



NUCLEAR ENERGY INSTITUTE

CHAIRMAN PFC'D

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(67FR 07093)

Joe F. Colvin  
PRESIDENT AND  
CHIEF EXECUTIVE OFFICER

June 10, 2004

The Honorable Nils J. Diaz  
Chairman  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 C1  
Washington, DC 20555-0001

DOCKETED  
USNRC

July 2, 2004 (8:56AM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Dear Chairman Diaz:

The Nuclear Energy Institute (NEI) shares the frustration expressed by the Commission in comments on COMSECY-04-0014 related to the delays in the drug and alcohol testing portions of 10 CFR 26.

In this regard, we request that the Commission reconsider its decision to combine the two separate rulemaking efforts and direct accelerated completion of the drug and alcohol portion of the rulemaking that has been in progress since 1991. We suggest the proposed rule on drug and alcohol testing be formally issued for public comment no later than December 31, 2004. We support the Commission's directive to complete the work-hours portion of the Part-26 rulemaking no later than December 2005. In addition, we believe guidance to the staff should clearly state the Commission's decision to not impose the security officer work-hour requirements, contained in the April 29, 2003 Order, on the other plant personnel as part of the proposed Part 26 rulemaking.

In support of our request to expedite completion of the drug and alcohol testing portions of the rule, we offer the following:

- As directed by the Commission, the NRC staff completed a series of very successful stakeholder meetings in 2002. Participation in these meetings included broad participation by internal and external stakeholders.
- The meetings focused on specific draft rule language. By December 2002, the NRC staff had a fully-developed draft rule which met NRC's intent and was viewed by stakeholders as being clear and could be implemented.

- The Commission ordered in January 2002, the implementation of a majority of the provisions of Sections A through D of the 2002 draft rule. The industry has since implemented these provisions. In essence, the only provision of the draft rule not currently being implemented contains updates to make the rule consistent with current HHS standards.
- COMSECY 04-0014 cited the need to add enhancements for authorization reinstatements. We consider these enhancements already known, in the process of being implemented, and available in current rule language. Specifically, when the new requirement was presented to the industry in March 2004, implementing guidance was quickly developed, reviewed by the NRC staff and included in industry guidance. The NRC staff approved this guidance on April 16, 2004. Implementation of this provision by the industry will be completed by October 29, 2004. Recommended rule language was also provided to the staff by NEI on April 29, 2004.

Therefore, we conclude that the 2002 version of the rule is essentially ready, following significant effort by NRC staff members with substantial input from external stakeholders, over the last three years.

Commissioner McGaffigan, in his comments on COMSECY-04-0014, suggested that long delays in the rulemaking process without the benefit of stakeholder input will negatively affect the quality of the rule. When public interaction was completed in December 2002, the draft rule was expected to be sent to the EDO in May 2003. On March 29, 2004, some 14 months after the last stakeholder meeting, the NRC staff posted the current draft rule. The industry is very concerned with the significant number of changes reflected in the current draft. A significant fraction of the agreed-upon input from external stakeholders integral to the 2002 draft have been lost in the 2004 draft. A protracted delay in rule promulgation will likely result in additional changes in the rule that will not reflect stakeholder input.

Many of the delays appear to be driven by issues related to the backfit analysis. The detailed analysis provided in the March 29, 2004 draft showed a net benefit for the rulemaking. Since no other significant changes should be needed to the basic rule requirements, this backfit analysis should be adequate for issuing the drug and alcohol portion of 10 CFR 26.

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I believe that our suggested approach meets the Commission's intent of getting all of the 10 CFR Part 26 rulemaking completed in a timely manner. We look forward to working with the Commission on these issues. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe F. Colvin". The signature is stylized with a large, looped initial "J" and a trailing flourish.

Joe F. Colvin

c: The Honorable Edward McGaffigan Jr., Commissioner, NRC  
The Honorable Jeffrey S. Merrifield, Commissioner, NRC  
Mr. Luis A Reyes, NRC  
Mr. Ellis Merschoff, NRC  
Mr. James Dyer, NRC