NRC Enforcement Manual.	Agree. Action can be taken in parallel with guidance updates (item 1a).	OE
	1d: Evaluate whether additional processes should receive backfit reviews.	Agree. To the extent that previous stakeholder outreach did not cover this topic, additional outreach should be conducted to develop the list of processes.	CRGR
2: New Commission Policy Direction (CRGR Report Section 4.2)	2a: Issue policy announcement on policy changes from SRM-COMSECY-16-0020.	Agree. As noted in this memorandum, a Yellow Announcement should be prepared for EDO review by July 28, 2017 .	CRGR
3: Training (CRGR Report Section 4.3)	3a: Develop "reset" training for managers and staff.	Agree. As noted in this memorandum, all affected individuals should receive this training by January 31, 2018 . A pilot training should be conducted for agency senior managers as soon as possible.	CRGR (through leadership of working group)
	3b: Update initial backfit training for use in qualification programs.	Agree. Activities should be conducted by an interoffice working group.	CRGR (through leadership of working group)
	3c: Develop or update backfit refresher training and developmental activities.	Agree. Activities should be conducted by an interoffice working group.	CRGR (through leadership of working group)
	3d: Revise office procedures to require backfit training and developmental activities.	Agree. This office action should be conducted after the interoffice working group develops or updates the training.	Relevant offices, including NMSS, NRR,† NRO, NSIR, OGC, and RES
	3e: Provide backfit refresher training and developmental activities.	Agree. Activities should be conducted by an interoffice working group and integrated with item 3c, rather than being tracked separately.	N/A

* OGC does not report to the EDO but is included in this table for completeness, as certain OGC procedures and documents may need to be updated consistent with other changes.

† NRR has responsibility for Inspection Manual Chapter 1245 (inspector qualifications), so regions are not listed separately.

Topic	Action or Recommendation	EDO Response	Lead Organization(s)
	3f: Provide “just-in-time” training and references on backfitting.	Agree regarding “just-in-time” training. Activities should be conducted by an interoffice working group and coordinated with KM activities (item 4a). The preparation of a formal report of case studies is a worthwhile activity, but less urgent. It should be considered, as resources allow, after completion of training development where such case studies may appear.	CRGR (through leadership of working group)
	3g: Conduct workshops on backfitting.	Agree. Activities should be conducted by an interoffice working group and should be integrated into the initial and refresher training (items 3b and 3c), rather than being tracked separately.	N/A
4: Knowledge Management (KM) (CRGR Report Section 4.4)	4a: Add backfitting documents to KM Web site.	Agree. Any new CRGR-led site should be cross-linked to OGC-prepared KM materials.	CRGR
	4b: Prepare a NUREG/KM document on CRGR history and activities.	Agree in principle, although this action is less urgent than other activities in this table and should be prioritized as resources allow.	CRGR
	4c: Create a backfitting Community of Practice with office points of contact.	Agree. The identification of points of contact should be done expeditiously so they can be recognized in the “reset” training and (if possible) participate in the training working group.	CRGR and appropriate offices
5: Other Issues (CRGR Report Section 4.5)	5a: Apply the policy announcement (item 2a) to issues currently under review.	Agree in principle, though such application would flow naturally from application of SRM-COMSECY-16-0020 and does not need to be separately tracked.	N/A
	5b: Conduct an effectiveness review of actions taken in response to the CRGR report.	Agree. The effectiveness review is to be conducted in 3 years rather than 5 years.	CRGR
6: CRGR Charter (CRGR Report Section 4.6)	6a: Revise the CRGR charter to reflect rulemaking criteria, incorporate recent Commission direction, and enhance rigor of CRGR assessments.	<p>Agree that the charter should be revised based on the findings in the CRGR report. Specific revisions should be proposed by the CRGR for EDO approval and Commission notification.</p> <p>The revisions should include, at a minimum:</p> <ul style="list-style-type: none"> • CRGR approval of certain backfitting-related guidance (to be identified in charter); • CRGR or CRGR-member consultation (in a manner to be defined) on facility-specific backfits; • CRGR or CRGR-member participation (in a manner to be defined) in review of formal backfit appeals; • criteria for holding public meetings, both on specific reviews and to obtain feedback on general CRGR and backfitting activities; and • requirement to conduct periodic assessments. 	CRGR

Topic	Action or Recommendation	EDO Response	Lead Organization(s)
7: Additional Actions Not Listed in CRGR Report	7a: Report on the availability of key docketed information and the resources needed to make information more readily retrievable.	Identified in this memorandum.	OCIO
	7b: Report on the resources needed to implement the actions identified in this table.	Identified in this memorandum.	CRGR