

August 28, 2003

Mr. Alex Marion, Director
Engineering Department
Nuclear Generation Division
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington, DC 20006-3708

Dear Mr. Marion:

This letter responds to your letter to me dated February 13, 2003 requesting NRC consideration of NEI proposed pre-transition and post-transition incentives to enhance the likelihood for licensees to adopt a risk-informed, performance-based fire protection rule.

Our considerations of the proposed incentives are included as Enclosure 1 to this letter.

If you have any questions regarding this letter, please contact Sunil Weerakkody of my staff, 301-415-2870.

Sincerely,

/RA/

John N. Hannon, Chief
Plant Systems Branch
Division of Systems Safety and Analysis
Office of Nuclear Reactor Regulation

Project No. 689

Enclosure

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 SWeerakkody JBirmingham EMcKenna GMizuno PKoltay
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 JLuehman Fred Emerson via e-mail fae@nei.org

*Please see previous concurrence

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OFFICE	SPLB:DSSA		NRR/DRIP/RPRP		SC:SPLB:DSSA		BC:SPLB:DSSA	
NAME	*AKlein:sf/tw		*JBirmingham		*SWeerakkody		JHannon	
DATE	08/27/03		08/28/03		08/28/03		08/28/03	

Response to NEI Letter dated February 13, 2003
Listing the Industry-Recommended Incentives for
Licensee Adoption of the Proposed Risk-Informed,
Performance-Based Fire Protection Rule

The following provides the U.S. Nuclear Regulatory Commission (NRC) staff's response to the NEI proposed incentives described in Enclosure 1 of NEI letter dated February 13, 2003. We have formatted this response with each NEI incentive in italicized text and our response directly below each incentive. We have also numbered each incentive for clarity.

Each response from the NRC listed below should be considered preliminary because the final rule and its Statement of Consideration have not been finalized and published in the Federal Register.

NEI INCENTIVE 1

A straightforward process for approving the transition will be described in the implementing guidance document currently being developed.

NRC Response to Incentive 1

The process for the license amendment is clearly described in the rule. The rule will be self-implementing and as such there is no transition approval contemplated. Any license amendment process described in the implementation guide must accurately reflect the new rule. The NRC intends to continue working with NEI to develop an implementation guide that is safety focused and maintains the public health and safety.

The NRC also plans to issue a Regulatory Guide that will endorse the NEI implementation guide where appropriate.

NEI INCENTIVE 2

The requirement for a license amendment to adopt alternative methods and analytical approaches is a barrier to licensee acceptance. We propose a less formal and less burdensome method for gaining prior NRC approval.

NRC Response to Incentive 2

The NRC has not at this time reviewed and approved methods such as fire models or fire PSAs. At this time the NRC does not consider that the rule contains a requirement for prior NRC review and approval for the use of methods. Therefore, it is expected that licensees may use such methods to comply with NFPA 805 without receiving prior NRC review and approval. However, the use of such methods by licensees may be subject to NRC review and inspection.

ENCLOSURE 1

The NRC is considering rule language that will allow a licensee to use risk-informed, performance-based alternatives to compliance with NFPA 805. The NRC is also considering rule language that will allow subjecting the fundamental fire protection elements and minimum design requirements of NFPA 805, Chapter 3 to the performance-based approaches permitted elsewhere in NFPA 805. It is our plan that the rule will require the licensee to request a license amendment under § 50.90 when either of these two options is implemented.

NEI INCENTIVE 3

An implementing guidance provision will define the scope of fundamental attributes, or elements (see NFPA 805 Section 3.1) broadly enough to encompass current fire protection programs. Fundamental attributes of current fire protection programs and designs within the scope of this definition should be considered to have been previously approved by NRC.

NRC Response to Incentive 3

With respect to those plants transitioning to NFPA 805, the NRC expects licensees will be able to treat attributes of existing reactor plant fire protection elements as 'previously approved' for the purposes of the Chapter 3 delineation of fundamental program elements provided that these attributes met the licensing bases prior to adoption of the rule. This approach is expected to be acceptable because licensees should either be in compliance with regulatory requirements or have obtained approval from the NRC for exemptions or deviations from those requirements.

NEI INCENTIVE 4

The implementing guidance will include a risk-informed analytical process for low power and shutdown operation.

NRC Response to Incentive 4

The NRC supports the inclusion of a risk-informed analytical process for low power and shutdown operation within the implementation guide. The implementation guide is under review by the NRC and comments will be provided as appropriate.

NEI INCENTIVE 5

The implementing guidance will include provisions for the use of fire modeling.

NRC Response to Incentive 5

NRC plans to review the fire model(s) used within the NFPA 805 environment and plans to provide these reviews in a Regulatory Guide to the extent the fire models are appropriate. Prior NRC review of a fire model used by a licensee for NFPA 805 is not required but is at the risk of the licensee.

NEI INCENTIVE 6

The NRC should conform inspection guidance and the process for resolving non-compliances to the risk-informed, performance-based methodology in the new rule, and reflect the implementing guidance.

NRC Response to Incentive 6

The NRC expects to develop audit guidance for the transition process and intends to develop inspection guidance for those licensees that transition to NFPA 805. The NRC will consider reflecting the implementation guide where it is appropriate and applicable.

NEI INCENTIVE 7

For each licensee that adopts NFPA 805 as an alternative licensing basis, NRC should defer regional Triennial Fire Inspections prior to and during the transition period. Instead, licensees should conduct an NRC-monitored self-assessment 1 year after the transition is complete, to give the licensee and NRC confidence that the licensee is in compliance with his post-transition licensing basis. Enforcement discretion should be applied to NRC oversight of the self-assessment results. This should be followed by an NRC inspection during the three years following the self-assessment. The triennial inspection cycle should continue if this initial post-transition inspection indicates significant compliance issues. If no significant issues are identified, the inspection cycle should be lengthened to six years, with the understanding that the licensee will conduct periodic self-assessments to monitor performance.

NRC Response to Incentive 7

The NRC Office of Enforcement (OE) is considering a separate, interim enforcement discretion policy to address the new rulemaking. OE is considering the enforcement discretion to be applicable during the transition and a one-year post-transition period to allow licensees an opportunity to resolve issues and be well-established in the new licensing basis. The one-year post-transition period is consistent with the approach the staff took to address concerns about performance indicators during initial implementation of the ROP.

The focus of the fire protection inspections are under discussion within the NRC for those licensees transitioning to the new rule. The NRC is considering refocusing the inspection efforts, assuming effective licensee self-assessments, in a manner which would facilitate licensee activities without compromising inspection effectiveness. The NRC is also considering licensee self-assessments to determine if they would satisfy the intent of certain aspects of the NRC inspection program.

NEI INCENTIVE 8

Risk insights should be used to establish compensatory measures for any non-compliances identified by the licensee during the transition.

NRC Response to Incentive 8

The NRC does not object to the use of risk insights to establish compensatory actions as a temporary alternative means of providing reasonable assurance that a necessary function will be compensated for during the impairment, or an act to mitigate the consequence of a fire provided that the licensee is in compliance with its existing licensing bases. The NRC also cautions that the compensatory actions must be selected and implemented carefully to ensure they compensate for the actual risk. Compensatory measures should be well documented and are subject to review by the NRC.

NEI INCENTIVE 9

Establish a streamlined process for technical issue reviews that involve NRR and the regional NRC staff.

NRC Response to Incentive 9

The NRC supports a streamlined process to resolve and disposition technical issue reviews that involve NRR and the regional NRC staff. The NRC intends to provide inspector guidance for NFPA 805 to ensure a consistent oversight process. In addition, the NRC has in place the formal process of Technical Interface Agreements to ensure that questions raised by other NRC organizations are resolved in a timely manner. This formal process will be used as necessary to address technical issues.

NEI INCENTIVE 10

Establish an improved process for maintaining stability in the regulatory acceptance of key assumptions underlying the new licensing basis, such as fire models, PSA reviews, and other calculations. The process should allow for the application of new technical information, but reduce the likelihood of regulatory viewpoints changing as personnel change.

NRC Response to Incentive 10

The NRC supports a stable and consistent regulatory review to minimize the likelihood of subsequent changes to NRC views. The NRC plans to review the method(s) (e.g., fire models, fire PSAs, NEI 00-01 implementation guide) when they are submitted and, if applicable, endorse them in a regulatory guide for use under NFPA 805. The NRC also expects that the bases for acceptance will be documented to ensure a stable regulatory environment. In addition, the NRC expects that proper implementation of NFPA 805 by a licensee will also help to ensure a stable and consistent regulatory review.

NEI INCENTIVE 11

Implement a regulatory process that ensures emerging issues concerning the licensing basis will be resolved by applying the nuclear safety performance criteria embodied in NFPA 805, Chapter 1, section 1.5.

NRC Response to Incentive 11

The NRC agrees that the performance criteria in NFPA 805, Chapter 1, Section 1.5 should be applied to resolve emerging issues concerning the licensing basis. The NRC notes that the new rule will already require those licensees who adopt NFPA 805 to apply the performance criteria of Chapter 1. Therefore, there is no need for a separate regulatory process.