



POLICY ISSUE **(Information)**

September 16, 2019

SECY-19-0089

FOR: The Commissioners

FROM: Margaret M. Doane
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, 2018, through May 31, 2019. This paper does not contain any new commitments or resource implications. For purposes of this report, backfit or backfitting includes issue finality.

BACKGROUND:

Since 1997, the Committee has annually evaluated and reported its activities to the Commission. This paper provides the Committee's annual report for June 1, 2018, through May 31, 2019. The report summarizes the backfit reviews performed by the Committee during this time and provides the results of the Committee's annual self-assessment. The report also summarizes the status of key actions in response to the EDO's tasking on agency backfit processes (see the following Discussion section and Enclosure 2 for a list of these items).

DISCUSSION:

Backfit Tasking

On June 27, 2017, the CRGR submitted its CRGR Review Report (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17174B161) to the EDO containing 10 key findings in response to two Executive Director for Operations (EDO) memoranda that directed the CRGR to review the agency backfitting program (ADAMS Accession Nos. ML16133A575, ML16344A004). On July 19, 2017, the EDO issued a response to the CRGR that supported the CRGR's recommendations and provided subsequent direction

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to the CRGR as well as affected offices (ADAMS Accession No. ML17198C141). The EDO direction provided 20 separate tasking items in 4 broad categories: (1) requirements, guidance, and criteria; (2) training; (3) knowledge management; and (4) revisions to the CRGR Charter.

The tasking also included direction to conduct an effectiveness review of the actions taken, to report on the availability of key docketed information and the resources needed to make information more readily retrievable, and to report on the resources needed to complete the directed actions. Some of these items have been accomplished, and some are near completion.

Status of Tasking Items

The following is an update to items discussed in the 2018 CRGR Annual Report (ADAMS Accession No. ML18156A412) regarding the status of the EDO memorandum tasking items as a response to the recommendation in the 2017 CRGR Review Report. Except for the completion of item #7 titled, "make available just-in-time training and references on backfitting and issue finality" (see Enclosure 2), for much of the review period, the staff's work related to these tasking items was on hold pending Commission direction (ADAMS Accession No. ML18302A268). The Commission provided direction to the staff in staff requirements memoranda (SRM) issued in May and July 2019; the staff is now working to implement this direction (ADAMS Accession Nos. ML19149A296 and ML19207A042). Because most of the Commission direction was received after the review period covered in this report, there is little Committee activity to report. Over the next year, the Committee anticipates it will have increased activity related to these tasking items.

As part of this work, the staff plans to update training to reflect the revised backfit and forward fit guidance and Commission direction. In addition, based on Commission direction to revise MD 8.4 and subsequent planned revisions to NUREG-1409, the staff anticipates that the "Committee to Review Generic Requirements Procedures and Internal Administrative Process" (ADAMS Accession No. ML17355A533) document will require revision. The anticipated revision will reflect changes in how the CRGR will proceed in addressing adequate protection exceptions and will redefine the Committee's scope to include the review of documents that may have forward fits (as defined in MD 8.4).

CRGR Briefings and Reviews Conducted

The CRGR Charter describes three categories of reviews the CRGR performs:

1. Routine Review (Category 1).
2. Complex Review (Category 2).
3. Complex Review with External Involvement (Category 3).

A Routine Review (Category 1) is one in which the matter does not appear to contain backfitting issues and can be handled via e-mail discussions. A Complex Review (Category 2) is one in which it is evident that the matter has significant technical and process complexity, backfitting, or potential backfitting and is handled in a formal setting in which the sponsoring staff provides a presentation to the CRGR. A Complex Review with External Involvement (Category 3) has all the elements of a Category 2 review in addition to a public meeting as a result of a request from external parties to meet separately with the CRGR to provide context for its deliberation. The CRGR procedures document (mentioned above) provides additional detail on these CRGR review categories.

Consultation briefings are used for the CRGR or staff to obtain clarification. With regard to the type of review the CRGR performs, barring specific EDO direction, the CRGR has the discretion to decide which type of review will be the most efficient and effective means to discharge its mission. In addition, in the event that a meeting to support a Category 3 review cannot be accommodated due to circumstances beyond the staff's control (e.g., time constraints), external stakeholders continue to have the public comment phase for the draft rule as an avenue to raise backfitting concerns. The consultation briefing and reviews conducted by the CRGR for this period are listed in Enclosure 1; a summary of these activities are included below.

Consultation Briefings

At the request of the CRGR, the staff held a consultation briefing with the Committee to determine whether CRGR review of the draft proposed rule, "2015-2017 American Society of Mechanical Engineers Boiler and Pressure Vessel/Operations and Maintenance Code Editions Incorporation by Reference" was required. The purpose of this briefing was to obtain clarification on the following topics discussed in the proposed rulemaking:

1. Metal Containment Issue.
2. Steam Generator Pre-Inspection.
3. Code Cases N-729-6 and N-770-5.

The staff had indicated previously that they did not consider these conditions or clarifications to be backfits. At the conclusion of this briefing, the CRGR determined that the rule did not contain any backfitting provisions and, therefore, a complex review was not required. As this rule was in the early phase of development, the CRGR expects the staff to re-engage if any substantiated backfit claims are made by external stakeholders after the public comment period is completed.

Routine Reviews

During the review period, the CRGR performed one routine review of the proposed draft Regulatory Issue Summary (RIS) 2018-06, "Clarification of the Requirements for Reactor Vessel Upper Head Bare Metal Visual Examinations." After its review, the CRGR concurred with the staff's conclusion that no backfitting concerns existed with the clarifications outlined in the document. The CRGR endorsed the RIS.

Complex Reviews

The CRGR performed one complex review of the Title 10 of the *Code of Federal Regulations* Part 74 draft final rule. For the four declared backfits in the draft final rule, the staff provided a detailed justification for the adequate protection exception. The CRGR ultimately agreed with the staff's bases for the adequate protection exception and recognized that the final decision in this evaluation rested with the Commission. Subsequently, the CRGR endorsed the rulemaking package.

Later, in the SRM for SECY-18-0104, "Draft Final Rule: Amendments to Material Control and Accounting Regulations" dated April 3, 2019 (ADAMS Accession No. ML19093B393), the Commission disapproved the draft final rule in large part due to the staff's inadequate justification for invoking the adequate protection exception (see Vote Record-SECY-18-0104), (ADAMS Accession No. ML19093B522). In this SRM, the Commission directed the Office of Nuclear Material Safety and Safeguards to "evaluate the history of this rulemaking activity as a

lessons-learned/case study under the agency transformation initiative,” and the Commission also directed the CRGR to “evaluate its endorsement of this draft final rule and provide a report to the Commission on any lessons-learned or modifications that may be needed to its evaluation criteria, given the Commission's disapproval of the rule's issuance.” See the below section, “Results of CRGR Self-Assessment,” for further discussion regarding CRGR activities in response to this SRM.

Complex Reviews with External Involvement

The CRGR did not conduct any complex reviews with external involvement.

Results of CRGR Self-Assessment

The Committee solicited feedback from the regulatory offices (ADAMS Accession No. ML19148A657) 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.

Documents Reviewed

The Committee 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 its assessment of these CRGR reviews, the Committee concluded that it had effectively fulfilled this key Charter responsibility of ensuring that staff proposals are appropriately justified based on backfitting and issue-finality provisions of applicable U.S. Nuclear Regulatory Commission regulations.

The June 27, 2017, CRGR Review Report provided insights on how effectively the Committee is adhering to its guidance and executing backfit reviews. Consequently, the areas that were identified needing improvement (such as the agency's implementation of backfitting and issue finality requirements and guidance for both facility-specific and generic issues as applied across agency programs) are either being addressed or have been completed. Moreover, the corrective actions underway and those recommended in the CRGR Review Report will enhance engagement and oversight by CRGR with regard to its activities and review of proposed generic and selected facility-specific agency communications that could impose a backfit.

Regarding the previously mentioned Commission direction in SRM SECY-18-0104 for the CRGR to perform a lessons-learned review on its evaluation criteria, the CRGR is reviewing its roles and responsibilities with respect to the use of the adequate protection exception, and has met with the EDO to obtain alignment on the path forward.

CRGR Involvement in NRC Processes

On the basis 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, with the possible exception of rulemakings that propose to use the adequate protection exception, 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. The CRGR processes for rulemakings that propose to use the adequate protection exception to the backfit rule are currently under review. For these reasons, the Committee concluded that it and the staff had effectively fulfilled this Charter responsibility.

Nevertheless, the CRGR and staff continue to make progress toward addressing the remaining opportunities for improvement in the process documents identified in the July 19, 2017, EDO tasking memorandum, such as the need for finalizing the ongoing update to NUREG-1409 and updates to other relevant staff guidance with respect to backfitting and CRGR engagement. With regard to process, the staff uses the CRGR criteria specified in its current Charter to identify rulemaking requiring CRGR involvement.

Impact and Value of the CRGR Process

Throughout the assessment period, the CRGR provided guidance to the staff regarding backfitting considerations on staff drafted proposed generic agency communications. The Committee's objective was to aid identification of potential backfits in proposed documents before the staff issued them as final.

For this assessment period, the Committee concluded that, based on the "value added memoranda" responses from the staff, its reviews were timely, focused on high-priority issues, and beneficial to the staff (ADAMS Accession No. ML19148A660). Interactions with the staff were positive and professional resulting in constructive feedback and useful insights to ensure product compliance with the applicable backfit provisions.

Other CRGR Activities

During this assessment period, the CRGR provided input to the NRC's responses to congressional questions. This input includes (1) the monthly report to Congress with regard to the CRGR review of specific documents and identification of documents containing backfitting and (2) the CRGR actions on those documents and current and planned CRGR reviews.

CONCLUSION:

The CRGR contributes to staff and industry awareness of applicable NRC regulations and Commission policy on backfitting. The self-assessment and program office feedback indicate that the Committee has performed its reviews and evaluations during the reporting period in an efficient and effective manner, added value to the regulatory process, and contributed to the accomplishment of the NRC's mission. The CRGR continues to work with the program and supporting offices to implement the EDO direction in response to the CRGR report recommendations. This effort will include any necessary improvements identified in the CRGR lessons-learned review of its evaluation criteria.

COORDINATION:

The Office of the General Counsel has reviewed this package and has no legal objection.

Handwritten signature of Margaret M. Doane in cursive, with the letters "FOR" written in a smaller font below the signature.

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for Operations

Enclosures:
As stated

SUBJECT: ANNUAL REPORT OF COMMITTEE TO REVIEW GENERIC REQUIREMENTS
 REVIEW ACTIVITIES DATED: September XX, 2019

ADAMS Accession No. Pkg. ML19197A120 Memo: ML19197A121 WITS: 199700390

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