COMSECY-06-0016

March 6, 2006

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes ***/RA/***
Executive Director for Operations

SUBJECT: PROPOSED REVISION OF THE INTERIM ENFORCEMENT DISCRETION POLICY FOR THE FIRE PROTECTION RULE - 10 CFR 50.48(c) (NFPA 805 RULE)

The purpose of this memorandum is to request Commission approval of staff's plan to publish a *Federal Register* Notice announcing a revision to the Enforcement Policy, to reflect the extension of the enforcement discretion period from two years to three years in the "Interim Enforcement Discretion Policy for the Fire Protection Rule" - 10 CFR 50.48(c).

On June 16, 2004, the U.S. Nuclear Regulatory Commission (NRC) published a final rule in the *Federal Register* amending 10 CFR 50.48, "Fire protection" (69 FR 33536). This rule became effective on July 16, 2004, and 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 its Enforcement Policy (69 FR 33684) to provide interim enforcement discretion during a "transition" period. The interim enforcement discretion policy includes provisions to address: (1) violations identified during the licensee's transition process; and (2) existing identified violations.

In accordance with the current interim Enforcement Policy, for violations identified during the transition to 10 CFR 50.48(c), the enforcement discretion period begins on the receipt of a letter of intent, from the licensee, stating its intention to adopt 10 CFR 50.48(c). This discretion remains in effect for up to two years and is analogous to the discretion afforded licensees conducting self-assessments, as described in section VII.B.3 of the Enforcement Policy. In addition, when the licensee submits a license amendment request to complete the transition to 10 CFR 50.48(c), the enforcement discretion will continue in effect until the NRC completes its review of the license amendment request.

The second element of the interim policy provides enforcement discretion for licensees that wish to take advantage of the rule to resolve existing violations. The original rule required licensees wishing to take advantage of this interim policy to submit letters of intent to adopt 10 CFR 50.48(c), within 6 months of the effective date of the final rule. However, the Nuclear

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Energy Institute (ADAMS Accession No. ML042010132), sent a letter dated July 7, 2004, requesting that the NRC extend the deadline for the letter of intent to be sent, from 6 months to 18 months. Subsequently, the NRC granted the extension, which was published in the *Federal Register* as a revision to the interim enforcement policy. The revision was effective on January 14, 2005 (70 FR 2662).

As stated in the January 14, 2005, revision, to the interim enforcement policy, if a licensee submitted a letter of intent by December 31, 2005, to meet the second element of the interim enforcement policy, the NRC would exercise enforcement discretion for existing noncompliances that could reasonably be corrected under 10 CFR 50.48(c). As of December 31, 2005, 37 plants had indicated their intents to transition to 10 CFR 50.48(c). Twenty of the 37 plants had started their transitions by December 31, 2005, and therefore will receive discretion for existing noncompliances. The staff has no plan to extend the date for enforcement discretion for existing identified noncompliances (i.e., beyond December 31, 2005).

Many licensees have requested additional time, beyond the two year discretion period, to properly evaluate their existing fire analyses and to develop fire probabilistic risk assessments. Based on these requests, the staff considered the extension of the current enforcement discretion period from two years to three years. The extension in time is appropriate in light of the level of effort required to transition to this risk-informed approach including the implementation of plant modifications that may be required as a result of a licensee's evaluation. In addition, this change will not adversely impact public health and safety because the discretion policy does not apply to the most risk-significant findings (i.e., violations characterized as Red or Severity Level I). For those findings where the policy does apply, licensees are required to implement and maintain immediate compensatory measures to qualify for discretion. This extension would facilitate a regulatory approach that encourages licensees to find and resolve their own issues in ways consistent with the Enforcement Policy goals. During the discretion period, licensees are required to maintain their current fire protection plans, including maintaining appropriate compensatory measures. Beyond the three year discretion period, the staff may grant item-specific extensions, on a case-by-case basis, to the discretion policy, when the licensee provides adequate justification (e.g., a modification that can only be implemented during an outage).

Some licensees with multiple facilities have indicated, in their letters of intent, that they plan to use staggered approaches to transition sites to 10 CFR 50.48(c), to optimize their resources and processes. A licensee with multiple facilities that chooses to stagger its implementations, must submit a letter of intent initiating the transition period for each facility. For facilities that begin their transitions after December 31, 2005, no discretion will be given for existing noncompliances. As such, these facilities have assumed some risk in their deferral of transition activities, if noncompliances are identified in the interim. The enforcement discretion, provided for with the withdrawal of the operator manual action rulemaking, minimizes this exposure by extending the discretion for circuit issues. Additionally, the staff has observed, in some instances, that licensees have informed their schedules for staggering the transitions of their facilities, with the NRC's triennial inspection schedule for fire protection, as a means of minimizing their exposures.

In accordance with Staff Requirements Memorandum (SRM)-SECY-06-0010, “Withdraw Proposed Rulemaking - Fire Protection Program Post-Fire Operator Manual Actions,” dated February 8, 2006, the staff will revise the existing enforcement discretion guidance, for noncompliances involving operator manual actions used to address fire-induced circuit failures, to allow licensees 6 months to initiate corrective actions, from the date of the *Federal Register* Notice withdrawing the proposed rulemaking. Licensees must fully implement the corrective actions within 3 years of the date of *Federal Register* Notice withdrawing the proposed rulemaking. Guidance for enforcement discretion for circuit issues was originally issued under Enforcement Guidance Memorandum (EGM) 98-02 and later included in the Enforcement Manual in Section 8.1.7.1. The staff will issue an EGM to modify this discretion policy in accordance with the SRM. For plants that are challenged with circuit issues, this discretion policy provides additional time for licensees to evaluate the benefits of National Fire Protection Association (NFPA) 805, while they evaluate the actions needed to restore compliance in accordance with the existing requirements.

The staff has made a few clarifications to address issues that have risen during implementation of this interim discretion policy. Additionally, the staff has enhanced the policy to address the treatment of existing noncompliances for licensees that transition after December 31, 2005, and the treatment of uncorrected noncompliances if a licensee withdraws from its transition to NFPA 805. Normal inspection and enforcement will continue to be applied to all plants that are not actively transitioning to 10 CFR 50.48(c).

The Office of Enforcement (OE) will accomplish this revision with the existing OE budget for fiscal year 2006.

Therefore, I recommend that you approve publication of a *Federal Register* Notice (Attached) announcing the revision to the Enforcement Policy, to reflect the extension of the enforcement discretion period from two years to three years, in the “Interim Enforcement Discretion Policy for the Fire Protection Rule” - 10 CFR 50.48(c) (NFPA 805 rule).

SECY, please track.

Attachment: *Federal Register* Notice Regarding Changes to the Policy

cc: SECY
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DATE	02/17/06	02/27/06	02/17/06	02/ /06
OFFICE	OGC	NRR/ADRA/ DRA/AFPB	D:NRR/ADRA/DRA	D:NRR/ADRA
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DATE	02/21/06	02/17/06	02/21/06	02/23/06
OFFICE	D:NRR	DEDMRS	EDO	
NAME	JDyer*	MVirgilio	LReyes	
DATE	02/23/06	03/03/06	03/06/06	

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Attachment

NOTICES

NUCLEAR REGULATORY COMMISSION

NRC Enforcement Policy: Extension of Discretion Period of Interim Enforcement Policy

[DATE]

AGENCY: Nuclear Regulatory Commission

ACTION: Policy Statement: Revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising the NRC "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues" (10 CFR 50.48), to extend the enforcement discretion period to three years for those licensees that commit to transition to 10 CFR 50.48(c), and to provide clarification and enhancements predominately in the areas of existing non-compliances and the treatment of non-compliances if a licensee withdraws from the transition.

DATES: This revision is effective [DATE]. Comments on this revision to the Enforcement Policy may be submitted on or before [DATE].

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD 20852. You may also e-mail comments to nrcrep@nrc.gov.

The NRC maintains the current Enforcement Policy on its Web site at http://www.nrc.gov, select "What We Do," then "Enforcement Policy."

FOR FURTHER INFORMATION CONTACT: Michael Johnson, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2741, e-mail mrj1@nrc.gov.

SUPPLEMENTARY INFORMATION:

On June 16, 2004, the NRC published, in the *Federal Register,* a final rule amending 10 CFR 50.48 (69 FR 33536). This rule became effective on July 16, 2004, and 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 its Enforcement Policy (69 FR 33684) to provide interim enforcement discretion during a "transition" period. The interim enforcement discretion policy includes provisions to address: (1) noncompliances identified during the licensee's transition process; and (2) existing identified noncompliances.

In accordance with the current Enforcement Policy, for those noncompliances identified during the transition to 10 CFR 50.48(c), the enforcement discretion policy will be in effect for up to two years from the date of a licensee's letter of intent to adopt the requirements of 10 CFR 50.48(c). In addition, when the licensee submits a license amendment request to complete the transition to 10 CFR 50.48 (c), the enforcement discretion will continue in effect until the NRC completes its review of the license amendment request.

The second element of the interim policy provides enforcement discretion for licensees that wish to take advantage of the rule to resolve existing noncompliances. The original rule required licensees wishing to take advantage of this interim policy to submit a letter of intent to adopt 10 CFR 50.48 (c), within 6 months of the effective date of the final rule. However, the Nuclear Energy Institute (NEI) (ADAMS Accession No. ML042010132) sent a letter dated July 7, 2004, requesting that the NRC extend the deadline for the letter of intent to be sent from 6 months to 18 months. Subsequently, the extension was granted and was published in the *Federal Register* as a revision to the interim enforcement policy regarding enforcement discretion for certain issues involving fire protection programs at operating nuclear power plants. The revision was effective on January 14, 2005 (70 FR 2662).

As a result, if a licensee submitted a letter of intent by December 31, 2005, in order to meet the second element of the interim enforcement policy, the NRC would exercise enforcement discretion for existing noncompliances that could reasonably be corrected under 10 CFR 50.48(c).

The NRC is revising the Enforcement Policy to extend the current two year period of enforcement discretion, for the transition to this voluntary, performance-based regulation, to three years for licensees that commit, in their letters of intent, to adopt 10 CFR 50.48(c) requirements.

Many licensees have requested additional time, beyond the two year discretion period, to properly evaluate their existing fire analyses and to develop fire probabilistic risk assessments (PRA). Based on these requests, the staff considered the extension of the current enforcement discretion period from two years to three years. The extension in time is appropriate in light of the level of effort required to transition to this risk-informed approach, including the implementation of plant modifications that may be required as a result of the licensee's evaluation. In addition, this change will not adversely impact public health and safety because the discretion policy does not apply to the most risk-significant findings (i.e., violations characterized as Red or Severity Level I). For those findings where the policy does apply, licensees are required to implement and maintain immediate compensatory measures to qualify for discretion. This extension would facilitate a regulatory approach that encourages licensees to find and resolve their own issues in ways consistent with Enforcement Policy goals. During the discretion period, licensees are required to maintain their current fire protection plans, including maintaining appropriate compensatory measures. In addition to the three year discretion period, the NRC staff may grant item-specific extensions, on a case-by-case basis, to the discretion policy, when the licensee provides adequate justification (e.g., a modification that can only be implemented during an outage).

Normal inspection and enforcement will continue to be applied to all plants that are not actively transitioning to 10 CFR 50.48(c).

Minor editorial changes have also been made to the current “Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues “, (10 CFR 50.48), to provide clarification and enhancements predominately in the areas of existing non-compliances and the treatment of non-compliances if a licensee withdraws from the transition.

Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, collection of information, unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the NRC Enforcement Policy is amended to read as follows:

NRC Enforcement Policy

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Interim Enforcement Policies

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Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This section sets forth the interim enforcement policy that the U.S. Nuclear Regulatory Commission (NRC) will follow to exercise enforcement discretion for certain noncompliances of requirements in 10 CFR 50.48, “Fire protection,” (or fire protection license conditions) that are identified as a result of the transition to a new risk-informed, performance-based fire protection approach included in paragraph (c) of 10 CFR 50.48 and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c). Paragraph (c) allows reactor licensees to voluntarily comply with the risk-informed, performance-based fire protection approaches in National Fire Protection Association Standard 805 (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).

For those noncompliances identified during the licensee's transition process, this enforcement discretion policy will be in effect for up to three years from the date specified by the licensee in their letter of intent to adopt the requirements in 10 CFR 50.48(c), and will continue to be in place, without interruption, until NRC approval of the license amendment request to transition to 10 CFR 50.48(c). This enforcement discretion policy may be extended on a case-by-case basis, by request, with adequate justification, from the licensee.

If, after submitting the letter of intent to comply with 10 CFR 50.48(c) and before submitting the license amendment request, the licensee decides not to complete the transition to 10 CFR 50.48(c), the licensee must submit a letter stating its intent to retain its existing license basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). After the licensee's withdrawal from the transition process, the staff, as a matter of practice, will not take enforcement action against any noncompliance that the licensee corrected during the transition process and should, on a case-by-case basis, consider refraining from taking action if reasonable and timely corrective actions are in progress (e.g., an exemption has been submitted for NRC review). Noncompliances that the licensee has not corrected, as well as noncompliances identified after the date of the above withdrawal letter, will be dispositioned in accordance with normal enforcement practices.

A. Noncompliances Identified During the Licensee's Transition Process

* * * * *

(1) It was licensee-identified, as a result of its voluntary initiative to adopt the risk-informed, performance-based fire protection program included under 10 CFR 50.48(c) or, if the NRC identifies the violation, it was likely in the NRC staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's transition to 10 CFR 50.48(c) provided the schedule reasonably provides for completion of the transition within three years of the date specified by the licensee in their letter of intent to implement 10 CFR 50.48(c) or other period granted by NRC;

* * * * *

B. Existing Identified Noncompliances

* * * * *

(3) It was not willful; and

(4) The licensee submits a letter of intent by December 31, 2005, stating its intent to transition to 10 CFR 50.48(c).

After December 31, 2005, as addressed in (4) above, this enforcement discretion for implementation of corrective actions for existing identified noncompliances will not be available and the requirements of 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) will be enforced in accordance with normal enforcement practices. However,

licensees that submit letters of intent to transition to 10 CFR 50.48(c) with existing noncompliances will have the option to implement corrective actions in accordance with the new performance-based regulation. All other elements of the assessment and enforcement process will be exercised even if the licensee submits its letter of intent before the NRC issues its enforcement action for existing noncompliances.

Dated at Rockville, MD, this _____ day of _____, 2006.

For the Nuclear Regulatory Commission
Annette L. Vietti-Cook,
Secretary of the Commission