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Date: Tue, Sep 21, 2004 1:02 PM
Subject: Comments on Draft FFD rule text.

Attached are some informal comments on the August 17, 2004 draft of 10 CFR Part 26 for your consideration. This review did not consider subpart I.

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OFFICE OF SECRETARY
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Draft FFD rule dated August 17, 2004
Comments
September 21, 2004

In reviewing the draft rule, NEI noticed three items that the NRC staff may want to consider:

26.5 definitions—Other entity—Are the facilities under 26.3(e) licensed by the NRC or do the need to be added to this definition?

26.59(b)—should “chapter” be “part”?

26.55(a)—Several times we have stated that the right word is “unfavorable” not “favorable”. The last time we did this was FFD 33. Let me try to explain the problem:

1. From 26.53.(a) we find that there are only three ways to grant authorization, initial, update, or reinstatement. This is consistent with the Access Authorization program.
2. Later in the section we find some special cases—reinstatement has two cases, and 26.69 provides some added criteria if there is potentially disqualifying FFD information.
3. In 26.57 we find that update can only be used if the individual was terminated favorably within the last three years.
4. In 26.59 we find that reinstatement can only be used if the individual was terminated favorably within the last 365 days.
5. Applying 3 and 4 to 1 it would appear that if the individual was terminated unfavorably, the only option is an initial.
6. However, 26.55(a) says, “Before granting authorization to an individual who has never held authorization under this part or whose authorization has been interrupted for a period of 3 years or more and whose last period of authorization was terminated favorably, the licensee or other entity shall—“
7. Now if we apply 6 to 1 there is no clear path, the logic rejects all three methods. You may claim that 26.69 solves the problem, is a fourth category of investigation. But what do you do where an individual was terminated unfavorably by another licensee for a reason other than drug abuse? Section 26.69 does not apply there.

Here is a matrix of the cases that must be considered—between AA and FFD.

Time since UA	Terminated	Reason	Investigation
Never	NA	NA	Initial
< 3 years	Favorable	NA	Initial
< 3 years	Unfavorable	Drug	26.69?
<3 Years	Unfavorable	AA program	??
1-3 years	Favorable	NA	Update
1-3 years	Unfavorable	Drug	26.69?

1-3 years	Unfavorable	AA program	??
<366	Favorable	NA	Reinstatement
<366	Unfavorable	Drug	26.69?
<366	Unfavorable	AA program	??

In implementing NEI 03-01 we have considered the initial authorization as the base state. It is what should be done unless you meet the criteria for one of the other two. Both update and reinstatement require that the individual have been terminated favorably within the last three years or 365 days respectively.

We have been trying to suggest the same approach to the FFD rule. In my view, 26.69 is a modifier. Under 26.69.(b) only an initial can be performed. Section 26.69.(c) applies to all three. Section 26.69(d) is independent of the authorization process.

With wording that initial applies, to (1) never, (2) greater than 3 years, or (3) unfavorable termination then the table would read:

Time since UA	Terminated	Reason	Investigation
Never	NA	NA	Initial
< 3 years	Favorable	NA	Initial
< 3 years	Unfavorable	Drug	Initial
<3 Years	Unfavorable	AA program	Initial
1-3 years	Favorable	NA	Update
1-3 years	Unfavorable	Drug	Initial
1-3 years	Unfavorable	AA program	Initial
<366	Favorable	NA	Reinstatement
<366	Unfavorable	Drug	Initial
<366	Unfavorable	AA program	Initial