

February 27, 1997

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: COMMITTEE TO REVIEW GENERIC REQUIREMENTS (CRGR) - SCOPE OF REVIEW AND PERIODIC REVIEW OF ACTIVITIES

PURPOSE:

To obtain Commission approval of staff proposals relating to scope of review of the Committee to Review Generic Requirements (CRGR) and periodic review of its activities.

BACKGROUND:

In the staff requirements memorandum (SRM) dated August 21, 1996, regarding COMSECY-96-028 - Strategic Assessment Issue Paper: Independent Oversight (DSI 19), the Commission stated:

- (1) the CRGR should be retained but its scope should be expanded to include NMSS activity;
- (2) consideration should be given to including reactor inspection guidance within the scope of CRGR;
- (3) each independent oversight committee, and CRGR, should be evaluated periodically to determine what value it is contributing to achieving the agency's mission; the committee should be directly involved in this evaluation;
- (4) each committee is requested to produce a set of criteria, for Commission consideration, under which the performance of the committee would be evaluated in the future; and the committee should then periodically review itself against these criteria and provide the results of this evaluation to the Commission.

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DISCUSSION:

Retain The CRGR And Expand Its Scope To Include NMSS Activity

In SECY-96-032, dated February 9, 1996, the staff sent to the Commission a proposed major revision to the CRGR Charter (i.e., Revision 6), which included a proposal to expand the CRGR review scope, on a trial basis, to include selected items in the nuclear materials area. The items selected for CRGR review would be identified by the Director, NMSS or the EDO; and, the results would be evaluated to determine if the "value added" by CRGR review of the selected items seemed to justify a recommendation to the Commission that the CRGR scope be expanded permanently to include CRGR review nuclear materials, or some other course of action. In a staff requirements memo (SRM) dated March 22, 1996 ([Attachment 1](#)), the Commission approved Revision 6 to the Charter and the proposal for CRGR review of selected nuclear materials on a trial basis.

In preliminary discussions with CRGR of this matter, the Director, NMSS identified the proposed major revision to 10 CFR Part 70 (for regulation of activities at the large SNM processing facilities) as one possible candidate for CRGR review ([Attachment 2](#)). Subsequently, in a separate action, the Commission directed the CRGR to review the proposed Part 70 rulemaking ([Attachment 3](#)).

CRGR held one meeting with the NMSS staff to begin its consideration of Part 70; the Committee was briefed on an early draft of the Part 70 rulemaking package at that meeting, and provided some preliminary views on possible improvements to the package ([Attachment 4](#)). The Committee also visited two fuel fabrication facilities (i.e., the Westinghouse facility at Columbia, S.C., and the Siemens facility at Pasco, WA.) in connection with the Part 70 review effort.

Following the initial CRGR meeting with the NMSS staff on the proposed Part 70 revision, the staff held a public meeting with the licensees of the major fuel facilities to solicit comment on the early draft of the proposed revision considered by CRGR. Following the public meeting, the proposed rulemaking was put on hold by the Commission to allow further consideration of alternatives. That process has included further discussions with affected licensees, preparation of an alternatives paper (SECY-96-079) submitted by the NMSS staff in April 1996, and submittal of a Petition for Rulemaking by the Nuclear Energy Institute ("the NEI Petition") in September 1996, on behalf of certain licensees and potential licensees, outlining industry-proposed alternatives in the Part 70 matter.

In a SRM dated December 4, 1996, SECY 96-079 was returned to the staff with the request by the Commission that NMSS evaluate the effect, if any, of the NEI Petition on the staff-proposed alternatives provided in that Commission Paper ([Attachment 5](#)). CRGR will continue its consideration of this item, as appropriate, based on the staff's further consideration of alternatives, including evaluation of the NEI Petition and comments received on that item, and possible further direction by the Commission. The schedule for completion of the Part 70 item is indeterminate at this time. In view of these developments, NMSS is actively seeking to identify other candidate items for CRGR review, based on the potential for significant value-added to the product and the balance of costs and benefits that can be projected for the supplemental activities involved, with the objective of identifying additional

candidates by the end of February 1997.

It was initially proposed, in SECY-96-032, that after a trial period of about a year (i.e., in February 1997) a conclusion could be drawn whether sufficient value is added by CRGR review of the selected nuclear materials items to justify the costs and additional NMSS staff and Committee effort required to support such reviews to warrant a permanent expansion of the CRGR review scope to include NMSS activities more broadly. Due to the circumstances and developments outlined above, there is not an adequate bases for making an informed decision on these questions on the originally proposed schedule.

The staff recommends, therefore, that the Commission approve a one year continuation of the trial program of CRGR review of selected NMSS items, including Part 70 (as appropriate) and additional items to be identified by NMSS, as discussed in the preceding, to provide additional time and information needed to properly decide whether the CRGR scope should be expanded to include review of NMSS activity on a permanent basis.

Consider Expanding The Scope of CRGR Review To Include Reactor Inspection Guidance

Reactor inspection guidance has not been routinely reviewed by CRGR in the past, although the language of the CRGR Charter would permit such review. In rethinking the past practice, consideration must be given to the balance between resources applied and results obtained in ensuring against inadvertent, unauthorized backfits being included in approved inspection guidance, while at the same time maintaining a strong safety focus in NRC inspection activities and a culture that encourages the aggressive pursuit of deficiencies identified by inspectors. Any decision to review inspection guidance must take into account the large volume of guidance which is necessary for the inspection program. Thus, an audit would have to recognize this, and would have to consider the length of a trial period, as well as evaluation criteria at the end of the trial period. The approach taken to addressing the potential for backfit issues arising from inspection guidance has been to include in the agency's backfitting guidance and procedures clear prohibitions against going beyond approved, applicable requirements and staff positions in inspection guidance, and reinforcing these prohibitions in backfit training provided to the staff and in management oversight of the inspection guidance development process.

Upon occasion, to meet a particular purpose or concern (e.g., to minimize the potential for inconsistent inspection practices or unauthorized backfitting arising from unresolved differing interpretations), CRGR has reviewed proposed inspection guidance at the specific request of the NRC staff. One such example was the guidance on operability determinations for degraded conditions (initially proposed as simply a revision to the NRC Inspection Manual, but in final form transmitted to all licensees in GL 89-12). Such instances have been relatively few in number, however; and no need was identified from such experience for requiring CRGR review of inspection guidance more generally. Further, in those instances in the past where complaints regarding unauthorized or proscribed backfitting practices have risen to a level requiring NRC attention and corrective action (i.e., the Regulatory Impact Survey in 1989, and the Towers-Perrin Report in 1992), the lack of CRGR review of inspection guidance was not identified as a major contributing factor.

The CRGR staff meets periodically with an industry association known as the Nuclear Utilities Backfit Reform Group (NUBARG). During the past year, in one of these meetings, a number of licensees claimed that there were unauthorized plant-specific backfits in connection with inspections associated with the efficacy of the 50.59 process. The NUBARG licensees recommended CRGR review of "interim" inspection criteria and enforcement policy guidance that were being applied by the staff in the ongoing design and licensing basis examination effort. They also recommended that CRGR become involved in the review of proposed new inspection guidance and enforcement policy revisions more generally in the future.

The staff believes that the experience and results that could be obtained from a two year trial program of CRGR review of inspection guidance on selected items to be identified by the Director, NRR and/or the CRGR would provide a proper basis for making a final recommendation to the Commission regarding whether permanent expansion of CRGR review activity to include review of selected inspection guidance is warranted. The staff recommends that the Commission approve initiation of a two year trial program.

Periodic Evaluation of CRGR Contribution To Achievement of NRC Mission

As noted in the CRGR Charter, the Committee to Review Generic Requirements (CRGR) was established by the Commission with the responsibility to review and recommend to the Executive Director for Operations (EDO) approval or disapproval of new or changed requirements or staff positions promulgated by the NRC that impact the licensees of nuclear power reactors and associated fuel cycle facilities. The objectives of the CRGR review process are to eliminate unnecessary burdens to the licensees, to reduce the exposure of workers to radiation in implementing new or changed regulatory requirements, and to conserve NRC resources while at the same time assuring the adequate protection of the public health and safety. Consistent with these objectives, the Committee reviews NRC staff proposals that would increase existing requirements or staff positions, and proposals that would reduce existing requirements/positions as well. The Committee also visits one or more operating facilities each year to obtain feedback directly from licensees regarding the overall effectiveness of the CRGR process.

A summary of CRGR activities is included routinely in the NRC Annual Report and the AEOD Annual Report. In the most recent AEOD Annual Report, the summary was expanded to include a brief "value-added" evaluation for each item considered by CRGR during the reporting period ([Attachment 6](#)); and the staff intends to continue this practice in the future. The staff believes that it is possible to draw conclusions from the summary regarding the effectiveness of the CRGR review process (a) in assuring that new or changed requirements and staff positions to be issued do in fact contribute effectively and significantly to the protection of public health and safety and result in the efficient utilization of both NRC and licensee resources, (b) in assuring the technical quality of NRC's generic regulatory issuances, and (c) in assuring regulatory coherence in regulatory actions taken by the agency. The staff believes that, with only minor adaptations, this established annual reporting mechanism provides an acceptable framework for periodic reporting of CRGR activities, and evaluation of the Committee's contribution to the NRC regulatory mission against criteria derived from the objectives stated in the Commission-approved CRGR Charter (as in a through c, above), consistent with the intent of the SRM. The adaptations involved would be for the Committee to review the summary report of CRGR activities normally prepared for inclusion in the NRC/AEOD Annual Reports and to provide to the Commission an evaluation of the summarized activities addressing (a) through (c) above, along with the summary itself, in a Commission Paper. The

same evaluation metrics would apply to trial programs being conducted during the time period.

The staff recommends that the Commission approve the process and criteria discussed in the preceding for periodic reporting and evaluation of CRGR activities.

RECOMMENDATIONS:

1. The staff recommends that the Commission approve a one year continuation of a trial program of CRGR review of selected NMSS items to provide additional information needed to decide whether the CRGR scope should be expanded to include review of selected NMSS activities on a permanent basis.
2. The staff recommends that the Commission approve initiation of a two year trial program of CRGR review of inspection guidance to determine whether the CRGR scope should be expanded to include review of selected inspection guidance.
3. The staff recommends that the Commission approve the proposed process and criteria for periodic reporting and evaluation of CRGR activities.

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Attachments:

1. SRM dated March 22, 1996
2. Attachment 2 to the Minutes of CRGR Meeting No. 269
3. SRM dated March 22, 1995
4. Attachment 4 to the Minutes of CRGR Meeting No. 271
5. SRM dated December 4, 1996
6. Excerpt from AEOD Annual Report - (Summary of CRGR Review Activities, with "Value-Added" comments for each review item)