

# AUDIT REPORT

Audit of the Committee to Review  
Generic Requirements

OIG-09-A-06 February 2, 2009



All publicly available OIG reports (including this report) are accessible through  
NRC's Web site at:

<http://www.nrc.gov/reading-rm/doc-collections/insp-gen/>



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

OFFICE OF THE  
INSPECTOR GENERAL

February 2, 2009

MEMORANDUM TO: R. William Borchardt  
Executive Director for Operations

FROM: Stephen D. Dingbaum */RA/*  
Assistant Inspector General for Audits

SUBJECT: AUDIT OF THE COMMITTEE TO REVIEW GENERIC  
REQUIREMENTS (OIG-09-A-06)

Attached is the Office of the Inspector General's (OIG) audit report titled, *Audit of the Committee to Review Generic Requirements*.

The report presents the results of the subject audit. Agency comments provided at the January 7, 2009, exit conference were incorporated into this report, as appropriate.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG followup as stated in Management Directive 6.1.

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at 415-5915 or Sherri Miotla, Team Leader, Nuclear Safety Audit Team, at 415-5914.

Attachment: As stated

## Electronic Distribution

Edward M. Hackett, Executive Director, Advisory Committee on Reactor Safeguards/Advisory Committee on Nuclear Waste and Materials  
E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel  
Karen D. Cyr, General Counsel  
John F. Cordes, Jr., Director, Office of Commission Appellate Adjudication  
Jim E. Dyer, Chief Financial Officer  
Margaret M. Doane, Director, Office of International Programs  
Rebecca L. Schmidt, Director, Office of Congressional Affairs  
Eliot B. Brenner, Director, Office of Public Affairs  
Annette Vietti-Cook, Secretary of the Commission  
Bruce S. Mallett, Deputy Executive Director for Reactor and Preparedness Programs, OEDO  
Martin J. Virgilio, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs, OEDO  
Darren B. Ash, Deputy Executive Director for Corporate Management and Chief Information Officer, OEDO  
Vonna L. Ordaz, Assistant for Operations, OEDO  
Timothy F. Hagan, Director, Office of Administration  
Cynthia A. Carpenter, Director, Office of Enforcement  
Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs  
Guy P. Caputo, Director, Office of Investigations  
Thomas M. Boyce, Director, Office of Information Services  
James F. McDermott, Director, Office of Human Resources  
Michael R. Johnson, Director, Office of New Reactors  
Michael F. Weber, Director, Office of Nuclear Material Safety and Safeguards  
Eric J. Leeds, Director, Office of Nuclear Reactor Regulation  
Brian W. Sheron, Director, Office of Nuclear Regulatory Research  
Corenthis B. Kelley, Director, Office of Small Business and Civil Rights  
Roy P. Zimmerman, Director, Office of Nuclear Security and Incident Response  
Samuel J. Collins, Regional Administrator, Region I  
Luis A. Reyes, Regional Administrator, Region II  
James L. Caldwell, Regional Administrator, Region III  
Elmo E. Collins, Jr., Regional Administrator, Region IV

---

## **EXECUTIVE SUMMARY**

---

### **BACKGROUND**

The Nuclear Regulatory Commission (NRC) established its Committee to Review Generic Requirements (CRGR) to help ensure that generic backfits imposed on NRC-licensees are appropriately justified based on NRC's regulations and backfit policy. Simplified, a backfit is a modification to a facility, or the procedures or organization required to operate the facility, due to a new or amended NRC regulation, rule, or interpretation. NRC considers backfitting as an inherent part of its regulatory process. According to agency guidance documents, for sound and effective regulation it is important that backfitting be conducted by a controlled and defined process.

In October 1981, the presiding NRC Chairman identified a need to better control the number and nature of backfit requirements imposed by NRC on its licensees. The Chairman further stipulated that a single, central point of control at NRC's highest operating level of management was needed, and in November 1981, NRC established the CRGR as its central backfit control. The CRGR's key implementing procedure for conducting generic backfit reviews is its Charter. The CRGR's mission, as identified in the Charter, includes ensuring that unintended backfits are not imposed or implied by proposed new or revised generic requirements for NRC-licensed power reactors and nuclear materials facilities, and that NRC-proposed actions are appropriately justified.

### **PURPOSE**

The objective of this audit was to determine if the CRGR adds value for the Executive Director for Operations' decisionmaking purposes and whether the committee's function is still needed.

### **RESULTS IN BRIEF**

The CRGR no longer functions as originally intended with respect to generic backfit reviews. Although NRC must still ensure that generic backfits are appropriately justified based on regulations and policy, the CRGR no longer performs the central role in this process. This is because the agency's processes have evolved which, in effect, resulted in other offices assuming some of the CRGR's duties. However, the agency has not developed overarching, agencywide guidance that describes its current backfit review process or reassessed what, if any, role the CRGR should play in the current process. As a result, the CRGR does not add

its full intended value as originally envisioned for backfit review and stakeholders do not fully understand NRC's backfit review process, including the CRGR's role. Moreover, without reassessing and documenting its current internal backfit review process, the agency cannot be assured that it is taking consistent or appropriate action with regard to backfit reviews and is taking the necessary steps to prevent unnecessary regulatory burden on NRC licensees.

#### **RECOMMENDATIONS**

This report makes two recommendations to the Executive Director for Operations. The recommendations appear on page 13 of this report.

#### **AGENCY COMMENTS**

At a January 7, 2009, exit conference, NRC senior managers, including CRGR members, agreed with the report's finding and recommendations. The agency subsequently decided not to provide formal comments. This final report incorporates informal comments provided by the agency, as appropriate.

## **ABBREVIATIONS AND ACRONYMS**

---

CFR	<i>Code of Federal Regulations</i>
CRGR	Committee to Review Generic Requirements
EDO	Executive Director for Operations
MD	management directive
NRC	Nuclear Regulatory Commission
OGC	Office of the General Counsel
OIG	Office of the Inspector General
P&PL	Policy and Procedures Letter

**[Page intentionally left blank.]**

## **TABLE OF CONTENTS**

---

EXECUTIVE SUMMARY .....	i
ABBREVIATIONS AND ACRONYMS.....	iii
I. BACKGROUND .....	1
II. PURPOSE.....	3
III. FINDING .....	4
THE CRGR NO LONGER FUNCTIONS AS ORIGINALLY INTENDED.....	5
RECOMMENDATIONS .....	13
IV. AGENCY COMMENTS .....	13
 <b><u>APPENDICES</u></b>	
A. SCOPE AND METHODOLOGY .....	15
B. CRGR EVOLUTIONARY TIMELINE .....	17
C. EVOLUTION OF AGENCY GENERIC BACKFIT REVIEWS TIMELINE.....	19



[Page intentionally left blank]

## I. BACKGROUND

---

The Nuclear Regulatory Commission (NRC) established its Committee to Review Generic Requirements (CRGR) in 1981 to help ensure that generic backfits<sup>1</sup> imposed on NRC-licensed power reactor facilities (and at a later date, certain nuclear materials facilities) were appropriately justified based on NRC's regulations and backfit policy. Simplified, a backfit is a modification to a facility, or the procedures or organization required to operate the facility, due to a new or amended NRC regulation, rule, or interpretation.<sup>2</sup> Backfitting<sup>3</sup> is the process by which NRC issues new or revised requirements or staff positions to its licensees. Backfitting is expected to occur and is an inherent part of the regulatory process.

NRC implements its backfit policy through multiple parts of Title 10 of the *Code of Federal Regulations* (CFR).<sup>4</sup> The first of these parts is in 10 CFR 50.109, commonly known as the "backfit rule." Other guidance is provided in agency documents, such as NUREG-1409, *Backfitting Guidelines*. Per NUREG-1409, for sound and effective regulation it is important that backfitting be conducted by a controlled and defined process. NRC's backfit review process is intended to provide for a systematic, disciplined review of new or changed staff regulatory positions to ensure that changes are justified and suitably defined before they are imposed on NRC licensees. According to NRC guidance, when developing proposals the staff is expected to:

- Assess the merits of emergent generic issues.
- Determine whether a proposed generic action is needed.
- Identify and analyze the consequences of alternative courses of action.

---

<sup>1</sup> Generic backfits apply to two or more nuclear power reactors or applicable materials facilities. Oversight responsibility for plant-specific backfits, which apply to a single reactor or fuel facility, falls to NRC office directors.

<sup>2</sup> Jay M. Gutierrez and Alex S. Polonsky, *Fundamentals of Nuclear Regulation in the United States*, Morgan, Lewis & Bockius LLP, Second Edition, Chapter 5, "Major Issues Associated With the Operation of Existing Nuclear Power Plants and the Licensing of Future Plants," Section 3, "Changes Due to an NRC Backfit Determination," page 80.

<sup>3</sup> 10 CFR 50.109 defines "backfitting" as the modification of, or addition to, systems, structures, or components of a facility; or to the procedures or organization required to operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previous NRC staff position.

<sup>4</sup> 10 CFR Part 50.109 and Part 52, including 52.39, 52.63, 52.98, 52.145, and 52.171 for nuclear power reactors and 10 CFR Parts 70.76, 72.62, and 76.76 for certain materials facilities as well as the provisions in 10 CFR Part 50.54(f), and the corresponding requirements in 10 CFR Parts 70, 72, and 76, and 10 CFR Part 2.204.

- Select a preferred alternative.
- Present a clear and well-documented explanation of why the NRC staff recommends the particular action.

Each proposal should also contain the sponsoring program office's position as to whether the proposal would modify, implement, relax, or reduce existing requirements or staff positions, thereby causing a potential backfit. Upon completion of the staff's review, all generic action proposals<sup>5</sup> must be submitted to the CRGR for review.

### Commission Identifies Need for Controls

In October 1981, the presiding NRC Chairman identified a need to better control the number and nature of requirements that NRC imposes as backfits on its licensees. Specifically, the Chairman cited a need to stop the flow of "conflicting or inconsistent directives and requests" placed on NRC licensees by the staff.<sup>6</sup> The Chairman further stipulated that a single, central point of control at NRC's highest operating level of management was needed to (1) review and coordinate the staff's communication with licensees, (2) manage and control NRC's requirements on licensees, and (3) ensure that all requirements issued or amended do, in fact, contribute effectively and significantly to the health and safety of the public. In November 1981, NRC established the CRGR as its central backfit control.

### CRGR Charter

The CRGR's key implementing procedure for conducting generic backfit reviews is its Charter, which was initially issued in 1982 and last officially revised in 1999. The CRGR's mission includes ensuring that unintended backfits are not imposed or implied by proposed new or revised generic requirements for NRC-licensed power reactors and nuclear materials facilities, and that NRC-proposed actions are appropriately justified. The Charter documents the committee's mission, scope of activities, and operating procedures. According to the Charter, each program office proposal will include a determination that the burden to be imposed on the licensees is justified in view of the potential safety significance of the issue to be addressed. Such justification must be based on the backfit provisions of NRC's regulations, Commission guidance and directives, applicable legislative acts, and Executive Orders.

---

<sup>5</sup> Generic action proposals are staff proposals developed to add or modify NRC regulations that have been identified as generic in nature.

<sup>6</sup> Memorandum for William Dircks, Executive Director for Operations, from Nunzio J. Palladino, Chairman, subject: *Reactor Requirements and Regional Office Reorganization*, dated October 8, 1981.

### CRGR Membership

According to the 1999 version of the CRGR Charter, committee membership includes a Chairman and representatives from various NRC offices, as appointed by the Executive Director for Operations (EDO). The current CRGR includes senior representatives from the Offices of Nuclear Regulatory Research; Nuclear Reactor Regulation; Nuclear Material Safety and Safeguards; Nuclear Security and Incident Response; New Reactors; and Federal and State Materials and Environmental Management Programs. The committee also includes a senior attorney from the Office of the General Counsel (OGC) and a rotating senior manager from one of NRC's four regional offices. Because committee participation is a collateral duty, NRC's budget does not include a separate allocation for the CRGR. However, the Office of Nuclear Regulatory Research currently designates 0.5 full-time equivalent to provide technical and administrative support to the CRGR.

## **II. PURPOSE**

---

The purpose of this audit was to determine if the CRGR (1) adds value for EDO decisionmaking purposes and (2) function is still needed. This audit was initiated in response to NRC Commission interest. Appendix A provides additional information regarding the audit's scope and methodology.

### III. FINDING

---

#### **The CRGR No Longer Functions As Originally Intended**

The CRGR no longer functions as originally intended with respect to generic backfit reviews. Although NRC must still ensure that generic backfits are appropriately justified based on regulations and policy, the CRGR no longer performs the central role in this process. This is because the agency's processes have evolved which, in effect, resulted in other offices assuming some of the CRGR's duties. However, the agency has not developed overarching, agencywide guidance that describes its current backfit review process or reassessed what, if any, role the CRGR should play in the current process. As a result, the CRGR does not add its full intended value as originally envisioned for backfit review and stakeholders do not fully understand NRC's backfit review process, including the CRGR's role. Moreover, without reassessing and documenting its current internal backfit review process, the agency cannot be assured that it is taking consistent or appropriate action with regard to backfit reviews and is taking the necessary steps to prevent unnecessary regulatory burden on NRC licensees.

#### **CRGR Was Originally Established To Serve As NRC's Central Generic Backfit Control Point**

When established, the CRGR was originally intended to serve as the agency's central control point and advisor to the EDO and staff regarding NRC-proposed generic backfit issues. Specifically, the CRGR was tasked to control the number and nature of NRC-imposed generic backfit requirements by assuring that agency actions were appropriate so as not to impose unnecessary burden on NRC's staff and licensees.

Per its Charter, to ensure that the staff properly identified and justified proposed generic backfits, the CRGR is to review, among other things,<sup>7</sup> new and revised regulatory requirements, generic correspondence, and regulatory guides<sup>8</sup> related to nuclear reactors and selected nuclear materials and fuel cycle facilities. The Charter further states that a formal CRGR review is to be "the ultimate check in NRC's backfit management to

---

<sup>7</sup> The CRGR will also review selected NRC staff guidance related to licensing, inspection, assessment, and enforcement.

<sup>8</sup> Except those requiring immediate action by the licensing office because they may involve adequate protection issues.

ensure that the internal backfit control processes work” before imposing changes on NRC’s licensees. According to the previous CRGR Chairman and current staff, a formal CRGR review involves the full committee reviewing, meeting, and voting on submitted backfit issues.

Additionally, the Charter states that the committee’s primary responsibilities include recommending to the EDO either the approval or disapproval of proposed generic actions, guiding and assisting the program offices in implementing the Commission's backfit policy, and reviewing NRC's administrative generic backfit controls to determine if the controls are sufficient and the staff guidance is comprehensive and clear.

### **The CRGR No Longer Functions As Originally Intended, Although the Requirement To Review for Generic Backfits Remains**

The CRGR no longer functions as originally intended with respect to generic backfit reviews. Although NRC must still ensure that generic backfits are appropriately justified based on regulations and policy, the CRGR no longer performs the central role in this process.

#### **CRGR No Longer Functions As Originally Intended**

As originally intended, the CRGR served for many years as NRC’s central control point for reviewing program office proposals to make approval or disapproval recommendations of generic backfit actions to the EDO. However, since the 1990s, the committee has not functioned in the same manner. [Appendix B reflects a timeline of CRGR’s evolving role.]

During its initial years, the CRGR members and a technical support staff served as the central reviewers of all generic action proposals submitted to them by program offices. Specifically, the CRGR members, with assistance from six full-time senior technical experts, formally reviewed all program office proposals to determine the completeness, adequacy, and sufficiency of the analysis, details, and technical data provided by the staff in support of the proposed requirements changes. The CRGR then submitted written statements to the EDO justifying the findings of its formal reviews. These statements provided a clear foundation of the CRGR’s recommendations to the presiding EDO to approve, disapprove, or suggest modifications to the submitted proposals. Additionally, to assist the program offices with implementing the backfit policy, the CRGR reviewed the sufficiency of the staff’s cost-benefit analyses and probabilistic risk analyses when such analyses were required by the agency’s backfit policy.

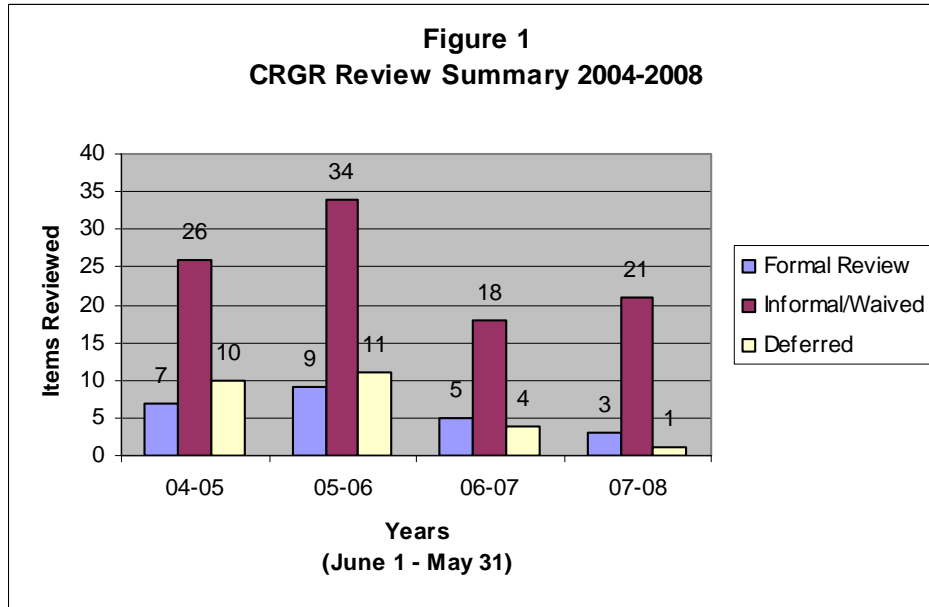
The current CRGR's functions differ significantly from the past. First, the CRGR no longer serves as the central control point for conducting technical reviews of all program office proposals to support recommendations to the EDO. Instead, the primary responsibility for ensuring proper backfit considerations belongs to each sponsoring office<sup>9</sup> which, in conjunction with OGC and other program offices as necessary, conducts in-depth backfit technical and legal reviews. The proposals are submitted to the CRGR for review only after these multi-office reviews are completed.

Furthermore, the majority of all CRGR reviews are now informal, although the Charter does not provide for this type of review. Informal reviews do not result in a recommendation to the EDO that is based on a formal committee review. Instead, informal reviews of the program office proposals referenced in Figure 1 consisted of the CRGR Chairman and support staff reviewing the submittals, summarizing the issues, and determining if a formal review was needed. Of the 25 program office proposals submitted between June 1, 2007, and May 31, 2008, only three were considered by the CRGR members for formal review.<sup>10</sup> Informal reviews of the remaining 22 submittals resulted in 21 proposals waived with or without comment and one deferred. Per the CRGR support staff, waived means that the CRGR Chairman's informal review determined there was no need for a formal CRGR review, and deferred means that the CRGR will reserve comment on the proposal until after the public comment period expires.

---

<sup>9</sup> NRC managers noted that although each sponsoring office has always been responsible for assuring compliance with applicable backfitting requirements, and OGC has always been involved in reviewing agency proposals, the offices are now more effective and robust in their plant-specific and generic backfitting compliance activities.

<sup>10</sup> The three formal reviews each subsequently resulted in a CRGR endorsement.



Source: OIG-generated

In addition to the infrequent use of formal reviews, current CRGR reviews, both informal and formal, are now more procedural than substantive. Recent CRGR Chairmen said that proposals were reviewed to ensure that the staff had properly complied with the process requirements of the backfit rule but not to assess the technical bases of the proposals. In other words, a review would typically ensure only that the required supporting documents were provided and included an appropriate justification for why the proposal does or does not represent a backfit.

Additionally, the CRGR does not effectively follow up on its own recommendations to improve the agency's generic backfit process. One of the CRGR's responsibilities is to assess the NRC's administrative controls over backfits. To this end, the CRGR's Charter directs the committee to periodically review NRC's control mechanisms in place for backfit reviews. In CRGR's last assessment,<sup>11</sup> performed in 2003, the committee identified several areas related to the agency's backfit process that needed improvement and made recommendations to address the weaknesses. However, the CRGR did not retain followup responsibility for all of its recommendations and the committee's support staff could not provide documentation that explicitly states the status of the CRGR's recommendations.

<sup>11</sup> The CRGR's next 5-year assessment was due in 2008. However, with Commission approval, the CRGR put the next assessment into abeyance pending receipt of OIG's audit report.



## **The Requirement To Review Generic Backfits Remains**

The requirement to review program office proposals for backfit implications remains. Specifically, there is still a need for the agency to review proposed generic changes or modifications to ensure that any potential backfits are appropriately justified based on NRC regulations and policy prior to imposition on NRC's licensees. Consistent with the intent of the regulations to avoid placing unnecessary burden on NRC licensees, agency managers and external stakeholders said that the agency's backfit reviews of generic proposals are necessary to ensure backfits are appropriately characterized and warranted. Additionally, according to a former EDO, having a high-level, disciplined backfit review process provides another level of support for NRC decisions and actions.

### **Generic Backfit Reviews Have Evolved Without a Defined Agencywide Process**

The CRGR no longer performs the central role in the backfit review process because the agency's processes have evolved. Currently, other offices focus more effort on backfit compliance and interoffice communications on backfitting issues. This evolution, in effect, resulted in these offices assuming some of the CRGR's duties. In contrast to a time when the CRGR served as the central agency control point for reviewing proposed generic backfits, the agency now relies on frequent agency office interactions, early stakeholder involvement in the review process, and multiple sources of backfit guidance to control NRC-imposed backfits. However, the agency has not developed overarching, agencywide guidance that describes its current backfit review process or reassessed what, if any, role the CRGR should play in the current process.

### **Frequent Agency Office Interactions**

In the 1980s, the agency's program offices did not commonly communicate information about generic action proposals under development to other offices or submit them for multiple office reviews. This lack of interaction occasionally resulted in unintended conflicts with the proposed actions of another NRC office. Therefore, the CRGR role was important as a central point of contact in the backfit review process during that period. Today, in contrast, interoffice sharing of information during the development process of proposed actions is a common practice. For example, the agency's senior managers routinely meet to discuss ongoing agency actions and, according to the agency, the interoffice communications regarding backfitting issues have also become more effective and robust. Additionally, other organizations such as the Office of Nuclear Regulatory Research's Generic Issue Review Panel and

the Office of Nuclear Reactor Regulation's Generic Communication and Power Uprate Branch now exist to perform reviews of generic issues for backfit implications. As a matter of function, both groups review documents prepared by their own offices, as well as documents sponsored by other agency offices.

Further, a headquarters legal review early in the agency's backfit review process is now considered a key control. NRC requires its program offices to obtain an OGC review of draft generic proposals before issuing the drafts for stakeholder comment. This legal review is intended to ensure that the staff's proposals either include the required justification and analysis for a proposed backfit or the appropriate reason why the proposal does not represent a backfit.

Thus, prior to CRGR's involvement in the process, these multiple program office technical reviews, along with OGC's legal role in the process, enhance the agency's ability to properly identify and justify backfits in accordance with its requirements. For example, the Commission recently approved the staff's request to remove the CRGR from the review of current and future proposals pertaining to new rules.<sup>12</sup> In justifying this vote, the NRC Chairman cited an extensive agency concurrence process that typically allows all agency offices to concur prior to the CRGR review and provides sufficient opportunity for the agency's experts to identify any potential backfit issues.

#### Early Stakeholder Involvement

Early stakeholder involvement helps to highlight previously unidentified backfit issues. As a result of NRC's efforts to be more open and transparent in its processes, external stakeholders such as industry representatives and the general public are now routinely afforded an opportunity through *Federal Register* notices to comment on many NRC draft documents. As noted in a 1986 revision to the CRGR's Charter, staff may interact with the public to obtain preliminary information on proposed actions and the CRGR could seek additional public comments, if desired. In contrast, by 2001, the agency had documented the value of early public involvement and directed staff to address which public participation

---

<sup>12</sup> Commission Staff Requirements Memorandum - SECY-07-0134 - *Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan*, dated October 25, 2007.

techniques would be included in their proposed actions. Furthermore, according to senior NRC managers, publishing documents in draft form for public comment serves as a valuable control mechanism for identifying potential backfit issues.

### Multiple Sources of Backfit Guidance

Over the past 8 years, the agency has developed various guidance documents, including a number of agencywide management directives,<sup>13</sup> to assist staff in identifying backfit issues when developing generic proposals. In addition, individual program offices developed and implemented guidance on internal backfit reviews specific to their areas of responsibility.<sup>14</sup> (See Appendix C for a timeline for the evolution of agency generic backfit reviews, including additional guidance sources.)

### NRC Has Not Reassessed CRGR Role or Developed Overarching Guidance

Although the agency's processes have evolved for evaluating program office proposals for backfit implications, the agency has not developed overarching, agencywide guidance that describes the current process or reassessed what, if any, role the CRGR should play in the current process.

In 1996, the Commission was asked, via SECY 96-032,<sup>15</sup> to approve a major revision to the CRGR Charter to reflect changes in policy and committee practices. One revised practice included for approval was the CRGR's move towards more frequent use of informal reviews in lieu of the once-standard formal committee reviews. As proposed, the CRGR support staff would review proposals submitted by NRC program offices and make recommendations to the committee members on the need for further review. The Commission responded to SECY 96-032 in a Staff

---

<sup>13</sup> Management Directive (MD) 6.3, *The Rulemaking Process*, dated July 31, 2001, revised June 2005; MD 6.4, *Generic Issues Program*, dated December 2001, revised July 2005; and MD 8.4, *Management of Facility-specific Backfitting and Information Collection*, dated October 28, 2004.

<sup>14</sup> The Office of Nuclear Reactor Regulation issued office instructions LIC-400, *Procedures For Controlling the Development of New and Revised Generic Requirements For Power Reactor Licensees*; and LIC-202, *Managing Plant-Specific Backfits and 50.54(f) Information Requests*. Similarly, the Office of Nuclear Material Safety and Safeguards developed Policy and Procedures Letters (P&PL) 1-82, *10 CFR Part 70, Backfit Guidance*, and 1-84, *10 CFR Part 72, Backfit Guidance*.

<sup>15</sup> SECY-96-032, *Charter of the Committee To Review Generic Requirements (CRGR) – (Proposed Revision 6)*, dated February 9, 1996.

Requirements Memorandum; however, the response focused on other matters and did not directly address the request to incorporate the more frequent use of informal reviews into the revised Charter. Even though the Commission did not issue any other communication regarding this practice, the committee instituted a process where the majority of submitted program office proposals now receive only an informal review.

The informal review process varies depending on the presiding committee Chairman, but proposals are primarily reviewed by the CRGR Chairman and the CRGR support person. According to the new CRGR Chairman, his informal process includes providing a copy of the proposals to the other CRGR members. If the CRGR Chairman does not recommend a formal review, no further review is performed. However, if any committee member disagrees with the CRGR Chairman's determination, the need for a formal review is reconsidered.

Although the agency's processes for reviewing program office proposals for backfit implications have evolved, NRC has not formally reviewed and documented its current process or revisited the role of the CRGR to ensure that controls are in place to verify that generic backfits are appropriately justified.

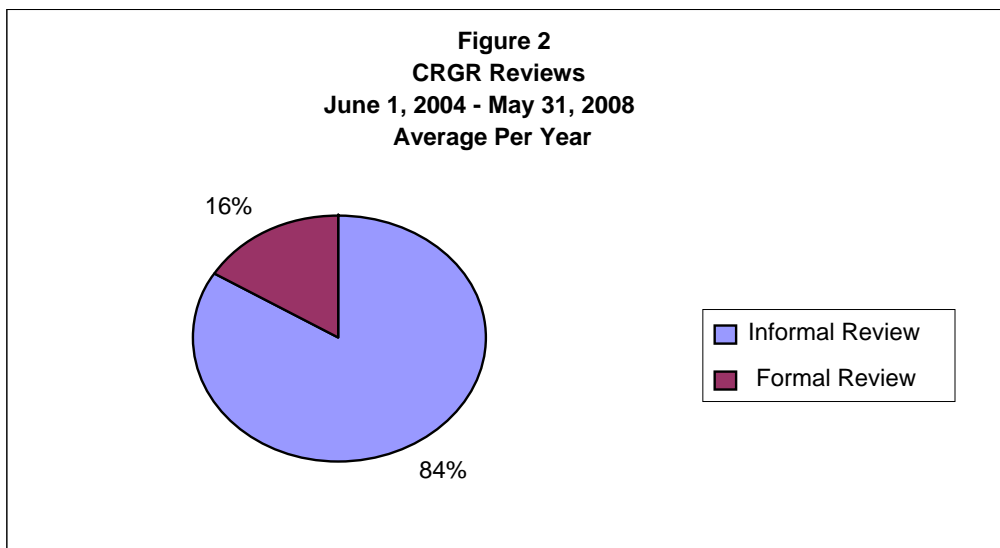
### **Evolution of Agency Backfit Reviews Raises Questions About CRGR's Value**

The CRGR does not add its full intended value as originally envisioned for backfit review and stakeholders do not fully understand the NRC's backfit review processes, including the CRGR's role. Moreover, without reassessing and documenting the current backfit review process, the agency cannot be assured it is taking appropriate and consistent action with regard to backfit reviews and is taking the necessary steps to prevent unnecessary regulatory burden for licensees.

According to the former EDO, if the agency does not adapt to meet the evolving agency backfit controls processes, the NRC may not be utilizing the staff to its full value. Because the agency's backfit review processes have evolved, the CRGR no longer serves as the agency's central control on backfit issues thereby diminishing the committee's value as an advisor to the EDO and staff. For example, the CRGR's frequent use of informal reviews, which are outside the scope of its Charter and typically do not result in a formal committee review, raises questions regarding the value of CRGR recommendations to the EDO on proposed backfit actions.

Furthermore, both NRC staff and external stakeholders stated that they do not fully understand what the CRGR does, including the committee's involvement in the agency's backfit review process. For example, some agency managers thought that the CRGR still performed many of the

functions prescribed in its 1999 Charter, such as conducting formal, technical backfit reviews of draft generic proposals, and were unaware of the CRGR's predominant use of informal reviews. In particular, the previous EDO assumed that recommendations received from the CRGR, whether as a result of a formal or informal review, were based on at least a minimal review of the submitted proposals by the full committee. His assumption that the full committee reviewed each proposal in some manner prior to his receiving a positive CRGR recommendation made his approval of program office proposals more "comfortable." In fact, EDO decisions rendered on more than 80 percent of the potential generic backfits from mid-2004 through mid-2008 were not based on a formal committee review as expected (see Figure 2).



Source: OIG-generated

Additionally, external stakeholders expressed confusion on how NRC backfit decisions are made or who actually makes them. Industry representatives commented on the lack of transparency in the agency's backfit decisions, including the lack of visibility into what happens inside the NRC with respect to how the CRGR deliberates and/or reaches its conclusions. Specifically, they were skeptical that CRGR undertakes a rigorous or consistent review of submitted proposals since the committee does not publicly provide any detailed information as to how it arrived at its decisions. Absent a well-defined and well-communicated agencywide backfit review process, there is a real potential for stakeholders to lose confidence in the NRC's ability to ensure that backfits are imposed according to the relevant rules and regulations.

**Recommendations:**

OIG recommends that the Executive Director for Operations:

1. Develop, document, implement, and communicate an agencywide process for reviewing backfit issues to ensure that generic backfits are appropriately justified based on NRC regulations and policy.
2. Determine what, if any, role the CRGR should perform in NRC's backfit review process, to include whether the CRGR function is still needed.

**IV. AGENCY COMMENTS**

---

At a January 7, 2009, exit conference, NRC senior managers, including CRGR members, agreed with the report's finding and recommendations. The agency subsequently decided not to provide formal comments. This final report incorporates informal comments provided by the agency, as appropriate.

[Page intentionally left blank]

## SCOPE AND METHODOLOGY

This audit was initiated in response to NRC Commission interest. The objectives of this audit were to determine if the CRGR (1) adds value for EDO decisionmaking purposes and (2) if the CRGR's function is still needed. To address the audit objectives, OIG reviewed the CRGR's functions and how the CRGR fits into NRC's overall backfit review processes. Additionally, OIG analyzed program documents, and reviewed relevant management controls, related documentation from internal and external sources, and Federal guidance. Some of the key documents reviewed include:

- *Code of Federal Regulations*, Title 10, Part 50.109 and Part 76.76.
- The CRGR Charter, Revision 1 through Revision 7.
- NUREG-1409, *Backfitting Guidelines*.
- The General Accounting Office, *Standards for Internal Control in the Federal Government*.
- Periodic Assessments of the Activities of the CRGR dated 2004 through 2007.
- CRGR Report, *NRC Administrative Controls Relating to Backfit*, May 2003.
- Management Directives
  - MD 6.3, *The Rulemaking Process*
  - MD 6.4, *Generic Issues Program*
  - MD 8.4, *Management of Facility-specific Backfitting and Information Collection*.
- Office of Nuclear Reactor Regulation's Office Instructions LIC-202, LIC-400 and LIC-503, and Office of Nuclear Material Safety and Safeguards' Office Instructions P&PLs 1-20, 1-82, and 1-84.

Additionally, auditors attended an informal CRGR meeting and conducted interviews with agency and industry individuals, including:

- Former and present Executive Directors for Operations.
- Former and current CRGR Chairmen and members.
- NRC senior management and staff from:

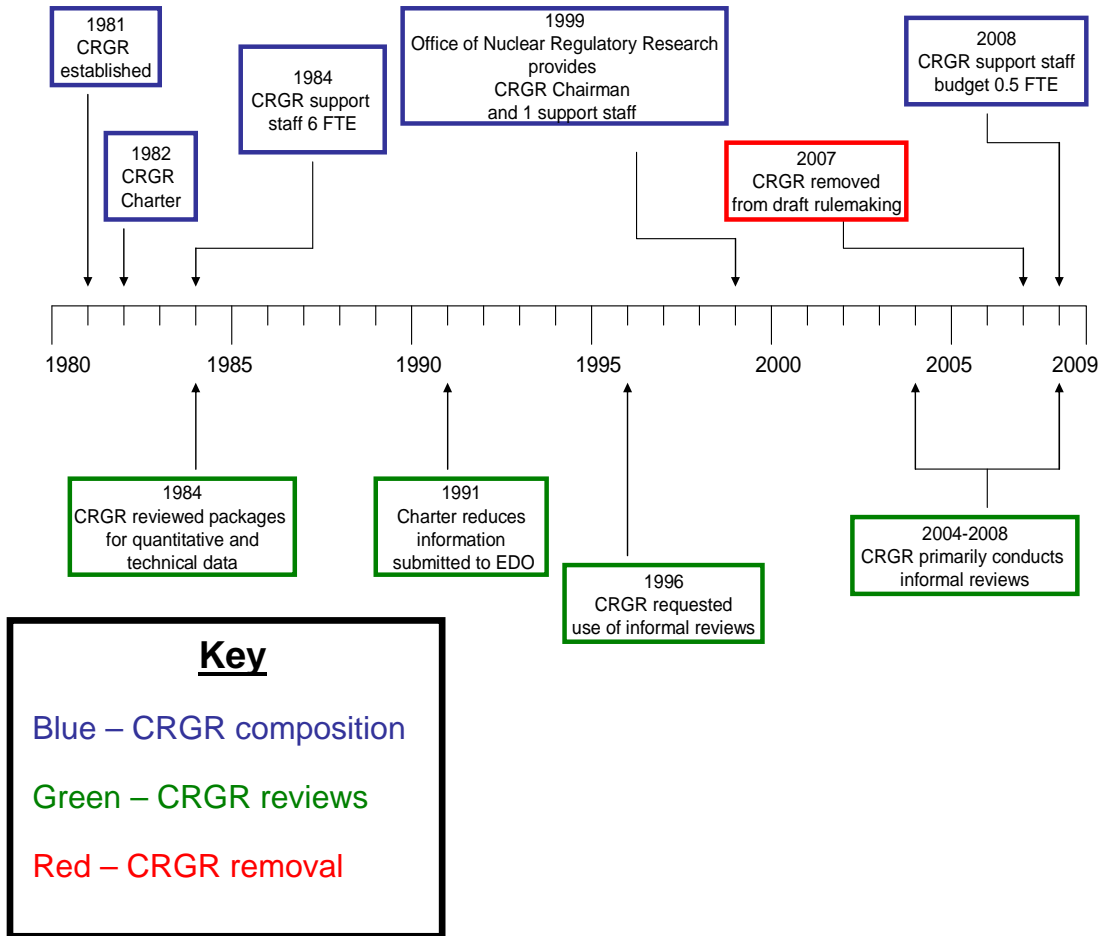


- Headquarters, Rockville, Maryland
  - Region II, Atlanta, Georgia.
- OGC members at NRC Headquarters.
- External stakeholders from:
- The Union of Concerned Scientists
  - The Nuclear Energy Institute.

OIG conducted this audit between May 2008 and August 2008 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

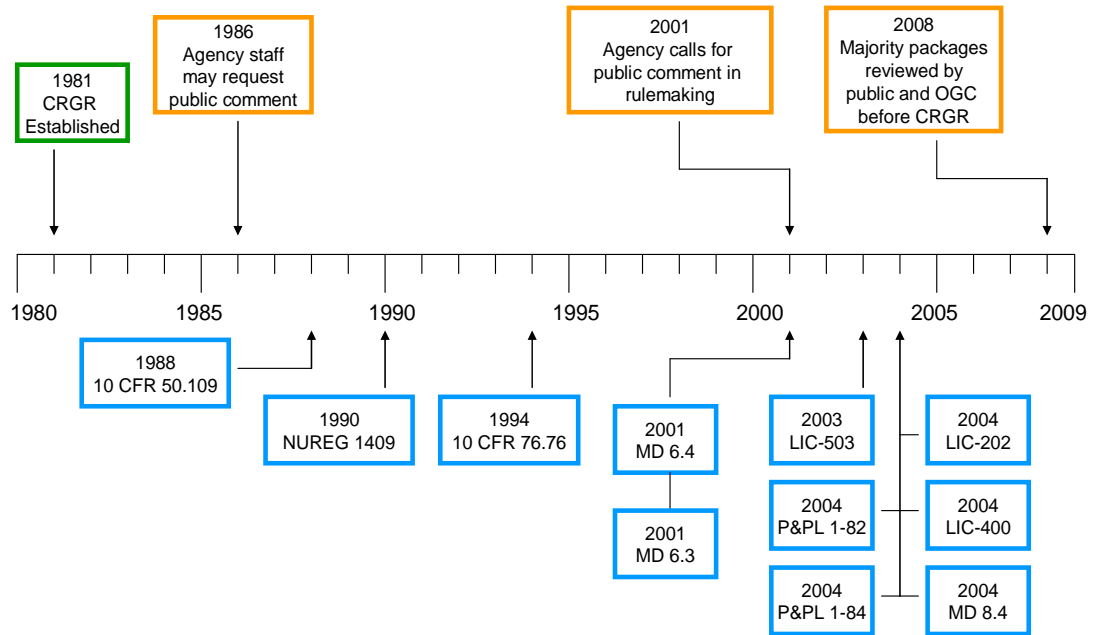
Major contributors to this report are Sherri Miotla, Team Leader; Catherine Colleli, Audit Manager; Timothy Wilson, Management Analyst; and Andrea Ferkile, Management Analyst.

### CRGR Evolutionary Timeline 1981-2008



[Page intentionally left blank.]

### Evolution of Agency Generic Backfit Reviews Timeline 1981-2008



**Key**

Blue – Agency guidance

Green – CRGR establishment

Orange – Public/OGC involvement