



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 22, 2018

MEMORANDUM TO: Chairman Svinicki  
Commissioner Baran  
Commissioner Burns  
Commissioner Caputo  
Commissioner Wright

FROM: Margaret M. Doane */RA/*  
Executive Director for Operations

SUBJECT: SUPPLEMENT TO SECY-18-0049, "MANAGEMENT DIRECTIVE  
AND HANDBOOK 8.4, 'MANAGEMENT OF BACKFITTING,  
ISSUE FINALITY, AND INFORMATION COLLECTION'"

On April 18, 2018, the U.S. Nuclear Regulatory Commission (NRC) staff issued SECY-18-0049, "Management Directive and Handbook 8.4, 'Management of Backfitting, Issue Finality, and Information Collection'" (Agencywide Documents Access and Management System (ADAMS) Package Accession No. ML18072A150). This memorandum describes two issues recently identified with the draft Management Directive (MD) and Handbook enclosed with SECY-18-0049 and provides revised text that, where designated, should be used in place of the text provided in the enclosure to SECY-18-0049 as the basis for Commission deliberation on the draft MD and Handbook.

**1. Fix a discrepancy in the applicability of the compliance exception to written commitments**

During its preparation of the draft revision to NUREG-1409, "Backfitting Guidelines," to conform to the draft policy proposed in SECY-18-0049, the staff noted an inconsistency in the draft MD and Handbook 8.4 regarding the scope of "written commitments" subject to the backfitting compliance exception. The draft MD Handbook refers to two different interpretations of "written commitment." The following discussion corrects the discrepancy in the MD Handbook.

Section I.A, "Backfitting," paragraph 8, on page 6 of the draft MD Handbook, specifies the written commitments within the scope of backfitting. This paragraph states:

Sections 50.109(a)(4)(i) and (a)(7), 70.76(a)(4)(ii) and (a)(7), 72.62(b), and 76.76(a)(4)(i) of 10 CFR require compliance with "written commitments" and, in

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the case of 10 CFR 76.76(a)(7), “written Corporation commitments.” Within the scope of backfitting, these written commitments mean ***those commitments that have been incorporated into the license as a means necessary to demonstrate compliance with requirements.***

Section III.B, “Compliance Backfitting,” paragraph 2, on page 17 of the draft MD Handbook, defines the phrase “written commitments.” This paragraph states:

The phrase “written commitments,” as used within the backfitting provisions, refers to ***those commitments that have been submitted to the NRC on the docket, have become part of the LB [licensing basis], and directly relate to the means by which the licensee complies with a requirement.***

To correct the discrepancy between the noted paragraphs of the MD and align the guidance on application of the compliance exception to written commitments with page 6 of the draft MD Handbook, Section III.B, “Compliance Backfitting,” paragraph 2, on page 17 of the draft MD Handbook, is modified as follows to clarify the staff’s intent in applying the compliance exception to commitments (revised text is underlined; deleted text is struck through):

The phrase “written commitments,” as used within the backfitting provisions, refers ***to those commitments that have been submitted to the NRC on the docket, ~~have become part of the LB~~ have been incorporated into the license, and directly relate to the means by which the licensee complies with a requirement.***

The staff notes that the use of the compliance exception described in MD 8.4 is based on the Commission’s direction in the document, “Staff Requirements – COMSECY-16-0020 – Revision of Guidance Concerning Consideration of Cost and Applicability of Compliance Exception to Backfit Rule,” dated November 29, 2016 (ADAMS Accession No. ML16334A462), as further clarified by the memorandum from the Office of the General Counsel (OGC) dated December 20, 2016 (ADAMS Accession No. ML16355A258). The staff notes that the proposed use of the compliance exception described in the revision to MD 8.4 is based on the Commission’s direction in the document “Staff Requirements – COMSECY 16 0020 – Revision of Guidance Concerning Consideration of Cost and Applicability of Compliance Exception to Backfit Rule,” dated November 29, 2016 (ADAMS Accession No. ML16334A462), as further clarified by the memorandum from OGC dated December 20, 2016 (ADAMS Accession No. ML16355A258). This includes the need to identify a mistake of fact or omission associated with the original NRC approval.

The phrase “written commitments” was incorporated into the backfitting regulations for power reactors in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.109, promulgated in the Final Rule, “Revision of Backfitting Process for Power Reactors,” dated September 20, 1985 (50 FR 38097). The phrase was not included in the Notice of Proposed Rulemaking, “Revision of the Backfitting Process for Power Reactors,” dated November 30, 1984 (49 FR 47034). The *Federal Register* statement of considerations for the final rule did not address the reasons for the addition of “conformance with written commitments” to the compliance exception of the backfitting regulations, or provide any discussion regarding the meaning and intent of the phrase including any discussion as to which written commitments would be considered under the compliance exception.

The staff's treatment of licensee commitments has become more disciplined since the 1985 issuance of the revisions to the backfitting regulations. In August 1988, the NRC issued Manual Chapter 0514, "NRC Program for Management of Plant-Specific Backfitting of Nuclear Power Plants" (ADAMS Accession No. ML041400111), the predecessor to MD 8.4. In July 1990, the NRC issued NUREG-1409, "Backfitting Guidelines," (ADAMS Accession No. ML032230247). For advice on implementing backfitting actions related to written commitments, these documents did little beyond repeating the language in 10 CFR 50.109(a)(4)(i). In draft MD 8.4, the staff focused on providing instructions that fit with the current regulatory philosophy. The staff recognizes that the backfitting regulations provide the Commission the authority to issue compliance exception backfits to require conformance with written commitments. The staff also recognizes that SRM-COMSECY-16-0020 and the OGC memorandum dated December 20, 2016, provide a focused framework for compliance backfits. The staff is augmenting this guidance by focusing the staff's consideration of written commitments to those that the staff has elevated to license conditions, which provides recognition of the safety significance of those commitments. Such commitments are legal obligations and will likely either be the known or established standard used in the initial staff approval or position, or otherwise key to the initial approval or position to which the compliance exception backfit is focused. As such, the staff concludes that applying the compliance exception clause to this set of commitments is consistent with the regulatory philosophy of SRM-COMSECY-16-0020.

The staff recognizes that licensee commitments are not legally binding unless elevated to legal obligations such as license conditions. The staff also recognizes that to impose a commitment as a license condition, the staff must perform a backfit evaluation. This analysis will include a determination about whether the elevation of this commitment to a specific license condition is necessary and justified. If a licensee terminates a written commitment that has not been incorporated in the license, and the staff performs a backfit analysis and determines that conformance with the commitment provides a substantial increase in the overall protection of the public health and safety or the common defense and security, and is cost justified, the staff can impose it as a backfit.

## **2. Revise the title of NUREG-1409, Revision 1**

The staff first issued implementation guidance on the backfitting process in NUREG-1409, "Backfitting Guidelines," dated July 1990. The staff stated in SECY-18-0049 that the title of NUREG-1409, Revision 1, would be changed to "Backfitting and Issue Finality Guidance," because NUREG-1409, Revision 1, will address all of the backfitting requirements in 10 CFR Parts 50, 70, 72, and 76, and the 10 CFR Part 52 issue finality provisions. Due to administrative limitations regarding publication of NUREG reports, the title of NUREG-1409, Revision 1, will remain "Backfitting Guidelines."

OGC has reviewed this memorandum and has no legal objection.

cc: SECY  
OGC  
OCA  
OPA  
CFO

SUBJECT: SUPPLEMENT TO SECY-18-0049, "MANAGEMENT DIRECTIVE AND HANDBOOK 8.4, 'MANAGEMENT OF BACKFITTING, ISSUE FINALITY, AND INFORMATION COLLECTION,'" DATED OCTOBER 22, 2018.

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**ADAMS Accession Nos.:** Package ML18253A012; Ticket ML17062B078; SECY-18-0049 ML18071A382; Draft MD 8.4 ML17277A924; Supplement to SECY ML18253A002 \*via email

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