

## **POLICY ISSUE** **(Information)**

February 24, 2012

SECY-12-0031

FOR: The Commissioners

FROM: R. W. Borchardt  
Executive Director for Operations

SUBJECT: ENFORCEMENT ALTERNATIVES FOR SITES THAT INDICATE  
ADDITIONAL TIME REQUIRED TO SUBMIT THEIR LICENSE  
AMENDMENT REQUESTS TO TRANSITION TO 10 CFR 50.48(C)  
NATIONAL FIRE PROTECTION ASSOCIATION STANDARD 805

PURPOSE:

This information paper responds to Staff Requirements Memorandum (SRM)-M111213 and provides the Commission with the staff's available alternatives in addressing licensees who inform the U.S. Nuclear Regulatory Commission (NRC) that they will not be able to submit their license amendment requests (LARs) for National Fire Protection Association Standard 805 (NFPA 805), "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants," on their docketed scheduled date.

SUMMARY:

In 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, the staff proposed a staggered LAR submittal approach in an effort to complete the LAR reviews in a timely fashion. The Commission approved the staff's approach and instructed the staff to revise the NFPA 805 Interim Enforcement Policy to align with this approach. In SRM-SECY-11-0061, dated June 10, 2011, the Commission approved the revision to the Enforcement Policy. In summer 2011, the industry provided and the staff approved a staggered submittal schedule for licensees transitioning to NFPA 805. Although licensees committed to submitting LARs by a certain date, at least three licensees indicated an inability to submit their LARs on or before their agreed upon dates.

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BACKGROUND:

Over the first half of calendar year 2011, the NRC held a series of public meetings with industry representatives to discuss criteria necessary to create a sequenced list of LAR submittals. On May 11, 2011, industry representatives and staff mutually agreed upon an LAR submittal schedule (Agencywide Documents Access and Management System Accession Number ML111450665), which aligned with the “staggered approach” approved by the Commission (SRM-SECY-11-0033). Also during this timeframe, the NRC revised its Enforcement Policy (SRM-SECY-11-0061) to support this method. Following those changes, most licensees requested and received an extension of their NFPA 805 enforcement discretion. Licensees with a scheduled submittal date that aligned with their previous scheduled date did not require an extension of enforcement discretion.

Although the NRC granted most licensees their request, two of the first seven licensees indicated in advance their inability to submit an LAR by the agreed upon date. This resulted in both licensees losing enforcement discretion. However, the licensees had adequate justification and enforcement discretion was reinstated once the NRC accepted their LARs for review. The NRC is aware of at least one additional licensee who indicated in advance an inability to meet its agreed upon submittal date.

DISCUSSION:

Voluntary transition to NFPA 805 is viewed by the NRC as an acceptable way for a licensee to address multiple, longstanding noncompliances with the existing deterministic fire protection requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, “Domestic Licensing of Production and Utilization Facilities,” Appendix R, “Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979.” The agency is facilitating the adoption of NFPA 805 by granting enforcement discretion for most noncompliances identified during the transition activities. Plant safety is being maintained through the use of compensatory measures. Once a licensee’s LAR is approved, implemented, and plant modifications have been completed, compliance will be restored and compensatory measures will no longer be needed.

Even with enforcement discretion, traditional fire protection inspections have occurred as scheduled. Inspectors continue to document instances of noncompliance found by the licensee or staff and ensure the acceptability of the corresponding compensatory measures. For those licensees currently making the transition to NFPA 805, use of the Reactor Oversight Process (ROP) Significance Determination Process (SDP) to determine the safety significance of a finding is only needed for findings that may be of high safety significance. Consistent with the NRC Enforcement Policy, findings that are not of high safety significance (i.e., those findings not determined to be Red using the SDP) receive enforcement discretion and are not entered into the ROP Action Matrix. This encourages licensees to find, report, and correct legacy fire protection design issues.

The staff has identified that some licensees will miss their scheduled submittal date. The delay in LAR submission by some licensees has caused the NRC to consider appropriate responses to a licensee’s failure to submit an acceptable LAR as scheduled. In considering alternatives, the staff identified three general objectives:

- (1) Establish a framework for effective regulatory response that is consistent with the existing Enforcement Policy;
- (2) Ensure the timely completion of committed licensee actions to transition to NFPA 805; and,
- (3) Reinforce public confidence by taking steps that address legacy fire protection noncompliances, rather than continued reliance on long-term compensatory measures.

SCENARIOS:

Based on recent communications with the reactor community, the staff believes most transitioning licensees will meet their scheduled date. However, because the staff now anticipates that some licensees are likely to miss their submittal date, the following scenarios describe possible alternative NRC responses if delays occur.

*Scenario A:* A licensee informs the staff before its scheduled submittal date that it will not be able to submit its LAR on time.

Potential Alternative NRC Responses to this Scenario:

1. The licensee may request to change the submittal schedule by substituting one site for another, if possible. Some licensees may have completed or be close to completing their LAR submittal and would be in a position to submit it earlier than their agreed upon date, substituting for the site that will be delayed. If a licensee requests to substitute one site for another, the staff will review the substitution to determine if it is acceptable. The staff's review will consider the comparative safety benefit of transitioning to NFPA 805 between the two sites and any interim safety improvements made at the site that will miss its original submittal date. If a substitution acceptable to the staff is possible, the NRC would revise the submittal date and would continue enforcement discretion until the licensee submits its LAR on the new date.

The staff prefers this alternative because it would result in little or no impact on the staff or the resources budgeted for the LAR review schedule. However, the potential exists that some licensees may be unable or unwilling to substitute LAR submittal dates.

2. The staff could issue a confirmatory order (CO) that would extend enforcement discretion, if the licensee provides adequate justification. The purpose of the CO would be to establish an enforceable date for the submittal of an acceptable LAR.

In evaluating the justification provided by a licensee, the staff would consider, but not be limited by, the status of the industry peer review, plant modifications, and the licensee's compliance reviews, as well as the resolution of methodology issues.

If the licensee fails to meet the submittal date established by the CO, or if the LAR is unacceptable, the licensee would be in violation of the CO and the NRC would take traditional enforcement action. Enforcement would consist of a Notice of Violation and

the use of Enforcement Policy discretion to allow for possible civil penalties, up to and including daily civil penalties, depending on the specifics of the situation.

The staff prefers this alternative when a substitution cannot be arranged, as it demonstrates a defined regulatory position, considering the long-standing history of these issues. Pairing the CO with continued enforcement discretion provides opportunity for timely completion of the licensee transition. Furthermore, it would contribute to public confidence by illustrating that the NRC is taking steps to actively manage a timely transition for those plants that have elected to adopt NFPA 805.

*Scenario B:* The licensee does not submit an acceptable LAR by its scheduled date and does not meet the Scenario A alternatives. In accordance with the Enforcement Policy, the licensee would lose enforcement discretion, but may regain it when it submits an acceptable LAR.

#### Potential Alternative NRC Responses to this Scenario:

The staff would shift to conducting focused triennial fire protection inspections annually. The NRC would conduct these inspections and take enforcement action on newly identified and previously identified fire protection noncompliances entered into the site's corrective action program that are greater than green and for which no corrective actions have been taken. These findings will be entered into the ROP Action Matrix.

In light of the previous enforcement discretion, and consistent with the existing Enforcement Policy, the staff would not take enforcement action for noncompliances that have been corrected or on a case-by-case basis, would consider refraining from taking action if reasonable and timely corrective actions are in progress. For noncompliances determined to be of minimal risk (minor or green), the staff would follow the established enforcement and ROP guidance and would not take enforcement action on these noncompliances.

The staff also considered other alternatives for responding to these scenarios, including no action, extending enforcement discretion on a case-by-case basis, preparing a Confirmatory Action Letter, and granting additional "blanket" enforcement discretion by revising the Enforcement Policy. However, the staff determined that these alternatives were not effective in addressing the overall objectives as outlined in the Discussion section.

#### CONCLUSION:

Implementing the performance-based objectives will support the resolution of the long-standing fire protection legacy issues. Under the current Enforcement Policy, the staff identified two possible scenarios for licensees who are unable to meet their submittal date. In the first scenario, enforcement discretion could continue if the licensee either (1) substitutes submittal dates with another site, or (2) agrees to a CO with a new, agreed upon submittal date. The second scenario is the licensee loses enforcement discretion if a licensee misses its submittal date and does not utilize one of the first scenario alternatives. This would result in a shift to annual focused fire protection inspections. The staff believes that these alternatives address the overall objectives and are the most effective solutions to the above scenarios.

The Commissioners

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COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Regions have reviewed this paper and their comments were addressed.

***/RA/ Michael F. Weber for***

R. W. Borchardt  
Executive Director  
for Operations

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