

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary


**FROM:** CHAIRMAN KLEIN

**SUBJECT:** COMSECY-08-0022 – REQUEST FOR AN  
EXTENSION OF DISCRETION FOR THE INTERIM  
ENFORCEMENT POLICY FOR FIRE PROTECTION  
ISSUES ON 10 CFR SECTION 50.48(c),  
“NATIONAL FIRE PROTECTION ASSOCIATION  
STANDARD NFPA 805”

Approved XX Disapproved        Abstain       

Not Participating       

**COMMENTS:** Below        Attached XX None       

  
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SIGNATURE

8/11/08  
\_\_\_\_\_  
DATE

Entered on “STARS” Yes X No

### **Chairman Klein's Comments on COMSECY-08-0022**


I support Commission approval of the revision to the NRC Enforcement Policy and its publication in the *Federal Register*. The revision will extend the existing enforcement discretion period six months from December 31, 2008, the date when the current enforcement discretion is due to expire. The extension is not automatic, and would only be granted on a case-by-case basis for licensees who have demonstrated substantial progress toward completion of their NFPA 805 transition efforts.

I agree with Commissioner Jaczko that the longstanding fire protection issues need to be resolved in a transparent and successful manner and some of the previous Commission policies describing the fire protection regulations may not have been clear. However, I do not agree that the current or previous Commission policies consider fire protection issues to be trivial. The Commission takes the fire protection issues very seriously, like all regulations, and bases its actions on the safety significance of identified problems and the licensees' corrective actions to ensure the safe operation of all nuclear power plants. I agree with Commissioner Jaczko that it has taken too long to develop a comprehensive set of fire protection regulations that are simple to enforce, inspect, and explain to licensees and the public. However, the combination of existing fire protection regulations and compensatory measures have resulted in no additional significant fires, since the Browns Ferry fire in 1975, and no significant threat to the operation of post fire safe shutdown equipment. In fact, in the past 15 years, there have been on the average only 1 to 2 small fires each year in safety related buildings at nuclear power plants with minimal or no impact on the safe operation of the reactors.

The timely transition of licensees to the NFPA 805 fire protection standard is a key element of the permanent resolution of existing fire protection issues. The completion of the two pilot plant fire probabilistic risk assessments (PRAs) required significant resources and took much longer than planned. This resulted in a delay of the license amendment request (LAR) submittals to the staff. The pilot plant LARs were submitted at the end of May 2008, and the staff reviews are projected to be completed approximately 10 months after submittal, in the March 2009 timeframe. The existing three year enforcement discretion period is due to expire on December 31, 2008. Granting an extension will provide a reasonable period of time for licensees to complete their transition to NFPA 805 and encourage them to find and correct any deficiencies, from their current reviews, without diverting resources to resolve issues that will be obsolete under the new licensing bases. The additional enforcement discretion time will allow licensees to apply their current resources to the NFPA 805 transition and should contribute to higher quality non-pilot plant LAR submittals, limit the transition time to NFPA 805, and improve the review process efficiency by applying the lessons learned from the pilot plants. In contrast to Commissioner Jaczko's view that the approval of the limited enforcement discretion on a case-by-case basis will delay the resolution of the current fire protection issues, as stated above, the approval should actually result in a shorter transition time, for the majority of licensees wishing to transition to a risk informed fire protection program.

Another factor to consider is the NRC's expected endorsement of Regulatory Guide (RG) 1.200, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities," scheduled for approval in December 2008. The six month enforcement discretion will provide licensees adequate time to apply the combined ANS/ASME standard to complete their in-progress fire PRA development effort, after the NRC endorses the standard.

The proposed enforcement discretion is consistent with the NRC Enforcement Policy expectations and its implementation is supported by a sound rationale. The guidance provides an incentive for licensees to complete their transition to the NFPA 805 process and encourages the continuation of efforts to find and correct any deficiencies consistent with their new licensing bases. The extension will also allow plants transitioning to NFPA 805 to maintain their focus on the permanent resolution of the longstanding and complex fire protection issues.

  
Dale E. Klein      8/11/08  
Date

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: COMMISSIONER JACZKO

SUBJECT: COMSECY-08-0022 – REQUEST FOR AN  
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Approved \_\_\_\_\_ Disapproved X Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached X None \_\_\_\_\_

  
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SIGNATURE

7/30/08  
\_\_\_\_\_  
DATE

Entered on “STARS” Yes X No \_\_\_\_\_

**Commissioner Jaczko's Comments on COMSECY-08-0022  
Request for an Extension of Discretion for the Interim Enforcement Policy for Fire  
Protection Issues on 10 CFR Section 50.48(c), "National Fire Protection  
Association Standard NFPA 805"**

I disapprove the extension of enforcement discretion policy for plants intending to transition to the performance based fire protection regulations established in section 50.48(c) of the Code of Federal Regulations. This enforcement discretion policy has been extended two times already. First, the Commission granted an extension of nearly one year to the deadline for licensees to submit a letter of intent to transition to the new regulations. Second, the Commission granted an extension of one year to the three-year timeline for a licensee to complete its license amendment submittal to transition to the new regulations from the time the licensees submitted their letter of intent. These extensions have already added a total of five years to the enforcement discretion period licensees have been afforded to transition to the new regulations. Adding additional time will do nothing to ensure the agency's ultimate goal -- that longstanding fire protection issues will finally be resolved in a transparent and successful manner -- is met.

The Nuclear Regulatory Commission has struggled since the Browns Ferry fire in 1975 to develop a comprehensive set of fire protection regulations that are simple to enforce, inspect and explain to licensees and the public. The result has been a series of confusing Commission policies that appear to describe fire protection as a both a trivial matter for compliance and one of the single most significant initiators of accident scenarios for operating reactors. In fact, nearly half of the risk of core damage is attributable to fire-initiated events according to probabilistic risk assessments. Yet some plants have unknown or even known violations of existing regulations. In addition, some areas of plants do not comply with existing requirements because they use interim compensatory measures, some of which have been in place for decades, or they received exemptions to our regulations. Although the exemptions are allowable under current regulations, the large number of approved exemptions at many facilities acknowledges the weakness of the current regulatory program and the inability of licensees to comply with the four basic elements of fire protection in our regulations.

The Commission consistently stresses the need to resolve all of these issues. In my view, there is a path forward to accomplish this task. It does not, however, involve additional enforcement discretion for plants transitioning to a new voluntary, performance-based regulation known as NFPA-805. In fact, continued enforcement discretion only delays the resolution of these issues, by providing an incentive for licensees to spend resources in other areas that do not address fire protection.

The path to resolution is simple. Licensees should transition to the performance-based standard for fire protection, they should address noncompliances identified by the licensee or the agency through inspections, or they should seek exemptions. Exemptions, however, are not a free pass from complying with regulations. The Commission has established a process to approve an exemption provided it does not present undue risk to public health and safety, and only under special circumstances as set forth in 10 CFR 50.12.

If necessary, the agency could consider seeking additional funding from Congress for enhanced fire protection inspections to identify all violations once and for all. In none of

these cases is enforcement discretion necessary. In fact, existing enforcement mechanisms through the significance determination process in the reactor oversight process or through traditional enforcement mechanism have built into their structure the ability to tailor enforcement actions to the risk of the violation to overall plant safety and take into account licensee efforts, such as identification and corrective action. This is a simple and well-established process. The only thing missing is for the agency to show the discipline to follow it. If problems with a licensee's fire protection program are identified and they pose very low safety significance to the facility, they will be found to be a green finding and have little negative impact on a licensee. Similarly, if violations fall under traditional enforcement, there are several mechanisms under the existing enforcement policy to determine the appropriate level of enforcement.

Enforcement discretion only provides an opportunity for further delay in resolving fire protection issues. It prevents licensees from ever having to face the consequence of failing to abide by Commission regulations for violating fire protection regulations. The role of a regulator is to establish regulations and then assure compliance with those regulations. If licensees cannot comply with their fire protection licensing basis, they have multiple avenues to resolve those issues. They can seek exemptions. They can transition to NFPA-805. But they must in all cases understand the implications of delay in taking those actions. That is the primary reason for enforcement – to ensure compliance. In the current situation the Commission should not be considering enforcement discretion; it should be considering enforcement *action*.



Gregory B. Jaczko

7/31/08  
Date

## RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

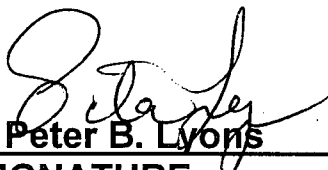
FROM: COMMISSIONER LYONS

SUBJECT: COMSECY-08-0022 – REQUEST FOR AN  
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ISSUES ON 10 CFR SECTION 50.48(c),  
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STANDARD NFPA 805”

Approved   X   Disapproved        Abstain       

Not Participating       

COMMENTS: Below        Attached   X   None       

  
Peter B. Lyons  
SIGNATURE

  7/ 25 /08    
DATE

Entered on “STARS” Yes   X   No

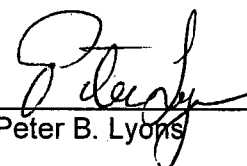
**Commissioner Lyons' Comments on COMSECY-08-0022**

I support Commission approval of the revision to the NRC Enforcement Policy and its publication in the *Federal Register*, as proposed by the staff. This revision will extend the existing enforcement discretion period for licensees who have demonstrated substantial progress toward completion of their NFPA 805 transition efforts.

The success of licensee transitions to 10 CFR 50.48(c) – NFPA 805 is crucial to the permanent resolution of longstanding and complex fire protection issues. The purpose of the two pilot plant initiatives is to incorporate their lessons into subsequent license amendment requests (LARs) for the other plants that are currently making this transition as well as potentially other plants that choose to do so in the future. Extending the current enforcement discretion for the licensees who have already started their transitions but have not yet submitted their LARs will permit those licensees to continue their momentum toward developing 50.48(c) licensing bases, including finding and correcting any deficiencies consistent with those new licensing bases, without diverting resources to correct deficiencies using their soon-to-be-obsolete existing licensing bases. In addition, development of the associated fire-related probabilistic risk assessments (PRAs) appears to be critical path, thereby elevating the importance of having clear regulatory standards for fire PRAs. The staff's latest endorsement of the associated standards is scheduled for issuance in December of this year and my expectation is that these standards will further enhance our regulatory clarity and predictability in this very important area.

I note this proposed extension will not apply to any plant that has not yet begun a transition to 50.48(c), but that chooses to do so in the future. Such plants will still be subject to the previous 3 year enforcement discretion policy approved unanimously by the Commission in 2006.

In developing my decision, I also considered the Commission's current Enforcement Policy, including its general statement on the use of enforcement discretion as well as the "Interim Enforcement Discretion for Certain Fire Protection Issues" which the NRC is currently following while licensees transition to 10 CFR 50.48(c). Under our Policy, the use of enforcement discretion is appropriate for certain circumstances and can result in either mitigation or escalation of enforcement sanctions. To exercise such discretion, the Policy requires establishing a sound rationale to avoid the appearance that the NRC has acted in an arbitrary or capricious manner in exercising its enforcement authority. In this case, the Commission's interim policy addressing fire protection issues has placed a premium on licensee identification of violations as a result of their voluntary initiative to adopt the risk-informed, performance-based fire protection program under 10 CFR 50.48(c). Therefore, when certain criteria are met, the NRC will not normally take enforcement action. These criteria include a requirement that when such violations are identified, immediate corrective actions and/or compensatory measures must be taken within a reasonable time commensurate with the risk significance of the issue. Although the overall history of resolving complex fire protection issues has certainly not been prompt, the current resolution of these issues using 10 CFR 50.48(c) has been hastened by the granting of enforcement discretion and, therefore, its continued use is warranted pursuant to the staff's proposed extension.

  
Peter B. Lyons      7/25/08  
Date



**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** COMMISSIONER SVINICKI

**SUBJECT:** COMSECY-08-0022 – REQUEST FOR AN  
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STANDARD NFPA 805”

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached XX None \_\_\_\_\_

  
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SIGNATURE

08/3/08  
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DATE

Entered on “STARS” Yes ✓ No \_\_\_\_\_

### Commissioner Svinicki's Comments on COMSECY-08-0022

I approve revision to the NRC Enforcement Policy as proposed in the Federal Register notice to extend the enforcement discretion period for a period of six months beyond the date of the safety evaluation approving the second pilot plant license amendment request (LAR) to transition to NFPA 805. The extended window of enforcement discretion will allow nonpilot plant licensees to review pilot plant safety evaluations and apply lessons learned to their own LAR submittals.

This extension of enforcement discretion is not – and cannot reasonably be portrayed as – wholesale absolution from fire protection requirements. Rather, NRC would grant this additional discretion on a case-by-case basis, and only after a demonstration of “substantial progress” in the transition to NFPA 805 on the part of the licensee, based on a review of the following information:

- 1) A list of all fire protection-related noncompliances and the related compensatory measure for those noncompliances.
- 2) Documentation that each Operator Manual Action put in place as a compensatory measure is feasible and reliable, in accordance with staff provided guidance in Regulatory Issue Summary 2005-07, “Compensatory Measures to Satisfy the Fire Protection Program Requirements.”
- 3) A description of the physical modifications performed, if any, to address existing risk-significant fire protection issues.
- 4) A status report of the transition (including a schedule of milestones for completing the fire probabilistic risk assessment) broken down into the areas of classical fire protection transition; nuclear safety performance criteria transition; nonpower operational transitions; and, NFPA 805 monitoring program.

Far from a trivial exercise, this will require a substantial showing on the part of any licensee requesting an extension, all aspects of which are subject to NRC audit and inspection. Under the interim enforcement policy, the NRC may take enforcement action against violations of high safety significance and those that are willful. Further, based on an examination of the areas outlined above, if the licensee fails to demonstrate “substantial progress” towards transition to NFPA 805, the NRC will deny the request for extension of enforcement discretion. This process seems to me a reasoned approach to risk-informed regulation. I find nothing automatic or superficial about it. It implies no abdication of NRC regulatory authority or prerogatives.

Let me be clear. I share the commitment of my colleagues to resolving longstanding fire protection issues in a manner that is transparent and disciplined. I think we best advance this goal, however, by maintaining a strong focus on enabling the effective transition to NFPA 805 now underway by power reactor licensees and continuing to travel further towards success on the path we have already chosen. This limited extension of enforcement discretion will allow plants transitioning after the pilot plants to capture the lessons learned from that process, will consequently make more efficient use of agency resources, and is - in my view - a commonsense step towards our ultimate objective of enhanced fire safety and protection of the public.

  
Kristine L. Svinicki 08/13/08