

July 16, 2008

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki

FROM: R. W. Borchardt /RA/ Martin J. Virgilio for
Executive Director for Operations

SUBJECT: REQUEST FOR AN EXTENSION OF DISCRETION FOR THE
INTERIM ENFORCEMENT POLICY FOR FIRE PROTECTION
ISSUES ON 10 CFR SECTION 50.48(c), "NATIONAL FIRE
PROTECTION ASSOCIATION STANDARD NFPA 805"

I request Commission approval to publish a *Federal Register* Notice announcing a revision to the U.S. Nuclear Regulatory Commission (NRC) Enforcement Policy. The revision concerns the transitioning of plants to the risk-informed, performance-based, alternative fire protection guidance of Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.48(c), "National Fire Protection Association Standard (NFPA) 805." This revision will extend the enforcement discretion period for licensees who have demonstrated substantial progress toward completion of their NFPA 805 transition efforts.

On June 16, 2004, the NRC published a final rule in the *Federal Register* amending 10 CFR 50.48, "Fire Protection" (69 FR 33536). This rule became effective July 16, 2004, and allows licensees to adopt 10 CFR 50.48(c), a risk-informed, performance-based alternative to then current fire protection requirements in 10 CFR 50.48(b). 10 CFR 50.48(c) endorses NFPA 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants," 2001 Edition (with limited exceptions stated in the rule language).

Also on June 16, 2004, the NRC revised its Interim Enforcement Policy (69 FR 33684) to provide enforcement discretion during a "transition" period. The policy change included discretion provisions to address: (1) noncompliances identified during the licensee's transition process; and (2) existing noncompliances that licensees could reasonably correct under NFPA 805. The discretion period would start when the licensee informs the NRC of the transition start date in a letter of intent (LOI) to transition to NFPA 805. The discretion period would remain in effect for up to 2 years for the licensee to submit to the NRC a License Amendment Request (LAR) to transition to NFPA 805; the discretion period would continue until the NRC dispositioned the LAR. In order to obtain discretion for existing noncompliances, the policy required the licensee to submit its LOI by January 15, 2005.

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On July 7, 2004, the Nuclear Energy Institute (NEI) requested that the NRC modify the Interim Enforcement Policy by extending the January 15, 2005, LOI due date for obtaining a discretion period for existing noncompliances. In its letter, NEI contended that the licensees needed additional time to plan for transition within their next budget cycle and to make decisions about adopting NFPA 805. In response, the NRC extended the LOI submittal date. Licensees who submitted their LOIs by December 31, 2005 (70 FR 2662) could receive discretion for existing fire protection noncompliances.

Duke Power and Progress Energy were the first utilities to submit a LOI to transition to 10 CFR Section 50.48(c) (for the Oconee Nuclear Power Station and Shearon Harris Nuclear Power Station, respectively). The NRC accepted both Oconee and Shearon Harris as pilot plants, and their License Amendment Requests (LARs) were submitted in May 2008.

By the deadline of December 31, 2005, the NRC had received LOIs from 36 units. Many of the licensees requested three or more years of enforcement discretion to conduct their transitions. The basis for the extension included the following: (1) the need for more time to evaluate their existing fire analysis; (2) a lack of resources; (3) the need for more time to incorporate lessons learned; and (4) the need for more time to develop fire probabilistic risk assessments (PRAs). The NRC considered the requests and on April 18, 2006, revised the Interim Enforcement Policy to extend the enforcement discretion period from 2 to 3 years (71 FR 19905).

On February 2, 2007, NEI submitted a request for additional discretion for sites transitioning to NFPA 805 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML070460550). NEI stated that the extension of the enforcement discretion period would allow an orderly transition process (at the time of the NEI letter, 42 units had committed to transitioning to 10 CFR 50.48(c)). NEI also recommended that the NRC stagger the LAR submittals into four groups—one group every 6 months. The first group would begin 6 months after the NRC approves the first pilot plant safety evaluation report (SER).

NEI stated that transitioning licensees are compelled to complete portions of the transition in advance of the pilot plants due to the current 3-year enforcement discretion period. This could result in creating substantial risk of rework and inconsistency among the transitioning licensees. The following four issues formed the basis for NEI's request that the staff reexamine the Interim Enforcement Policy:

- 1) Pilots Schedule vs. Nonpilot Deadline

The pilot plants are generating a substantial knowledge base. Joint NRC and industry processes are in place to support a successful pilot effort and a success path for industry to follow. These include regular pilot plant observation visits, regular public meetings to discuss progress and issues, regular public meetings to discuss frequently asked questions (FAQs) regarding transition to NFPA 805, and joint NRC-industry workshops to discuss NFPA 805 transition issues. However, the schedule for the two pilot plant LAR submittals and staff review with the present enforcement discretion deadline compels some nonpilot licensees to complete portions of the transition before the pilot program is complete. This poses a risk of rework and inconsistency for NFPA 805 nonpilot submittals and programs.

2) Consensus PRA Standard

The NRC participated with other stakeholders to develop the American Nuclear Society (ANS) fire PRA standard, published in November 2007. Currently the ANS fire PRA standard is being folded into the combined American Society of Mechanical Engineers (ASME) PRA standard. NRC endorsement of the combined standard in Regulatory Guide (RG) 1.200, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities," is scheduled for December 2008. NEI noted that this is a deviation from the original schedule. As such, many licensees transitioning would not have a final, NRC-endorsed fire PRA standard to support their fire PRA development effort. To address this issue, on March 18, 2008, the staff issued a publicly-available memorandum (ADAMS Accession No. ML080250107) that provides NRC staff major positions on the fire PRA aspects of the combined ASME PRA standard.

3) Availability of Fire PRA Expertise

Development and peer review of fire PRAs is a resource and time-intensive process. Internal events PRA resources are interrelated with the fire PRA, and these resources are also occupied with the implementation of NRC RG 1.200. Industry estimates peak loading for PRA work on internal events and the fire PRA will occur in 2009.

4) Timely Reviews of NFPA 805 LARs

At the current schedule, 20 nonpilot units will submit their LARs by the end of the year. NEI expressed concern that the additional resource burden on the NRC staff was too great to provide timely and effective LAR reviews.

The staff anticipates having sufficient resources to accomplish the task within the licensing action timeliness goals of 96% of all licensing actions being complete within 1 year, and 100% being complete within 2 years, as stated in NRR Office Instruction LIC-101. As stated in the existing enforcement policy, discretion will continue to be applied while the NRC staff reviews the NFPA 805 LAR.

Nuclear safety is the first consideration in any request for additional enforcement discretion. NRC requires transitioning licensees to fully maintain their approved fire protection program. Transitioning licensees must address all nonconforming conditions with adequate compensatory measures to assure fire safety. Throughout the transition process, the NRC will continue to inspect the licensees to ensure that they maintain their existing fire protection program until transition is complete. The agency will continue to apply normal inspection and enforcement to all plants that are not actively transitioning to 10 CFR 50.48(c).

The staff recommends extending the discretion window six months past the date of the safety evaluation approving the second pilot plant LAR review. Acceptance review to evaluate the completeness of the two pilot plant applications is ongoing. Final review schedules will be established following completion of the acceptance reviews. As described in the July 15, 2008 Closure Plan for Key Fire Protection Topics (ADAMS Accession No. ML081970473), the staff anticipates a nine month review period for a high quality complete pilot application. This six month enforcement discretion window would allow nonpilot licensees time to review pilot plant safety evaluations and apply lessons learned to their own LAR submittals. The NRC would grant this additional discretion extension on a case-by-case basis and to those licensees who have demonstrated substantial progress toward completion of their NFPA 805 transition and who will continue to maintain and enhance fire safety at their facilities.

Therefore, I recommend that the Commission approve publication of a *Federal Register* Notice (enclosed) announcing the revision to the Enforcement Policy to extend the enforcement discretion period 6 months past the date of the safety evaluation approving the second pilot plant LAR review.

SECY, please track.

Enclosure: As stated

cc: SECY
OGC
OCA
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CFO

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