

Draft NUREG-1409, Revision 1, “Backfitting Guidelines”

Category 3 Public Meeting
April 28, 2020

Ground Rules



- Meeting is being recorded and transcribed
- Your phones will be muted until designated times
- NRC operator will queue those with questions
- Identify your name and affiliation when speaking
- Questions not related to NUREG-1409 will be referred to NRC's public affairs officer

Purpose



- Understanding of Draft NUREG-1409, Rev. 1
- Opportunity to ask questions
- The meeting is neither designed nor intended to solicit or receive comments
 - Submit comments per the *Federal Register* notice dated March 23, 2020 (85 FR 16278)
 - Regulations.gov at docket NRC-2018-0142

Background



- 2016 – Effort to enhance and improve backfitting practices and guidance
- 2019 – Management Directive (MD) 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests”
- Revising NUREG-1409 to conform with and implement MD 8.4
- Complete rewrite of the 1990 version

Draft NUREG-1409 Structure



- Chapter 1 – Overview of Backfitting and Forward Fitting
- Chapter 2 – Screening and Justifying Backfitting Actions
and Changes Affecting Issue Finality
- Chapter 3 – Forward Fitting
- Chapter 4 – Backfitting and Forward Fitting Appeals
- Chapter 5 – Relationship to Other Processes
- Chapter 6 – Recordkeeping and Documentation
- Chapter 7 – References
- Appendix A – Flowcharts
- Appendix B – Worksheets
- Appendix C – Guides

Chapter 1 – Overview



- 1.1 Introduction
- 1.2 Backfitting and Issue Finality
- 1.3 Forward Fitting
- 1.4 Risk Considerations and Safety Significance
- 1.5 Communications with Licensees
- 1.6 Management and Oversight of Backfitting and Forward Fitting
- 1.7 Implementation of Backfitting and Forward Fitting Process

Chapter 2 – Backfitting and Issue Finality



Five questions used to screen and justify backfits:

- Question 1: Is the proposed action excluded from the backfitting and issue finality provisions?
- Question 2: Would the proposed action affect an entity that is within the scope of a backfitting or issue finality provision?

Chapter 2 – Backfitting and Issue Finality



- Question 3: Would the proposed action constitute backfitting or affect issue finality?
 - Is there a new or changed requirement or staff interpretation?
 - Is NRC imposing the new or changed requirement or interpretation?
 - Would imposition result in the modification or addition to the facility's structures, systems, components, design, or procedures or organization for designing, constructing, or operating the entity's facility?
- Relative to when the position became applicable

Chapter 2 – Backfitting and Issue Finality (continued)



- Question 4: Do any of the exceptions to the requirement to prepare a backfit analysis apply to the proposed backfitting?
 - Ensure that a facility provides adequate protection
 - Define or redefine the level of protection considered adequate
 - Ensure compliance
- Backfits using the adequate protection or compliance exceptions are supported by documented evaluations (not backfit analyses)

Chapter 2 – Backfitting and Issue Finality (continued)



- Question 4a: Do one or both of the adequate protection exceptions apply?
 - Adequate protection is not defined, but is considered as “no undue risk”
 - Adequate protection considered first
 - Imminent threat analysis
 - Cost considerations if alternatives identified

Chapter 2 – Backfitting and Issue Finality (continued)



- Question 4b: Does the compliance exception apply?
 - Correct mistaken NRC approvals caused by an error or omission at or before the time of approval
 - Judged by the standards, practices, and knowledge at the time of approval
 - Graded approach to cost considerations

Chapter 2 – Backfitting and Issue Finality (continued)



- Question 5: Does the proposed backfitting action constitute a cost-justified substantial increase in the overall protection of public health and safety or the common defense and security?
 - Substantial *additional* overall protection is achieved
 - Costs are justified in view of the substantial additional protection
 - Supported by a backfit analysis

Chapter 3 – Forward Fitting



Six aspects:

1. Voluntary licensing request
2. Licensee within scope of backfitting provisions
3. Imposition is a new or changed requirement or interpretation of a requirement
4. Imposition results in a modification or addition to the facility's structures, systems, components, design, or procedures or organization for designing, constructing, or operating the facility
5. Imposed as a condition of the approval
6. Licensee did not propose to comply with the imposition

Chapter 3 – Forward Fitting (continued)



- Conditions
 - Direct nexus: must directly relate to the subject matter of the request
 - Essential: must be essential to the NRC staff's approval of the request
 - Costs: must be a supporting cost estimate
- Supported by a “forward fit analysis”

Chapter 4 – Appeals



- Backfitting and forward fitting decisions can be appealed by licensees in writing
- Appeals can be submitted when
 - NRC did not intend to backfit or forward fit, but the licensee believes that it occurred
 - NRC does intend to backfit or forward fit, but the licensee believes it was not properly justified
- Two levels of appeals
 - NRC Office Director
 - NRC Executive Director for Operations

Chapter 5 – Other Processes



- Backfitting and forward fitting interfaces with other processes
- Prevent inadvertent backfitting or forward fitting
- Understanding the licensing basis is key
- Major interfaces include:
 - Inspection/enforcement, violations, confirmatory action letters, enforcement orders
 - Generic communications and information requests
 - Regulatory guidance
 - Initial licensing
 - Standard Review Plan

Remaining Chapters and Appendices



- Records and Documentation
- References
- Flowcharts
- Worksheets
- Guides

Concluding Remarks



- Please submit written comments by the deadline in the *Federal Register* notice
- A copy of the meeting minutes will be made publicly available in ADAMS and posted to regulations.gov, Docket ID: NRC-2018-0142
- Staff will consider formally submitted comments and has the goal of finalizing the NUREG by the end of 2020

References



- Draft NUREG-1409, Revision 1, “Backfitting Guidelines” (ML18109A498)
- Management Directive 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests” (ML18093B087)
- *Federal Register* Notice:
<https://www.govinfo.gov/content/pkg/FR-2020-03-23/pdf/2020-06081.pdf>