

POLICY ISSUE NOTATION VOTE

April 29, 2011

SECY-11-0061

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: A REQUEST TO REVISE THE INTERIM ENFORCEMENT POLICY FOR
FIRE PROTECTION ISSUES ON 10 CFR 50.48(C) TO ALLOW
LICENSEES TO SUBMIT LICENSE AMENDMENT REQUESTS IN A
STAGGERED APPROACH (RIN 3150-AG48)

PURPOSE:

The purpose of this paper is to request Commission approval to publish a *Federal Register* notice announcing a revision to the U.S. Nuclear Regulatory Commission's (NRC) Enforcement Policy. The revision will provide licensees additional enforcement discretion for noncompliant fire protection issues to allow them to submit their license amendment requests (LARs) in a staggered approach as part of the transition of nuclear power plants to the risk-informed, performance-based alternative in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.48(c), "National Fire Protection Association Standard (NFPA) 805."

SUMMARY:

SECY-11-0033, "Proposed NRC Staff Approach To Address Resource Challenges Associated with Review of a Large Number of NFPA 805 License Amendment Requests," dated March 4, 2011, stated the staff expects approximately 25 LARs to be submitted at the end of June 2011, and explains how this many submittals and the effort to review them properly will significantly challenge the staff to complete the LAR reviews in a timely fashion. To alleviate this challenge, the staff proposed a staggered LAR submittal approach and committed to hold public meetings to engage the industry in discussions on the criteria that will be used to determine a staggered schedule for licensees to submit their LARs. In SRM-SECY-11-0033, dated April 20, 2011, the Commission approved the staggered submittal approach and instructed the staff to revise the NFPA 805 interim Enforcement Policy. This Commission paper proposes the revision to the Enforcement Policy necessary to support a staggered approach.

CONTACT: Gerry J. Gulla, OE/EB
(301) 415-2872

BACKGROUND:

On June 16, 2004, the NRC published a final rule in the *Federal Register* (69 FR 33536) amending 10 CFR 50.48, "Fire Protection." This rule became effective on July 16, 2004, and allowed reactor licensees to comply with the risk-informed, performance-based fire protection requirements in 10 CFR 50.48(c) instead of the requirements in 10 CFR 50.48(b) or a licensee's approved fire protection program (FPP). On June 16, 2004, the NRC revised its Enforcement Policy (69 FR 33684) to include an interim Enforcement Policy that describes enforcement discretion for plants transitioning to NFPA 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants." If the criteria, as stated in the interim Enforcement Policy, were met, the NRC granted a transitioning licensee enforcement discretion for 2 years for any FPP noncompliant issue that was discovered during the transition process. Additionally, if a licensee submitted a letter of intent (LOI) that met the criteria in the interim Enforcement Policy before January 16, 2005, then the NRC granted enforcement discretion for any existing identified noncompliant issues that the licensee could reasonably correct under 10 CFR 50.48(c).

The Nuclear Energy Institute (NEI) requested an extension to the January 16, 2005, LOI due date (Agencywide Documents Access and Management System (ADAMS) Accession No. ML042010132). NEI contended that licensees needed additional time to make the decision to adopt NFPA 805 and to plan for the transition within their next budget cycle. On January 14, 2005, the NRC amended the interim Enforcement Policy (70 FR 2662) to revise the date by which a licensee must submit its LOI to receive enforcement discretion for existing identified noncompliances. The date was moved from January 16, 2005, to December 31, 2005.

A number of licensees submitted their LOIs before December 31, 2005; however, many of them also requested an additional year of enforcement discretion to better facilitate the transition process. In April 2006 (71 FR 19905), the NRC revised the interim Enforcement Policy to extend the enforcement discretion period from 2 years to 3 years from the date as specified in the licensee's letter of intent to transition to NFPA 805.

In February 2007, NEI submitted, and licensees were granted, a request for additional enforcement discretion for sites transitioning to NFPA 805 (ADAMS Accession No. ML070460550), even though the NRC agreed with only some of the concerns that were raised. In September 2008, the NRC amended the interim Enforcement Policy (73 FR 52705) to grant additional enforcement discretion, on a case-by-case basis, to those licensees that had demonstrated "substantial progress" toward the completion of their NFPA 805 transition and that would continue to maintain and enhance fire safety at their facilities. This enforcement discretion period was continued until 6 months past the date of the safety evaluation approving the LAR for the second pilot plant, Oconee Nuclear Station (Oconee). The NRC completed the safety evaluation for Oconee on December 29, 2010, which resulted in the June 29, 2011, due date for licensees that were granted the additional 6-month enforcement discretion.

DISCUSSION:*Staggered Submittal*

By the end of 2008, the staff expected to receive approximately 16 LARs, which included both pilot plants (Shearon Harris Nuclear Power Plant and Oconee). However, many transitioning licensees, including those licensees who were expected to have submitted their LARs in 2008, requested and were granted the additional enforcement discretion. As a result, the number of LARs that the NRC expects to receive on or before June 29, 2011, has increased from 16 LARs to approximately 23¹ LARs. Approximately 26 LARs will be submitted in Calendar Year 2011. Reviewing this many concurrent LARs would be a significant challenge to the staff.

The staff submitted SECY-11-0033 to the Commission to propose a staggered approach to the LAR submittal process. As part of this staggered approach, the staff will use safety and efficiency criteria and will hold public meetings to engage the industry in the selection of submittal criteria that would result in higher quality applications and more effective and efficient application review. In SRM-SECY-11-0033, dated April 20, 2011, the Commission approved this staggered approach, and the staff began working with key stakeholders to develop submittal criteria and mutually agreeable site selection to meet the LAR submittal schedule.

Based on previous requests from NEI to stagger LAR submittals, on April 14, 2011, the NRC held a public meeting with various licensees, stakeholders, and NEI. The purpose of the meeting was to (1) discuss the staggered approach to LAR submittals, (2) identify industry considerations for staggered LAR submittals, and (3) discuss the staff's LAR review approach and adjustment to the monthly status meetings.

An industry working group is currently generating a list of transitioning licensees with suggested corresponding LAR submittal dates necessary to support this staggered submittal approach. Once the working group completes this list, the staff will review and decide whether to approve it. The approved sequencing will also include submittal dates for licensees who are currently scheduled to submit sometime after June 29, 2011. Each licensee will be required to submit a letter to the NRC acknowledging the agreed-upon commitment date with the exception of the first group of licensees that are scheduled to submit around July 1, 2011. The NRC expects that all commitment letters will be submitted before the current enforcement discretion expires on June 29, 2011. Enforcement discretion will continue while the staff processes and responds to the commitment letters.

Licensees will be held accountable for submitting an acceptable LAR on the date specified in their NRC-approved commitment letters. Failure on the part of a licensee to submit the LAR on or before the NRC-approved date will result in a loss of enforcement discretion. However, licensees with appropriate justifications and staff approval may regain enforcement discretion once an acceptable LAR is submitted. If enforcement discretion is not granted, any identified noncompliance associated with 10 CFR 50.48(b) or the approved FPP may be subject to enforcement actions. While the LAR is under review, enforcement discretion will continue as long as the noncompliances meet the criteria as stated in the interim Enforcement Policy.

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Monticello Nuclear Generating Plant (ADAMS Accession No. ML102000433) and Nine Mile Point Nuclear Station, Unit 2 (ADAMS Accession No. ML110601312) decided not to complete the transition to NFPA 805.

The NRC staff will take steps to work with licensees, if necessary, to amend the submittal schedule to substitute one site for another if a submitted LAR does not pass the NRC's acceptance review.

Enforcement discretion for a licensee will end once the license amendment is issued. Going forward, previously identified noncompliances may be covered under the transition license conditions. However, once the NRC issues the amendment, newly identified FPP noncompliances may be subject to enforcement actions.

Policy Clarifications

Recently, licensees have asked for clarification on the LAR review process. The staff is taking this opportunity to clarify the NFPA 805 interim Enforcement Policy to address these questions. If a licensee does not submit its LAR within the required timeframe, or if the LAR does not meet the NRC's acceptance review, the licensee will lose its enforcement discretion but may regain it with appropriate justification and staff approval. Upon LAR submittal, enforcement discretion may continue for any previously and newly identified noncompliance until the NRC disposes the LAR. To ensure licensing review efficiency, the staff intends to establish specific response dates to requests for additional information to address the timeliness and quality of response. The staff is also clarifying information and removing the section of the policy that previously granted licensees the ability to request an additional 6 months of enforcement discretion.

RECOMMENDATION:

The staff recommends that the Commission approve the publication of a *Federal Register* notice (enclosure) announcing the revision to the Enforcement Policy to extend the enforcement discretion to correspond with a staggered LAR submittal schedule, as amended and approved by the NRC, in "Interim Enforcement Discretion Policy for the Fire Protection Rule" (10 CFR 50.48(c)) (NFPA 805 Rule). The second enclosure compares the proposed revisions to the Enforcement Policy with the existing Enforcement Policy.

COORDINATION:

The Office of the General Counsel has reviewed this notification and has no legal objection.

/RA Michael Weber for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. Draft *Federal Register* Notice
2. Markup of the NFPA 805 Interim Enforcement Policy

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OFFICE	OE: ES	OE:BC	NRR:OD	Tech Editor
NAME	GGulla	NHilton	BRuland for ELeeds	JDougherty
DATE	04/20/11	04/21/11	04/22/11	04/22/11
OFFICE	OGC/GCHEA/MLE	ADM/DAS/RAD:BC	OE:OD	EDO
NAME	MLemoncelli for CScott	TLeslie for CBladey	RZimmerman	RWBorchardt (MWeber for)
DATE	04/27/11	04/27/11	04/27/11	04/29/11

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