

REQUEST REPLY BY: 7/5/05

COMSECY-04-0079



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 23, 2004

CHAIRMAN RECORD

04 DEC 29 AM 9:16

Approved with edits.

[Signature]
Nils J. Diaz 01/04/05

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Luis A. Reyes
Executive Director for Operations

[Signature]

SUBJECT: FIRE PROTECTION RULE 10 CFR 50.48(c) (NFPA 805 RULE)
INTERIM ENFORCEMENT DISCRETION POLICY EXTENSION

By letter dated July 7, 2004, the Nuclear Energy Institute (NEI) requested additional enforcement discretion regarding the final rule amending 10 CFR 50.48. This rule became effective on July 16, 2004, and allows licensees to adopt 10 CFR 50.48(c), a voluntary risk-informed, performance-based alternative to current fire protection requirements. The agency concurrently revised the Commission's Enforcement Policy to provide interim enforcement discretion during a "transition" period. The interim enforcement discretion policy includes provisions to address (1) noncompliances identified during the licensee's transition process and, (2) existing identified noncompliances. One of the criteria that must be met to exercise discretion for existing noncompliances is that the licensee must submit a letter of intent to adopt 10 CFR 50.48(c) within 6 months of the effective date of the final rule. Therefore, the current deadline for the letter of intent to allow discretion for existing noncompliances is January 16, 2005. NEI's letter proposed an extension of about a year for licensees to submit the letter of intent.

In accordance with the current Commission-approved Enforcement Policy, for noncompliances identified as part of the transition to 10 CFR 50.48(c), the enforcement discretion period begins upon the receipt of a letter from the licensee stating their intention to adopt 10 CFR 50.48(c) and it would remain in effect for up to two years. Furthermore, when the licensee submits a license amendment request to complete the transition to 10 CFR 50.48(c), the enforcement discretion will continue until the NRC approval of the license amendment request.

The current deadline for the letter of intent to allow discretion for existing noncompliances is January 16, 2005. Therefore, if a licensee submits a letter of intent on or before January 16, 2005, the enforcement discretion would remain in effect until January 15, 2007. NEI requested that the agency extend the deadline for the letter of intent from

CONTACT: Renée M. Pedersen, OE
(301) 415-2742

would remain in effect for up to two years. Furthermore, when the licensee submits a license amendment request to complete the transition to 10 CFR 50.48(c), the enforcement discretion will continue until the NRC approval of the license amendment request.

↑ completes its review.

The second element of the interim enforcement discretion policy provides enforcement discretion for licensees who wish to take advantage of the new rule to resolve existing noncompliances. One of the criteria that must be met to exercise this discretion is that the licensee must submit a letter of intent to adopt 10 CFR 50.48(c) within 6 months of the effective date of the final rule. Therefore, the current deadline for the letter of intent to allow discretion for existing noncompliances is January 16, 2005.

As a result, if a licensee submits a letter of intent on or before January 16, 2005, (in order to meet the second discretion element) the enforcement discretion for noncompliances identified during the licensee's transition process (the first discretion element) would remain in effect until January 15, 2007.

By letter dated July 7, 2004, the Nuclear Energy Institute (NEI) (ADAMS Accession ML042010132) requested additional enforcement discretion regarding the final rule amending 10 CFR 50.48. NEI requested that NRC extend the deadline for the letter of intent from January 16, 2005, to December 31, 2005. According to the NEI letter, the primary basis for this request is to accommodate the licensee planning and budgeting for transition to 10 CFR 50.48(c).

The NRC considered NEI's request in light of possible safety implications, the NRC's regulatory philosophy to provide incentives for licensees to move to risk-informed, performance-based fire protection requirements, and the NRC's need to put long standing fire protection issues on a closure path.

When the NRC issued the interim enforcement discretion policy, the NRC chose to limit the time allowed to submit a letter of intent to 6 months for existing noncompliances because the NRC wanted to prevent undue delays in either restoring compliance to 10 CFR 50.48(b) or establishing compliance to 10 CFR 50.48(c). The NRC did not consider the challenges imposed on the licensees in budgeting and planning. After receiving NEI's request to extend the time allowed for the letter of intent by one year, the NRC reevaluated potential safety concerns associated with a one year extension to existing noncompliances. The NRC concludes that granting NEI's request does not adversely affect public health and safety because:

- Enforcement discretion does not apply to the risk-significant issues, which under the Reactor Oversight Process would be evaluated as Red, X
- Enforcement discretion does not apply to issues that would be categorized as Severity Level 3, X
- The licensee is required to adopt compensatory measures until compliance is either restored to 10 CFR 50.48(b) or achieved per 10 CFR 50.48(c), and

• Licensees would be identifying and addressing ~~new issues during the transition process~~ that otherwise would likely not be identified. *improvements to existing programs.*

In addition to allowing licensees time for budgeting and planning to adopt 10 CFR 50.48(c), this extension will also allow licensees to consider the draft Regulatory Guide (RG) and the probabilistic risk assessment (PRA) and fire modeling tools in their decision. This RG and the PRA were issued for public comment in October 2004. The fire modeling tools will be issued for public comment in Summer 2005.

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.) Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act



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Chairman Diaz.*

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Luis A. Reyes
Executive Director for Operations

[Handwritten signatures and date 1/5/05]

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