



# **POLICY ISSUE**

## **(Information)**

November 14, 2022

SECY-22-0101

**FOR:** The Commissioners

**FROM:** Daniel H. Dorman  
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**SUBJECT:** ANNUAL REPORT OF THE 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, 2021, through May 31, 2022. For purposes of this report, the terms “backfit” and “backfitting” include the terms “forward fitting” and “issue finality.” This paper does not contain any new commitments or resource implications.

**BACKGROUND:**

The Committee has evaluated and reported its activities to the Commission each year since 1997. This report summarizes the backfit reviews performed by the Committee during the reporting period and includes the results of the Committee’s annual self-assessment. This report also summarizes the status of actions in response to the Executive Director for Operations (EDO) tasking related to the agency’s implementation of backfitting requirements.

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### *Categories of CRGR Backfit Reviews*

The CRGR Charter describes three categories of Committee reviews:

- (1) Routine Review (Category 1): a review in which the matter does not appear to contain backfitting issues and can be handled through email discussions
- (2) Complex Review (Category 2): a review 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 where the sponsoring staff provides a presentation to the CRGR
- (3) Complex Review with External Involvement (Category 3): a review with all the elements of a Category 2 review that includes a public meeting if requested by external parties to meet separately with the CRGR to provide context for its deliberation

The document "Committee to Review Generic Requirements Procedures and Internal Administrative Process," Revision 9, dated June 26, 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17355A533), provides additional detail on these review categories.

### DISCUSSION:

The CRGR exercised its roles and responsibilities for a relatively high number of complex reviews this reporting period. This high level of activity afforded the staff and CRGR members the opportunity to apply backfitting policy and exercise agencywide and CRGR-specific procedures. Through these reviews, CRGR identified several lessons learned that it will address through procedural updates.

### *CRGR Backfit Reviews*

During this review period, the CRGR performed three complex reviews (see enclosure 1):

- draft final rule for Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs," (Meeting #457) (complex review)
- draft proposed rule, "Alignment of Licensing Processes and Lessons Learned from New Reactor Licensing," (Meeting #458) (complex review)
- proposed non-cited violation associated with the Limerick Generating Station independent spent fuel storage installation (ISFSI) (Meeting #459) (complex review)

The three reviews concluded with CRGR endorsement of the staff positions, with comments. The CRGR confirmed staff adherence to agency policy and regulations with respect to backfitting.

### *Reviews with Identified Backfits*

Two of the three reviews for this reporting period included staff-identified backfits.

The first staff-identified backfit was for the draft final rule for 10 CFR Part 26. The backfit consisted of mandated changes to the drug testing panel that licensees and other entities must use when testing individuals under 10 CFR Part 26. The CRGR agreed that the staff changes in the final rule are cost justified and substantially increase the overall protection of public health and safety or the common defense and security.

The second staff-identified backfit was associated with the draft proposed rule, “Alignment of Licensing Processes and Lessons Learned from New Reactor Licensing.” This draft rule amends 10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities,” and 10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” to ensure consistency and efficiency in the new reactor licensing review process. The backfit invoked an adequate protection justification related to a gap in agency security requirements for the protection of Category II and III quantities of special nuclear material stored within the owner-controlled area but outside the protected area for 10 CFR Part 50 power reactor operating licensees. The CRGR reviewed the backfitting justification and endorsed the staff position after receiving the staff’s clarifications and an explanation of the physical security concern with a risk-informed perspective.

### *Review with No Backfit*

In the remaining review, the staff benefited from interactions with the CRGR that supported enhancements and clarifications to the staff justifications of no backfitting.

Two different backfitting positions informed the CRGR review of a facility change at Limerick regarding operations of the licensee’s independent spent fuel storage installation (ISFSI). The Committee heard diverse views from the staff to inform the CRGR determination on the backfitting concerns raised after an inspection. The review involved considering a proposed non-cited violation for a licensee facility change to use a different crane design when the licensee did not explicitly complete a site-specific assessment for operations in conditions such as high winds and during tornado hazards. Ultimately, the CRGR endorsed the staff position of a proposed violation and, therefore, no backfitting.

### *CRGR Annual Self-Assessment and Staff Feedback*

To facilitate preparation of this annual paper, the CRGR requested feedback from the staff on how its review supported or negatively impacted activities. The overall feedback from the staff was that CRGR reviews provided constructive feedback strengthening backfitting evaluations and explanations. The staff discussed that in most cases CRGR reviews did not impact schedules and the preparations were beneficial to resolving public comments and improving evaluations. Regarding the Limerick ISFSI review, some staff expressed that the CRGR interaction helped to resolve differences among staff positions on backfitting.

Two notable observations arose during the year:

- Lesson learned from the Limerick ISFSI non-cited violation review—Following the completion of the CRGR review, the staff questioned whether CRGR review of different staff positions fell under the CRGR Charter and recommended that the role should be

clarified if the practice becomes more common. Additionally, the staff expressed opinions with respect to the public releasability of agency deliberative positions. Considering these observations, the CRGR plans to update its procedures to clarify its role in the resolution of differing views and the releasability of documentation to support the transparency of CRGR activities.

- Lesson learned regarding the importance of interactions with the Backfitting Community of Practice (BFCoP)—The BFCoP is led by staff of the Office of the General Counsel, with staff from the U.S. Nuclear Regulatory Commission (NRC) program and Regional offices. The BFCoP provides a forum for the staff to discuss backfitting issues, support assessment and resolution of backfitting issues, and determine the staff's readiness before bringing items to the CRGR for review. All activities that were subject of CRGR reviews were evaluated by members of the BFCoP; however, CRGR program staff noted a few cases in which requests occurred for CRGR review before BFCoP interactions. Interactions with the BFCoP can help guide the staff with strengthening backfitting evaluations and justifications to demonstrate adherence to agency procedures, policy, and regulations. Additionally, the BFCoP supports staff resolution of backfitting issues and builds agency expertise in this area. Considering these observations, the CRGR plans to update the CRGR procedures to clarify the expectation that reviews should be provided to the BFCoP before they are brought to the CRGR.

The observations from the lessons learned this year led to the identification of areas in the CRGR procedures that would benefit from a revision to support CRGR member and staff interactions.

#### *Status of EDO Tasking Memorandum*

On June 27, 2017, the CRGR submitted to the EDO its review report on its assessment of the NRC's implementation of backfitting and issue finality requirements and guidance (ADAMS Accession No. ML17174B161). The report contained 10 key findings in response to two EDO memoranda that directed the CRGR to review the agency's backfitting program (ADAMS Accession Nos. ML16133A575 and ML16344A004). On July 19, 2017, the EDO issued a response to the CRGR that supported the CRGR's recommendations and provided subsequent direction to the CRGR and several NRC offices (ADAMS Accession No. ML17198C141). The EDO response included 20 separate tasking items. For tracking purposes, and because of the similarities between the tasking items, some of the items were grouped together, resulting in 15 tasking items grouped into 4 broad categories: (1) requirements, guidance, and criteria, (2) training, (3) knowledge management, and (4) revisions to the CRGR Charter (see footnote 1 in enclosure 2).

Enclosure 2 provides a complete status of the actions identified in the EDO tasking memorandum. There were no changes in status this reporting period.

#### CONCLUSION:

The CRGR contributes to staff and industry awareness of applicable NRC regulations and Commission policy on backfitting. The Committee's self-assessment indicates that the CRGR performed its review in an efficient and effective manner and has identified areas for improvement to support the staff and enhance its effectiveness. The CRGR continues to work with the backfitting program and support offices to implement the EDO tasking memorandum.

COORDINATION:

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

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Enclosures:

1. Action on Staff Proposals by the  
CRGR June 1, 2021–May 31, 2022
2. Status of EDO Tasking Items

SUBJECT: ANNUAL REPORT OF COMMITTEE TO REVIEW GENERIC REQUIREMENTS  
REVIEW ACTIVITIES DATED: NOVEMBER 14, 2022

**ADAMS Accession No.: Pkg. ML22300A191 Memo: ML22300A194 WITS: 199700390**

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