

COMMENTS FROM THE MARCH 29 PUBLIC MEETING AND CRGR RECOMMENDATIONS

This enclosure provides the associated responses to the comments raised in the March 29, 2007, public meeting to discuss the U.S. Nuclear Regulatory Commission (NRC) backfit controls along with planned actions and recommendations. Stakeholder comments that convey related issues are grouped together to facilitate ease in addressing.

1. Comment:

Establish an enhanced backfit training program (NEI).

Response:

Current procedures provide clear expectations regarding establishment and implementation of training programs. MD 8.4, "Management of Facility-specific Backfitting and Information Collection," currently requires that the Office of Nuclear Regulatory Research (RES), the Office of Nuclear Reactor Regulation (NRR), the Office of Nuclear Material Safety and Safeguards (NMSS), the Office of Nuclear Security and Incident Response (NSIR), and the Regions provide appropriate training. Additionally, the Committee to Review Generic Requirements (CRGR) charter indicates that the CRGR is responsible for ensuring that technical training is adequate. Training is also evaluated as part of periodic CRGR audits.

Recommendation:

- Confirm that the training programs in relevant offices and the Regions include adequate training on MD 8.4 and the backfit process. The programs should include provisions for initial and periodic refresher training. (NRR, NMSS, FSME, NSIR, NRO, Regions)

2. Comments:

The CRGR sometimes allows issuance of regulatory actions that do not meet the backfit requirements, policy, or provisions. Even in those instances in which the generic action does not represent a backfit, subsequent implementation sometimes results in an informal backfit (e.g., requests for additional information (RAIs) in followup to responses to a generic letter) (NEI).

The CRGR should review staff requested changes in decommissioning plans because for various reasons (e.g., new staff, different interpretation), the definition of adequate protection does not remain static between the decommissioning plan and decommissioning process, resulting in a large increase in cost but a minimal increase in safety (this also applies to partial site clean up) (FCFF).

Furthermore, generic backfits are being introduced when a plant specific backfit or requirement on a plant is improperly promulgated to other plants. Consequently, some alternative means to achieving compliance or adequate protection are curtailed as licensees are "steered" toward an alternative solution that has been "tested or used at

another facility.” This applies to both operating and decommissioned plants (NEI) (FCFF).

Licensees should be consulted regarding the impact of proposed regulatory actions. Some backfits result in changes to procedures and organizations at a significant cost not considered by the staff (FCFF).

Responses:

There are numerous documents that provide staff direction regarding issuance of generic communications (including ensuring that no unjustified backfits are imposed), and also solicitation of comments from stakeholders. These include:

- MD 8.4, “Management of Facility-specific Backfitting and Information Collection”
- MD 6.3, “The Rulemaking Process”
- MD 6.4, “Generic Issues Program”
- Policy and Procedures Letter (PPL) 1-82, “10 CFR Part 70 Backfit Guidance”
- PPL 1-84, “10 CFR Part 72 Backfit Guidance for NMSS”
- LIC-202, Revision 1, “Managing Plant-Specific Backfits and 50.54(f) Information Requests”
- LIC-300, “Rulemaking Procedures”
- LIC-503, “Generic Communications Affecting Nuclear Reactor Licensees”

The CRGR monitors the overall effectiveness of the NRC's generic backfit management process. The CRGR periodically performs both a self evaluation and an audit on the administrative controls for backfit to determine if they are sufficient and the staff guidance is comprehensive and clear. Additionally, as discussed in response to comment four, below, the CRGR plans to conduct biannual meetings with licensees and stakeholders in which specific focus will be on ensuring backfit controls and training are adequate and avoiding informal backfits.

Additionally, policy and procedures currently exist that provide for oversight of staff activities to ensure backfit controls are effectively implemented. For example, Inspection Manual Chapter (IMC) 0102, “Oversight and Objectivity of Inspectors and Examiners at Reactor Facilities,” instructs that line managers, with respect to inspection activities, ensure that relevant program guidance and individual performance attributes display “adherence to agency-wide regulatory positions and policies (e.g., backfit) and avoidance of personal interpretations and opinions.”

While anecdotes are sometimes provided regarding the existence of backfits that were not appropriately identified or justified, licensees who believe a backfit has occurred would be expected to raise the issue through the backfit appeal process as outlined in MD 8.4.

With regards to the final comment in this section, for actions other than adequate protection and compliance, NUREG/BR-0058, “Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,” 10 CFR 50.54(f), “Conditions of Licenses” and MD 8.4 specifically require the staff to address the burden and the cost-benefit impact on the licensee by new or change of staff positions imposed through generic

communications or rulemaking. One area of review during the CRGR audit includes ensuring that proposed generic backfits to be imposed on the NRC-licensed power reactors and nuclear materials facilities are appropriately justified based on backfit provisions of applicable NRC regulations and the Commission's backfit policy.

As discussed in the documents listed above (except for MD 8.4 and LIC-202), the staff is required to solicit public comments from the licensees and stakeholders during the development of or change to various generic communications or rulemaking. Contained within the package, when applicable, is the cost benefit analysis which stakeholders may review and provide comments. Therefore, licensees do have an opportunity to provide input regarding the costs of proposed regulatory changes. Note: A cost benefit analysis is not required for generic communication or rulemaking that involve compliance or adequate protection backfits.

Recommendations:

- Reemphasize the expectation that significant generic documents receive public comment/input before going forward to the final stages. (NRR, NMSS, FSME, NSIR)
- Provide increased awareness of the backfit requirements, the CRGR charter and activities, and the plant specific process. Specifically, (1) the CRGR, with the assistance of the Office of Information Systems, should establish an externally available CRGR web page, and (2) the program offices should emphasize the plant specific backfit process in appropriate industry forums. Sensitize and educate the industry with regards to the backfit appeal process and the available options to freely raise issues and voice their concerns with regards to backfits. (CRGR, OIS, NRR, NMSS, FSME, NSIR, Regions)

3. Comment:

Revise the CRGR charter to include plant specific backfits (NEI) (FCFF).

Response:

The CRGR considered a similar comment in 1999 and gave its input in the transmittal memo to the Commission for the 1999 CRGR charter revision (ML0037183740). At that time, the CRGR concluded that it was best not to expand the Charter into the area of plant-specific backfits, primarily because they are adequately treated by other initiatives. The CRGR continues to agree with that opinion.

Recommendation:

- None.

4. Comment:

The CRGR participation should include site visits and occasionally consulting with an external entity or group of industry representatives for input on specific issues or specific aspects of the industry (NEI) (FCFF).

Responses:

Members of the CRGR participate in site visits as part of their routine responsibilities. These visits are used as an opportunity to collect insights. Additionally, IMC 0102 requires that managers solicit feedback regarding backfit during site visits. However, the feedback form for site visits does not explicitly address backfit policy adherence.

The CRGR members regularly participate as panel members in the annual NEI Licensing Forum. In the past, this forum has been a productive opportunity for interactions in which the licensee representatives have voiced concerns that the CRGR has taken into consideration and addressed. During these meetings, the CRGR clarifies any issues concerning the CRGR process and NRC policies regarding backfit requirements.

The CRGR plans to periodically meet every two years with industry representatives to discuss relevant issues.

Recommendations:

- Establish procedural guidance for CRGR members regarding site visits. The information gained from this interaction will be submitted to the feedback process, using the NRC Form 649 "Site Visit Observation." (CRGR)
- Provide explicit instructions and questions in the feedback form (NRC Form 649) regarding plant and generic backfit issues. Information obtained should be provided to the CRGR for consideration. (NRR, Regions)

5. Comment:

Open the CRGR review process to external stakeholders (NEI) (FCFF).

Responses:

The CRGR serves a management oversight function, the primary purpose of which is to ensure that the backfits that are imposed are appropriately justified. The CRGR meetings provide an opportunity for the committee to review material that is predecisional in open and frank discussions with the staff. While providing the opportunity for external stakeholders to meet with the CRGR in open sessions would enable the committee to hear comments firsthand, it would not obviate the need for closed sessions.

Moreover, because the CRGR values stakeholder comments on proposals, we normally review proposed generic documents and staff actions after public comments have been received and addressed. In consideration of the above, the additional effort and cost for open CRGR sessions, in light of the opportunity that currently exists for input, are not commensurate with the likely benefit.

Recommendation:

- None.

6. Comment:

Increase the scope of the CRGR review to include review of other regulatory products (e.g., Regulatory Issue Summary (RIS)) and include other major regulatory actions. (NEI) (FCFF)

Response:

RISs, NUREGS, and regulatory guides are informally reviewed by the CRGR Chairman staff. This review involves identification of any inadvertent changes in staff position or new staff positions. The packages that have any issues of concern are reviewed formally before the full complement of CRGR members. In addition to these documents and as outlined in the CRGR charter, the CRGR formally reviews: Advanced Notices, Proposed and Final Rules, Policy Statements, Bulletins, Generic Letters, Standard Review Plan, Standard Technical Specifications, Safety Evaluation Reports on industry initiatives, and Inspection and Enforcement Guidance.

Recommendation:

- None.

7. Comment:

Develop an externally available CRGR Web page (NEI).

Response:

At this time, the CRGR web page is only available internally. It provides the staff with links to relevant documents and instruction for preparing generic documentation packages. However, it is not comprehensive or inclusive of all relevant documents.

Recommendation:

- Develop an external web page containing additional links to other relevant documents for staff use, specifically in the areas of plant-specific and generic backfits. The web page will also make available pertinent information to external stakeholders, such as the public availability of any regulatory issue summary reviewed by the CRGR. (CRGR, OIS)

8. Comment:

Engage a third party (e.g., former CRGR members, retired NRC managers, or consultants) to assess CRGR activities. Conduct sample reviews of past CRGR endorsed packages and make adjustment in the CRGR process where necessary (NEI) (FCFF).

Responses:

To improve effectiveness and efficiency, the CRGR conducts an annual self assessment and incorporates input from program offices that had items reviewed in the past period. The self assessment requests input in the following four areas:

- a. The value added by the CRGR review with regards to improvement in the quality of the product (as it relates to underlying safety concerns and backfit considerations), completeness, and consistency with the Commission's policies, rules, and regulations.
- b. The quantity of staff effort expended in addressing CRGR comments and recommendations.
- c. The impact on the staff schedule as a result of the CRGR review.
- d. The significance of the issues identified by the CRGR, as well as the associated costs in terms of overall impact on schedules and resources.

Another source of valuable input to the CRGR process has been the CRGR involvement in the annual NEI Licensing Forum meetings. Accordingly, changes are made to the CRGR process where it is deemed necessary. Therefore, we believe that there is an adequate evaluation of the CRGR review process and its activities.

Recommendation:

- None.