



NUCLEAR ENERGY INSTITUTE

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August 28, 2001

Mr. John N. Hannon  
Chief, Plant Systems Branch  
Office of Nuclear Reactor Regulation  
Mail Stop O11-A11  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**SUBJECT:** NFPA 805 Rulemaking

**PROJECT:** 689

Dear Mr. Hannon:

We understand that the NRC staff will conduct a public meeting on August 30, 2001, to resolve remaining issues concerning the staff's performance-based fire protection rulemaking. These issues, discussed in three prior meetings, NEI's letter of March 23 and your letter of July 31, are listed below and discussed in more detail in Enclosure 1. We look forward to resolving these issues and discussing our proposed schedule (Enclosure 2) for the development of implementing guidance.

The issues are as follows:

1. Specific language in the rule (in the form of an exception to NFPA 805 Section 3-1) to allow the use of performance-based methods in NFPA 805 Section 3.
2. Specific language in the rule that docketed licensing bases take precedence over the provisions of NFPA 805 Section 3.
3. Provision for NRC review of licensee proposals for the use of specific performance-based methods in NFPA 805 Section 3 without the direct involvement of the NFPA Technical Committee for Nuclear Facilities in the regulatory review process.

We look forward to the early resolution of these issues and beginning the implementation of the rulemaking process.

Sincerely,

A handwritten signature in black ink that reads "Alex Marion". The signature is written in a cursive, flowing style.

Alex Marion

## Proposed Changes

During the meeting on June 6, NEI proposed the following language for Section 3-1, and recommended that this language be stated explicitly in the rule:

*“Performance-based approaches acceptable to the NRC may be applied to the fire protection program elements and minimum design requirements in this chapter. Fire protection elements described in the existing **docketed** licensing basis take precedence over the requirements contained herein. If **docketed** [delete “previously approved”] licensing bases do not address specific fire protection program elements and design requirements in this chapter, performance-based approaches may be applied to these elements and requirements as described above.”*

This statement was a slight modification to the language recommended in NEI’s letter of March 23. The modification was intended to address NRC concerns expressed in earlier meetings.

### Recognition of Performance-Based Approaches

The current language of NFPA 805 Section 3-1 specifically prohibits the use of performance-based methods in the application of Section 3. It states,

“This chapter contains the fundamental elements of the fire protection program and specifies the minimum design requirements for fire protection systems and features. These fire protection program elements and minimum design requirements shall not be subject to the performance-based methods permitted elsewhere in this standard.”

It is appropriate to specify the fundamental elements of a fire protection program as stated in the standard, but these can be addressed as readily by performance-based methods as by the prescriptive methods.

NRC’s objection to the industry proposal, as stated in your letter of July 31, indicated that the staff will support the use of these methods for Chapter 3 elements when they “have been validated and approved for use in nuclear power plant applications” in accordance with Section 1-7 of NFPA 805. We agree that NRC approval of specific methods is appropriate (see the proposed industry language above), but there must be a general recognition in the rule that these methods are acceptable. The current language prohibiting these methods does not provide an appropriate environment for the submittal of specific performance-based methods. And, it is not appropriate to create this recognition only in the implementing guidance. Rather, specific language must be provided in the rule.

### Allowance for Previously Approved Alternatives

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The current language of NFPA 805 Section 3-1 states:

“Previously approved alternatives from the fundamental protection program attributes of this chapter by the AHJ take precedence over the requirements contained herein.”

Limiting this provision to “previously approved” alternatives creates a murky situation for licensees considering the adoption of this alternative licensing basis. SERs often provide very general approvals without addressing the specific features of the programs. For this reason, it is not uncommon for a licensee to understand that an SER addresses certain program features and for NRC inspectors to determine, long after the SER was issued, that it doesn’t. It can therefore be very unclear as to which program features have been “previously approved” and which ones haven’t.

The proposed industry language focuses on docketed licensing basis information rather than previous NRC approvals. This has three advantages:

1. The language of docketed submittals is frequently far more specific than the SER as to the program features included. Confusion over the specific nature of program features is much less likely.
2. The NRC has the opportunity to review all docketed information even if it does not provide specific approvals.
3. The docketed information represents licensee commitments to NRC to carry out certain actions as part of the docketed information. These commitments are always subject to NRC inspection and enforcement. Consequently, NRC maintains the ability to inspect and enforce these commitments at any time, under the new licensing basis as under the old one.

#### Role of NFPA Committees

You stated in your letter of July 31,

“Performance-based alternatives to the specified NFPA codes and standards in NFPA 805 should be presented to the responsible NFPA technical committee for their consideration for incorporation into the specific standard, this would obviate the need for deviations from the requirements in NFPA 805, reducing unnecessary burdens on both the industry and the staff for those alternatives.”

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The involvement of NFPA technical committees in the regulatory process is not appropriate. Once the NRC adopts NFPA 805 by rulemaking, licensee proposals for changes or exceptions should be submitted to, and acted upon by, the NRC.

Involving an NFPA technical committee in the regulatory process subjects that process to a variety of interests represented on the committee that are unrelated to licensee and regulatory responsibilities.

It is certainly appropriate for anyone to propose changes to NFPA 805, or to other standards referenced by NFPA 805, to the cognizant NFPA committee, and for NRC to determine whether these changes should be reflected in the regulation. However, this should be treated separately from a licensee's proposals to change its licensing basis, which is a matter solely between the licensee and NRC.

## Preliminary Schedule for Development of Implementing Guidance for Adoption of NFPA 805

We propose the following preliminary schedule for developing implementing guidance for the proposed rulemaking to adopt NFPA 805. This schedule begins (T=0) when current issues are resolved and industry agrees to support the rulemaking process.

Time Reference	Possible Date	Milestone
T = 0	September 17, 2001	Resolution of current issues and industry agreement to support rulemaking.
T + 4 weeks	October 15, 2001	NRC provides any additional regulatory guidance to industry on format, content, or process for developing implementing guidance.
T + 12 weeks	December 10, 2001	Industry provides a detailed draft <u>outline</u> of implementing guidance. The outline addresses stated NRC format and content guidance and provides an overview of proposed industry guidance positions.  A public meeting held to present the outline.
T + 18 weeks	January 21, 2002	NRC provides comments on proposed outline.  A public meeting is held to discuss comments.
T + 24 weeks	March 4, 2002	NRC and industry complete the process of resolving issues on outline. If agreement is achieved, industry will begin development of the full implementing guidance document. If significant disagreements remain, industry will not begin implementation guidance until resolution is complete.  Public meetings are held as necessary to address comments.
T + 32 weeks	April 29, 2002	Industry provides a status report on the guidance development at public meeting.
T + 40 weeks	June 24, 2002	Industry provides a status report on the guidance development at public meeting.
T + 48 weeks	August 19, 2002	Industry submits a draft implementation guidance document to NRC.  A public meeting is held to present and discuss details of the draft implementing guidance.
T + 60 weeks	November 11, 2002	NRC provides comments on guidance document. Public meetings are held as necessary to address comments.
T + 67 weeks	December 30, 2002	Comments and issues are resolved; NEI issues the guidance document. Public meetings are held as necessary to address comments.