

March 30, 2004

MEMORANDUM TO: Glenn M. Tracy, Director  
Division of Nuclear Security  
Office of Nuclear Security  
and Incident Response

FROM: Garmon West, Acting Chief **/RA/**  
Licensee Personnel Security Section  
Division of Nuclear Security  
Office of Nuclear Security  
and Incident Response

SUBJECT: NOTICE CONCERNING PUBLIC MEETING TO DISCUSS THE  
FITNESS-FOR-DUTY RULE (SECY-01-0134)  
**(ADAMS ACCESSION NO. ML040900158)**

DATE AND TIME: Tuesday, April 13, 2004  
8:30 A.M. - 5:30 P.M.

LOCATION: U.S. Nuclear Regulatory Commission  
One White Flint North  
11545 Rockville Pike, Auditorium  
Rockville, Maryland

PURPOSE: To obtain stakeholder feedback regarding the draft proposed 10 CFR  
Part 26 (Fitness-For-Duty) rule. The meeting agenda is provided as  
Attachment 1, and a listing of notable changes to the draft proposed rule  
is provided as Attachment 2. Several background documents have been  
placed at the NRC's rulemaking website:  
[http://ruleforum.llnl.gov/cgi-bin/library?source=\\*&library=Part26\\_risk\\_lib&file=\\*&st=risk](http://ruleforum.llnl.gov/cgi-bin/library?source=*&library=Part26_risk_lib&file=*&st=risk)  
The documents provided on the website are:

- Draft Part 26 language
- Draft Regulatory Analysis
- Draft Resolution of Public Comments Regarding OMB Clearance  
for the Withdrawn 2000 Affirmed FFD Rule

CATEGORY 2: This is a Category 2 meeting. The public is invited to participate in this  
meeting by discussing regulatory issues with the NRC at designated  
points during the meeting. Feedback forms will be made available. A  
meeting summary with the list of participants will be placed on the NRC's  
rulemaking website (see link above).

G. Tracy

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PARTICIPANTS:	<u>NRC</u>	<u>STAKEHOLDERS</u>
	J. Shea	J. Davis (NEI)
	C. Haney	et al.
	D. Skeen	
	G. West	
	R. Karas	
	B. Richter	

Attachments: As Stated (ADAMS Accession No: **ML040900158**)

cc w/att: See next page

CONTACT: Brad Baxter  
301-415-6742, [BXB@NRC.GOV](mailto:BXB@NRC.GOV)

DISTRIBUTION FOR MEETING NOTICE WITH STAKEHOLDERS ON APRIL 13, 2004

DATED: March 30, 2004

DISTRIBUTION:

Hard copy:

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PUBLIC

DNS r/f

G. Tracy

R. Zimmerman

J. Shea

D. Desaulniers

J. Persensky

A. Roecklein

C. Haney

D. Skeen

R. Karas

M. Burrell

M. Rothschild

K. Nolan

S. Treby

M. Lesar

B. Richter

B. Beckner

B. Thomas

D. Trimble

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PMNS (PUBLIC MEETING ANNOUNCEMENT COORDINATOR)

G. Tracy

-2-

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 G. West  
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cc w/att: See next page

CONTACT: Brad Baxter  
 301-415-6742, BXB@NRC.GOV

**ADAMS ACCESSION NO: ML040900158** \* see previous concurrence

OFFICE	LPSS/DNS	E	NRR		LPSS/DNS	E
NAME	B. Baxter*		R. Karas*		G. West*	
DATE	3/26/04		3/26/04		3/29/04	

"C" = Copy without enclosures "E" = Copy with enclosures "N" = No copy

OFFICIAL RECORD COPY

MEETING WITH STAKEHOLDERS TO DISCUSS THE DRAFT

FITNESS-FOR-DUTY (PART 26) PROPOSED RULE

APRIL 13, 2004

NOTE: For background documents, go to the NRC's rulemaking website at [http://ruleforum.llnl.gov/cgi-bin/library?source=\\* &library=Part26\\_risk\\_lib&file=\\* &st=risk](http://ruleforum.llnl.gov/cgi-bin/library?source=* &library=Part26_risk_lib&file=* &st=risk)

- 8:30 A.M.-8:45 A.M. REGISTRATION AT TWO WHITE FLINT NORTH AUDITORIUM  
(ADAMS ACCESSION NUMBER **ML040900158**)
- 8:45 A.M.-9:00 A.M. INTRODUCTIONS AND OPENING REMARKS
- Purpose, need and objectives for the meeting.
  - Format and procedures for participation in the meeting.
- 9:00 A.M.-9:15 A.M. BACKGROUND
- History of Part 26 rulemaking activity.
  - Objectives for rulemaking.
  - Comments and questions. (Stakeholders)
- 9:15 A.M.-10:15 A.M. PRESENTATION AND DISCUSSION OF NOTABLE CHANGES SINCE LAST  
STAKEHOLDER MEETING
- Discussion of each of the changes listed on Attachment 2.
  - Comments and questions. (Stakeholders)
- 10:15 A.M.-10:30 A.M. BREAK
- 10:30 A.M.-12:00 P.M. CONTINUATION...PRESENTATION AND DISCUSSION OF NOTABLE  
CHANGES SINCE LAST STAKEHOLDER MEETING
- Discussion of each of the changes listed on Attachment 2.
  - Comments and questions. (Stakeholders)
- 12:00 P.M.-1:00 P.M. BREAK FOR LUNCH
- 1:00 P.M.-2:30 P.M. CONTINUATION...PRESENTATION AND DISCUSSION OF NOTABLE  
CHANGES SINCE LAST STAKEHOLDER MEETING
- Discussion of each of the changes listed on Attachment 2.
  - Comments and questions. (Stakeholders)
- 2:30 P.M.-2:45 P.M. BREAK
- 2:45 P.M.-3:45 P.M. COMMENTS AND QUESTIONS (STAKEHOLDERS) ON ANY OTHER  
DRAFT RULE LANGUAGE
- Comments and questions. (Stakeholders)
- 3:45 P.M.- 4:00 P.M. BREAK
- 4:00 P.M.-5:00 P.M. PRESENTATION AND DISCUSSION OF DRAFT REGULATORY ANALYSIS
- Presentation of Draft Regulatory Analysis Results
  - Comments and questions. (Stakeholders)
- 5:00 P.M.-5:30 P.M. CLOSING REMARKS BY NRC
- Summation of major topics.
  - Next steps.
  - Comments and questions. (Stakeholders)

## Notable Changes Since the Last Public Meeting

1. Revisions to Subpart C to clarify and separate the requirements for initial authorization [26.55], authorization update [26.57], and authorization reinstatement [26.59].
2. Addition of new pre-access drug and alcohol testing requirements for applicants, depending on the period of time the individual's authorization has been interrupted [26.65], and addition of random drug and alcohol testing of individuals in applicant status [26.67].
3. Addition of a requirement that MRO staff activities must be under the direct control and supervision of the MRO and that MRO staff must be physically resident at the location where they are performing their duties [26.183 (c)(4)].
4. Addition of a requirement for an independent forensic toxicologist to certify in writing the scientific and technical suitability of any cutoff levels to be adopted by a licensee or C/V that are more stringent than those specified in Part 26 [26.31(d)(3)(iii)(C)]; and to certify in writing as scientifically sound and legally defensible the assay and cutoff levels to be used for any drugs not specified in Part 26 that will be tested for by a licensee or C/V [26.31(d)(1)(i)(D)].
5. Addition of a requirement that licensee testing facility personnel minimize false negative results from specimen degradation by maintaining specimens cooled, and have emergency power equipment available [26.129(f)].
6. Addition of a requirement that all individuals must receive qualification training before serving as a collector [26.85(a) and (b)], with certain specified exceptions [26.85(c)].
7. Replacement of the "preferred" Electronic Breath Testing device (EBT) concept with a requirement to use evidential breath testing devices listed in the National Highway Traffic Safety Administration's current Conforming Products List that do not have an asterisk [26.91(b)].
8. Addition of QA/QC requirements for Alcohol Screening Devices (ASDs) [26.91(d)].
9. Reduction in the required quantity for the minimum urine specimen from 60 mL to 30 mL (instead of the previously considered 15 mL) [26.107(a)(1)].
10. Addition of specific and detailed requirements for the MRO review of non-negative test results, invalid, dilute, substituted, and adulterated specimens, and determination of fitness-for-duty policy violations [26.185].
11. Addition of a requirement that all cutoff levels must be applied equally to everyone subject to testing and for all types of tests [26.31(d)(3)(iii)(B)].
12. Addition of specific descriptions of when the MRO may order testing down to the confirmatory assay's limit of detection (LOD) [26.31(d)(1)(ii) and 26.163(a)(2)].
13. Change in the requirement to test someone who is not available when selected for random testing from "as soon as reasonably practicable when both the donor and collectors are available" to "at the earliest reasonable and practical opportunity when

both the donor and collectors are available” and addition of the requirement that collections must be completed within 30 days after selection [26.31(d)(2)(iv)].

14. Revision of the audit frequency requirement from once every 36 months to once every 24 months [26.41(b)].
15. Deletion of a requirement that FFD policies of licensees and C/Vs must state that all individuals subject to the FFD rule shall report FFD concerns, and substitution of a statement that the policy describe the individual’s ability to report FFD concerns [26.27(b)(11)].
16. Addition of a provision that individuals subject to Part 26 who are also subject to a program regulated by another Federal agency or State need to be covered by only those elements of a Part 26 program that are not included in the Federal or State program, provided that certain specified conditions are met [26.25(c)].
17. Extension from one to three business days the time limit within which a donor may request a re-test of a specimen [26.165(b)] and/or of Bottle B [26.165(a)(4)].
18. Revision of the retention period requirement for various records on individuals (self-disclosures and suitable inquiries that result in authorization, records pertaining to denial of authorization, records pertaining to determination of FFD violation, and records documenting granting of authorization) from 5 years or completion of legal proceedings, to 5 years after termination or denial of authorization or completion of legal proceedings [26.197(a)].
19. Addition of a 3-year retention requirement for logs of FFD authorization events [26.197(f)].