

Enclosure

Comments on SECY 04-0050

1. Page 3, Public Comments on the Proposed Rule: The staff determined that performance-based alternatives to the program elements and minimum design requirements of NFPA 805 Chapter 3 require a license amendment prior to implementation.

Comment: Another method for implementing these performance-based alternatives is by submittal of a topical report for staff approval describing the alternative. Licensees would then be able to reference the topical report and demonstrate that the report addresses their particular application without the formal submittal of a license amendment for each application. The licensee would retain the documentation for future NRC inspection. This is consistent with the current process for NRC review of generic topical reports.

The NRC staff states in the SECY that license amendments would not be required to use fire modeling or PSA analyses to comply with NFPA 805. This addressed the Commission direction in the SRM to SECY 02-0132 regarding the use of methods not in NFPA 805. If NRC approves a topical report pertaining to a particular performance-based method as an alternative to a Chapter 3 method, this approved method should be treated in the same fashion as for fire modeling and PSA methods. Licensees should be able to utilize it without prior staff approval and retain the documentation for its use at the site.

Implementation of this approach would potentially provide a significant saving of NRC resources that would otherwise be spent on reviewing license amendments from multiple utilities for the application of the same alternative.

2. Page 4, Enforcement Considerations: A provision is made for granting enforcement discretion for noncompliances during the period until the licensee has transitioned to 10 CFR 50.48(c).

Comment: The stated provision is appropriate. It will allow licensees a suitable time to adopt a risk-informed licensing structure and provide an opportunity to tailor risk-informed solutions to identified issues with a continuing focus on safety.

3. Page 5, Consideration of Other Rulemakings: The staff notes that the rulemaking on post-fire manual actions may impact licensees adopting 10 CFR 50.48(c) if that rulemaking is made applicable to those licensees.

Comment: The staff should maintain cognizance of the risk-informed, performance-based approach contained in 10 CFR 50.48(c) and avoid creating unintended consequences to plants adopting 10 CFR 50.48(c) as a result of the pending rulemaking on manual actions. The manual actions rulemaking is deterministic in nature and should be applicable only to licensees using the deterministic approach for identifying the fire protection systems and features required to achieve the NFPA 805 performance criteria. Section 4.2.4 of NFPA 805 allows the use of recovery actions in the performance-based approach. The manual actions rulemaking shouldn't conflict with the intent of that provision.

4. Attachment 1, page 18: The SECY states, "NFPA 805, Chapter 1, states the radioactive release performance criteria to maintain radiation release from the effects of fire as low as reasonably achievable and not to exceed 10 CFR Part 20 limits." [emphasis added]

Comment: NFPA 805, Chapter 1, Section 1.5.2, actually states "Radiation release to any unrestricted area due to the direct effects of fire suppression activities (but not involving fuel damage) shall be as low as reasonably achievable and not exceed applicable 10 CFR, Part 20, limits." [emphasis added] The staff's intent should be clarified since "the effects of fire" are not the same as "the effects of fire suppression activities."

5. Cost Estimates: Attachment 1, page 29, *Licensee Impact*, states that the analysis required by the licensee to adopt 10 CFR 50.48(c) is 11,250 person-hours. The same estimate is provided on page 32 of this attachment. On page 48 the estimate is 11,290. On page 3 of Attachment 2, *Regulatory Analysis*, Section 6, the dollar cost is estimated at \$1.68 million for each facility.

Comment: We believe the NRC staff estimates are too high by a factor of 3 to 10, and do not reflect the industry estimate of 1,200 to 3,800 man-hours for the transition. The industry estimate was developed during the pilot evaluation of the NEI implementing guidance conducted at a nuclear plant in 2003. The range in the industry estimate reflects a broad spectrum of plants, not just those that are well-positioned for making the transition to a new licensing basis. The industry estimate does not reflect the resources required to develop a fire PRA, since this is not required in order to comply with NFPA 805.

We are concerned that the high NRC estimate could discourage licensees from adopting the new rule. We recommend that the Commission request the staff to reconcile their estimates with those from the industry pilot evaluation.