

ENFORCEMENT CONSIDERATIONS:

Even with Commission consent to proceed with rulemaking, licensees using unapproved operator manual actions would be in non-compliance until the rulemaking is processed and the regulations and guidance are formally revised. In the interim, rulemaking, by itself, will not avoid potential inspection compliance issues and enforcement proceedings or the related potential of exemption or deviation requests associated with operator manual actions. To address this potential unnecessary regulatory burden during the interim rulemaking period, the staff would need to adopt conforming enforcement changes, specifically, the staff will also need to propose an interim enforcement policy. If the Commission approves the attached rulemaking plan, the staff will develop an interim enforcement policy to allow discretion and will refrain from taking enforcement action for those licensees that rely on unapproved operator manual actions, provided these licensees have documented feasibility of their operator manual actions in accordance with the staff's proposed preliminary generic acceptance criteria. The staff recently issued a fire protection inspection procedure 71111.05, dated March 06, 2003, to provide guidance for inspectors to consistently document inspection findings. Although the staff has had numerous interactions with the industry on the manual action compliance concerns over the last year and discussed on a high level what constitutes feasible operator manual actions, there has not been a focus on the details of manual action criteria. Therefore, should the Commission approve the attached rulemaking plan, the staff would engage stakeholders in at least one public meeting to discuss the detailed manual action feasibility criteria and how it would be used in interim enforcement policy. Shortly after the public meeting, a specific interim enforcement policy will be submitted to the Commission for approval. If the Commission approves the interim enforcement policy, it will be published in the *Federal Register* together with a Regulatory Information Summary (RIS). The RIS will summarize for the industry and public the expected change in enforcement policy and where the agency is headed with fire protection rulemaking.

RESOURCES :

The staff estimates that the resources to conduct the rulemaking, develop the associated guidance, and process the interim enforcement policy are 3.0 full-time equivalents (FTE) over the period FY 2003 - 2004. The staff has budgeted 0.4 FTE for FY 2003 to prepare the rulemaking plan and manage the rulemaking. If the Commission approves the rulemaking plan, the staff will budget the remaining resources through the planning budgeting and performance management (PBPM) process. In addition, contract technical assistance may be needed to revise the regulatory guidance in support of the rulemaking and develop the regulatory analysis. It is estimated that these items will cost no more than \$50K in FY03 and \$50K in FY04. The staff will address the need for any contract funding through the PBPM process.

COORDINATION:

OGC has no legal objection to the rulemaking plan. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection to its content. The Office of Enforcement (OE) concurs with the staff-recommended approach to an interim enforcement policy for licensees using unapproved fire protection related operator manual actions.

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INITIAL OFFICE OF RESEARCH SUPPORT TO PREPARE THE PROPOSED RULE WOULD BE APPROXIMATELY 0.2 FTE AND \$60K. THE RESOURCES, WHILE CURRENTLY NOT EXPLICITLY IN THE RES FIRE PROTECTION RESEARCH PLAN, WOULD BE ALLOCATED FROM OTHER FIRE RESEARCH IN COORDINATION WITH NRR, BASED ON PRIORITY AND TIMING.

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X that can be credited, and (2) the minimum time allowable to account for detection and recognition.

The staff's rulemaking recommendation is performance-based to the extent that the NRC will not require approval of licensee fire protection programs that employ operator manual actions provided licensees demonstrate the feasibility of the operator manual actions in their fire hazard analysis using the acceptance criteria to be specified in the rulemaking. Details of acceptable compliance methods would be provided in updated fire protection regulatory guidance (such as Regulatory Guide 1.189, "Fire Protection for Operating Nuclear Power Plants").

### Backfit

To resolve an existing regulatory compliance issue, the proposed rulemaking represents a voluntary alternative to the current requirements. The proposed rule would allow the use of operator manual actions for achieving and maintaining safe shutdown during a fire in an area where redundant shutdown trains are located. Licensees that currently have approved operator manual actions should not be required to perform any additional actions (such as analysis or documentation). Pre-1979 licensees that employ operator manual actions but have not received NRC approval are in violation of the current regulations. The NRC position on use of operator manual actions under Paragraph III.G.2 has not changed. There is no backfitting as defined in 10 CFR 50.109(a)(1) with respect to pre-1979 licensees who are currently relying upon operator manual actions to comply with Paragraph III.G.2 and who have not previously received an exemption approving such use. Post-1979 licensees that use operator manual actions without NRC approval may or may not be in compliance with GDC-3, §50.48(a), the license condition or licensees' current fire protection program. Compliance for the post-1979 plants depends on the specific licensing commitments, the change control process, and how the change was justified and analyzed to demonstrate that the operator manual actions are feasible and do not adversely affect the ability to achieve or maintain safe shutdown. For noncompliant post-1979 licensees, the proposed rulemaking would provide another possible option that could be used to demonstrate compliance. Therefore, licensees relying on operator manual actions would have regulatory certainty that they are in compliance with applicable NRC requirements provided that they have documentation that demonstrates the acceptability of operator manual actions in accordance with acceptance criteria (as discussed elsewhere in this plan and to be developed and included in the rulemaking language). While such documentation of manual action acceptability in the fire hazards analysis would represent additional requirements, they are strictly voluntary for noncompliant licensees. Licensees could elect to comply with the currently specified physical fire barrier separation requirements. Therefore, the staff has concluded that the proposed rule would not constitute a backfit as defined in 10 CFR 50.109(a)(1).

### OGC Legal Analysis

The proposed rule would provide: (1) pre-1979 licensees a voluntary alternative of relying upon operator manual actions under certain circumstances in complying with the fire protection requirements for redundant safe shutdown in Paragraph III.G.2. of 10 CFR Part 50, Appendix R; and (2) specific criteria for post-1979 licensees to demonstrate compliance with GDC-3, §50.48(a) and licensees' current fire protection program commitments. The proposed rule would set forth the specific circumstances and the proposed criteria for licensee reliance on

INSERT (2):

OFFICE OF RESEARCH WOULD INITIALLY SUPPORT THIS EFFORT BY CONDUCTING A LITERATURE SEARCH, AND EVALUATING THE CURRENTLY AVAILABLE INFORMATION. ANY ADDITIONAL SUPPORT FROM OFFICE OF RESEARCH WOULD BE DETERMINED DURING THE RULEMAKING PROCESS.