

MARKUP OF THE NFPA 805 INTERIM ENFORCEMENT POLICY

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

This section ~~sets forth~~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 ~~the 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). ~~Paragraph Under 10 CFR 50.48(c) allows,~~ reactor licensees ~~to~~may voluntarily comply with the risk-informed, performance-based fire protection approaches in National Fire Protection Association Standard 805 ~~(NFPA 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).

~~For these~~Enforcement discretion may apply to noncompliances identified during the ~~licensees'~~licensee transition process, ~~this~~. 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 ~~policy will~~. 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 ~~in effect~~subject to enforcement action.

Once an acceptable LAR is submitted, enforcement discretion for ~~up to 3 years from the date specified~~previously identified noncompliances² and any newly identified noncompliances discovered either by the licensee ~~in its letter of intent to adopt~~or the NRC while the requirements in 10 CFR 50.48(c). ~~This enforcement discretion~~LAR is under review will continue to be in place until the ~~NRC~~NRC disposes the licensee's amendment request to transition to 10 CFR 50.48(c). ~~The Agency will use NRR Office Instruction LIC-109, "Acceptance Review Procedures," (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081200811), to process the license amendment request (LAR). If the amendment is acceptable for review, enforcement discretion will continue to be in place, without interruption, until the NRC disposes the LAR. If the amendment is LAR.~~³ If the NRC finds the amendment request unacceptable ~~with~~but gives the licensee an opportunity to ~~supplement~~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~~reviews. If the NRC finds the amendment ~~if acceptable~~after receipt of the supplemental information, ~~the amendment is determined to be acceptable for~~

¹ The agency will use Office of Nuclear Regulation (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.

~~review, enforcement discretion will continue until the NRC NRC decides the disposition of dispositions the amendment. The NRC will determine the disposition of submittals. A licensee that resubmits an LAR that is not acceptably supplemented, or submittals an LAR that was initially characterized as unacceptable with no opportunity to supplement, in accordance with normal enforcement practices, provide supplemental information will lose its enforcement discretion. However, licensees with appropriate justification and NRC approval may regain enforcement discretion once an acceptable LAR is submitted. If enforcement discretion is not granted, any identified noncompliances may be subject to enforcement action.~~

~~The NRC may grant an additional period of enforcement discretion on a case-by-case basis, if a licensee has made substantial progress in its transition effort. This additional period of discretion, if granted, would end 6 months after the date of the safety evaluation approving the second pilot plant[†] LAR review. The NRC will assess "substantial progress" based on accomplishment of tasks that are not resource limited with respect to technical expertise in fire probabilistic risk assessment (e.g., classical fire protection transition, deterministic nuclear safety performance criteria transition, nonpower operational transition, radioactive release transition, development of the NFPA 805 monitoring program, operator manual action transition to NFPA 805 recovery actions). In order for the NRC to adequately evaluate the transition progress, licensees that request enforcement discretion beyond the 3 years currently available should make their request to the NRC in writing at least 3 months before the expiration of the 3-year discretion period and compile or submit the following information:~~

- ~~• Compile, for onsite NRC audit/inspection, a list of all fire protection-related noncompliances and the related compensatory measures for those noncompliances.~~
- ~~• Document, for onsite NRC audit/inspection, that each operator manual action put in place as compensatory measures 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."~~
- ~~• Submit a description of the physical modifications performed, if any, to address existing risk-significant fire protection issues.~~
- ~~• Submit a status report on the transition, including a schedule of milestones for completing the fire probabilistic risk assessment. The status report should be divided into the following major areas:
 - ~~— classical fire protection transition (in accordance with NFPA 805, Chapter 3)~~
 - ~~— nuclear safety performance criteria transition (in accordance with NFPA 805, Chapters 1, 2, and 4)~~
 - ~~— nonpower operational transitions~~
 - ~~— NFPA 805 monitoring program~~~~

[†] The NRC accepted the request from both Duke Power (ADAMS Accession No. ML051080005) and Progress Energy (ML052140391) to allow Oconee Nuclear Power Station and Shearon Harris Nuclear Power Station, respectively, to become pilot NFPA 805 plants.

~~If the NRC determines that a licensee has not made sufficient progress during the transition to NFPA 805, the NRC will deny the request for an extension of enforcement discretion.~~

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 fashion² 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, ~~the~~ 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 staff, 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). ~~Noncompliances-~~ ~~The NRC will disposition noncompliances~~ that the licensee has not corrected, ~~as well as and noncompliances that were~~ identified after the date of the withdrawal letter, ~~will be dispositioned~~ 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 ~~normally will not be taken~~ for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license 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:

- 2-1. ~~4.~~ 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 staff found it likely that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of ~~the licensee's transition to 10 CFR 50.48(c), provided that the schedule reasonably provides for completion of the transition within 3 years of the date specified by the licensee in its letter of intent to implement 10 CFR 50.48(c) or other period granted by the NRC.~~ its transition to 10 CFR 50.48(c).
2. The ~~violation was licensee~~ corrected the violation or will ~~be corrected as a result of~~ correct the violation after completing ~~theits~~ transition to 10 CFR 50.48(c). Also, the licensee took immediate corrective action ~~and/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).~~

² See NRR Office Instruction LIC-101 "License Amendment Review Procedures."

3. Routine licensee efforts, such as normal surveillance or ~~QA~~ 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 ~~are not met~~ or when a violation that is associated with a finding of high safety significance is identified.

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

b. Existing Identified Noncompliances

In addition, ~~licensee~~ 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 ~~ROP SDP~~ 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).

~~After December 31, 2005, this enforcement discretion for implementation of corrective actions for existing identified noncompliances will not be available and the requirements of 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) will be enforced in accordance with normal enforcement practices. However, licensees that submitted letters of intent to transition to 10 CFR 50.48(c) with existing noncompliances will have the option to implement corrective actions in accordance with the new performance-based regulation. The NRC will exercise all other elements of the assessment and enforcement process even if the licensee submitted its letter of intent before the NRC issues its enforcement action for existing noncompliances.~~