

ATTACHMENT 4
REVISION OF ENFORCEMENT POLICY

NUCLEAR REGULATORY COMMISSION

[NUREG - 1600]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG-1600) (Enforcement Policy or Policy) to include an interim enforcement policy regarding enforcement discretion for certain issues involving fire protection programs at operating nuclear power plants.

DATES: This revision is effective **[insert date 30 days after publication in the *Federal Register*]**. Comments on this revision to the Enforcement Policy may be submitted on or before **[insert date 30 days after publication in the *Federal Register*]**.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document

Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also email comments to nrcprep@nrc.gov.

The NRC maintains the current Enforcement Policy on its Web site at <http://www.nrc.gov>, select **What We Do, Enforcement**, then **Enforcement Policy**.

FOR FURTHER INFORMATION CONTACT: Joseph Birmingham, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, (301) 415-2829, e-mail (JLB4@nrc.gov) or Renée Pedersen, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, (301) 415-2742, e-mail (RMP@nrc.gov).

SUPPLEMENTARY INFORMATION:

In a separate action published in today's *Federal Register*, the NRC is revising its regulations in 10 CFR 50.48 governing fire protection at operating nuclear power plants. The revision adds a new paragraph (c) to §50.48 that allows reactor licensees to voluntarily comply with the risk-informed, performance-based fire protection approaches in National Fire Protection Association (NFPA) Standard 805 (NFPA 805), "Performance-based Standard For Fire Protection For Light Water Reactor Electric Generating Plants," 2001 Edition (with limited exceptions stated in the rule language), as an alternative to complying with §50.48(b) or the requirements in their fire protection license conditions.

As part of the transition to 10 CFR 50.48(c), licensees will establish the fundamental fire protection program identified in NFPA 805. Licensees will perform a plant-wide assessment to

identify fire areas and fire hazards and evaluate compliance with their existing fire protection licensing basis. This fire protection assessment is beyond the normal licensee review of their fire protection program.

During the assessment process, licensees may identify noncompliances with their existing fire protection licensing basis which must be evaluated to restore compliance with the existing plant requirements or to establish compliance with a performance-based approach under NFPA 805. These noncompliances would normally be identified by the licensee as part of the above fire protection assessment, entered into the licensee's corrective action program, and dispositioned for corrective action, including any compensatory measures. The NRC believes it is appropriate to provide incentives for licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts. Therefore, the NRC is issuing an interim policy that provides enforcement discretion for certain fire protection noncompliances identified as part of the transition to 10 CFR 50.48(c).

For those noncompliances discussed above, the enforcement discretion period would begin upon receipt of a letter of intent from the licensee stating their intention to adopt the risk-informed, performance-based fire protection program under 10 CFR 50.48(c) and providing a schedule for the transition to 10 CFR 50.48(c). The enforcement discretion period would be in effect for up to two years under the letter of intent and, if the licensee submits a license amendment request to complete the transition to 10 CFR 50.48(c), will continue until the NRC approval of the license amendment request is completed.

If the licensee decides not to complete its transition to 10 CFR 50.48(c), the licensee must submit a letter stating their intention to retain their existing license basis and withdrawing their letter of intent. Enforcement discretion would be provided for those violations that were identified under the letter of intent to transition to NFPA 805 provided those violations are resolved under the existing licensing basis and meet the criteria included in this policy for these violations. Violations identified after the date of the withdrawal letter will be dispositioned in accordance with normal enforcement practices.

Additionally, licensees who plan to comply with 10 CFR 50.48(c) may have existing identified noncompliances which could reasonably be corrected under 10 CFR 50.48(c). For these noncompliances, the NRC is providing enforcement discretion for the implementation of corrective action so that those noncompliances may be corrected in accordance with the requirements of 10 CFR 50.48(c). Those noncompliances must be entered into the licensee's corrective action program, must not be associated with findings that the Reactor Oversight Process Significance Determination Process would evaluate as Red, or would not be categorized at Severity Level I, and appropriate compensatory measures have been taken. To prevent undue delay in either restoring these existing noncompliances to 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) or establishing compliance to 10 CFR 50.48(c), the letter of intent must be submitted within 6 months of the effective date of the final rule amending 10 CFR 50.48.

This interim enforcement discretion policy is consistent with the long-standing policy included in Section VII.B.3, "Violations Involving Old Design Issues," of the Enforcement Policy addressing discretion when licensees voluntarily undertake a comprehensive review and assessment. This exercise of discretion provides appropriate incentives for licensees initiating

efforts to identify and correct subtle violations that are not likely to be identified by routine efforts.

However, the NRC may take enforcement action when a violation that is associated with a finding of high safety significance is identified. The staff intends to normally rely on the licensee's risk assessment of an issue when making a decision on whether to exercise enforcement discretion under this policy.

Accordingly, the proposed revision to the NRC Enforcement Policy reads as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT
ACTIONS

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INTERIM ENFORCEMENT POLICIES

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fitness-for-Duty Issues (10 CFR Part 26)

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Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

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

For those noncompliances identified during the licensee's transition process, this enforcement discretion policy will be in effect for up to two years from the date of a licensee's letter of intent to adopt the requirements in 10 CFR 50.48(c) and will continue to be in place until NRC approval of the license amendment request to transition to 10 CFR 50.48(c). This discretion policy may be extended upon a request from the licensee with adequate justification.

If, after submitting the letter of intent to comply with 10 CFR 50.48(c) and before submitting the license amendment request, the licensee determines not to complete the transition to 10 CFR 50.48(c), the licensee must submit a letter stating their intent to retain their existing license basis and withdrawing their letter of intent to comply with 10 CFR 50.48(c). Any violations identified prior to the date of the above withdrawal letter will be eligible for discretion, provided they are resolved under the existing licensing basis and meet the criteria included in

this policy for these violations. Violations identified after the date of the above 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, 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 such as in engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets all of the following criteria:

- (1) It was licensee-identified as a result of its voluntary initiative to adopt the risk-informed, performance-based fire protection program included under 10 CFR 50.48(c) or, if the NRC identifies the violation, it was likely in the NRC staff's view 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 the schedule reasonably provides for completion of the transition within two years of the date of the licensee's letter of intent to implement 10 CFR 50.48(c) or other period granted by NRC;
- (2) It was corrected or will be corrected as a result of completing the transition to 10 CFR 50.48(c). Also, immediate corrective action and/or compensatory measures are taken 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) It was not likely to have been previously identified by routine licensee efforts such as normal surveillance or quality assurance (QA) activities; and
- (4) It was not willful.

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

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

B. Existing identified noncompliances

In addition, licensees 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 transitioned to 10 CFR 50.48(c) provided that the noncompliances meet all of the following criteria:

- (1) The licensee has entered the noncompliance into their 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 it would not be categorized at Severity Level I, and

- (3) The licensee submits a letter of intent within 6 months of the effective date of the final rule stating their intent to transition to 10 CFR 50.48(c).

After the 6 month period described in (3) above, 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.

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Dated at Rockville, Maryland, this ____th day of _____, 2004.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook

Secretary of the Commission.