

March 15, 2002

MEMORANDUM TO: Cynthia Carpenter, Program Director
Policy and Rulemaking Program
Division of Regulatory Improvement Programs, NRR

FROM: Peter C. Wen, Project Manager */RA/*
Policy and Rulemaking Program
Division of Regulatory Improvement Programs, NRR

SUBJECT: SUMMARY OF FEBRUARY 26, 2002, MEETING WITH NUCLEAR
ENERGY INSTITUTE ON IMPLEMENTING GUIDANCE FOR NFPA 805

On February 26, 2002, Nuclear Regulatory Commission (NRC) staff met with representatives of the Nuclear Energy Institute (NEI) and industry to continue discussion of NEI's proposed outline of guidance for implementation of National Fire Protection Association (NFPA) standard NFPA 805, "Standard on Performance-Based Fire Protection for Light Water Reactor Electric Generation Plants." The meeting attendees are listed in Attachment 1. Presentation material from NEI is in Attachment 2.

The meeting focused on the discussion of four major topics: configuration baselining process under NFPA 805, content of an NFPA 805 transition letter, discussion of NRC comments on NEI's implementation guidance document outline, and schedule for developing implementation guidance document. These discussions are summarized as follows:

Configuration Baselining Process under NFPA 805

- NEI made the point that baselining a reactor plant's initial fire protection configuration would naturally be a part of a licensee's NFPA 805 adoption (economic/business) decision-making process.
 - This review would focus largely on the fundamental fire protection program and design elements of Chapter 3 of NFPA 805, which do address the three elements of nuclear fire protection defense-in-depth (combustible and ignition control, fire detection and suppression, and barriers to fire propagation to ensure post-fire [nuclear reactor] safe shutdown capability).
 - NEI commented that configuration baselining would address NFPA 805 Chapter 3 elements only. The staff pointed out that some sections in Chapter 3 are connected to Chapter 4. For example, Section 3.11.2 would direct the analyst to Chapter 4 to ensure that barriers to fire propagation result in appropriate nuclear safety.

- It was agreed by both the NRC and NEI attendees that (1) any inconsistencies with the enumerated Chapter 3 elements must be resolved as part of the transition process to NFPA 805, and that (2) pre-existing non-compliance with the existing fire protection licensing basis (possibly mitigated, but not resolved, through the use of long-term compensatory measures) should be addressed during the NFPA 805 transition process through application of the Chapter 2 deterministic or performance-based analysis methodology. The implementation guidance should address any differences in the handling of, for example, fire barriers versus gaseous or liquid suppression systems.
- The NRC pointed out that since there is not a one-to-one correspondence between 10 CFR 50, Appendix R and NFPA 805 (of the two, only NFPA 805 addresses all modes or “phases” of operation, and only Appendix R addresses post-fire cold shutdown), the implementation guidance document should address what should become of existing cold shutdown equipment and procedures during transition, and should also indicate the need for, timing and character of analyses of non-power producing modes (or “phases”) of operation.

Content of an NFPA 805 Transition Letter

- The NRC stated that the underlying concepts of the current draft rule language were being reviewed by NRC management, and, as a result, rulemaking efforts were in a short-term “hold” condition. As a result of changes arising from possible management direction, rule language features such as an “NFPA 805 transition date,” and an “NFPA 805 transition letter” may not exist in the initial proposed rule language. Therefore, unavoidably there would be some ambiguity or confusion inherent in any discussion of the contents of an NFPA 805 transition letter (a feature included in the draft rule language placed on the NRC public web site for public comment in December, 2001).
- NEI stated that it was their view that an NFPA 805 transition letter (1) would constitute a *de facto* license amendment submittal, (2) would deserve an NRC response letter, and (3) would be an opportunity for NFPA 805 adopting licensees to place on the docket a clear statement of important characteristics of their intended NFPA 805 configuration, including a listing of “carryovers” from the existing fire protection licensing basis and possibly a listing of NFPA Chapter 3 elements which would not be directly complied with. The contents of a “complete” transition letter should be listed in the guidance document.
- The NRC stated that the implementation guidance document should be written in sufficient detail and be of sufficient quality to guide licensee transitions without *a priori* oversight (reviews or responses) by the NRC, and that other, more complex regulatory structures would be unnecessarily burdensome for both licensees and the NRC. The NRC stated that post-transition inspection was its preferred means of oversight for this performance-based rulemaking.
- The NRC stated that submitted lists of “carryovers” and Chapter 3 “non-compliances” would be problematic in light of the discussion at the second meeting on February 12, 2002, regarding the concept of “tacit NRC approval” (i.e., un-responded to, but required and docketed information could legally be considered as “tacitly approved”), as well as potentially putting the NRC in a position of reviewing incomplete information (lists of items rather than full and comprehensive analyses).

- Both the NRC and NEI agreed that there was a fundamental philosophical difference in their preferred approaches. Both agreed to table discussion of this subject and revisit it once a draft list of transition letter contents had been developed by NEI.

Discussion of NRC Comments on NEI's Implementation Guidance Document Outline (Letter from J. Hannon to A. Marion, dated January 7, 2002, ADAMS Accession #ML020080003)

- NRC Comment #6 - Use of NFPA 805 "tools" by licensees retaining current fire protection licensing bases
 - The NRC comment said that guidance for licensees which do not plan to adopt NFPA 805 plant-wide should not be in the implementation guidance document. NEI said that it did not agree with the staff's comment.
 - The staff stated that "piecemeal" use of risk-informed, performance-based tools from within risk-informed, performance-based processes invites numerous exemption requests under 10 CFR 50.12. This was contrary to one of the goals of the NFPA 805 rulemaking, which was to minimize the need for fire protection exemption requests in the future.
 - Both the NRC and NEI agreed that, during the second implementation guidance document meeting on February 12, 2002, it had been agreed that NEI would continue with development of guidance for licensees which choose not to adopt NFPA 805 plant-wide, since there are existing regulatory mechanisms (e.g. 10 CFR 50.12 or 10 CFR 50.90) which permit licensees to make application to use methodologies of their choosing, and therefore the NRC must expect that there may be attempts by licensees to gain approval for selective implementation of NFPA 805 analytical tools.
- NRC Comment #16 - Submitted versus retained document requirements
 - The NRC comment said that the implementation guidance document could describe what documentation a licensee can and/or should submit in its transition request "license amendment" to ensure the initial NFPA 805 licensing basis is well understood by the NRC, the licensee and the public.
 - This comment was noted to be somewhat dated, in that a transition request letter or license amendment may, or may not be required by the rule language as it exists after the ongoing NRC management review process (discussed above in the first paragraph under the heading "Content of an NFPA 805 Transition Letter").
- NRC Comment #13 - Use of Current Licensing Basis Elements in New Licensing Basis
 - The NRC comment said that the NRC recommends that the guidance document contain clarification of the terms "approved licensing basis," "existing licensing basis," and "current licensing basis."
 - The NRC noted that the meeting minutes for the second implementation guidance document meeting between the NRC and NEI on February 12, 2002, should contain definitions of these terms, as well as the term "tacit approval."

Schedule for Developing Implementation Guidance Document

- NEI stated that, in light of information it had learned during the second NRC/NEI implementation guidance document meeting on February 12, 2002, it had revised its schedule for developing implementation guidance document:
 - June 2002: First draft of document
 - August 2002: NRC comments on first draft expected
 - By November, 2002: NRC Commission acts on proposed rule language
 - January 2003: NEI submits second draft of document
 - Spring 2003: Industry Peer Review of second draft of document
 - June 2003: NEI submits third draft of document
 - Second Half of CY 2003: Industry conducts pilot application of third draft of document
 - Early CY 2004: Public and Industry workshop on document.
- The NRC stated, to facilitate NEI in its implementation guidance document development efforts, that in March 2002, the NRC staff would place the initial proposed rule language on the NRC public web site, as well as any revisions to the staff's NFPA 805 rulemaking schedule.

In the public comment section, Mr. Paul Gunter of the Nuclear Information Resource Service (NIRS) commented that he believed the public would rather have three-hour fire barriers in the plants instead of the "bureaucratic wrangling" he was observing at the meeting. Mr. Gunter also stated that OMB Circular A-119 (issued to implement the National Technology Transfer Act) was being violated because the NRC and NEI were developing a guidance document which was, in and of itself, a *de facto* standard. Therefore, in effect, the end users (licensees) would be writing a standard they were to implement. Mr. Gunter said that this went against the concept of independent "national consensus" organizations and bodies described in the Act.

- NEI responded to Mr. Gunter's comment (that the implementation guidance document would be *de facto* standard) by stating that, to the contrary, the NFPA 805 implementation guidance document was intended to serve as a guide to licensees as they transition to NFPA 805 processes from their existing configurations and licensing bases. The NRC representatives agreed with this assessment of the purpose of the implementation guidance document, and assured Mr. Gunter that the NRC's Office of General Counsel would provide the staff with legal advice on this subject and would review the rulemaking and any associated regulatory guide with respect to the intent of OMB Circular A-119.

Having completed discussion of the agenda items, the group adjourned.

Project No. 689
 Attachments: As stated
 cc w/atts: See list

**Attendees for February 26, 2002
Meeting on NFPA 805 Implementing Guidance**

NAME	ORGANIZATION
A. Marion	NEI
F. Emerson	NEI
D. Brandes	Duke Energy
R. Rispoli	Entergy
D. Raleigh	Scientech LIS
J. Weil	McGraw-Hill
T. Furlong	NSO/NEIC
P. Dinennk	Hughes Associates Inc.
P. Gunter	NIRS
J. Hannon	NRC/NRR/DSSA/SPLB
E. Weiss	NRC/NRR/DSSA/SPLB
L. Whitney	NRC/NRR/DSSA/SPLB
P. Wen	NRC/NRR/DRIP/RPRP

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