

**POLICY ISSUE**  
**(Information)**

September 29, 2016

SECY-16-0112

FOR: The Commissioners

FROM: Victor M. McCree  
Executive Director for Operations

SUBJECT: ANNUAL REPORT OF COMMITTEE TO REVIEW GENERIC  
REQUIREMENTS REVIEW ACTIVITIES

PURPOSE:

This paper provides the Commission with the annual report of the activities of the Committee to Review Generic Requirements (CRGR, or the committee). The report covers the period from June 1, 2015, through May 31, 2016. This paper does not contain any new commitments or resource implications.

BACKGROUND:

The CRGR is comprised of senior U.S. Nuclear Regulatory Commission (NRC) managers drawn from the Offices of Nuclear Regulatory Research (RES), Nuclear Reactor Regulation (NRR), New Reactors (NRO), Nuclear Material Safety and Safeguards (NMSS), Nuclear Security and Incident Response (NSIR), the Office of the General Counsel (OGC), and one of the regional offices selected on a rotating basis (currently, Region II). The CRGR reports to the Executive Director for Operations (EDO) who appoints the chairperson and members. The committee conducts its activities in accordance with Revision 8 of the CRGR charter dated March 2011 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML110620618). The RES staff provides technical and administrative support to the committee.

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By charter, the CRGR reviews selected regulatory requirements, generic correspondence, regulatory guidance, and NRC staff guidance related to licensing, inspection, and enforcement that could impose a generic backfit. The CRGR ensures that any generic backfits proposed for NRC-licensed power reactors, new reactors, and nuclear materials facilities that fall within the committee's charter are appropriately justified on the bases of the backfit provisions of the applicable NRC regulations, the Regulatory Analysis Guidelines (NUREG/BR-0058), and the Commission's backfit policy. The committee also helps the NRC regulatory offices implement the Commission's backfit policy and recommends to the EDO either approval or disapproval of certain staff proposals.

Since 1997, the committee has annually evaluated and reported its activities to the Commission. This paper provides the committee's annual report for the period of June 1, 2015, through May 31, 2016. The report summarizes the backfit reviews performed by the committee during the assessment period, provides the results of the committee's annual self-assessment, and gives the status of outstanding Office of the Inspector General (OIG) audit recommendations.

## DISCUSSION:

### Backfit Tasking

During this reporting period, as a result of both internal deliberations and external stakeholder feedback, the Office of the Executive Director for Operations (OEDO) convened a meeting with the senior managers and staff involved in backfitting. The focus of this meeting was to discuss how well we were continuing to adhere to the "formal, systematic, and disciplined review of new or changed positions" that was intended for the backfitting process, consistent with our Principles of Good Regulation.

Following this discussion, and with the intent of continuous improvement, OEDO tasked the CRGR and NRC staff to conduct a rigorous review of the NRC's guidance, training, and expertise for assessing issues for backfit implications, and for responding to questions and concerns raised by our stakeholders. This tasking is documented in the June 9, 2016, memorandum titled, "Tasking Related to Implementation of Agency Backfitting and Issue Finality Guidance" (ADAMS Accession No. ML16134A004). The tasking covered three general topics:

1. assess backfit requirements, guidance, and criteria (NUREG-1409 and Management Directive (MD) 8.4);
2. assess backfit training;
3. assess knowledge management for backfitting.

The CRGR is currently engaging in this activity and intends to document the results of this activity in a report to the EDO by January 31, 2017, and summarize them in the 2017 CRGR annual assessment. Furthermore, in response to the OEDO tasking memorandum, the CRGR held a public meeting on backfitting on September 13, 2016, to obtain stakeholder inputs. The public meeting was well attended and the stakeholders provided constructive input for CRGR consideration. The public input will be summarized in the 2017 CRGR annual assessment and incorporated in the January 31, 2017 report to the OEDO. The CRGR is also considering insights provided by the Nuclear Energy Institute in a July 19, 2016, letter that stated concerns

relating to the agency application of the backfit rule in the area of compliance exception (ADAMS Accession No. ML16208A015).

### Backfit Reviews Conducted by CRGR

During this assessment period, the CRGR reviewed nine documents:

- seven Regulatory Issue Summaries (RIS) (listed in the enclosure);
- an Interim Staff Guidance (ISG) document titled “Guidance for the Evaluation of Acute Chemical Exposures and Quantitative Standards” (ADAMS Accession No. ML16056A301);
- a Documented Evaluation for potential future compliance backfits titled “Evaluation for Compliance Backfit Exception: Open Phase Condition Design Vulnerability in Electric Power System” (ADAMS Accession No. ML15254A208).

As documented in the 2015 CRGR annual assessment (SECY-15-0107, “Annual Report of CRGR Review Activities,” dated August 20, 2015), the CRGR informally reviewed a draft of RIS 2015-10, “Applicability of ASME Code Case N-770-1 as Conditioned in 10 CFR 50.55a [Title 10 of the *Code of Federal Regulations*, Section 50.55a], ‘Codes and Standards,’ to Branch Connection Butt Welds.” However, because of the nature of the related concerns raised by the industry and issues identified by the CRGR in its review of the draft RIS, the review was elevated to a formal review.<sup>1</sup> The CRGR performed a formal review of the subject document on July 7, 2015, as documented in the meeting minutes for CRGR Meeting Number 439 (ADAMS Accession No. ML15189A085). This item is discussed further in the “Impact and Value of the CRGR Process” section that follows.

The staff did not propose any generic backfits in this assessment period. Moreover, based on its reviews, the CRGR did not identify any inadvertent backfits in the documents that it reviewed.

### Results of CRGR Self-Assessment

The committee solicited feedback from the regulatory offices and used its own insights to assess its effectiveness in fulfilling the primary areas of responsibility specified in the CRGR charter and its impact on staff activities. The results of the self-assessment are provided below.

#### 1. Proposed Generic Communications

For each of the seven proposed generic communications, the ISG, and the backfit evaluation document that the committee reviewed, the committee verified that the staff proposal was consistent with the backfit provisions of the applicable regulations. The committee also confirmed that the staff had followed the requirements specified in the CRGR charter and had supplied all documentation needed to support each CRGR review. Based on staff feedback and

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<sup>1</sup> By CRGR process, the CRGR typically reviews proposed RISs informally as opposed to a formal review that includes meeting with the staff and having the full complement of the CRGR members in attendance. However, the CRGR process also has the option of a formal review, and the committee would normally conduct a formal review when a proposed RIS concerns controversial issues or when the CRGR identifies that a formal CRGR review format is more appropriate.

its assessment of these CRGR reviews, the committee concluded that it had effectively fulfilled this key charter responsibility.

The CRGR also concluded that the concurrence process ensured that all pertinent offices are appropriately engaged; the appropriate technical staff, branch chiefs, and SES-level managers are involved in the reviews; and OGC is involved both in the reviews of legal issues and backfit considerations. OGC performs a thorough legal review of each generic communication and ensures that the appropriate backfit language is included in each document.

The ongoing review described previously under the “Backfit Tasking” section will provide additional insights regarding how effectively we are adhering to our guidance and executing backfit reviews. The CRGR will document the results of this activity in a report to the EDO by January 31, 2017, and will summarize them in the 2017 CRGR annual assessment.

## 2. NRC Processes

The CRGR charter specifies that the regulatory offices incorporate the CRGR process into their administrative procedures for developing new or revised generic actions. Implementing documents include:

- MD 8.4, “Management of Facility-Specific Backfitting and Information Collection,” dated October 9, 2013 (ADAMS Accession No. ML050110156);
- MD 8.18, “NRC Generic Communications Program,” dated December 9, 2015 (Accession No. ML15327A372);
- NRR Office Instruction LIC-202, “Procedures for Managing Plant-Specific Backfits and [10 CFR] 50.54(f) Information Requests,” Revision 2, dated May 17, 2010;
- NRR Office Instruction LIC-300, “Rulemaking Procedures,” Revision 4, dated September 24, 2012;
- NRR Office Instruction LIC-400, “Procedures for Controlling the Development of New and Revised Generic Requirements for Power Reactor Licensees,” Revision 1, dated December 20, 2006;

As previously noted, the CRGR reviewed nine documents during the assessment period. For each CRGR review, the committee interacted with the staff, as needed, to understand the intent of the proposed generic communication as well as any potential or actual backfitting implications. On the bases of the quality of the documents submitted for its review and the quality of its interactions with the responsible regulatory office staff and managers, the CRGR concluded that the established CRGR review process, in concert with the associated agency and regulatory office implementing procedures, resulted in the proper treatment of any backfit considerations. For these reasons, the committee concluded that it and the staff had effectively fulfilled this charter responsibility. As stated previously, the ongoing review described under the “Backfit Tasking” section will provide additional insights regarding how effectively the CRGR and program offices are executing backfit reviews.

Furthermore, in SECY-15-0129, "Commission Involvement in Early Stages of Rulemaking," dated October 19, 2015 (ADAMS Accession No. ML15267A716), the staff responded to direction in the staff requirements memorandum (SRM) dated August 14, 2015, associated with COMSGB-15-0003, "Commission Involvement in Early Stages of Rulemaking," (ADAMS Accession No. ML15226A355). In SECY-15-0129, the staff stated that it had not requested CRGR review of any proposed rule packages since October 2007, when the Commission approved removing the requirement that CRGR review rulemaking packages. The CRGR concluded that the lack of requests for CRGR review of rulemaking packages may be due in part to a lack of guidance or criteria to assist the EDO and Office Directors in deciding when to request CRGR review of a particular proposed rulemaking.

In the same Commission paper, the staff committed to developing a set of criteria and guidance to provide clarity on when the NRC staff would request CRGR review of proposed rules. In the SRM dated February 3, 2016 (Accession No. ML16034A441), the Commission directed that the staff provide these criteria and guidance to the Commission for information. The Commission also directed the staff to inform the Commission if it determines that further process enhancements regarding CRGR would be beneficial after it has been able to assess lessons-learned and feedback from the use of the new criteria and guidance. In response to this Commission direction, the CRGR developed the criteria and guidance, and the staff provided it to the Commission for information via SECY-16-0064, "CRGR Response to Staff Requirements – SECY-15-0129 Commission Involvement in Early Stages of Rulemaking," dated May 23, 2016 (ADAMS Accession No. ML16075A365).

In addition, as indicated in SECY-16-0084, the CRGR plans to assess the lessons learned and feedback from the staff on its use of the new criteria and guidance and inform the Commission in the 2017 CRGR annual assessment whether further process enhancements would be beneficial. Any changes to the scope of CRGR review and the associated staff responsibilities would be incorporated into a subsequent revision of the CRGR charter and the appropriate agency and office implementing procedures.

### 3. Impact and Value of the CRGR Process

Throughout the assessment period, the CRGR provided guidance to the staff regarding generic backfitting considerations as the staff drafted proposed generic communications. The committee's objective was to address any implications of potential backfits in proposed generic documents before the staff issued them as final generic communications. To minimize delays, to the extent practicable, the CRGR scheduled its meetings expeditiously as the NRC staff requested, scheduled special meetings to meet the staff's needs, and provided timely assistance to the staff before and during the committee's reviews. In addition, to expedite the endorsement process, the CRGR members helped the sponsoring office staff resolve committee comments as appropriate.

For this assessment period, the committee concluded that its reviews were timely, focused on high-priority issues, and 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. The committee typically completed its reviews within the timeframes requested by the staff.

The CRGR often asked questions of the staff and sometimes made comments on its proposed generic communications, which may have required revisions. In most cases, the committee's comments were not related directly to backfit issues; however, other technical or regulatory or editorial (e.g., issues of clarity) concerns were associated with the proposed generic document under review. Overall, the staff judged that the workload needed to address the CRGR comments was not burdensome relative to the value added. The following three examples highlight the value added by the CRGR.

The first example concerns the CRGR review of the Acute Chemical Exposure ISG and the staff's plan to use the ISG to inform inspections and gather or assess additional information for future regulatory decision-making. The Committee determined that the staff's planned inspection activity was unrelated to the proposed ISG and, therefore, should not be presented in the context of the ISG nor performed using the ISG. The CRGR requested that the staff reconsider this aspect of its presentation of the ISG. The staff later provided a revised ISG (ADAMS Accession No. ML16056A301) and revised documents relevant to the ISG addressing the CRGR recommendations pertaining to the regulatory, legal, and policy implications related to the issuance of the final ISG (ADAMS Accession No. ML16056A308). A more detailed description of this review can be found in the meeting minutes for CRGR Meeting Number 440 (ADAMS Accession No. ML16032A047). In addition, the staff commented that the CRGR provided good feedback regarding underlying safety concerns and backfit considerations on the guidance and the staff's path forward. The CRGR added value by assuring no new positions or requirements were being imposed on licensees and applicants in the issuance of the documents and no backfitting was required.

The second example is the CRGR's formal review of RIS 2015-10. As noted above, given the nature of the RIS, the CRGR elected to perform a formal review of the proposed RIS on July 7, 2015. The staff subsequently commented that the formal CRGR review added confidence that the RIS was in accordance with the backfit policies, rules, and regulations.

The final example concerns the backfit evaluation document reviewed on May 17, 2016 (CRGR Meeting Number 441, "Evaluation for Compliance Backfit Exception: Open Phase Condition Design Vulnerability in Electric Power System," ADAMS Accession No. ML16145A431). In this meeting, the CRGR focused its discussion with the staff on:

- the applicable regulatory requirements and how they have been applied by the staff and licensees;
- the status of the U.S. reactor fleet and whether compensatory measures are in place to address the subject vulnerability;
- the concerns raised by the industry with regard to the staff's application of the compliance backfit exception.

Feedback from the staff indicated that the CRGR deliberations were helpful in guiding them on the nuances of potential backfit implications in this review. The CRGR did not identify any inadvertent backfitting or concerns regarding application of the Commission backfit policy and endorsed the subject document.

In summary, for the assessment period, feedback from the regulatory offices confirmed that the CRGR reviews added value across the board by ensuring that proposed generic documents were consistent with the applicable Commission backfitting policies, rules, and regulations and

did not inadvertently backfit new requirements on licensees. In addition, the offices stated that the staff generally expended reasonable efforts addressing CRGR comments and recommendations. Moreover, the costs and impacts associated with CRGR review activities did not significantly affect the overall schedules and staff resources beyond those associated with preparing the packages for CRGR review.

### Status of OIG Audit Recommendations

As discussed in previous CRGR annual reports, the Office of the Chief Human Capital Officer (OCHCO) and CRGR staff coordinated with subject matter experts to develop a Web-based training course titled “Backfitting and Issue Finality.” On September 1, 2015, the staff completed preparation of the training, and the course was subsequently made active on the agency Web-based iLearn platform. The relevant offices involved in backfitting are expected to include this Web-based training material as part of their qualification training requirements, and the training may also be used as part of subsequent refresher training.

The training covers the backfitting process including a history of the backfit regulations, the applicable regulatory requirements and guidance, and the Commission’s backfit policy. Moreover, the training uses example scenarios in connection with discussions on the following topics:

- backfitting and issue finality (regulations and policy considerations);
- staff roles and responsibilities;
- backfitting and issue finality versus regulatory analysis;
- key reference documents.

This accomplishment resolves the one remaining recommendation from OIG Audit Report OIG-09-A-06, “Audit of the Committee to Review Generic Requirements,” dated February 2, 2009 (ADAMS Accession No. ML090330754).

The ongoing review described under the “Backfit Tasking” section above, will provide additional insights regarding the effectiveness of backfit training and staff knowledge of backfit requirements and guidance. Upon completion of the review, the staff will make changes to the current training program as well.

### Other CRGR Activities

During this assessment period, the CRGR provided input to the NRC’s response to Congressional questions regarding CRGR role and responsibilities, CRGR review process and its procedures, CRGR member qualifications, interactions with the industry, review of specific documents, Fukushima Dai-ichi accident follow-up, and current and planned CRGR activities.

Although the following activity is outside of this reporting period, it is included here because of its relevancy for this reporting period. As part of our continuing interactions with the industry, Steven West—a current CRGR member and former CRGR chairman—served as a member of the backfit issues panel at the industry-sponsored conference, “American Nuclear Society’s (ANS) annual Utility Working Conference and Vendor Technology Expo” in August 2016. Mr. West discussed CRGR’s role and typical activities, provided perspectives on backfitting and the

use of the compliance exception, and described how CRGR has responded to the EDO's tasking memorandum associated with backfitting. He also participated in the backfitting discussion among the panel members and addressed questions and comments from the audience.

**CONCLUSION:**

The CRGR continues to contribute to staff and industry awareness of the applicable NRC regulations and Commission policy on backfitting. The self-assessment and program office feedback suggests that the committee has performed its reviews and evaluations in an efficient and effective manner, added value to the regulatory process, and contributed to the accomplishment of the NRC's mission. The CRGR looks forward to working with the program offices and OGC in completing the OEDO tasking related to backfitting. CRGR expects the results of the tasking and our upcoming interactions with stakeholders to enhance agency rigor in future backfitting evaluations.

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**ADAMS Accession No.: Pkg. ML16118A238      Memo: ML16160A311      WITS:199700390**

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