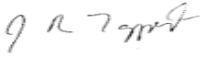




UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

December 12, 2023

MEMORANDUM TO: Daniel H. Dorman  
Executive Director for Operations

FROM: John R. Tappert, Chairman  Signed by Tappert, John  
Committee to Review Generic Requirements on 12/12/23

SUBJECT: COMMITTEE TO REVIEW GENERIC REQUIREMENTS:  
MINUTES OF MEETING NOS. 463 AND 464

On October 30, and November 3, 2023, the Committee to Review Generic Requirements (CRGR, the Committee) held Meeting Nos. 463 and 464. The purpose of this meeting was to discuss the potential backfitting aspects of Final Rule, "Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning." The overall goal of this rule is to amend the U.S. Nuclear Regulatory Commission's (NRC) regulations to implement specific regulatory requirements for different phases of the decommissioning process consistent with the reduced radiological risk when compared to an operating production and utilization facility.

The staff from the NRC's Office of Nuclear Material Safety and Safeguards, Office of Nuclear Security and Incident Response, and Office of the General Council presented the proposed rule language and the staff's positions on one identified backfit and one potential backfit concern. The staff also presented the changes to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.109, "Backfitting." Enclosure 1 lists the meeting attendees and Enclosure 2 provides list of references provided to the CRGR for review including the staff's presentation slides.

During the meeting, the staff discussed one aspect of the final rule that changes the cybersecurity requirements for holders of combined licenses (COLs) under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants." The final rule will require current COL holders to maintain their cybersecurity plan into the decommissioning phase until the spent fuel in the spent fuel pool has sufficiently cooled. Presently, COL holders are required to maintain a cybersecurity program only until they are not authorized to operate their reactors. This change will ensure consistency with the requirements of Part 50 reactor licensees in the new rule (which are currently addressed through license conditions). Because this will be a new requirement for COL holders, the final rule change will constitute backfitting. The NRC staff presented its justification for proceeding with this change.

Enclosure 1: List of References  
Enclosure 2: List of Attendees from CRGR  
Meetings No. 463 and 464

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The NRC staff presented its conclusion that the changes would provide a cost-justified substantial increase in protection of public health and safety and the common defense and security by ensuring that effective operation of emergency planning systems and physical security programs. Within its roles and responsibilities, the Committee agreed that the staff's analysis was consistent with agency backfitting policy and endorsed the characterization of this backfit.

The potential backfit concern presented to the CRGR involves changes to the rule to clarify fitness-for-duty (FFD) program elements that apply to nuclear power reactor licensees through the insider mitigation program (IMP). The existing requirement in 10 CFR 73.55(b)(9)(ii)(B) states that IMPs must include "elements" of the FFD program described in 10 CFR Part 26, "Fitness for duty programs," but the specific elements are not defined. The new rule explicitly identifies what elements of Part 26 are required. Comments on the proposed rule led to inclusion of additional required elements and no comments raised potential backfit concerns on this provision. The NRC staff determined that the final rule clarifies which FFD elements must be part of the IMP and it does not require licensees to change their IMP procedures. Therefore, the changes to 10 CFR 73.55(b)(9)(ii)(B) do not meet the definition of backfitting. It is also noted that the IMP continues to apply in decommissioning until a licensee has transitioned from a physical security plan under 10 CFR 73.55 to 10 CFR 73.51 and that Part 26 no longer applies when a plant has entered decommissioning.

In its review of this portion of the rulemaking, the Committee engaged the staff in discussions to understand the purpose and intent for this portion of the rulemaking. Some CRGR members viewed the final rule IMP changes as backfitting because the change removes the flexibility the current rule has regarding what elements from 10 CFR Part 26 the licensee can use to meet 10 CFR 73.55(b)(9)(ii)(B). However, the CRGR majority agreed with the NRC staff and determined that this change was not a backfit but a clarification of the existing regulation.

The NRC staff also briefed the CRGR on changes 10 CFR 50.109. The decommissioning final rule provides a new backfitting provision for nuclear power reactor licensees in decommissioning. The final rule renumbers the paragraphs of 10 CFR 50.109 so paragraph (a) would be the current backfit rule and paragraph (b) would be the new rule text for decommissioning nuclear power reactor licensees. The NRC is also revising the backfitting provision in 10 CFR Part 72 so that provision applies during the decommissioning of a monitored retrievable storage facility or an independent spent fuel storage installation. The final rule revises a requirement that the NRC must consider the costs of imposing a backfit if the basis for the backfit is the compliance exception to the requirement to perform a backfit analysis. This change is based on a 2019 update to the Commission's backfitting policy in Management Directive 8.4. The Committee endorsed this change.

## **CONCLUSION**

As discussed above, the CRGR agreed that the staff's analysis is consistent with agency backfitting policy. Following the review of the rulemaking package, staff presentation, and regulatory analysis, the Committee endorsed the final rulemaking package. The Committee appreciated the time and effort the staff expended to complete the work needed to support the CRGR review and was impressed by the quality and thoroughness of the staff's meeting presentation.

SUBJECT: COMMITTEE TO REVIEW GENERIC REQUIREMENTS:  
MINUTES OF MEETING NUMBERS 463 and 464

**DISTRIBUTION:**

Chair Hanson  
 Commissioner Wright  
 Commissioner Caputo  
 Commissioner Crowell  
 Carrie Safford, SECY  
 Daniel H. Dorman, EDO  
 Scott Morris, DEDR  
 Catherine Haney, DEDM  
 Marissa Bailey, AO  
 Tekia Govan, OEDO  
 Scott Moore, ACRS  
 John Lubinski, NMSS  
 Robert Lewis, NMSS  
 Andrea D. Veil, NRR  
 Andrea Kock, NRR  
 Robert Taylor, NRR  
 Michael King, NRR

Mirela Gavrilas, NSIR  
 Craig Erlanger, NSIR  
 Brooke Clark, OGC  
 Susan Vrahoretis, OGC  
 Robert J. Feitel, OIG  
 Jenny Weil, OPA  
 Eugene Dacus, OCA  
 David Pelton, OE  
 Raymond Furstenau, RES  
 John Tappert, RES  
 Raymond Lorson, Region I  
 Laura Dudes, Region II  
 Jack Giessner, Region III  
 John Monninger, Region IV  
 CRGR r/f

**ADAMS Accession No.: ML23342A212**

OFFICE	RES/TA	RES/CRGR
NAME	DDuvigneaud	JTappert
DATE	12/12/2023	12/12/2023

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**COMMITTEE TO REVIEW GENERIC REQUIREMENTS MEETING NOS. 463 AND 464  
LIST OF REFERENCES**

Final Rule Package (ML23258A200)

Commission Paper (ML23258A205)

Enclosure 1 – Federal Register notice (ML23258A206)

Enclosure 2 – Responses to Comments (ML23258A201)

Enclosure 3 – Regulatory Analysis (ML23258A202)

Enclosure 4 – Environmental Assessment (ML23258A203)

Enclosure 5 – Estimated Resources (ML23258A204)

Staff Presentation for CRGR Briefing on Final Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (ML23299A028)

**COMMITTEE TO REVIEW GENERIC REQUIREMENTS MEETING NO. 463  
LIST OF ATTENDEES  
(October 30, 2023)**

<p><b><u>CRGR Members</u></b>          John R. Tappert, Chairman, RES          Andrea Kock, NRR          Craig G. Erlanger, NSIR          Robert Lewis, NMSS          Mohammed Shuaibi, R-III          Susan Vraforetis, OGC          DyLanne Duvigneaud, CRGR TA</p>
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<p><b><u>NRC Staff</u></b>          Dan Doyle          Marlayna Doell          Howard Benowitz          Ilka Berrios          Kristina Banovac          Duane Hardesty          Aaron Sanders          Eric Schrader          Jeremy Tapp          Brian Zaleski          Tekia Govan          Audrey Klett          Kenneth Kolaczyk          Donna Jackson</p>	<p>Jason Drake          David Werkheiser          David Jones          Stacy Prasad          Ethan Licon          Elena Herrera          Tony Sierra          Thomas Byrd          Jeff Smith          Joseph Azeizat          Zach Turner          Greg Bowman          Nadiyah Morgan          Blake Purnell</p>
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**COMMITTEE TO REVIEW GENERIC REQUIREMENTS MEETING NO. 464  
LIST OF ATTENDEES  
(November 3, 2023 )**

<p><b><u>CRGR Members</u></b>          John R. Tappert, Chairman, RES          Andrea Kock, NRR          Craig G. Erlanger, NSIR          Robert Lewis, NMSS          Mohammed Shuaibi, R-III          DyLanne Duvigneaud, CRGR TA</p>	<p><b><u>NRC Staff</u></b>          Dan Doyle          David Jones          Tony Bowers          Howard Benowitz          Brian Zaleski          Evan Anderson          Audrey Klett          Blake Purnell          Ethan Licon          Tekia Govan          Marlayna Doell          Joseph Azeizat          Soly Soto Lugo (She/Her)          Stanley Gardocki          Donna Jackson</p>
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COMMITTEE TO REVIEW GENERIC REQUIREMENTS: MINUTES OF MEETING NOS. 463 AND 464  
DATE December 12, 2023

DISTRIBUTION:

**ADAMS Accession No.: Memo ML23342A212**

OFFICE	NMSS/DFM/IOB	RES/DRA		
NAME	DDuvigneaud <i>DD</i>	JTappert <i>JT</i>		
DATE	Dec 12, 2023	Dec 12, 2023		

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