

Backfitting & Forward Fitting

October 17, 2019

Management Directive 8.4

- September 20, 2019 (ML18093B087)
- New Title: “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests”
- Policy topics include:
 - Backfitting, Forward fitting
 - Risk-informing backfitting and forward fitting
 - Communications
 - Appeals

Backfitting

- Three justifications considered in the order presented:
 - Adequate protection (includes imminent threat to public health & safety analysis)
 - Compliance (cost & time considerations)
 - Cost-justified substantial increase in overall protection (backfit analysis)

Compliance Backfitting

- Non-compliance caused by an omission or mistake of fact
- Conditions:
 - Because of a staff, licensee, or third-party error/omission made at or before the determination in question, the staff:
 - incorrectly perceived facts,
 - performed or failed to recognize flawed analyses, or
 - failed to draw inferences from those facts or analyses
 - Issue is judged by the standards and practices that were prevailing at the time of the determination in question
 - The facts, analyses, or inferences have now been properly perceived, performed, or drawn.

Forward Fitting

- Definition:
 - Imposing certain new/revised requirements or interpretations as a condition of approval by the NRC of a licensee-initiated request for a licensing action when the underlying request did not propose to comply with the new/revised requirement or interpretation.
- Forward fitting applies to licensees within the scope of backfitting regulations

Forward Fitting Criteria

- Office Director approval
- Direct nexus to the request
- Essential to the staff's determination
- If the forward fit is unrelated to adequate protection, the NRC must consider cost before imposing the new or modified requirement or interpretation.

Risk-Informed Decision-Making

- All backfitting and forward fitting must be risk-informed
- Consideration of all available quantitative and qualitative risk information
- Risk information integrated with traditional regulatory approaches and support the defense-in-depth philosophy

Communications

- Any communication has potential to convey unjustified backfitting or forward fitting
 - Regulatory guidance
 - Inspection reports
 - Generic communications
 - Interactions with licensees
- NRC not to convey expectations outside the licensing basis unless supported with backfit or forward fit analysis

Appeals

- Licensees can appeal backfits and forward fits in writing
 - NRC and licensee disagree whether action was backfitting/forward fitting
 - Licensee believes backfitting/forward fitting was not properly justified
- First Appeal
 - Office Director and Regional Administrator
- Second Appeal
 - Executive Director for Operations - Panel

Next Steps

- SRM-SECY-18-0042 – Update:
 - NUREG/BR-0058 – Regulatory Analyses
 - NUREG-1409 – Backfitting Guidance
- Just-in-time training
- Office-level implementation procedures
- Training and qualification programs

NUREG-1409 Milestones

- OEDO and Commission review draft
- Publish draft in *Federal Register* for comment
- Public meeting
- Resolve feedback
- Provide final to OEDO and Commission
- Issue final