

June 3, 2014

MEMORANDUM TO: William Gott, Chief
Fuel Cycle Transportation Security Branch
Division of Security Policy
Office of Nuclear Security and Incident Response

FROM: Alex Sapountzis, Senior Program Manager */RA/*
Fuel Cycle Transportation Security Branch
Division of Security Policy
Office of Nuclear Security and Incident Response

SUBJECT: SUMMARY OF MAY 28, 2014, PUBLIC MEETING BETWEEN U.S. NUCLEAR REGULATORY COMMISSION AND STAKEHOLDERS TO DISCUSS THE APPLICATION OF FATIGUE REQUIREMENTS IN TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS* PART 26 TO SECURITY OFFICERS AT CATEGORY I FUEL CYCLE FACILITIES, ALL ASSOCIATED WITH THE REGULATORY BASIS FOR THE TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS* FOR THE PART 26 RULEMAKING EFFORTS

On May 28, 2014, the U.S. Nuclear Regulatory Commission (NRC) hosted a public meeting. The purpose of this public meeting was to discuss and obtain stakeholder feedback on the NRC's efforts to develop a draft regulatory basis to apply fatigue requirements to security officers at Category I fuel cycle facilities (FCF) within Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26.

The staff discussions focused on providing stakeholders the following:

- Background/history on the fatigue effort at the NRC;
- What is fatigue and why is fatigue a concern;
- How other industries address fatigue; and
- NRC's basis for applying fatigue to officers at Category I FCF.

Stakeholder discussions began with the length of the comment period for the soon to be released regulatory basis on 10 CFR Parts 73 and 26. The NRC indicated that it was looking at allowing a thirty to forty-five day comment and stakeholders indicated that this period is too short. The NRC explained that it will try to maximize comment period, however, the length of the comment period is driven by the schedule which has the Office of Nuclear Security and Incident Response (NSIR) submitting the regulatory basis to the Office of Federal and State Materials and Environmental Management Programs (FSME) by October 1, 2014, for review and approval. The NRC stated that the regulatory basis would be made available prior to sending the document to the Office of the Federal Register to publish for stakeholder comment to interested parties.

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In the staff's fatigue presentation (Agencywide Documents Access and Management System Accession No. ML14142A063), the staff went over the history of the NRC efforts on fatigue beginning with the April 29, 2003, issuance of fatigue security orders (EA-03-038) to nuclear power reactor sites for security officers. Next the staff discussed its attempts to issue fatigue security orders (COMSECY-04-0037) in 2004 for security officers for certain material licensees at the following sites:

- Category I FCF:
- Independent Spent Fuel Storage Installations;
- Decommissioned Reactors;
- Gaseous Diffusion Plants; and
- Natural Uranium Conversion facilities

The staff mentioned that during development of the fatigue security orders for these material licensees, the staff held ten public meetings to obtain stakeholder comments on the orders and forwarded the orders for review on June 21, 2004, to the Commission. Subsequently, on September 1, 2004, the Commission disapproved issuance of these security orders (SRM-COMSECY-04-0037) and directed the staff to pursue rulemaking vice issuance of security orders for those facilities for which the staff believe fatigue-related requirements are necessary and for the appropriate personnel. The staff elaborated that based on Commission direction in SRM-COMSECY-04-0037, the NRC is looking to applying fatigue requirements in 10 CFR Part 26 to security officers at Category I FCF and does not rule out the possibility that the staff in the future may look at applying fatigue requirements to security officers at other material licensees.

The next set of discussion focused on what is fatigue, why is fatigue a concern, followed by how other industries address fatigue concerns such as the U.S. Department of Energy (DOE) Order 473.3 with their protective force by providing daily and weekly work hour guidelines. Additionally, it was mentioned that the U.S. Department of Transportation provides fatigue (work hour) restrictions for some entities it regulates and the National Institute of Justice indicates that many law enforcement agencies across the U.S. have implemented fatigue prevention programs. Stakeholder comments included the potential conflicts of DOE and NRC requirements regarding officers at Category I sites falling under the fatigue provisions of 10 CFR Part 26. Specifically, the stakeholder asked what analysis had been done to avoid duplication or conflict between two sets of regulations. Other comments included why the NRC was taking a different approach to fatigue than other industries. The NRC noted that stakeholders are welcome to provide comments on this issue or alternatives to having Category I security officers fall under the fatigue provisions of 10 CFR Part 26. Furthermore, the NRC responded that security officers at Category I sites have similar roles and responsibilities to security officers at nuclear power reactors who fall under the fatigue provisions of 10 CFR Part 26, and thus the staff felt this group should also fall under the same fatigue regulations.

The next set of discussions focused on the NRC's basis for applying fatigue requirements to security officers at Category I FCF. The NRC stated that its basis is:

1. Through risk insights, the staff is concerned with the potential consequences from adversaries acquiring Category I special nuclear material (SNM) in a form for use in an improvised nuclear device (IND); and

2. Category I security officers have similar roles and responsibilities to security officers at nuclear power reactors [e.g., interdict during a security event that may involve neutralizing adversaries through the use of deadly force and they must defend against a design basis threat (DBT)] who are subject to the fatigue/work hour controls in 10 CFR Part 26, Subpart I.

Comments from stakeholders included that they agree and at least understand the risk. The NRC elaborated that it also investigated concerns and incidents regarding inattentive officers at Category I sites and those details are found in the draft regulatory basis that will be published in June 2014, for stakeholder comment. Comments from stakeholders included what evidence did the NRC have that fatigue was a problem at the Category I sites that warranted the security officers at these sites fall under the fatigue requirements in 10 CFR Part 26. The NRC stated that the basis is more heavily weighted towards the two reasons provided above for having this group fall under fatigue requirements.

The last set of discussions focused on the NRC requesting comments on the draft regulatory basis that relates to cost impacts to licensees that implement any of the 10 CFR Parts 26 or 73 regulations proposed in the regulatory basis. For example, the NRC is looking for stakeholders (e.g., Category I FCF) to provide cost estimates with respect to startup and annual costs to implement the fatigue regulations in 10 CFR Part 26. The NRC stated that the letter submitted in January 2014, from the Nuclear Energy Institute (NEI) associated with cost impacts to nuclear power reactor licensees for implementing the amended 10 CFR Part 26 of March 2008, is not applicable to the Category I sites, primarily due to the fatigue requirements apply to a larger group of individuals beyond security officers. Stakeholder comments included that any cost estimates provided would likely reflect worst-case cost projections and that some aspects of the Category I FCF operations make implementation of fatigue management more complicated than at nuclear power reactors.

Enclosures:

1. Agenda for Public Meeting to Discuss the Application of Fatigue Requirements in 10 CFR Part 26 to Security Officers at Category I Fuel Cycle Facilities, all Associated with the Regulatory Basis for the 10 CFR Part 26 Rulemaking Effort
2. Attendance List

2. Category I security officers have similar roles and responsibilities to security officers at nuclear power reactors [e.g., interdict during a security event that may involve neutralizing adversaries through the use of deadly force and they must defend against a design basis threat (DBT)] who are subject to the fatigue/work hour controls in 10 CFR Part 26, Subpart I.

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DISTRIBUTION:

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DATE	6/3/14	6/3/14

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AGENDA FOR PUBLIC MEETING TO DISCUSS THE APPLICATION OF FATIGUE REQUIREMENTS IN 10 CFR PART 26 TO SECURITY OFFICERS AT CATEGORY I FUEL CYCLE FACILITIES, ALL ASSOCIATED WITH THE REGULATORY BASIS FOR THE 10 CFR PART 26 RULEMAKING EFFORT

**May 28, 2014
9:00 A.M. – 11:30 A.M.**

U.S. NUCLEAR REGULATORY COMMISSION

Agenda

PURPOSE: To provide an opportunity for interested parties to discuss the U.S. Nuclear Regulatory Commission (NRC's) efforts to develop a regulatory basis to apply the fatigue requirements within Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, to security officers at Category I fuel cycle facilities (FCF).

May 28, 2014

- 9 00 A.M. Opening remarks, introduction and meeting focus. (NRC)
- 9:15 A.M. Application of Part 26 Fatigue Requirements to Officers at Category I FCF. (NRC)
- 9:45 A.M. Public comments. (All)
- 11:15 P.M. Closing remarks. (NRC)
- 11:30 A.M. Adjournment

Attendance List

On May 28, 2014, the NRC met with stakeholders to discuss the NRC's efforts to apply fatigue requirements to security officers at Category I fuel cycle facilities, all associated with development of a regulatory basis to update 10 CFR Part 26.

Name	Organization
Nick Baker	Nuclear Regulatory Commission/Nuclear Materials Safety and Safeguards
Howard Benowitz	Nuclear Regulatory Commission/General Counsel
Alan Blamey	Nuclear Regulatory Commission/Region II
Kristi Branch	Pacific Northwest National Laboratory
Janet Bryant	Pacific Northwest National Laboratory
John Carter	Babcock and Wilcox-Nuclear Operations Group
Jim Danna	Nuclear Regulatory Commission/Federal State Materials and Environmental Management Programs
Bill Gott	Nuclear Regulatory Commission/Nuclear Security and Incident Response
Dealis Guyn	MOX Service-Savannah River Site
Larry Harris	Nuclear Regulatory Commission/Nuclear Security and Incident Response
Tim Harris	Nuclear Regulatory Commission/Nuclear Security and Incident Response
Gerry Jackson	Nuclear Regulatory Commission/Nuclear Security and Incident Response
Robert Johnson	Nuclear Regulatory Commission/Nuclear Materials Safety and Safeguards
Andrew Mauer	Nuclear Energy Institute
James Knoll	Babcock and Wilcox-Nuclear Operations Group
John Nakoski	Nuclear Regulatory Commission/Research
Michael Rodriguez	Nuclear Regulatory Commission/Nuclear Security and Incident Response
Michelle Romano	Nuclear Regulatory Commission/Region II
John Rund	Nuclear Energy Institute
Alex Sapountzis	Nuclear Regulatory Commission/Nuclear Security and Incident Response
Janet Schlueter	Nuclear Energy Institute
Scott Sloan	Nuclear Regulatory Commission/Nuclear Reactor Regulations
Otis Smith	Nuclear Regulatory Commission/Region II
Kris Weir	Nuclear Fuel Services
Tom Young	Nuclear Regulatory Commission/Federal State Materials and Environmental Management Programs