

ATTACHMENT 1

PROPOSED REVISION 6 TO THE CRGR CHARTER

CHARTER

COMMITTEE TO REVIEW GENERIC REQUIREMENTS

Revision 6
Draft - 12/5/95

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Attachment 1: New Generic Requirement and Staff Position Review Process

Attachment 2: Procedures to Control Communication of Generic Requirements and Staff Positions to Licensees

Attachment 3: Guidance on Application of the "Substantial Increase Standard"

APPROVED BY THE COMMISSION JUNE 16, 1982 (SECY-82-39A)

REVISION 1 APPROVED BY THE COMMISSION (SECY MEMO DTD JANUARY 6, 1984)

REVISION 2 APPROVED BY THE COMMISSION (COMSECY-86-5, JUNE 20, 1986)

REVISION 3 APPROVED BY THE COMMISSION (SECY MEMO DTD AUGUST 13, 1986)

REVISION 4 APPROVED BY THE EDO (MEMO TO COMMISSIONERS, APRIL 6, 1987)

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REVISION 6 APPROVED BY THE COMMISSION (Insert date when aproved)

I. PURPOSE

The Committee to Review Generic Requirements (CRGR) has the responsibility to review and recommend to the Executive Director for Operations (EDO) approval or disapproval of requirements or staff positions to be imposed by the NRC staff on one or more classes of power reactors. In addition, on a one-year trial basis, the Committee will review selected nuclear materials items at the recommendation of the Director, NMSS or at the EDO's request. The CRGR review applies to staff proposals of requirements or positions which reduce existing requirements or positions and proposals which increase or change requirements. The implementation of this responsibility shall be conducted in such a manner so as to assure that, for power reactors, the provisions of 10 CFR 2.204, 10 CFR 50.109 and 10 CFR 50.54(f) as pertaining to generic requirements and staff positions are implemented by the staff. For proposed actions pertaining specifically to nuclear materials related activities, implementation shall assure that proposed new generic requirements and staff positions are justified by appropriate regulatory analyses in accordance with the NRC Regulatory Analysis Guidelines (NUREG/BR-0058, Revision 2). The objectives of the CRGR process are to help implement the Commission's Principles of Good Regulation - specifically to eliminate or remove any unnecessary burdens placed on licensees, reduce the

exposure of workers to radiation in implementing some of these requirements, and conserve NRC resources while at the same time assuring the adequate protection of the public health and safety and furthering the review of new, cost-effective requirements and staff positions. The CRGR review and the associated staff procedures will assure NRC staff implementation of 10 CFR 50.54(f) and 50.109 for generic backfit matters. The overall process⁽¹⁾ will assure that requirements and positions to be issued (a) do in fact contribute effectively and significantly to the health and safety of the public, and (b) do lead to utilization of both NRC and licensee resources in as optimal a fashion as possible in the overall achievement of protection of public health and safety. By having the Committee submit recommendations directly to the EDO, a single agency-wide point of control will be provided.

The CRGR will focus primarily on proposed new requirements and staff positions,⁽²⁾ but it may also review selected existing requirements and staff positions which may place unnecessary burdens on licensee or agency resources. In reaching its recommendation, the CRGR shall consult with the proposing office to ensure that the reasons for the proposed requirement or staff position are well understood and, (a) for power reactors, that

(1) See Attachment 1.

(2) See Attachment 2.

the applicable provisions of 10 CFR 50.109, 50.54(f), and 10 CFR 2.204, are appropriately addressed by the staff proposal; or (b) for nuclear materials related activities, that the applicable provisions of the NRC Regulatory Analysis Guidelines are addressed by the staff proposal. The CRGR shall submit to the EDO a statement of its recommendations in accordance with IV.D below.

Tools used by the CRGR for scrutiny are expected to include cost-benefit analysis and (for power reactors) probabilistic risk assessment where data for its proper use are adequate.

Therefore, to the extent possible, written staff justifications should make use of these evaluation techniques. The use of cost-benefit analyses and other tools should help to make it possible to determine which proposed requirements and staff positions have quantifiable safety significance, and/or readily-demonstrated significant safety benefit based on straightforward and compelling qualitative considerations. These may be distinguished from those proposed requirements and staff positions not amenable to quantification for which more arguable, tentative or indirect qualitative judgments must be the deciding factor.⁽³⁾ The EDO may authorize deviations from this Charter when the EDO, after consulting with the CRGR Chairman, finds that

(3) See Attachment 3 for guidance regarding consideration of such qualitative factors.

such action is in the public interest and the deviation otherwise complies with applicable regulations including 10 CFR 2.204, 50.54(f) and 50.109. Such authorization shall be written and shall become a part of the record of CRGR actions.

A rulemaking proposal presented to and considered by the CRGR, and ultimately, if presented to the Commission, should include any necessary exemption request with supporting reasons for the proposed exemption.

II. MEMBERSHIP

This Committee shall be chaired by the Director, AEOD, and it shall consist of, in addition to the CRGR Chairman, one individual each from NRR, NMSS, the Regions (on a rotational basis), and RES appointed by the Executive Director for Operations, and one individual from OGC appointed by the EDO with the concurrence of the General Counsel. The regional individual shall be selected from one of the regional offices, and this assignment shall be on a rotational basis, with a new selection made by the appointing official after that official judges that sufficient experience has been gained by the incumbent regional representative. The CRGR Chairman shall assure that process controls for overall agency management of the generic backfit process are developed and maintained. These process controls

shall include specific procedures, training, progress monitoring systems, and provision for obtaining and evaluating both staff and industry views on the conduct of the backfit process. The CRGR Chairman is also responsible for assuring that each licensee is informed of the existence and structure of the NRC program described in this Charter. The CRGR Chairman shall assure that substantive changes in the Charter are communicated to all licensees.

AEOD will provide staff support. The Committee may use several non-NRC persons as consultants in special technical areas.

New members will be appointed as the need arises. If a member cannot attend a meeting of the CRGR, the applicable office may propose an alternate for the CRGR Chairman's approval. It is the responsibility of the alternate member to be fully versed on the agenda items before the Committee.

III. CRGR SCOPE

- A. The CRGR shall consider all proposed new or amended generic requirements and staff positions to be imposed⁽⁴⁾ by the NRC

(4) Legally, a staff position would not be imposed until the point at which conformance is required, for example, by a rule or an order. Documents

staff on one or more classes of power reactors.⁽⁵⁾ These include:

- (i) All staff papers which propose the adoption of rules or policy statements affecting power reactors or modifying any other rule so as to affect requirements or staff positions applicable to reactor licensees, including information required of reactor licensees or applicants for reactor licenses or construction permits.
- (ii) All staff papers proposing new or revised rules of the type described in paragraph (i), including Advance Notices.
- (iii) All proposed new or revised regulatory guides; all proposed new or revised Standard Review Plan (SRP)

such as bulletins and generic letters do not require compliance with staff positions; licensees are free to respond with alternative proposals. Regardless, such documents and positions are to be reviewed by CRGR.

- (5) However, involvement of the CRGR in standard plant reviews being conducted under 10 CFR Part 52 is not necessary because the Commission and the EDO's office have participated closely in those reviews. (Memorandum for the Chairman and Commissioners from J. M. Taylor, dated October 24, 1991, Subject: Deviation from CRGR Charter for Standard Plant Reviews.)

sections; all proposed new or revised branch technical positions; all proposed generic letters; all multiplant orders, show cause orders, and 50.54(f) letters; all bulletins and circulars; all USI NUREGs; and all new or revised Standard Technical Specifications.

In addition, the Committee will review selected nuclear material issues and proposed new materials-related requirements and staff positions at the recommendation of the Director, NMSS or at the EDO's request.

All staff-proposed generic information requests directed to power reactor licensees, or related to the selected nuclear materials items referred to herein, will be examined by the CRGR in accordance with the criteria of 10 CFR 50.54(f). Except for information sought to verify licensee compliance with the current licensing basis for a facility, the staff must prepare the reason or reasons for each information request prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. CRGR examination of generic letters will include those letters proposed to be sent to construction permit holders. For those plants for which an

operating license is not yet issued, an exception to staff analysis may be granted by the Office Director only if the staff seeks information of a type routinely sought as part of the standard procedures applicable to the review of applications. If a request seeks to gather information to verify licensee compliance with the current licensing basis, the staff must identify explicitly in the request the requirement(s) (e.g., Commission regulation, license condition, order) or written licensee commitment(s), for which the staff wishes to verify compliance. If a request seeks to gather information pursuant to development of a new staff position, then the exception does not apply and the reasons for the request must be prepared and approved prior to issuance of the request. When staff evaluations of the necessity for a request are required, the evaluation shall include at least the elements specified in IV.B(xi).

- B. For power reactors, the CRGR shall consider all licenses, license amendments, approvals of Preliminary Design Approvals (PDAs) and Final Design Approval (FDAs), minutes of conferences with owners groups, licensees or vendors, staff approval of topical reports, and all other documents, letters or communications of a generic nature which reflect or interpret NRC staff positions, unless such documents refer only to requirements or staff positions previously

applicable to the affected licensees and approved by the appropriate officials.⁽⁶⁾ The following are examples of approved staff positions previously applicable to affected licensees:

- (i) positions or interpretations which are contained in regulations, policy statements, regulatory guides, the Standard Review Plan, branch technical positions, generic letters, orders, topical report approvals, PDAs, FDAs, licenses and license amendments which have been promulgated prior to November 12, 1981.⁽⁷⁾
- (ii) positions after November 12, 1981 which have been approved through this established generic review process.

C. For those rare instances where it is judged that an immediately effective action is required (10 CFR 50.109 (a)(6)), no prior review by the CRGR is necessary. However, the staff shall conduct a documented evaluation in accordance with IV. B. ix below. This evaluation may be

(6) See footnote 5.

(7) Any document or communication of this type shall cite and accurately state the position as reflected in a previously promulgated regulation, order, Regulatory Guide, SRP, etc.

conducted either before or after the action is taken and shall be subject to CRGR review. The CRGR Chairman should be notified by the Office Director originating such an action. Use of this provision should normally be reserved for circumstances that pose an immediate or imminent threat to adequate protection of the public health and safety.

Generally, the CRGR should review immediately effective actions promptly after issuance; the review should focus primarily on the appropriateness of treating the action on an urgent basis and on identification of any issues requiring EDO attention. The staff need not provide a written CRGR review package but should be prepared to address, at the meeting, the appropriate items from Section IV.B of this Charter. Immediately effective actions will be included in the CRGR monthly report to the Commission.

- D. For each proposed requirement or staff position not requiring immediately effective action, the proposing office is to identify the requirement as either Category 1 or 2.

Category 1 requirements and staff positions are those 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. Category 1 items are expected to be infrequent and few in number, and they are to be reviewed or otherwise dealt with within 2-working days of receipt by the CRGR. If the appropriateness of designation as Category 1 is questioned by the CRGR Chairman, and if the question is not resolved within the 2 working-day limit, the proposed requirement or staff position is to be forwarded by the CRGR Chairman to the EDO for decision.

Category 2 requirements and staff positions are those which do not meet the criteria for designation as Category 1. These are to be scrutinized by the CRGR on the basis of written justification, which must be submitted by the proposing office along with the proposed requirement or staff position.

- E. The CRGR may receive early briefings from the offices on proposed new generic requirements or staff positions before the staff has developed the requirements or positions and held discussions with the ACRS or ACNW.
- F. The CRGR may be consulted on any issue deemed appropriate by the CRGR Chairman.

IV. CRGR OPERATING PROCEDURES

A. Meeting Notices

Meetings will generally be held at regular intervals and will be scheduled well in advance. Meeting notices will generally be issued by the CRGR Chairman 2 weeks in advance of each meeting, except for Category 1 items, with available background material on each item to be considered by the Committee.

B. Contents of Packages submitted to CRGR

The following requirements apply for proposals to reduce existing requirements or positions as well as proposals to increase requirements or positions. Each package submitted to the CRGR for review shall include fifteen (15) copies of the following information:

- (i) The proposed generic requirement or staff position as it is proposed to be sent out to licensees. Where the objective or intended result of a proposed generic requirement or staff position can be achieved by setting a readily quantifiable standard that has an unambiguous relationship to a readily measurable quantity and is enforceable, the proposed requirement should merely specify the objective or result to be

attained, rather than prescribing to the licensee how the objective or result is to be attained.

- (ii) Draft staff papers or other underlying staff documents supporting the requirements or staff positions. (A copy of all materials referenced in the document shall be made available upon request to the CRGR staff. Any Committee member may request CRGR staff to obtain a copy of any reference material for his or her use.)
- (iii) Each proposed requirement or staff position shall contain the sponsoring office's position as to whether the proposal would increase requirements or staff positions, implement existing requirements or staff positions, or would relax or reduce existing requirements or staff positions.
- (iv) The proposed method of implementation, along with the concurrence (and any comments) of OGC on the method proposed, and the concurrence of affected program offices or an explanation of any non-concurrences.
- (v) Regulatory analyses generally conforming to the

directives and guidance of NUREG/BR-0058 and NUREG/BR-0184, as applicable.⁽⁸⁾ (This does not apply for backfits that ensure compliance or ensure, define or redefine adequate protection. In such cases, for power reactors, a documented evaluation is required as discussed in IV.B.(ix). For nuclear materials items, there is no rule requirement for such an evaluation; but, for the purpose of CRGR review of such items under this Charter, a similar documented evaluation should be provided by the staff as part of the review package.)

- (vi) Identification of the category of reactor plants or nuclear materials facilities/activities to which the generic requirement or staff position is to apply (that is, whether it is to apply to new plants only, new OLS only, OLS after a certain date, OLS before a certain date, all OLS, license renewals, all plants under construction, all plants, all light water reactors, all PWRs only, some vendor types, some vintage types such

(8) Ref: NUREG/BR-0058, Revision 2, dated November 1995, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission".

Ref: Draft NUREG/BR-0184, dated August 1993, "Regulatory Analysis Technical Evaluation Handbook" (To be published in final in 1996.)

as BWR 6 and 4, jet pump and nonjet pump plants, etc.).

- (vi i) For power reactor backfits other than compliance or adequate protection backfits, a backfit analysis as defined in 10 CFR 50.109.⁽⁹⁾ ⁽¹⁰⁾ ⁽¹¹⁾. The backfit analysis shall include, for each category of reactor plants, an evaluation which demonstrates how action should be prioritized and scheduled in light of other ongoing regulatory activities. The backfit analysis shall document

(9) As a legal matter, the backfit rule does not strictly apply unless a backfit is to be required by, for example, a rule or an order. However, the NRC backfit process, including the CRGR Charter, is defined on the principle that new positions, as well as new requirements, are to be reviewed for backfitting considerations and, if appropriate, meet the standards of the backfit rule before they are issued to the licensee(s). New generic positions in documents, such as generic letters, bulletins, and regulatory guides, whether affecting power reactors or nuclear materials facilities/activities, are to be considered and justified as backfits before they are issued.

(10) Types of actions to which the standards of the backfit rule do not apply include: (1) voluntary actions (2) actions mandated by statute and (3) requests for information. (See NUREG-1409, Backfitting Guidelines, July 1990, Section 2.1.1 for further discussion.)

(11) Reporting requirements, such as those contained in 10 CFR 50.72 and 10 CFR 50.73 (for power reactors), or those contained in 10 CFR 50.50 and 10 CFR 70.52 (for nuclear materials activities), are more akin to the information requests covered under 10 CFR 50.54(f) than they are to modifications covered under the backfit rule (10 CFR 50.109). They should be justified by evaluation against criteria similar to the analogous provision in 10 CFR 50.54(f), i.e., by demonstrating that the burden of reporting is justified in view of the potential safety benefits to be obtained from the information reported.

for consideration information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed action:

- (a) Statement of the specific objectives that the proposed action is designed to achieve;
- (b) General description of the activity that would be required by the license or applicant in order to complete the action;
- (c) Potential change in the risk to the public from the accidental offsite release of radioactive material;
- (d) Potential impact on radiological exposure of facility employees and other onsite workers.
- (e) Installation and continuing costs associated with the action, including the cost of facility downtime or the cost of construction delay;
- (f) The potential safety impact of changes in plant or operational complexity, including the relationship

to proposed and existing regulatory requirements and staff positions;

- (g) The estimated resource burden on the NRC associated with the proposed action and the availability of such resources;
- (h) The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed action;
- (i) Whether the proposed action is interim or final, and if interim, the justification for imposing the proposed action on an interim basis.
- (j) For both rulemaking actions and proposed generic correspondence, staff evaluation of comments received as a result of the notice and comment process. ⁽¹²⁾

(12) Generic communications which articulate a new staff position or seek additional licensee commitments affecting power reactors are generally noticed for comment. The Commission's instructions in this regard are documented in the following staff requirements memoranda: (1) Memorandum for J. M. Taylor from S. J. Chilk, dated October 27, 1992, Subject: SECY-92-338 - Implementing Procedures for Issuing Urgent Generic Communications, (2) Memorandum for J. M. Taylor from S. J. Chilk, dated July 17, 1992, Subject: SECY-92-224 - Revised Implementing Procedures for Issuance of Generic Communications, and

(k) How the action should be prioritized and scheduled in light of other ongoing regulatory activities. The following information may be appropriate in this regard:

1. The proposed priority or schedule,
2. A summary of the current backlog of existing requirements awaiting implementation,
3. An assessment of whether implementation of existing requirements should be deferred as a result, and
4. Any other information that may be considered appropriate with regard to priority, schedule or cumulative impact. For example, could implementation be delayed pending public comment?

(viii) For each power reactor backfit analyzed pursuant to 10 CFR 50.109(a)(2) (i.e., not adequate protection backfits and not compliance backfits), the proposing office director's determination, together with the rationale for the determination based on the

(3) Memorandum for J. M. Taylor from S. J. Chilk, dated December 20, 1991, Subject: SECY-91-172 -Regulatory Impact Survey.

considerations of paragraphs (i) through (vi) above, that

- (a) there is a substantial increase in the overall protection of public health and safety or the common defense and security to be derived from the proposal;^{(13), (14)} and
- (b) the direct and indirect costs of implementation, for the facilities affected, are justified in view of this increased

(13) Attachment 3 to this Charter provides additional guidance on consideration of qualitative factors in applying the "substantial increase" standard of 10 CFR 50.59 for actions affecting power reactors. By its terms, 10 CFR 50.109 does not apply to nuclear material facilities/activities that are not licensed under Part 50; but much of the guidance in Attachment 3 is applicable, and should be considered by the staff, in evaluating qualitative factors that may contribute to the justification of proposed backfitting actions directed to nuclear materials facilities/activities.

(14) There may be proposed actions affecting power reactors which do not meet the "substantial increase" standard but, in the staff's judgment, should be promulgated nonetheless. The Commission has indicated the willingness to consider such exceptions to the Backfit Rule on a case-by-case basis; but such exceptions would be promulgated only if the proposal (not to apply the Backfit Rule to the proposed rulemaking) is made the subject of notice and comment. Such a rulemaking proposal presented to CRGR, for presentation ultimately to the Commission for consideration, should include any necessary request for exemption from the applicable provisions of 10 CFR 50.109, with supporting reasons for the proposed exemption.

protection.

NOTE: Although, as a legal matter, 10 CFR 50.109 does not apply to nuclear materials facilities/activities that are not licensed under Part 50, footnote 13 does apply to the evaluation of proposed backfits affecting the selected nuclear facilities/activities items submitted to CRGR for review.

(ix) For adequate protection or compliance backfits affecting power reactors, evaluated pursuant to 10 CFR 50.109(a)(4),

- (a) a documented evaluation consisting of:
 - (1) the objectives of the modification
 - (2) the reasons for the modification
 - (3) if the compliance exception is invoked, the requirement(s) (e.g., Commission regulation, license condition, order) or written licensee commitment(s), for which compliance is sought.
 - (4) if an adequate protection exception is

invoked, the basis for concluding that the matter to be addressed involves adequate protection, and why current requirements (e.g., Commission regulation, license condition, order) or written licensee commitments do not provide adequate protection.

- (b) In addition, for actions that were immediately effective (and therefore issued without prior CRGR review as discussed in III.C) the evaluation shall document the safety significance and appropriateness of the action taken and (if applicable) consideration of how costs contributed to selecting the solution among various acceptable alternatives.

- (x) For each evaluation conducted for proposed relaxations or decreases in current requirements or staff positions, whether affecting power reactors or nuclear materials facilities/activities, the proposing office director's determination, together with the rationale for the determination based on the

considerations of paragraphs (i) through (vii) above, that

- (a) the public health and safety and the common defense and security would be adequately protected if the proposed reduction in requirements or positions were implemented, and
- (b) the cost savings attributed to the action would be substantial enough to justify taking the action.

Also, the staff must indicate explicitly whether the proposed relaxation or decrease in current requirements or staff positions is OPTIONAL or MANDATORY.

- (xi) For each request for information from power reactor licensees under 10 CFR 50.54(f) (which is not subject to exception as discussed in III.A) an evaluation that includes at least the following elements:
 - (a) A problem statement that describes the need for the information in terms of potential

safety benefit.

- (b) The licensee actions required and the cost to develop a response to the information request.
- (c) An anticipated schedule for NRC use of the information.
- (d) A statement affirming that the request does not impose new requirements on the licensee, other than for the requested information.
- (e) The proposing office director's determination that the burden to be imposed on the respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information.

Additional guidance for preparing this evaluation is provided in Section 5.4 of NUREG/BR-0058, Revision 2. (See footnote 8.)

An analogous evaluation addressing items (a) through (e) above should also be provided for each

information request directed to the licensees of the selected nuclear materials facilities/activities referred to in III.A.

- (xi i) For each proposed power reactor backfit analyzed pursuant to 10 CFR 50.109 (a)(2) (i.e., not adequate protection or compliance backfits), an assessment of how the proposed action relates to the Commission's Safety Goal Policy Statement.⁽¹⁵⁾

C. CRGR Staff Review

CRGR staff shall review each package. If the package is not sufficient for CRGR consideration, it may be returned by the CRGR Chairman to the originating office with reasons for such action. Prior notice to the Committee is not needed; however, CRGR members shall be informed of such actions.

- In deciding whether a package should be returned and in

(15) Detailed guidance for addressing the Commission's safety goals is contained in "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Guidelines" (NUREG/BR-0058, Revision 2, dated November 1995).

scheduling its review, due consideration shall be given to the EDO's priorities and schedules for completion of work and resolution of issues.

- An accepted package shall be scheduled for CRGR consideration; however, scheduling priorities shall be at the discretion of the CRGR Chairman.
- All requests for particular scheduling shall be made to the CRGR Chairman by the sponsoring office director (or identified designate).
- The CRGR staff may obtain additional information from industry and consultants on such proposals, particularly with respect to the cost of implementation, realistic schedule for implementation and the ability of licensees to safely and efficiently carry out the full range of safety-related activities at each facility while implementing the proposed requirement or staff position. The CRGR staff should normally provide a brief summary analysis of each package to CRGR members prior to the meetings.

D. CRGR Meeting Minutes

At each meeting, for each package scheduled for discussion, the sponsoring office shall present to the CRGR the proposed generic requirement or staff position and respond to comments and questions. A reasonable amount of time, within the discretion of the CRGR Chairman, shall be permitted for discussion of each item by Committee members. At the conclusion of the discussion, each Committee member shall summarize his or her position. The minutes of each meeting, including CRGR recommendations and the bases therefor, shall be prepared. Minutes normally shall be circulated to all members within 10 working days after the meeting, and each member shall have 5-working days to comment in writing on the minutes. It is the responsibility of each member to assure that the minutes accurately reflect his or her views. All comments received shall be appended to or made part of the minutes of the meeting.

The Committee shall recommend to the EDO, approval, disapproval, modification, or conditioning of generic proposals considered by the Committee, as well as the method of implementation for such requirements or staff positions and appropriate scheduling for such implementation, which shall give consideration to the ability of licensees to safely and efficiently carry out the entire range of safety-related activities at each facility. For issues affecting

power reactors, the minutes shall give an accurate description of the basis for the recommendations; shall relate this basis, as appropriate, to 10 CFR 50.109, 10 CFR 50.54(f) and 10 CFR 2.204 (as discussed in I) and the Commission's Safety Goals Policy (as discussed in IV.B (xi)); and shall accurately reflect the consensus decision of the Committee.⁽¹⁶⁾ For issues affecting selected nuclear material facilities/activities reviewed by CRGR, the minutes shall provide similar detail, except the basis for CRGR recommendations shall be related, as appropriate, to analogous provisions/criteria of NUREG/BR-0058 and NUREG/BR-0184, as indicated in IV.B. (v); to the provisions of IV.B. (x); to the applicable provisions of IV.B. (xi); and to 10 CFR 2.204. Copies of these minutes shall be distributed to the Commission, Office Directors, Regional Administrators, CRGR Members, and the Public Document Room. The EDO's action taken in response to the Committee's recommendations shall be provided in writing to the Commission.

¹⁶ The minutes should include a clear indication as to whether an action was considered to be justified as a backfit and, if so, whether it was considered to be: (1) an adequate protection exception; (2) a compliance exception; or (3) a substantial safety enhancement for which the associated costs of implementation are justified in view of the safety benefits to be realized. (Also, see footnote 9.)

E. Recordkeeping System

The CRGR staff will assure that there is an archival system for keeping records of all packages submitted to the CRGR Chairman, actions by the staff, summary minutes of CRGR consideration of each package including corrections, recommendations by the Committee, and decisions by the EDO and the Commission.

V. REPORTING REQUIREMENTS

The CRGR staff shall prepare a report to be submitted by the EDO to the Commission each month. The report will provide a brief summary of CRGR activities. The report shall be included in the Weekly Items of Interest report to the EDO at the end of each month.

Attachment 1 to
CRGR Charter

NEW GENERIC REQUIREMENT AND STAFF POSITION REVIEW PROCESS

The attached chart is a schematic representation of how new generic requirements and staff positions are developed, revised and implemented.

In the early stages of developing a proposed new requirement or staff position, it is contemplated that the staff may have discussions with the industry, ACRS, ACNW, and the public to obtain preliminary information of the costs and safety benefits of the proposed action. On the basis of this information, the proposing office will prepare the package for CRGR review.

The CRGR may recommend approval, revision, or disapproval or that further public comment be sought. After CRGR and EDO approval, there may be further review by the ACRS, ACNW, or the Commission. Decisions by the Commission are controlling.

Schematic Representation of New Requirements Review

INSERT CHART

Attachment 2 to
CRGR Charter

PROCEDURES TO CONTROL
GENERIC REQUIREMENTS AND STAFF POSITIONS

A. Background

In a memorandum from the Chairman to the Executive Director for Operations dated October 8, 1981, the Commission expressed concern over conflicting or inconsistent directives and requests to reactor licensees from various components of the NRC staff. By that memorandum, the Commission outlined certain recommended actions to establish control over the number and nature of requirements placed by NRC on reactor licensees. These included: establishing a Committee to Review Generic Requirements (CRGR); establishing a new position of Deputy Executive Director for Regional Operations and Generic Requirements (DEDROGR); conducting a survey of formal and informal mechanism to communicate with reactor licensees; and developing and implementing procedures for controlling communications involving significant requirements covering one or more classes of power reactors. In February 1987 the Commission approved a NRC reorganization that, among other changes, placed the CRGR operations under the Office for Analysis and Evaluation of

Operational Data (AEOD). CRGR responsibilities and authorities were not directed to change under the new organizational structure; only organizational location was changed. However, subsequently, the Commission approved the expansion of the CRGR review scope, on a trial basis, to include selected issues/items in the nuclear materials area at the recommendation of the Director, NMSS or request of the EDO. The following procedures have been established for controlling generic requirements or staff positions, and are designed to implement provisions of 10 CFR 50.109, 50.54(f) and 2.204 for power reactors and analogous control mechanisms for evaluation of proposed backfitting actions affecting selected nuclear materials facilities/activities as indicated in IV.D.

B. Committee to Review Generic Requirements (CRGR)

Except for immediately effective actions, the CRGR shall review all proposed new generic requirements and staff positions to be imposed on one or more classes of power reactors and selected nuclear materials facilities/activities, in accordance with the Charter of the Committee (as indicated in Section III.A), before such proposed requirements or staff positions are forwarded to the EDO and Commission and imposed on, or communicated for use or guidance to, any licensee of a power reactor or selected nuclear material facility/activity.

C. Office Responsibility

Each office shall develop appropriate internal procedures to assure that the following policy requirements regarding licensees are carried out:

- (1) All proposed generic requirements and staff positions with a direct or indirect impact on power reactors, or selected nuclear materials facilities/activities (as indicated in III.A), shall be submitted for CRGR consideration. Table I (attached) provides examples.
- (2) All generic documents, letters and communications that establish, reflect or interpret NRC staff positions or requirements to be imposed on power reactors or selected nuclear materials facilities/activities (as indicated in III.A). Table II (attached) provides examples. These documents shall be submitted for review by CRGR unless these documents refer only to requirements or staff positions approved prior to November 12, 1981. In the latter case, the previously approved requirement or staff position should be specifically cited and accurately stated. Offices should be careful to review new or specific interpretations to assure

that they are only case-specific applications of existing requirements rather than initial applications having potential generic use. Case-specific applications are governed by NRC Management Directive 8.4.

- (3) For all other communications with licensees (Table III, attached), no statements shall be used that might suggest new or revised generic requirements, staff positions, guidance or recommendations unless such statements have been approved by the EDO or the Commission.
- (4) In developing a proposed new generic requirement or staff position for CRGR review, an office may determine that it is in possession of important safety information that should be made available to licensees. It is the responsibility of that office to take immediate action to assure that such information is communicated to the licensees by the appropriate office. Such actions may be taken before completion of any proposed or ongoing CRGR reviews.

D. Immediately Effective Action (Power reactors only)

For those rare instances where it is judged that an immediate effective action is required (10 CFR 50.109(a)(6)), no prior review by the CRGR is necessary. However, the staff shall

conduct a documented evaluation which includes a statement of the objectives of and reasons for the actions and the basis for invoking the exception. The evaluation may be conducted either before or after the action is taken and shall be subject to CRGR review. The evaluation shall also document the safety significance and appropriateness of the action taken and consideration of how costs contribute to selecting the solution among various acceptable alternatives. The CRGR Chairman should be notified by the Office Director originating the action. These immediately effective requirements will be included in the monthly report to the Commission.

TABLE 1

PRINCIPAL MECHANISMS USED BY NRC STAFF TO
ESTABLISH OR COMMUNICATE GENERIC REQUIREMENTS AND STAFF POSITIONS
[See paragraph C. (1)]

Rulemaking¹

Advanced Notices
Proposed Rules
Final Rules
Policy Statements²

Other Formal Requirements³

Multiplant orders including show cause orders and
confirmatory orders

Staff Positions⁴

Bulletins
Generic Letters (including 10 CFR 50.54f information
requests)
Regulatory Guides
SRP (including Branch Technical Positions)
Standard Tech Specs
USI NUREGs

¹ While Rulemaking is an action of the Commission rather than the staff,
most rules are proposed by or prepared by the staff.

² A Policy Statement does not impose a legal requirement, as does a rule, order, or license condition.

³ The document itself imposes a legal requirement; e.g., regulatory orders or license conditions.

⁴ Documents that reflect staff positions which, unless complied with or a satisfactory alternative offered, the staff would impose or seek to have imposed by formal requirement.

TABLE II

MECHANISMS SOMETIMES USED TO INTERPRET
GENERIC REQUIREMENTS OR STAFF POSITIONS
[See paragraph C. (2)]

Action on Petitions for Rulemaking

Action on 10 CFR 2.206 Requests

Approvals on Topical Reports

Facility Licenses and Amendments

SERs

FDAs, PDAs

NUREG Reports (other than USIs)

Operator Licenses and Amendments

Single Plant Orders

Staff Positions on Code Committees

Unresolved Issues Resulting from Inspections

TABLE III

MECHANISMS THAT SHOULD NOT BE USED TO
COMMUNICATE GENERIC REQUIREMENTS OR STAFF POSITIONS
[See paragraph C. (3)]

Administrative Letters

DES & FES

Entry, Exit and Management Meetings

Information Notices

Inspection Manual (Including Temporary Instructions)

Licensee Event Reports; Construction Deficiency Reports
(Sent to Other Licensees)

NRC Staff Contact with Licensees in Operator
Qualification/Requalification Process

Phone Calls or Site Visits by NRC Staff or Commission to Obtain
Information
(i.e., Corrective Actions, Schedules, Conduct Surveys, etc.)

Pleadings

Preliminary Notifications

Press Releases

Proposed Findings

Public Meetings, Workshops, Technical Discussions

Resident Inspector Day-to-Day Contact

SALP Reports

SECY Paper (Some Utilities Apparently Sent Operators to College
Based on
Recent SECY Paper on Operator Qualifications)

Special Reports

Speeches to Local Groups or Industry Associations

Technical Specifications

Telephone Calls and Meetings with Licensees, Vendors, Industry
Representatives, Owners Groups

Testimony

GUIDANCE ON APPLICATION OF THE "SUBSTANTIAL INCREASE" STANDARD

The Backfit Rule states that, aside from exceptions for cases of adequate protection or compliance, the Commission shall require the backfitting of a facility only when it determines, based on a backfit analysis, "that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection"⁽¹⁾

The Commission's Regulatory Analysis Guidelines are intended to be a primary source of guidance on application of the "substantial increase" standard as well as application of the Commission's safety goals.⁽²⁾

Generally, the staff should quantify the benefits of a proposed backfit to the extent feasible. With regard to cases where the safety benefits of a backfit cannot be quantified, or can only be partially quantified, a flexible approach is warranted.

In the preamble to the 1985 backfit rule the Commission said:

Substantial means "important or significant in a large amount, extent, or degree." Under such a standard the Commission would not ordinarily expect that safety improvements would be required as backfits that result in an insignificant or small benefit to public health and safety or common defense and security, regardless of costs. On the other hand, the standard is not intended to be interpreted in a manner that would result in disapprovals of worthwhile safety or security

¹ 10 CFR 50.109(a)(3).

² Ref: NUREG/BR-0058, Revision 2, dated November 1995, "Regulatory Analysis Guidelines of the U. S. Nuclear Regulatory Commission".

improvements having costs that are justified in view of the increased protection that would be provided.⁽³⁾

In a 1993 memorandum to the staff the Commission said that it continues to believe that these words embody a sound approach to the "substantial increase" criterion and that this approach is flexible enough to allow for qualitative arguments that a given proposed rule would substantially increase safety.⁽⁴⁾

Examples of general areas where the benefits of new requirements have not been considered amenable to quantification and, therefore, qualitative arguments have been used, include the following:

1. Plant access control (10 CFR 73)
2. Fitness for duty (10 CFR 26)
3. Emergency Response Data System (10 CFR 50.72 and Appendix E.)

The Commission further said that the qualitative approach is also flexible enough to allow for arguments that consistency with national and international standards, or the incorporation of wide spread industry practices, contributes either directly or indirectly to a substantial increase in safety. Such arguments concerning consistency with other standards, or incorporation of industry practices, would have to rest on the particulars of a given proposed rule.⁽⁵⁾

Incorporation of industry standards into NRC rules or staff positions, as a prudent means of assuring continued conformance

³ 50 FR 38102, September 20, 1985.

⁴ Memorandum to James M. Taylor and William C. Parler from Samuel J. Chilk, dated June 30, 1993, Subject: SECY-93-086, Backfit Considerations.

⁵ See footnote 4.

with currently voluntary standards and practices that provide substantial safety benefit, can provide the basis for a finding that a proposed backfit meets the "substantial increase" standard of 10 CFR 50.109.

In addition factors such as the following may be argued to contribute directly or indirectly to a substantial increase in safety, depending on the particulars of a given proposed backfit.

1. Incorporation of advances in science and technology.
2. Greater uniformity of practice.
3. Greater flexibility in practice/less prescriptive requirements.
4. Greater specificity in existing generally-stated requirements.
5. Correction of significant flaws in current requirements.
6. Greater confidence in the reliability and timeliness of information or programs.
7. Fewer exemption requests and interpretive debates.
8. Better focusing of corrective actions towards the sources of problems.
9. Benefits that may accrue in the longer term, beyond the immediately apparent effects of the backfit.