

U.S. NUCLEAR REGULATORY COMMISSION

RIN 3150-AG48

[NRC-XXXX-XXXX]

Interim Enforcement Policy for Certain Fire Protection Issues

AGENCY: Nuclear Regulatory Commission

ACTION: Policy statement; revision

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is revising its interim Enforcement Policy on enforcement discretion for certain fire protection issues to extend the enforcement discretion to correspond with a submittal schedule for new license amendment requests (LARs). This interim policy affects licensees that are transitioning to use the National Fire Protection Association Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants" (NFPA 805).

DATES: This policy revision is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The NRC is not soliciting comments on this revision to its Enforcement Policy.

ADDRESSES:

You can access publicly available documents related to this proposed rule using the following methods:

- **NRC's Public Document Room (PDR):** The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The Enforcement Policy is available through ADAMS under Accession No. ML093480037.
- **Federal Rulemaking Web Site:** Public comments and supporting materials related to this proposed rule can be found at <http://www.regulations.gov> by searching on Docket ID **NRC-2XXX-XXXX**.

The NRC maintains the Enforcement Policy on its Web site at <http://www.nrc.gov>; select "Public Meetings and Involvement," then "Enforcement," and then "Enforcement Policy."

FOR FURTHER INFORMATION CONTACT: Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2872; e-mail: Gerald.Gulla@nrc.gov.

SUPPLEMENTARY INFORMATION

I. Background

On June 16, 2004, the NRC revised its Enforcement Policy to include an interim Enforcement Policy applicable to licensees that are transitioning to the risk-informed, performance-based fire protection requirement in NFPA 805. However, because of the complexity and evolving issues related to fire protection, the NRC revised its interim Enforcement Policy several times. The table below lists the corresponding *Federal Register* notices and provides brief descriptions of the associated revisions.

FEDERAL REGISTER NOTICE	DATE	BRIEF DESCRIPTION
69 FR 33684	June 16, 2004	Describes the initial interim Enforcement Policy on fire protection.
70 FR 2662	January 14, 2005	Revises the submittal date for licensees to receive enforcement discretion for existing identified fire protection program noncompliant issues.
71 FR 19905	April 18, 2006	Extends the enforcement discretion from 2 years to 3 years from the date as specified in the licensee's letter of intent to transition to NFPA 805.
73 FR 52705	September 10, 2008	Grants additional enforcement discretion so that licensees can use lessons learned from the pilot process.

On March 4, 2011, the NRC published SECY-11-0033, "Proposed NRC Staff Approach To Address Resource Challenges Associated with Review of a Large Number of NFPA 805 License Amendment Requests." In SECY-11-0033, the staff proposed to increase the current resources for the NFPA 805 LARs and to work with industry to develop a schedule for

staggering the LAR submittals. In SRM-SECY-11-0033, dated April 20, 2011, the Commission approved this staggered approach and instructed the staff to submit a Commission paper with an attached proposed revision to the NFPA 805 interim Enforcement Policy for Commission approval.

II. Discussion

Initially, the NRC expected to receive approximately 16 LARs in 2007. However, because of the unforeseen complexity of the transitioning process, the interim Enforcement Policy has undergone a number of revisions that have changed the submittal due date for many licensees. These revisions have created a “grouping effect,” and now the NRC expects approximately 23 LARs by the end of June 2011. The Commission has approved the use of additional resources for NFPA 805 LAR reviews and working with industry to develop and create a staggered LAR submittal schedule. The NRC held a public meeting on April 14, 2011, during which the staff and stakeholders discussed the staggered approach method. The meeting focused on (1) the staggered approach to LAR submittals, (2) identifying industry considerations for staggered LAR submittals, and (3) discussing the staffs LAR review approach and adjustment to 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 the list, the staff will review and decide whether to approve it. The NRC expects the sequencing of the submittals to result in approximately 7 LARs by July 1, 2011; 10 additional LARs by July 1, 2012; another 10 LARs by July 1, 2013;

and the remainder by July 1, 2014. The NRC will require licensees, with the exception of the first group of licensees scheduled to submit around July 1, 2011, to submit a letter by June 29, 2011, that acknowledges their new commitment date. Enforcement discretion will continue while the staff is processing and responding to the commitment letters.

Once this process is completed, the NRC will hold the licensee accountable for submitting an acceptable LAR on the date as stated in its commitment letter. A failure on the part of the licensee to submit an acceptable LAR on or before the NRC approved date will result in a loss of enforcement discretion. However, licensees with appropriate justification and staff approval may regain enforcement discretion once an acceptable LAR is submitted. If enforcement discretion is not granted, any identified noncompliance with the requirements of 10 CFR 50.48(b) (or the requirements in a fire protection license condition) 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 policy. The NRC staff will maintain the number of scheduled reviews per year. For example, the staff will 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.

Nuclear safety is the first consideration in any request for additional enforcement discretion. The NRC will continue to apply normal inspection schedules and processes during the transition process (including staggering the LAR submittals) to ensure that licensees maintain their existing fire protection program licensing basis. The approved fire protection program uses numerous levels of defense in depth with regard to fire protection. Most noncompliant issues only affect one level of defense in depth, leaving two or more "layers" of protection to provide significant safety margin. Licensees must address all nonconforming

conditions with adequate compensatory measures to ensure fire safety with sufficient defense in depth. As a result, the plant preserves nuclear safety because the licensee implements compensatory measures that offset the risk of the nonconforming conditions in accordance with the approved fire protection program. Therefore, extending enforcement discretion should not significantly impact fire safety.

PROCEDURAL REQUIREMENTS:

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.).

The Office of Management and Budget (OMB) approved existing requirements under OMB Control Number 3150-0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Congressional Review Act

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

Accordingly, the NRC has revised its Enforcement Policy to read as follows:

NRC Enforcement Policy

9.1 Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This section contains the interim Enforcement Policy that the NRC will follow to exercise enforcement discretion for certain noncompliances with the requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.48, "Fire Protection" (or fire protection license conditions), that are identified as a result of a licensee's transition to the new risk-informed, performance-based fire protection approach included in 10 CFR 50.48(c) and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c). Under 10 CFR 50.48(c), reactor licensees may voluntarily comply with the risk-informed, performance-based fire protection approaches in National Fire Protection Association Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants" (NFPA 805), 2001 Edition (with limited exceptions stated in the rule language).

Enforcement discretion may apply to noncompliances identified during the licensee transition process. This timeframe starts on the date as specified in the licensee's letter of intent to

transition to 10 CFR 50.48(c) and ends (1) 3 years after that initial start date or (2) on the date as specified in the licensee's commitment letter, as amended and approved by the NRC. If the licensee is unable to submit its license amendment request (LAR) within the timeframe stated above, it will lose its enforcement discretion. However, licensees with appropriate justification and staff approval may regain enforcement discretion once an acceptable¹ LAR is submitted. If enforcement discretion is not granted, any identified noncompliances may be subject to enforcement action.

Once an acceptable LAR is submitted, enforcement discretion for previously identified noncompliances² and any newly identified noncompliances discovered either by the licensee or the NRC while the LAR is under review will continue to be in place until the NRC disposes of the LAR.³ If the NRC finds the amendment request unacceptable but gives the licensee an opportunity to provide supplemental information, the enforcement discretion will continue while the licensee prepares the supplemental information, provided that it submits the information within the timeframe stipulated by the staff. If the NRC finds the amendment acceptable after receipt of the supplemental information, enforcement discretion will continue until the NRC disposes of the amendment. A licensee that submits an LAR that is not acceptably supplemented or an LAR that was initially characterized as unacceptable with no opportunity to provide supplemental information will lose its enforcement discretion. However, licensees with appropriate justification and NRC approval may regain enforcement discretion once an

¹ The agency will use the Office of Nuclear Reactor Regulation's (NRR) Office Instruction, LIC-109, "Acceptance Review Procedures," to evaluate the LAR for acceptability.

² These are noncompliances that were previously granted enforcement discretion before submittal of the LAR.

³ Noncompliances that are identified during the LAR review process and that are determined to be either associated with a finding of high safety significance or willful will be considered for potential enforcement action.

acceptable LAR is submitted. If enforcement discretion is not granted, any identified noncompliances may be subject to enforcement action.

Once the NRC accepts an LAR for licensing review, the timeliness and quality of the responses to a request for additional information (RAI) will significantly affect the LAR review schedule. Licensees that do not respond in a timely fashion⁴ to staff RAIs or do not provide quality RAI responses may lose enforcement discretion.

If, after submitting the letter of intent to comply with 10 CFR 50.48(c) and before submitting the LAR, a 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 licensing 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 NRC, as a matter of practice, will not take enforcement action against any noncompliance that the licensee corrected during the transition process and will, 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). The NRC will disposition noncompliances that the licensee have not corrected and noncompliances that were identified after the date of the withdrawal letter in accordance with normal enforcement practices.

a. Noncompliances Identified During the Licensee's Transition Process

Under this interim Enforcement Policy, the NRC will normally not take enforcement action for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license

⁴ See NRR's Office Instruction, LIC-101 "License Amendment Review Procedures."

condition) involving a problem in an area such as engineering, design, implementing procedures, or installation if the violation is documented in an inspection report and meets all of the following criteria:

1. The licensee identified the violation as a result of a voluntary initiative to adopt the risk-informed, performance-based fire protection program under 10 CFR 50.48(c), or, if the NRC identified the violation, the NRC found it likely that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of its transition to 10 CFR 50.48(c).
2. The licensee corrected the violation or will correct the violation after completing its transition to 10 CFR 50.48(c). Also, the licensee took immediate corrective action or compensatory measures or both within a reasonable time commensurate with the risk significance of the issue following identification; this action should involve expanding the initiative, as necessary, to identify other issues caused by similar root causes.
3. Routine licensee efforts, such as normal surveillance or quality assurance activities, were not likely to have previously identified the violation.
4. The violation was not willful.

The NRC may take enforcement action when the licensee has not met these conditions or when a violation that is associated with a finding of high safety significance is identified.

Although the NRC may exercise discretion for violations meeting the required criteria, if the licensee failed to make a required report to the agency, then it will normally issue a separate enforcement action for the licensee's failure to make the required report.

b. Existing Identified Noncompliances

In addition, the licensee may have existing identified noncompliances that could reasonably be corrected under 10 CFR 50.48(c). For these noncompliances, the NRC is providing enforcement discretion for the implementation of corrective actions until the licensee has made the transition to 10 CFR 50.48(c), provided that the noncompliances meet all of the following criteria:

1. The licensee has entered the noncompliance into its corrective action program and implemented appropriate compensatory measures.
2. The noncompliance is not associated with a finding that the Reactor Oversight Process significance determination process would evaluate as red, or otherwise it would not be categorized at Severity Level I.
3. The noncompliance was not willful.

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

Dated at Rockville, MD, this day of 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission