

**May 26, 1999**

**SECY-99-143**

**FOR:** The Commissioners

**FROM:** William D. Travers /s/  
Executive Director for Operations

**SUBJECT:** REVISIONS TO GENERIC COMMUNICATION PROGRAM

**PURPOSE:**

To inform the Commission of actions taken or planned by the staff to improve the agency's generic communication program and its implementation (Chairman's Tasking Memo Issue IV.F), including the consideration given to concerns expressed by the nuclear power industry.

**SUMMARY:**

This paper describes the staff's evaluation of the NRC generic communication program performed in response to comments received from the Senate Committee on Appropriations and the nuclear power industry. On the basis of this evaluation, the staff identified the following improvements to the generic communication program: (1) requiring the staff to obtain early senior management acknowledgment of emergent generic issues and requiring the staff to initiate early interaction with the nuclear power industry when evaluating an issue (Direction-Setting Issue 13 (DSI 13), "The Role of Industry," is currently evaluating how the staff is to execute the latter responsibility); (2) more clearly defining each generic communication product and the distinctions between them; (3) implementing a tiered approach to generic information requests and restricting citation of 10 CFR 50.54(f) to only those matters for which the NRC has been unable to obtain needed information through other means, and (4) developing simplified

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value-impact assessments when the compliance exception to the backfit rule (10 CFR 50.109) is invoked in order to present senior management with additional information for making better informed decisions. The staff's findings concerning these improvements are presented in this paper.

### **BACKGROUND:**

In a report prepared by the Senate Committee on Appropriations titled "Energy and Water Development Appropriation Bill, 1999" (Report 105-206, dated June 5, 1998) it is stated, "(t)he NRC frequently imposes regulatory requirements using informal approaches that circumvent legal requirements for imposing legal requirements.... Those informal practices include: ... generic communications that reactor operators feel obligated to follow...."

The Nuclear Energy Institute (NEI), as a follow-up to the NRC-sponsored public meeting held on July 17, 1998, to address stakeholder concerns, recommended in a letter dated August 11, 1998, several actions the NRC could take to improve its regulatory processes, including two recommendations related to the generic communication program: (1) more rigorous and broader application of the backfit rule (10 CFR 50.109) and (2) greater recognition of industry programs to avoid duplicative reviews and the issuance of redundant generic communications.

The NRC staff subsequently met twice with NEI representatives (August 27 and November 3, 1998) in public meetings to discuss industry views on the generic communication program and its implementation. The discussions highlighted four such views: (1) early interaction between the NRC and the nuclear power industry at the formative stage of an emergent issue can be successful and beneficial to both the NRC and the industry in terms of identifying mutually satisfactory resolution approaches and reducing resource burdens; (2) the generic communication products are imprecisely understood (this stems from the perception that current generic communication products do not have a uniquely defined mission, particularly in regard to the lack of distinction between bulletins and generic letters); (3) the frequent citation of 10 CFR 50.54(f) to gather information without regard for the significance of the issue conveys an unrealistic and unnecessary sense of urgency to gather information; and (4) excessive use of the compliance exception of the backfit rule (10 CFR 50.109(a)(4)(i)) can subvert the discipline intended by the rule.

The first industry view (above) is being actively addressed through DSI 13, "The Role of Industry." In this regard, SECY-99-063, "The Use by Industry of Voluntary Initiatives in the Regulatory Process," dated March 2, 1999, presents the findings of a staff assessment of how voluntary industry initiatives may be used in lieu of, or to complement, regulatory actions. The staff has, in fact, been advocating the use of voluntary industry initiatives in lieu of regulatory actions for the past several years and in some instances the industry has responded favorably by forming specialized working groups to address technical issues. As a matter of background, in the past, voluntary initiatives were not viewed favorably by the industry because costs of voluntary initiatives could usually not be passed along to the ratepayers, but costs of formal regulatory actions could. More recently, the industry has stated that voluntary initiatives can result in more efficient utilization of resources in certain circumstances. The staff has concluded that utilization of industry initiatives can provide effective resolution of issues while

optimizing resource expenditures. Effective resource utilization will require coordination with the industry to assure appropriate development of budgeting and operating plans. The staff notes, however, that it will be important for the industry to remain an active participant in these initiatives and to work for their timely resolution in order for this approach to be effective.

To some extent, the concerns expressed by NEI have been addressed in a memorandum, dated August 7, 1998, from Samuel J. Collins, Director, Office of Nuclear Reactor Regulation (NRR), to senior NRR management on the subject "Recent Changes in the Process for the Preparation of Generic Communications." This memorandum informed NRR staff of two changes that were being implemented: (1) the need to obtain early senior management support for a generic communication and (2) the need to develop an implementation plan that carefully considers the ramifications of any burden to be imposed on licensees and efficiently utilizes NRR resources to achieve closure on an issue. In implementing this guidance, alternate resolution strategies are discussed, including those that may obviate the need for a utility response to the generic communication or the need for the generic communication. The new policy has already had a discernible impact. Recently, the staff has engaged the industry, at the direction of NRR management, on a number of potential generic communication issues. This engagement has led to industry-sponsored initiatives for issue resolution that were acceptable to the staff and, consequently, efforts on the proposed generic communications have been terminated.

The staff believes that early and more frequent interactions with representatives of the nuclear power industry on emergent issues, along with the implementation of a better integrated and more disciplined internal process for handling such matters, will lead to more efficient and effective use of industry and NRR resources. There is an additional advantage to be gained by interacting with the industry on emerging issues, and that is the public will have additional opportunity to follow their evolution in public meetings.

In advance of an April 22, 1999, public meeting, the staff sent a draft version of this paper to NEI and the Public Document Room on March 30, 1999. The staff discussed the proposed improvements to the generic communication program with NEI at the public meeting. NEI submitted written comments in a letter dated May 3, 1999 (Attachment 1). The staff has summarized NEI's concerns in Attachment 2, which also contains staff responses to them.

Staff plans for improving the generic communication program are discussed next.

## **DISCUSSION:**

### **Current Generic Communication Products**

As defined in NRC Inspection Manual Chapter (MC) 0720, "Generic Communications Regarding Nuclear Reactor Issues," there are four basic types of generic communications currently in use: bulletins (BLs), generic letters (GLs), information notices (INs), and administrative letters (ALs). The same types of generic communications are defined in MC-0730, "Generic Communications Regarding Material and Fuel Cycle Issues." Bulletins and generic letters are the focus of industry concern. The differences between the two are subtle

and can lead to misperceptions of staff intent. Both are used to request actions or information or both, and both can require a response by invoking §50.54(f). Generic letters can also be used to transmit information without involving a response. Bulletins have typically conveyed a greater sense of urgency; however, both bulletins and generic letters can be designated as “urgent.” The Charter of the Committee to Review Generic Requirements (CRGR) defines “urgent” as an issue “which the proposing office rates as urgent to overcome a safety problem requiring immediate resolution or to comply with a legal requirement for immediate or near-term compliance.” In practice, this means the public comment phase is omitted and the generic communication may be issued without prior CRGR review. For those generic communications issued without prior CRGR review, the proposing office is required to subsequently send to the CRGR an evaluation of the safety significance and appropriateness of any actions taken. This requirement assures that the “urgent” classification is being appropriately applied. The majority of generic letters have not been designated as “urgent,” but rather, as “routine.” Bulletins and generic letters are reviewed by the CRGR for compliance with the backfit rule (§50.109). In addition, “routine” generic communications are issued in draft for public comment, often are reviewed by the Advisory Committee on Reactor Safeguards (ACRS), and are sent to the Commission for review before they are issued.

The role and purpose of bulletins seem to be better understood by the industry because they are more consistently aligned with matters of greater urgency, address more narrowly focused issues, and entail short-term, non-continuing actions. Therefore, as a primary goal, the staff examined ways to distinguish bulletins from generic letters. The staff also reviewed its experience with information notices and administrative letters to see if any changes were warranted. In contrast, information notices and administrative letters are not subjected to the same level of scrutiny that is given to bulletins and generic letters because they do not convey or imply new requirements or new interpretations of regulations and do not request licensee actions or require a response.

### **Proposed Generic Communication Products**

The revised generic communications program will use four products: bulletins, generic letters, regulatory issue summaries (a new product), and information notices. The program will no longer use administrative letters. The characteristics of each generic communication product are described next.

#### **Bulletins**

Bulletins will continue to be used in much the same way as before; that is, to address significant issues that also have great urgency. Bulletins will now be the only generic communication product that may be designated “urgent” and, therefore, will be issued without public comment. Bulletins may request information and will require a response pursuant to §50.54(f), in keeping with the urgent nature of a bulletin. Bulletins that request action will be reviewed in accordance with §50.109. Bulletins will always be subject to CRGR review, but not necessarily before they are issued.

## Generic Letters

Generic letters will continue to request information or action or both. Generic letters will address only technical issues. Generic letters will be designated “routine.” Therefore, the critical difference between bulletins and generic letters is that bulletins will be issued without public comment and generic letters will be published in the *Federal Register* for public comment. Generic letters that request action (versus only requesting information) will be reviewed in accordance with §50.109. Generic letters will typically not invoke §50.54(f) unless the NRC has been unable to obtain needed information through other means. The staff will continue to develop the rationale for information requests, justifying the burden relative to the safety significance of the issue as described in the CRGR charter. Generic letters will always be subject to CRGR review. Generic letters will not be issued without prior staff interaction with the industry and the public.

## Regulatory Issue Summaries (New Product)

The NRC communicates with the nuclear power industry on a variety of matters for which no response or action is requested. This functional need has previously been met through the use of administrative letters and, in some cases, generic letters. The staff has determined that a new type of generic communication, designated a “regulatory issue summary,” would better meet this need. Regulatory issue summaries will be used to (1) document NRC endorsement of the resolution of issues addressed by industry-sponsored initiatives, (2) solicit voluntary licensee participation in staff-sponsored pilot programs, (3) inform licensees of opportunities for regulatory relief, (4) announce staff technical or policy positions not previously communicated to the industry or not broadly understood, and (5) address all matters previously reserved for administrative letters. CRGR will be given the opportunity to review all regulatory issue summaries; however, it is expected that CRGR will only review regulatory issue summaries of Types 1, 3 and 4. All regulatory issue summaries will be evaluated for the appropriateness of publication for public comment; however, it is expected that only regulatory issue summaries of Types 1, 3, and 4 will be published for public comment. Use of the regulatory issue summary will allow generic letters to be reserved for routine issues that request a response from the industry.

With respect to Type 1, the staff has been advocating the use of voluntary industry initiatives in lieu of regulatory actions for the past several years and the industry has responded favorably by forming specialized working groups to address technical issues. The staff determined that a generic communication is the appropriate method to document the resolution of issues addressed through industry initiatives. The staff determined that while this generic communication would potentially contain new staff positions, it would not require any response from industry because the industry response would be addressed through the original voluntary initiative. It was felt that the regulatory issue summary would best suit this purpose. In this case, the regulatory issue summary would document the evolution of the issue and the resolution agreed to between the industry and the staff, including industry initiatives and commitments.

## Information Notices

Information notices will continue to be used to inform the nuclear industry of significant, recently identified, operating experience. Recipients are still expected to review the information for applicability to their facilities and consider actions, as appropriate, to avoid similar problems. Information notices will not convey or imply new requirements or new interpretations, and will not request information or actions. Therefore, CRGR review and endorsement and a *Federal Register* notice to solicit public comment are not required.

## **Management of Generic Communication Development**

It is expected that bulletins, generic letters, and regulatory issue summaries will stem from a disciplined NRR process for the identification and tracking of emergent issues to resolution, after a sponsoring organization receives the approval from senior NRR management to pursue a matter. In so doing, a proposed generic communication will be a logical extension of a known staff activity, that is, an approved item in an NRR division operating plan and, equally important, the need for a generic communication and the basis for it will become apparent as the staff proceeds to interact with industry. To implement this expectation, changes have been made in the way generic communications are approved. The process is outlined in the attached flowchart (Attachment 3). An August 7, 1998, memorandum, "Recent Changes in the Process for the Preparation of Generic Communications," from the director of NRR to senior NRR management, notified NRR staff of the need to obtain early management support for these generic communications and the need for early and frequent industry interaction regarding generic issue resolution. The process has been revised so that the organization sponsoring a proposed generic communication must brief senior NRR management and obtain its approval before it develops the generic communication. As part of the briefing, the sponsoring organization must provide a summary analysis that addresses the required contents of the CRGR review package as discussed in the CRGR charter. The charter states that the review package must contain, among other things: (1) the proposed generic requirement or staff position, (2) underlying staff documents that support the requirement or position, (3) a backfit analysis as defined in 10 CFR 50.109 or a documented evaluation of the basis for invoking the compliance or adequate protection exemption' and (4) an assessment of how the proposed action relates to the Commission's Safety Goal Policy Statement. Item 4 will assure that the risk implications of the issue are discussed among senior NRR management before it approves development of the generic communication. As part of the briefing, the sponsoring organization will indicate whether the issue is a candidate for resolution through an industry initiative. Criteria concerning which issues are appropriate candidates for resolution through industry initiatives are currently being developed as part of DSI 13. Oversight of the generic communications development process will be accomplished by giving both the CRGR and the Advisory Committee on Reactor Safeguards (ACRS) the opportunity to review all bulletins, generic letters, and regulatory issue summaries. It is important to note that issues are concurrently evaluated to determine whether or not some form of regulatory action other than issuance of a generic communication is appropriate. Other regulatory actions could include referral to the Office of Nuclear Regulatory Research (RES) for consideration as a new or revised generic issue, or revision of the inspection program, standard review plan, or standard technical specifications. As discussed in NRR Office Letter 503, "Procedure for Integrated

Identification, Evaluation, Prioritization, Management, and Resolution of Generic Issues,” issued December 27, 1995, those emergent issues for which corrective actions are not believed to meet the compliance exception to the backfit rule are forwarded to RES for prioritization in accordance with RES Office Letter 1, “Procedure for Identification, Prioritization, Resolution, and Tracking of Generic Issues.”

## **Information Requests**

On occasion, the staff needs to gather information from licensees to gain a better understanding of the nature and extent of an issue. The staff has several avenues available to obtain this information. Surveys by project managers may be used for relatively simple matters in which licensees would be expected to have the information readily available. A temporary instruction (TI) may be used to have NRC inspection staff obtain information that is available at plant sites. In addition, the staff has historically worked with a broad range of industry groups to obtain needed information and resolve issues. The industry has encouraged this practice and has suggested that early discussion with the industry is a better way to gather information than issuing a generic communication. The staff agrees, and will continue to increase contact with the industry on these matters. Nevertheless, in some situations a generic communication will be the appropriate regulatory vehicle for gathering information. Bulletins and generic letters routinely cite §50.54(f) as the basis for requiring a response from licensees. From a legal perspective, such information requests are not backfits and are not reviewed in accordance with §50.109. However, §50.54(f) itself does require that the staff develop a rationale for an information collection to ensure that the burden to be imposed on the respondents is justified in view of the potential safety significance of the issue being addressed. In addition, information collection efforts that affect ten or more respondents are governed by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The law stipulates that Federal agencies must justify to the Office of Management and Budget (OMB) their information collection needs and prepare industry-burden estimates. In this regard, the NRC has obtained approval for information collections associated with 10 CFR Part 50, which includes the generic communications program.

With respect to generic communications, the industry has recently expressed concern about the staff’s practice of citing §50.54(f) when seeking information. In 10 CFR 50.54(f), the Commission states, in part, that “The licensee shall ... upon request of the Commission, submit ... written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.” The industry has argued that the frequent citation of 10 CFR 50.54(f) to gather information without regard for the significance of the issue conveys an unrealistic and unnecessary sense of urgency to gather information.

The NRC currently, routinely cites §50.54(f) in generic communications in part because of past industry criticism that the NRC did not cite the regulations upon which its actions were based. On the other hand, even if the NRC issues a generic communication to request information without citing §50.54(f), it is expected that licensees will exercise due diligence in responding in routine matters notwithstanding that they are not required to respond “under oath or affirmation.” Therefore, the staff has determined that it will restrict citation of §50.54(f) to those matters in which the NRC has been unable to obtain needed information from the industry

through other means and deems it appropriate to require a response. The staff expects that since this initiative is being undertaken in response to industry concerns, the industry will not use the lack of citing §50.54(f) to exemplify a prior criticism. The staff intends to continue to develop a rationale for information requests to justify the burden relative to the safety significance of the issue, as described in the CRGR charter.

### **Use of the Compliance Exception to the Backfit Rule**

From a legal perspective, generic communications cannot impose requirements and, therefore, are not backfits; only a rule or order can impose requirements. Nevertheless, the industry has indicated that it feels obligated to act on any request in generic communications. Recognizing this perceived imposition of burden, the staff is required by internal procedure to treat requested actions as potential backfits. Generic communications requesting actions discuss the applicability of the backfit rule and are reviewed by the CRGR. Realizing that generic communications cannot impose requirements, the majority of them do not even request actions. However, those that have requested actions have indicated that the actions met the compliance exception of the backfit rule. Thus, no value-impact analysis was required and none was performed.

The backfit rule requires an analysis that demonstrates a substantial increase in safety with justifiable costs for all backfits, except those that are needed for compliance or adequate protection. The analyses in question are generally performed in accordance with the directives and guidance of NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," and NUREG/CR-3568, "A Handbook of Value-Impact Assessment." Rather than focusing only on what truly constitutes compliance, the staff intends to perform a simplified value-impact analysis in those cases in which the compliance exception is invoked. The staff is in the process of developing such a simplified value-impact assessment technique. Use of this simplified value-impact assessment will support better informed regulatory decisions, whether to issue the generic communication, revise an associated rule, or take some other regulatory action. Emergent issues for which the appropriate corrective actions are not believed to meet the compliance exception to the backfit rule are forwarded to RES for prioritization in accordance with RES Office Letter 1, "Procedure for Identification, Prioritization, Resolution, and Tracking of Generic Issues." In those cases where adequate protection backfits are identified, they will continue to be imposed regardless of the associated impacts, as required by the backfit rule, but will not be imposed through a generic communication.

### **CONCLUSION:**

The staff has determined that there are several areas in which the generic communications program could be improved in order to maintain safety, reduce unnecessary regulatory burden, improve efficiency and effectiveness, and enhance public confidence. To effect these improvements, the staff intends to implement the following changes: (1) require the staff to obtain early senior management acknowledgment of emergent generic issues and require the staff to initiate early interaction with the nuclear power industry when evaluating an issue, (2) more clearly define each generic communication product and the distinctions between them, (3) implement a tiered approach to generic information requests and restrict citation of 10 CFR 50.54(f) to only those matters in which the NRC has been unable to obtain needed information



through other means, and (4) develop limited value-impact assessments when the compliance exception to the backfit rule (10 CFR 50.109) is invoked in order to provide additional information for better informed decisions.

**COORDINATION:**

The Office of Nuclear Material Safety and Safeguards (NMSS) has reviewed this paper and concurs with the proposed changes. NMSS intends to revise Inspection Manual Chapter 0730, "Generic Communications Regarding Materials and Fuel Cycle Issues," to curtail the use of "oath or affirmation" requirements, adopt the new communications types and definitions, and make other changes necessary to ensure that all NRC generic communications are prepared and issued in a consistent manner.

The Advisory Committee on Reactor Safeguards and the Committee to Review Generic Requirements have reviewed this paper and have no objections to its content.

The Office of the General Counsel has reviewed this paper and has no legal objections to its content.

The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections to its content.

The Office of the Chief Information Officer has reviewed this paper for information technology and information management implications and has no objections to its content.

William D. Travers  
Executive Director  
for Operations

Attachments: As stated

## NEI Comments on Generic Communications SECY Paper

NEI Comment	NRC Position	Resolution
<p>1. Compliance exception should not be used when invoking broad and fluid regulatory standards such as GDC and Appendix B.</p>	<p>Do not agree: OGC has indicated that past compliance exceptions are legally defensible. Paper proposes that when compliance exception is invoked, staff performs limited value-impact assessment to better inform decision makers (NRR ET, Commission) as to appropriate action to take, i.e., force compliance or revise rule. Paper already discusses that trying to get both sides to agree on what constitutes compliance would be ineffective.</p>	<p>No revision to paper.</p>
<p>2. 50.54(f) should only be used for requests of existing information.</p>	<p>Do not agree: 50.54(f) allows for any information request as long as burden imposed is commensurate with safety benefit or that the information is necessary to verify adequate protection or compliance.</p>	<p>No revision to paper.</p>
<p>3. 50.54(f) should only be used for those circumstances which reach the threshold of potential regulatory action that would result in modification, suspension, or revocation of an operating license.</p>	<p>Do not agree: Notwithstanding this, the paper proposes tiered approach where staff first works with industry to obtain necessary information and only cites 50.54(f) when necessary information was unobtainable by other means.</p>	<p>Paper will be revised to more clearly delineate the tiered approach to information gathering.</p>
<p>4. NEI encourages further use of TIs, PM surveys, and resident inspector surveys in lieu of generic communications for information gathering; however, priority and schedule for such requests should be communicated to licensees.</p>	<p>Outside of scope: Paper briefly discusses how these mechanisms are used.</p>	<p>No revision to paper.</p>

<p>5. Before generic communications are issued, NRC should make initial determination whether rulemaking or orders are necessary to address an emerging concern.</p>	<p>Agree: NRR Office Letter 503, "Procedure for Integrated Identification, Evaluation, Prioritization, Management, and Resolution of Generic Issues," issued December 27, 1995, dictates that those emergent issues for which corrective actions are not believed to meet the compliance exception to the backfit rule are considered for rulemaking.</p>	<p>Paper will be revised to address how generic communication process fits into generic issue resolution process.</p>
<p>6. Paper should include discussion of Commission involvement in establishing goals and objectives for generic communications.</p>	<p>Agree: Staff provides Commission with opportunity to review all Bulletins, Generic Letters, and, in the future, Regulatory Issue Summaries.</p>	<p>Paper will be revised to address Commission role in generic communication process.</p>
<p>7. Three generic communication products proposed:</p> <ul style="list-style-type: none"> <li>• Action Request: request action when specific hardware problem is identified and urgent action is warranted.</li> <li>• Information Request: request information when situation is not explicitly addressed by existing regulation and perform regulatory analysis in accordance with backfit rule.</li> <li>• Advisory: communicate information regarding operating experience, NRC improved TS changes, etc. Specific action or response not required. Does not convey or imply new requirements or interpretations.</li> </ul>	<p>Four generic communication products proposed:</p> <p>NEI proposal does not provide for non-urgent action requests, and does not provide for non-hardware issues (ACRS does not want to limit the staff to only being able to request actions with respect to hardware issues). Staff's proposed "Bulletin" provides for urgent action and information requests.</p> <p>NEI proposal does not provide for information requests to verify compliance. Backfit rule does not apply to information requests, 50.54(f) has its own provisions that require the staff to justify burden of information request in light of safety benefit. Staff's proposed "Generic Letter" provides for routine action and information requests.</p> <p>Nei proposal does not provide for dissemination of new staff positions , e.g., Reg Guides and regulatory relaxations, that do not require a response. Staff's proposed "Regulatory Issue Summary" provides for dissemination of new staff positions. Staff desires that operational experience (Information Notices) be kept separate, from an efficiency/effectiveness point of view, because they do not require CRGR review.</p>	<p>Keep four generic communication products:</p> <p>Keep the proposed suite of generic communication products. ACRS and CRGR both concur that proposed suite allows NRC to fulfill regulatory mission while providing additional clarity to industry.</p>

Proposed Generic Communication  
Decisionmaking Process

