

POLICY ISSUE  
(INFORMATION)

August 17, 2011

SECY-11-0114

FOR: The Commissioners

FROM: Jennifer L. Uhle, Chairman  
Committee to Review Generic Requirements

SUBJECT: PERIODIC ASSESSMENT OF THE ACTIVITIES OF THE COMMITTEE  
TO REVIEW GENERIC REQUIREMENTS FROM JUNE 1, 2010,  
THROUGH MAY 31, 2011

PURPOSE:

The purpose of this paper is to provide the Commission with a periodic assessment of the activities of the Committee to Review Generic Requirements (CRGR or the Committee). This paper does not address any new commitments or resource implications.

BACKGROUND:

The CRGR consists of selected senior U.S. Nuclear Regulatory Commission (NRC) managers drawn from the Offices of the General Counsel (OGC), Nuclear Regulatory Research (RES), Nuclear Reactor Regulation (NRR), Nuclear Material Safety and Safeguards (NMSS), Nuclear Security and Incident Response (NSIR), Federal and State Materials and Environmental Management Programs (FSME), and New Reactors (NRO), as well as one of the NRC's regional offices on a rotating basis (currently Region III). The CRGR reports to the Executive Director for Operations (EDO), who appoints the Committee chairperson and members. The CRGR conducts its activities in accordance with Revision 8 of the Committee's charter, dated March 8, 2011, which describes the Committee's mission, scope of activities, and operating procedures. RES provides the Committee's technical and administrative support. The CRGR's primary mission is to ensure that no inadvertent backfits are either imposed or implied by proposed new or revised generic requirements for NRC-licensed power reactors and certain nuclear materials facilities, and that staff-proposed actions are appropriately justified. Such justification must be based on the backfit provisions of the NRC's regulations, Commission guidance and directives, applicable legislative acts, and Executive orders.

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The Committee's primary responsibilities are to recommend to the EDO either approval or disapproval of the staff's proposed generic actions and to assist the NRC program offices in ensuring consistent implementation of the Commission's backfit regulations, directives, and guidance. The CRGR also participates in periodic meetings with NRC stakeholders as part of its responsibility for monitoring the overall effectiveness of the agency's generic backfit management process. In addition, the CRGR periodically audits the NRC's administrative controls for facility-specific backfitting to assess their effectiveness.

The CRGR proposed a process and criteria for use in periodically assessing its own activities in SECY-97-052, "Committee to Review Generic Requirements—Scope of Review and Periodic Review of Activities," dated February 27, 1997. The Commission subsequently approved the process and criteria in an SRM dated April 18, 1997. Accordingly, since 1997, the CRGR has annually evaluated and reported its activities to the Commission. This paper represents the Committee's 14<sup>th</sup> assessment, which addresses the period from June 1, 2010, through May 31, 2011. Toward that end, this paper discusses the Committee's activities, presents its self-assessment, and summarizes the feedback received from the NRC's program offices.

#### DISCUSSION:

During the current 12-month assessment period, the Committee reviewed proposed new or revised generic actions and identified no backfits (unintended or otherwise). In this assessment period, the CRGR reviewed four Regulatory Issue Summaries (RIS), one generic letter (GL), and the staff approach for the resolution of a generic issue. The CRGR reviewed three of these documents informally. In the case of an informal review, the CRGR Chairman provides the document to the CRGR members with a recommended course of action. If the Chairman recommends that a formal review is not needed, no further review is performed unless a Committee member disagrees with the CRGR Chairman's determination.

One noteworthy item reviewed was RIS 2005-02, Revision 1, "Clarifying the Process for Making Emergency Plan Changes," dated April 19, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100340545), which involved a nonconcurrence from the staff. Since the nonconcurrence was related to backfit, the CRGR conducted a formal review instead of the typical informal review for a RIS. Enclosures 1 and 2 summarize the topics formally and informally reviewed during the Committee's meetings, respectively.

In 2008, the Office of the Inspector General (OIG) conducted an audit to determine whether the functions of the CRGR are appropriate. The audit report, OIG-09-A-06, "Audit of the Committee to Review Generic Requirements," dated February 2, 2009 (ADAMS Accession No. ML090330754) recommended that the NRC revise its processes to reflect the CRGR's evolution over the years. The document describing planned actions to address the OIG's findings is titled, "Discussion of the CRGR's Action Plan," dated July 1, 2010 (ADAMS Accession No. ML101170084). The actions envisioned include: (1) revise the CRGR charter (ADAMS Accession No. ML110620618), (2) revise Management Directive (MD) 8.4, "Management of Facility-specific Backfitting and Information Collection" (ADAMS Accession No. ML050110156), (3) develop office and regional procedures that are consistent with the revised MD 8.4, (4) develop an agencywide Web-based backfit training program, and (5) document, communicate, and implement an overarching agencywide backfit program.

RES has the lead to revise the CRGR charter and MD 8.4 to reflect changes in the NRC's organizational responsibilities and backfit program and to address important elements for

ensuring effective overarching management of generic and plant-specific backfits. After working with internal stakeholders, Revision 8 of the CRGR charter was signed by the Executive Director for Operations on March 8, 2011. The charter now specifies that: (1) rulemakings will only be reviewed at the request of the proposing office or as directed by the EDO, (2) documents will now be reviewed if the non-concurrence process has been invoked related to a backfit issue, (3) the CRGR can use “informal” reviews of various documents, as circumstances allow, (4) the CRGR will review draft Regulatory Guides (RGs) at the request of the staff, but the staff is required to engage the CRGR if there has been a valid documented backfit claim made during the public comment phase, and (5) the CRGR will review requests regarding a backfit claim from external stakeholders to address an unresolved backfit claim raised in the public comment phase of document development pertaining to new or revised generic requirements.

The CRGR is in the process of updating MD 8.4. At this stage, comments from the program offices are being addressed. It is anticipated that the draft final MD 8.4 will be provided to the Office of Administration by December 2011 for its final edits and formatting.

The CRGR and Office of the General Counsel (OGC), in cooperation with the Office of Human Resources (HR), continue to work together to establish a centralized agency resource for backfit training. At present, the CRGR and HR are in the early stages of reviewing and updating a previous draft of an agencywide Web-based backfit training. The next step will involve developing a training module on the overall process and then developing program-specific modules that the program offices and regions can use as appropriate.

Improving the training material for the staff and other guidance documents will help the CRGR ensure compliance with backfit requirements and procedures that have evolved since the inception of the CRGR. The CRGR will communicate the changes to the staff and verify that the relevant offices and regions have incorporated processes to ensure that backfit rules and requirements are followed. This work is expected to be completed by November 2011, depending upon resources.

As part of its efforts to meet the NRC’s strategic goals of openness and effectiveness, the CRGR periodically meets with licensees and other agency stakeholders. In a letter to OGC dated June 4, 2010 (ADAMS Accession No. ML101970353), the Nuclear Energy Institute (NEI) stated its opinion that some of the RGs recently published by the staff were not in full compliance with the NRC’s stated backfit policy by not providing backfit analyses upon issuing interpretive guidance. In its response, dated July 14, 2010 (ADAMS Accession No. ML101960180), OGC stated that the CRGR would conduct a session at the upcoming RIC focusing on the NRC’s compliance with the backfit rule when issuing interpretive guidance.

On December 7, 2010, the CRGR received a memorandum with attached comments from NEI (ADAMS Accession Nos. ML110210998 and ML110210996, respectively) indicating that it had concerns about Draft Regulatory Guide (DG) 1240, “Condition Monitoring Program for Electric Cables Used in Nuclear Power Plants,” issued June 2010 (the final version of the DG, RG 1.218, has not been issued as of the date of this report) and had requested CRGR action to ensure that the staff considers the industry concerns identified in comments provided on the subject RG. The CRGR responded on February 18, 2011 (ADAMS Accession No. ML110250686), to assure NEI that the CRGR plans to review the RG to ensure that all stakeholder comments are adequately addressed.

On March 10, 2011, the CRGR offered a session at the 2011 RIC titled, "NRC's Compliance with the Backfit Rule when Issuing Interpretive Guidance." This session was well attended. It featured a panel of four NRC senior staff members (two OGC lawyers, the Director for the RES Division of Engineering responsible for the Regulatory Guide Development Branch, and the current CRGR Chairman). The RIC session provided a forum to discuss the relevant industry concerns and an opportunity for the stakeholders and staff to have a meaningful exchange during the question and answer part of the session. Various comments from NRC staff and industry participants indicated that the session was well received.

Subsequently, CRGR Review Meeting No. 429 took place on June 27, 2011, to review OGC's revised template for the implementation section of RGs and its impact as incorporated into three RGs, and to ensure that all stakeholder comments were adequately addressed. The CRGR approved the implementation section and the three RGs. At this time, the minutes of the meeting are not finalized and since the meeting occurred after May 31, 2011, and is therefore outside of the period considered in this annual report, the staff will list and discuss this meeting in the next CRGR periodic review.

### Self-Assessment

The CRGR conducted a self-assessment to determine its effectiveness in fulfilling the three areas of responsibilities as identified in the CRGR charter using information obtained from the program offices, the OIG and other stakeholders. Based on this assessment, the CRGR has concluded that it is adequately fulfilling its key areas of responsibility. The following provides details on the CRGR self-assessment:

#### 1. Area of Responsibility

Ensure that proposed generic backfits to be imposed on the NRC-licensed power reactor and nuclear materials facilities are justified appropriately based on backfit provisions of applicable NRC regulations and the Commission's backfit policy.

#### Discussion

The primary mission of the CRGR is to ensure that no inadvertent backfits are either imposed or implied by proposed new or revised generic requirements, generic correspondence, and regulatory guidance for NRC-licensed power reactors and certain nuclear materials facilities, and that the staff-proposed actions are appropriately justified.

During this assessment period, the NRC staff ensured that its proposals were consistent with the backfit provisions of applicable regulations and that they assessed and explained any impacts of these proposals on NRC or its licensees. The staff also followed the Committee's guidance, as outlined in the CRGR charter and associated regulatory requirements, and provided the required supporting documents for CRGR review. The Committee confirmed that the documents adhered to the applicable NRC regulations and the Commission's backfit policy and did not identify any backfits for this assessment period.

## 2. Area of Responsibility

Ensure that NRC processes (in particular, the office and regional directives, procedures, and staff guidance and the technical staff training in NRR, NMSS, NSIR, FSME, NRO, and the regions) are adequate.

### Discussion

The staff follows various procedures for generating generic documents, such as MD 8.4; LIC-202, "Managing Plant-Specific Backfits and 50.54(f) Information Requests," issued on May 17, 2010; LIC-300, "Rulemaking Procedures," issued on May 31, 2011; LIC-400, "Procedures for Controlling the Development of New and Revised Generic Requirements for Power Reactor Licensees," issued on December 20, 2006; and LIC-503, "Generic Communications Affecting Nuclear Reactor Licensees," issued on November 29, 2004.

As indicated above, the CRGR considered a total of six issues, either informally or formally. In conducting these reviews, the CRGR did not find any evidence of specific flaws that would indicate the existence of a broad systematic failure. The established process and associated procedures have resulted in the proper consideration of any backfits during the development of generic documents and ensure that stakeholder inputs have been taken into consideration.

It is noted that although the CRGR identified questions and gave comments on proposed documents that required resolution, the staff did not consider the changes onerous. The process for ensuring that backfits are properly justified includes following the guidance and addressing the questions posed in Appendices C and D of the CRGR charter, as well as fulfilling the requirements of MD 8.4 and other requirements as stated in the agency guidance and procedures for generating generic communications. During this process, the CRGR interacts with the staff to address questions and concerns about the adequacy of the proposed generic document. Therefore, the success of the staff in delivering a product that generally meets expectations serves to confirm the effectiveness of the overall process.

For the most part, the staff has some form of backfit training available. However, as previously indicated, the CRGR and OGC, in cooperation with HR, continue to work together to establish a centralized agency resource for backfit training.

Based on overall quality of documents submitted to the CRGR for review, NRC processes and procedures appear to be effective.

## 3. Area of Responsibility

Consider the significance of issues raised by the CRGR compared to the schedule and resource impacts required to address those issues.

### Discussion

The CRGR continued to provide guidance and consultation to the NRC staff, when needed, to eliminate the implications of potential backfits in proposed documents before they were issued for public comment and formal CRGR review. To prevent unnecessary delays, the

CRGR scheduled its meetings expeditiously as requested by the NRC staff, scheduled special meetings to meet the staff's needs, and provided necessary assistance to the staff before the Committee's formal reviews. In addition, when necessary to expedite the endorsement process, the CRGR staff assisted the sponsoring office staff in satisfactorily resolving the Committee's comments. As a result, the sponsoring office staff generally needed to expend only minimal effort to respond to the Committee's comments and recommendations.

For the current reporting period, the Committee's self-assessment revealed that CRGR reviews were timely, focused on the priority issues, and were beneficial to the NRC staff. Interactions with the NRC staff were positive and professional, resulting in constructive feedback and useful insights to ensure product compliance with the applicable backfit provisions. In general, the Committee typically completed the requested CRGR reviews by the staff's requested due date. The review of the RIS with the staff nonconcurrency was not completed within the staff's scheduled timeline since a formal rather than informal review was conducted.

In general, the program offices stated that the staff expended minimal effort in responding to the CRGR's comments and recommendations. Moreover, the associated costs did not significantly impact the overall schedules and resources beyond those associated with preparing the packages for CRGR review. One office commented that although the CRGR review and comment resolution extended the scheduled timeline, the process supported the final issuance of the generic communication. Another office commented that the CRGR opinion was considered to be valuable because it allowed the staff to proceed on a basis that had a consensus amongst the body with the most expertise in the area of backfit.

#### CONCLUSION:

The CRGR believes that it has successfully contributed to the necessary staff and industry awareness of the applicable NRC regulations and Commission policy on backfits. The self-assessment and program office feedback indicate that the Committee has provided its reviews and evaluations in an efficient and effective manner, added some value to the regulatory process, and contributed to the accomplishment of the NRC's mission by identifying technical, procedural, and legal issues.

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Committee to Review Generic Requirements

#### Enclosures:

1. Topics Formally Reviewed
2. Topics Informally Reviewed

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