

POLICY ISSUE NOTATION VOTE

April 29, 2011

SECY-11-0061

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: A REQUEST TO REVISE THE INTERIM ENFORCEMENT POLICY FOR
FIRE PROTECTION ISSUES ON 10 CFR 50.48(C) TO ALLOW
LICENSEES TO SUBMIT LICENSE AMENDMENT REQUESTS IN A
STAGGERED APPROACH (RIN 3150-AG48)

PURPOSE:

The purpose of this paper is to request Commission approval to publish a *Federal Register* notice announcing a revision to the U.S. Nuclear Regulatory Commission's (NRC) Enforcement Policy. The revision will provide licensees additional enforcement discretion for noncompliant fire protection issues to allow them to submit their license amendment requests (LARs) in a staggered approach as part of the transition of nuclear power plants to the risk-informed, performance-based alternative in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.48(c), "National Fire Protection Association Standard (NFPA) 805."

SUMMARY:

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, stated the staff expects approximately 25 LARs to be submitted at the end of June 2011, and explains how this many submittals and the effort to review them properly will significantly challenge the staff to complete the LAR reviews in a timely fashion. To alleviate this challenge, the staff proposed a staggered LAR submittal approach and committed to hold public meetings to engage the industry in discussions on the criteria that will be used to determine a staggered schedule for licensees to submit their LARs. In SRM-SECY-11-0033, dated April 20, 2011, the Commission approved the staggered submittal approach and instructed the staff to revise the NFPA 805 interim Enforcement Policy. This Commission paper proposes the revision to the Enforcement Policy necessary to support a staggered approach.

CONTACT: Gerry J. Gulla, OE/EB
(301) 415-2872

BACKGROUND:

On June 16, 2004, the NRC published a final rule in the *Federal Register* (69 FR 33536) amending 10 CFR 50.48, "Fire Protection." This rule became effective on July 16, 2004, and allowed reactor licensees to comply with the risk-informed, performance-based fire protection requirements in 10 CFR 50.48(c) instead of the requirements in 10 CFR 50.48(b) or a licensee's approved fire protection program (FPP). On June 16, 2004, the NRC revised its Enforcement Policy (69 FR 33684) to include an interim Enforcement Policy that describes enforcement discretion for plants transitioning to NFPA 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants." If the criteria, as stated in the interim Enforcement Policy, were met, the NRC granted a transitioning licensee enforcement discretion for 2 years for any FPP noncompliant issue that was discovered during the transition process. Additionally, if a licensee submitted a letter of intent (LOI) that met the criteria in the interim Enforcement Policy before January 16, 2005, then the NRC granted enforcement discretion for any existing identified noncompliant issues that the licensee could reasonably correct under 10 CFR 50.48(c).

The Nuclear Energy Institute (NEI) requested an extension to the January 16, 2005, LOI due date (Agencywide Documents Access and Management System (ADAMS) Accession No. ML042010132). NEI contended that licensees needed additional time to make the decision to adopt NFPA 805 and to plan for the transition within their next budget cycle. On January 14, 2005, the NRC amended the interim Enforcement Policy (70 FR 2662) to revise the date by which a licensee must submit its LOI to receive enforcement discretion for existing identified noncompliances. The date was moved from January 16, 2005, to December 31, 2005.

A number of licensees submitted their LOIs before December 31, 2005; however, many of them also requested an additional year of enforcement discretion to better facilitate the transition process. In April 2006 (71 FR 19905), the NRC revised the interim Enforcement Policy to extend the enforcement discretion period from 2 years to 3 years from the date as specified in the licensee's letter of intent to transition to NFPA 805.

In February 2007, NEI submitted, and licensees were granted, a request for additional enforcement discretion for sites transitioning to NFPA 805 (ADAMS Accession No. ML070460550), even though the NRC agreed with only some of the concerns that were raised. In September 2008, the NRC amended the interim Enforcement Policy (73 FR 52705) to grant additional enforcement discretion, on a case-by-case basis, to those licensees that had demonstrated "substantial progress" toward the completion of their NFPA 805 transition and that would continue to maintain and enhance fire safety at their facilities. This enforcement discretion period was continued until 6 months past the date of the safety evaluation approving the LAR for the second pilot plant, Oconee Nuclear Station (Oconee). The NRC completed the safety evaluation for Oconee on December 29, 2010, which resulted in the June 29, 2011, due date for licensees that were granted the additional 6-month enforcement discretion.

DISCUSSION:*Staggered Submittal*

By the end of 2008, the staff expected to receive approximately 16 LARs, which included both pilot plants (Shearon Harris Nuclear Power Plant and Oconee). However, many transitioning licensees, including those licensees who were expected to have submitted their LARs in 2008, requested and were granted the additional enforcement discretion. As a result, the number of LARs that the NRC expects to receive on or before June 29, 2011, has increased from 16 LARs to approximately 23¹ LARs. Approximately 26 LARs will be submitted in Calendar Year 2011. Reviewing this many concurrent LARs would be a significant challenge to the staff.

The staff submitted SECY-11-0033 to the Commission to propose a staggered approach to the LAR submittal process. As part of this staggered approach, the staff will use safety and efficiency criteria and will hold public meetings to engage the industry in the selection of submittal criteria that would result in higher quality applications and more effective and efficient application review. In SRM-SECY-11-0033, dated April 20, 2011, the Commission approved this staggered approach, and the staff began working with key stakeholders to develop submittal criteria and mutually agreeable site selection to meet the LAR submittal schedule.

Based on previous requests from NEI to stagger LAR submittals, on April 14, 2011, the NRC held a public meeting with various licensees, stakeholders, and NEI. The purpose of the meeting was to (1) discuss the staggered approach to LAR submittals, (2) identify industry considerations for staggered LAR submittals, and (3) discuss the staff's LAR review approach and adjustment to the monthly status meetings.

An industry working group is currently generating a list of transitioning licensees with suggested corresponding LAR submittal dates necessary to support this staggered submittal approach. Once the working group completes this list, the staff will review and decide whether to approve it. The approved sequencing will also include submittal dates for licensees who are currently scheduled to submit sometime after June 29, 2011. Each licensee will be required to submit a letter to the NRC acknowledging the agreed-upon commitment date with the exception of the first group of licensees that are scheduled to submit around July 1, 2011. The NRC expects that all commitment letters will be submitted before the current enforcement discretion expires on June 29, 2011. Enforcement discretion will continue while the staff processes and responds to the commitment letters.

Licensees will be held accountable for submitting an acceptable LAR on the date specified in their NRC-approved commitment letters. Failure on the part of a licensee to submit the LAR on or before the NRC-approved date will result in a loss of enforcement discretion. However, licensees with appropriate justifications and staff approval may regain enforcement discretion once an acceptable LAR is submitted. If enforcement discretion is not granted, any identified noncompliance associated with 10 CFR 50.48(b) or the approved FPP may be subject to enforcement actions. While the LAR is under review, enforcement discretion will continue as long as the noncompliances meet the criteria as stated in the interim Enforcement Policy.

¹

Monticello Nuclear Generating Plant (ADAMS Accession No. ML102000433) and Nine Mile Point Nuclear Station, Unit 2 (ADAMS Accession No. ML110601312) decided not to complete the transition to NFPA 805.

The NRC staff will take steps to work with licensees, if necessary, to amend the submittal schedule to substitute one site for another if a submitted LAR does not pass the NRC's acceptance review.

Enforcement discretion for a licensee will end once the license amendment is issued. Going forward, previously identified noncompliances may be covered under the transition license conditions. However, once the NRC issues the amendment, newly identified FPP noncompliances may be subject to enforcement actions.

Policy Clarifications

Recently, licensees have asked for clarification on the LAR review process. The staff is taking this opportunity to clarify the NFPA 805 interim Enforcement Policy to address these questions. If a licensee does not submit its LAR within the required timeframe, or if the LAR does not meet the NRC's acceptance review, the licensee will lose its enforcement discretion but may regain it with appropriate justification and staff approval. Upon LAR submittal, enforcement discretion may continue for any previously and newly identified noncompliance until the NRC disposes the LAR. To ensure licensing review efficiency, the staff intends to establish specific response dates to requests for additional information to address the timeliness and quality of response. The staff is also clarifying information and removing the section of the policy that previously granted licensees the ability to request an additional 6 months of enforcement discretion.

RECOMMENDATION:

The staff recommends that the Commission approve the publication of a *Federal Register* notice ([enclosure](#)) announcing the revision to the Enforcement Policy to extend the enforcement discretion to correspond with a staggered LAR submittal schedule, as amended and approved by the NRC, in "Interim Enforcement Discretion Policy for the Fire Protection Rule" (10 CFR 50.48(c)) (NFPA 805 Rule). The second [enclosure](#) compares the proposed revisions to the Enforcement Policy with the existing Enforcement Policy.

COORDINATION:

The Office of the General Counsel has reviewed this notification and has no legal objection.

/RA Michael Weber for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. [Draft Federal Register Notice](#)
2. [Markup of the NFPA 805 Interim Enforcement Policy](#)

U.S. NUCLEAR REGULATORY COMMISSION

RIN 3150-AG48

[NRC-XXXX-XXXX]

Interim Enforcement Policy for Certain Fire Protection Issues

AGENCY: Nuclear Regulatory Commission

ACTION: Policy statement; revision

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is revising its interim Enforcement Policy on enforcement discretion for certain fire protection issues to extend the enforcement discretion to correspond with a submittal schedule for new license amendment requests (LARs). This interim policy affects licensees that are transitioning to use the National Fire Protection Association Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants" (NFPA 805).

DATES: This policy revision is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The NRC is not soliciting comments on this revision to its Enforcement Policy.

ADDRESSES:

You can access publicly available documents related to this proposed rule using the following methods:

- **NRC's Public Document Room (PDR):** The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The Enforcement Policy is available through ADAMS under Accession No. ML093480037.
- **Federal Rulemaking Web Site:** Public comments and supporting materials related to this proposed rule can be found at <http://www.regulations.gov> by searching on Docket ID **NRC-2XXX-XXXX**.

The NRC maintains the Enforcement Policy on its Web site at <http://www.nrc.gov>; select "Public Meetings and Involvement," then "Enforcement," and then "Enforcement Policy."

FOR FURTHER INFORMATION CONTACT: Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2872; e-mail: Gerald.Gulla@nrc.gov.

SUPPLEMENTARY INFORMATION

I. Background

On June 16, 2004, the NRC revised its Enforcement Policy to include an interim Enforcement Policy applicable to licensees that are transitioning to the risk-informed, performance-based fire protection requirement in NFPA 805. However, because of the complexity and evolving issues related to fire protection, the NRC revised its interim Enforcement Policy several times. The table below lists the corresponding *Federal Register* notices and provides brief descriptions of the associated revisions.

FEDERAL REGISTER NOTICE	DATE	BRIEF DESCRIPTION
69 FR 33684	June 16, 2004	Describes the initial interim Enforcement Policy on fire protection.
70 FR 2662	January 14, 2005	Revises the submittal date for licensees to receive enforcement discretion for existing identified fire protection program noncompliant issues.
71 FR 19905	April 18, 2006	Extends the enforcement discretion from 2 years to 3 years from the date as specified in the licensee's letter of intent to transition to NFPA 805.
73 FR 52705	September 10, 2008	Grants additional enforcement discretion so that licensees can use lessons learned from the pilot process.

On March 4, 2011, the NRC published SECY-11-0033, "Proposed NRC Staff Approach To Address Resource Challenges Associated with Review of a Large Number of NFPA 805 License Amendment Requests." In SECY-11-0033, the staff proposed to increase the current resources for the NFPA 805 LARs and to work with industry to develop a schedule for

staggering the LAR submittals. In SRM-SECY-11-0033, dated April 20, 2011, the Commission approved this staggered approach and instructed the staff to submit a Commission paper with an attached proposed revision to the NFPA 805 interim Enforcement Policy for Commission approval.

II. Discussion

Initially, the NRC expected to receive approximately 16 LARs in 2007. However, because of the unforeseen complexity of the transitioning process, the interim Enforcement Policy has undergone a number of revisions that have changed the submittal due date for many licensees. These revisions have created a “grouping effect,” and now the NRC expects approximately 23 LARs by the end of June 2011. The Commission has approved the use of additional resources for NFPA 805 LAR reviews and working with industry to develop and create a staggered LAR submittal schedule. The NRC held a public meeting on April 14, 2011, during which the staff and stakeholders discussed the staggered approach method. The meeting focused on (1) the staggered approach to LAR submittals, (2) identifying industry considerations for staggered LAR submittals, and (3) discussing the staffs LAR review approach and adjustment to monthly status meetings.

An industry working group is currently generating a list of transitioning licensees with suggested corresponding LAR submittal dates necessary to support this staggered submittal approach. Once the working group completes the list, the staff will review and decide whether to approve it. The NRC expects the sequencing of the submittals to result in approximately 7 LARs by July 1, 2011; 10 additional LARs by July 1, 2012; another 10 LARs by July 1, 2013;

and the remainder by July 1, 2014. The NRC will require licensees, with the exception of the first group of licensees scheduled to submit around July 1, 2011, to submit a letter by June 29, 2011, that acknowledges their new commitment date. Enforcement discretion will continue while the staff is processing and responding to the commitment letters.

Once this process is completed, the NRC will hold the licensee accountable for submitting an acceptable LAR on the date as stated in its commitment letter. A failure on the part of the licensee to submit an acceptable LAR on or before the NRC approved date will result in a loss of enforcement discretion. However, licensees with appropriate justification and staff approval may regain enforcement discretion once an acceptable LAR is submitted. If enforcement discretion is not granted, any identified noncompliance with the requirements of 10 CFR 50.48(b) (or the requirements in a fire protection license condition) may be subject to enforcement actions. While the LAR is under review, enforcement discretion will continue as long as the noncompliances meet the criteria as stated in the policy. The NRC staff will maintain the number of scheduled reviews per year. For example, the staff will work with licensees, if necessary, to amend the submittal schedule to substitute one site for another if a submitted LAR does not pass the NRC's acceptance review.

Nuclear safety is the first consideration in any request for additional enforcement discretion. The NRC will continue to apply normal inspection schedules and processes during the transition process (including staggering the LAR submittals) to ensure that licensees maintain their existing fire protection program licensing basis. The approved fire protection program uses numerous levels of defense in depth with regard to fire protection. Most noncompliant issues only affect one level of defense in depth, leaving two or more "layers" of protection to provide significant safety margin. Licensees must address all nonconforming

conditions with adequate compensatory measures to ensure fire safety with sufficient defense in depth. As a result, the plant preserves nuclear safety because the licensee implements compensatory measures that offset the risk of the nonconforming conditions in accordance with the approved fire protection program. Therefore, extending enforcement discretion should not significantly impact fire safety.

PROCEDURAL REQUIREMENTS:

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.).

The Office of Management and Budget (OMB) approved existing requirements under OMB Control Number 3150-0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the OMB Office of Information and Regulatory Affairs.

Accordingly, the NRC has revised its Enforcement Policy to read as follows:

NRC Enforcement Policy

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

This section 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 a 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). Under 10 CFR 50.48(c), reactor licensees may voluntarily comply with the risk-informed, performance-based fire protection approaches in National Fire Protection Association Standard 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).

Enforcement discretion may apply to noncompliances identified during the licensee transition process. 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. 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 subject to enforcement action.

Once an acceptable LAR is submitted, enforcement discretion for previously identified noncompliances² and any newly identified noncompliances discovered either by the licensee or the NRC while the LAR is under review will continue to be in place until the NRC disposes of the LAR.³ If the NRC finds the amendment request unacceptable but gives the licensee an opportunity to 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. If the NRC finds the amendment acceptable after receipt of the supplemental information, enforcement discretion will continue until the NRC disposes of the amendment. A licensee that submits an LAR that is not acceptably supplemented or an LAR that was initially characterized as unacceptable with no opportunity to provide supplemental information will lose its enforcement discretion. However, licensees with appropriate justification and NRC approval may regain enforcement discretion once an

¹ The agency will use the Office of Nuclear Reactor Regulation's (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.

acceptable LAR is submitted. If enforcement discretion is not granted, any identified noncompliances may be subject to enforcement action.

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 fashion⁴ 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, 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 NRC, 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). The NRC will disposition noncompliances that the licensee have not corrected and noncompliances that were identified after the date of the withdrawal letter 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 for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license

⁴ See NRR's Office Instruction, LIC-101 "License Amendment Review Procedures."

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:

1. 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 found it likely that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of its transition to 10 CFR 50.48(c).
2. The licensee corrected the violation or will correct the violation after completing its transition to 10 CFR 50.48(c). Also, the licensee took immediate corrective action 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.
3. Routine licensee efforts, such as normal surveillance or 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 or when a violation that is associated with a finding of high safety significance is identified.

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

b. Existing Identified Noncompliances

In addition, 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 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).

Dated at Rockville, MD, this day of 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission

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.~~