



NUCLEAR ENERGY INSTITUTE

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July 7, 2004

Mr. Michael T. Lesar
Chief, Rules and Directives Branch
Division of Administrative Services, Office of Administration
U.S. Nuclear Regulatory Commission
Mail Stop T6-D59
Washington, DC 20555-0001,

PROJECT NUMBER: 689

Dear Mr. Lesar:

On June 16, 2004, the NRC published in the Federal Register its final rule amending 10 CFR 50.48, which will become effective on July 16, 2004 (69 FR 33536). This rulemaking allows licensees to adopt 10 CFR 50.48(c), a voluntary risk-informed, performance-based alternative to current fire protection requirements. The NRC concurrently revised (69 FR 33684) its Enforcement Policy to provide enforcement discretion during a "transition" period to full implementation of the new rule. One element of this revised policy allows enforcement discretion for licensees who wish to take advantage of the new rule to resolve existing noncompliances. These licensees must submit a letter of intent to adopt 10 CFR 50.48(c) within six months of the effective date of the rule (by January 16, 2005). We request an extension of this submittal date from January 16, 2005 to December 31, 2005, for the reasons detailed below.

In order to obtain funding to implement the NFPA-805 approach, a licensee must internally request funding in the first half of the year prior to beginning the transition to the new licensing basis. A decision to implement a new approach will have a major impact on the manner in which a licensee conducts its fire protection program for the remaining life of the plant. This decision is needed to support the budget request and requires significant management consideration. Since licensees will have typically developed their 2005 budgets by the July 16, 2004, effective date of the rule, 2006 will be the earliest they can begin the transition to the new licensing basis. A requirement to submit a letter of intent within six months, to take advantage of this enforcement discretion provision, would therefore have one of the following effects:

1. The licensee could submit the letter of intent by January 16 and immediately begin the transition using unbudgeted funds. Funds for completing the transition would be budgeted in early 2005 for 2006. This scenario is very unlikely because few licensees will proceed without budgeted funds.
2. The licensee could submit the letter of intent by January 16 but not begin the transition until early 2006. Funds for completing the transition would be budgeted in early 2005 for 2006. With the other provision in 69 FR 33684 for enforcement discretion (for the discovery of potential compliance issues) lasting two years, the licensee would have to proceed without enforcement discretion for the period beyond 2006. This scenario is also unlikely because few licensees will proceed without the availability of enforcement discretion.
3. The licensee could budget in 2005 for the transition to begin in 2006 and wait until the end of 2005 to file a letter of intent. This scenario would not permit the licensee to take advantage of the enforcement discretion period for existing issues.
4. Absent the benefit of resolving existing issues under the new rule, the licensee could simply choose not to adopt the new licensing basis at all.

The net effect of this enforcement discretion provision, as currently written, is that few if any licensees will consider adopting 10 CFR 50.48(c) in the near term. The NRC surely did not intend this result, given the level of staff resources applied to this rulemaking.

Extending this period of enforcement discretion will permit licensees to take realistic advantage of this rulemaking, offering a significant benefit for most licensees and for NRC staff. It will allow the supporting Regulatory Guide to be issued and considered by licensee management in making an informed decision. And most significantly, it will not create a safety concern.

In 69 FR 33684 NRC states that this proposed interim enforcement discretion policy is consistent with the longstanding policy incorporated in Section VII.B.3 of the Enforcement Policy (NUREG-1600) for old design issues. This policy is not limited to a certain time period of effectiveness. Thus, extending the time allowed for submitting a letter of intent would remain consistent with Section VII.B.3.

Extending the final date for submitting a letter of intent from January 16 to December 31, 2005, is therefore in the best interest of both staff and industry.

Michael T. Lesar
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Please address any questions about this recommendation to me (202-739-8080; am@nei.org) or to Fred Emerson (202-739-8086; fae@nei.org).

Sincerely,

A handwritten signature in black ink that reads "Alex Marion". The signature is written in a cursive style with a large initial "A".

Alex Marion

c: Ms. Suzanne Black, NRC
Mr. John Hannon, NRC
Mr. Sunil Weerakkody, NRC
Mr. Paul Lain, NRC