

November 6, 2002

Mr. Alex Marion, Director
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Nuclear Generating Division
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington, D.C. 2006-3708

SUBJECT: NRC COMMENTS ON NFPA 805 FIRE PROTECTION RULEMAKING
IMPLEMENTING GUIDANCE DOCUMENT

Dear Mr. Marion:

On July 29, 2002, you forwarded to us Revision C of the implementing guidance document for the NFPA 805 risk-informed, performance-based rulemaking, dated July 2002. During our August 1, 2002, meeting with you, we agreed to provide comments on your outline. Our comments on the implementing guidance document are enclosed. The staff recognizes that this is an early version of the guidance and that interaction with you on the content is expected. We will arrange for a meeting with you at a mutually convenient time.

If you have any questions on this matter, the Project Manager is Joseph Birmingham. Mr. Birmingham may be reached by phone at 301-415-2829 or email jl4@nrc.gov. The technical contact is Leon Whitney. Mr. Whitney may be contacted by phone at 301-415-3081 or email lew1@nrc.gov.

Sincerely,

/RA/

Christopher I. Grimes, Program Director
Policy and Rulemaking Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Project No. 689
Enclosure: As stated

cc: See list

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DISTRIBUTION: See list

*See previous concurrence

DOCUMENT NAME: G:\RPRP\JBirmingham\Ltr to NEI w NRC Comments on 805 Imp Guide.WPD

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Project No. 689

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SPLB Comments on NFPA 805 Implementation Guidance Draft C

1. Section 1.2 states that the purpose of the NFPA 805 Implementation Guidance is for the adoption of NFPA 805 in whole or in part, and to address the use of analytical tools within an existing licensing basis. Section 7 provides specific guidance in this regard. This issue is also addressed in Section 3, Section 4.1, Section 4.8 and Section 5.3.

NFPA 805 was designed to be taken as a complete, self-contained fire protection methodology. However, in the April 29, 2002, meeting minutes for the NRC/NEI April 12, 2002, meeting on implementing guidance for NFPA 805, the NRC stated that it did not have a conceptual problem with licensees using NFPA 805 methodologies and approaches on an optional, selective basis (assuming the necessary NRC approvals are obtained, for example, under 10 CFR 50.12 or 10 CFR 50.90). This NRC position should be reflected in the implementation guidance document in Sections 1.2, 3, 4.1 and 7.

2. Section 1.4 points to NEI 00-01 as a document that will “interface” with NFPA 805. However, the NRC staff will reserve judgement regarding the degree to which NEI 00-01 will be endorsed pending NRC review of NEI 00-01 Draft D. Similarly, in Section 9.0, reference to NEI 00-01 should be reconsidered because its status as an acceptable approach to post-fire safe shutdown circuit analysis is currently under staff review.
3. Section 3.0 and Section 4.3.1 state that the rule may be adopted as an alternative to 10 CFR 50.48(f) (at the time it was written, correctly following the lead of SECY-02-132). However, the proposed rule language has been changed to indicate that NFPA 805 is an “acceptable method” for meeting 10 CFR 50.48(f). Please refer to the *Federal Register* Notice, published November 1, 2002, for the proposed rule language in this regard.
4. The fourth sentence of Section 4.3.2 on page 16 should be rewritten to state, in two sentences, “Adequacy of the transition license amendment request rests on the completeness and appropriateness of the licensee’s identification of any orders and license conditions that must be revised or superseded, as well as the appropriateness of any licensee suggested revisions to the plant’s technical specifications and the bases therefore. The technical adequacy of the licensee’s new fire protection configuration under NFPA 805 will be reviewed during the NRC’s routine fire protection inspection process.”

Similarly, in the last paragraph/sentence of Section 6.5 on page 37, the sentence should read “A safety evaluation report on a license amendment request is the vehicle the NRC will use to document that the licensee has satisfied the submission requirements of the NFPA 805 fire protection rule (but not necessarily document that a

reactor plant is in compliance with NFPA 805 per se, a subject which will be addressed during the routine fire protection inspection process).”

Also, in the first paragraph of Section 4.7 on page 19, note that, as stated in SECY-02-132, the NRC does not intend to determine licensee technical compliance with NFPA 805 during a licensee’s administrative transition to/adoption of NFPA 805. That determination is left to the subsequent routine NRC fire protection inspection process. During the transition process, the NRC will attempt to ensure that licensees are in regulatory compliance (e.g., with the largely licensing requirements of Section 10 CFR 50.48(c)(3)(i) of the proposed rule language).

5. In the first paragraph, fourth and fifth sentences of Section 4.4, and the first bullet of Section 4.4, all on page 17, the implementation guidance makes statements regarding whether violations will result from licensee submittals which make mistaken claims of prior NRC approval. Section 4.7 states that “prior NRC approval” may include changes that were made under an “NRC approved process” such as GL 86-10 and 10 CFR 50.59. In the first bullet of Section 4.4 on page 17, the term “tacit approval” is used and Sections 6.1.2, 6.2.1, and 6.2.2 address concepts of “explicit approval,” “tacit approval” and “potential tacit approval” by the NRC. These sections imply that docketed submittals, meeting minutes, licensee presentations, and inspection reports provide a regulatory foundation for assuming NRC approval. Section 6.2.1 states that plant changes using an NRC approved change process are considered to be an acceptable part of the licensing basis. Section 6.2.2 states that changes made under 10 CFR 50.59 or GL 86-10 constitute NRC approval.

The NRC does not agree that docketed submittals, meeting minutes, licensee presentations, and inspection reports, represent evidence of NRC approval. Specifically, Section 6.2.1, fourth paragraph, last sentence, page 32 reads “Specific acceptance of a plant configuration, as well as changes because original [NRC] acceptance, should be documented.” This sentence contains the presumption that past fire protection (“Appendix R”) inspections at reactor plants validated or certified the reactor plant fire protection configuration to be in compliance with Appendix R. NRC inspections are conducted on a sample basis, not a plant-wide nor (typically) a system-wide basis, and in no instance has any specific reactor plant fire protection feature received “validation” or “certification” by the NRC after having been the subject of an NRC fire protection inspection.

The implementation guidance should make no statements regarding whether violations will result from licensee submittals which make mistaken claims of prior NRC approval, tacit or otherwise.

The NRC disagrees with NEI's discussion of "tacit approval" and does not recognize any concept of "potential tacit approval." A case-by-case determination of the existence of NRC approvals is necessary.

Note that changes made to a reactor plant's fire protection program under an NRC approved change process (e.g., GL 86-10 or 10 CFR 50.59), if implemented correctly, are considered to be part of the plant's licensing basis.

We would welcome proposals to address generic issues more efficiently. Given the legal constraints on this matter, we are hopeful that other approaches to the underlying problem can be found. We seek an efficient method of clarifying licensing basis issues that have yet to receive definitive regulatory approval, and that otherwise could become the source of unproductive misunderstandings. We would welcome a dialogue on this matter.

6. In the last paragraph of Section 4.7, the NRC is considering expanded review of the first few licensee transition license amendment submittals which may have content in excess of that required by the rule language, such as descriptions of modifications to the reactor plant, its programs and procedures to demonstrate compliance with NFPA 805 (see item (2) of the subject paragraph in Section 4.7). However, after a few such expanded transition license amendment reviews, the NRC intends to revert to a review of only that content required by the rule language (e.g., content pertaining to the future status of existing orders, licensing commitment, and technical specifications under NFPA 805). Please reflect this plan in all appropriate locations in the implementation guidance, such as Section 4.7.
7. Section 4.7 states that licensees need to only comply with Chapters 2, 3 and 4 of NFPA 805, related to nuclear safety and radiological release. However, licensees that adopt NFPA 805 for operating plants must also comply with Chapter 1 of the standard. Decommissioning plants that wish to use NFPA 805 to satisfy 10 CFR 50.48(f) must comply with Chapter 5 of the standard with respect to radiological release.