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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 PART 26 RULEMAKING

5 PUBLIC MEETING

6 + + + + +

7 Wednesday,

8 September 21, 2005

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10 ROCKVILLE, MARYLAND

11 The Public Meeting was held in the
12 Randolph/Congressional Rooms, at the Ramada Inn, 1775
13 Rockville Pike, Rockville, Maryland, Becky Karas,
14 Facilitator, presiding.

15 APPEARANCES:

16 BECKY KARAS, NRC

17 JIM DAVIS, NEI

18 TOM HOUTEN, NEI

19 PETE S. STOCKTON, POGO

20 JOHN FEE, SCE

21 ANTHONY RIZZO, SALEM & HOPE CREEK

22 GETACHEW TEFAYE, CONSTELLATION

23 JOSEPH BAUER, EXELLON

24 GLENN WILSON, DOMINION

25 J. PERSENSKY, NRC-RES

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1 APPEARANCES: (CONT.)

2 MOLLY KEEFE, NRC-RES

3 BRIAN MCCABE, Progress Energy

4 DAVID ZIEBELL, EPRI

5 DANA MILLAR, ENTERGY

6 DAVE LOCHBAUM, Union of Concerned Scientists

7 JOHN P. COWAN, NMC

8 DAVE DESAULNIERS, NRC/NRR

9 TIM MCCUNE, NSIR

10 PETER DEFILIPPI, Westinghouse

11 DAVID DIEC, NRC

12 EILEEN MCKENNA, NRC/NRR

13 GARMON WEST, NRC/NSIR

14 LEE BANIC, NRC

15 NICK DIPIETRO, First Energy

16 SUSAN TECHAU, Exelon

17 TODD NEWKIRK, IBEW

18 ERIC SKARPAK, NRC

19 RANDY CLEVELAND, NMC

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A-G-E-N-D-A

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P-R-O-C-E-E-D-I-N-G-S

8:30 a.m.

MS. MCKENNA: Good morning. I want to welcome you to our meeting this morning. My name is Eileen McKenna, I'm the acting program director for policy and rulemaking in the Office of Nuclear Reactor Regulation at NRC.

Our meeting today is to collect comments on our Proposed Rule Part 26, "fitness-for-duty". Our purpose is, really, to hear from you, what your comments are.

We do have staff here, available, to answer any clarifying questions about what the Commission intended in issuing its document. But I want to remind everyone this is not a comment resolution meeting.

So I hope you will understand if, in some cases, we say thank you for your comment, and we move on. I know we have had a lot of meetings, in the past, on this subject. And now we have a very full agenda, so now I'm going to turn it right over to Becky to get right into the heart of the meeting.

MS. KARAS: A lot of you know me already. I'm Becky Karas, I'm one of the project managers for this rule making. Dave Diec has joined me as a co-

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1 project manager for completing this final rule.

2 Again, I wanted to join Eileen in thanking
3 you all for taking the time, out of your very busy
4 schedules, to attend this meeting. The purpose,
5 again, is to solicit comments on the Proposed Rule,
6 and we will also be available to provide any necessary
7 clarifications, as Eileen has stated.

8 On tomorrow's agenda, as most of you know,
9 this is a two-part public meeting. The second
10 portion, which is a morning portion, is held at NRC
11 headquarters. And that is, really, just to discuss
12 industry plans for implementation, guidelines for the
13 managing fatigue portion.

14 And, really, the scheduling was just for
15 that. Again, that will be over at NRC headquarters.
16 What we are planning on doing, as far as the agenda
17 today, is to go through the drug and alcohol portions
18 in the morning, receive comments on those. And, after
19 lunch, go into any comments on the worker fatigue
20 portions of the Rule.

21 As I mentioned, just for some
22 introductions, I guess, Dave and I will have the lead
23 for the rule making, for the project management of it.
24 And Tim McCune, from the office of NSIR, has got the
25 technical lead for the drug and alcohol testing

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1 portions.

2 Dave Desaulniers at the office of NRR has
3 the technical lead for the worker fatigue portions of
4 the rule making. Lee Banic is also here, from the
5 Nuclear Regulatory Commission. She has been, also,
6 assisting Dave and I with some of the logistics with
7 the rule making portions.

8 And Garmon West is Tim McCune's section
9 chief in the office of NSIR, dealing with the drug and
10 alcohol testing portions, again.

11 I just also wanted to have anybody who is
12 on the speakerphone -- we have a lot of people here,
13 so I really didn't want to go through full
14 introductions with everybody that is here.

15 But so that everybody knows who is on the
16 speakerphone, anybody who is tied in, if you could
17 please introduce yourself and your affiliation?

18 (No response.)

19 MR. DIEC: Is anybody on the line? Good
20 morning.

21 (No response.)

22 MR. DIEC: I think Deanne Raleigh, from
23 Information Services was on the line.

24 MS. KARAS: I also want to remind
25 everybody that since this meeting is being

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1 transcribed, and that is really so that we have a
2 complete set of comments that are provided during this
3 meeting, if you can please say your name, when you are
4 speaking or providing a comment, especially if you
5 don't have a name tag out in front of you.

6 And if you can, also, try and get a
7 microphone close to you when you are speaking, so that
8 it is recorded on the transcript, that will help us
9 out greatly.

10 On to some other logistics. The rule
11 comments, the date for commenting on the Proposed Rule
12 provisions, the final date for receiving those
13 comments is December 27th.

14 The information collections aspects, the
15 comments are due September 26th. So that is coming up
16 very soon. You can also provide comments, at this
17 meeting, and there are multiple ways that we have set
18 up here for you to do that.

19 You can either provide them verbally,
20 through the microphones, as we are going through the
21 different portions of this meeting, or you also have
22 little index cards that I have passed out in a lot of
23 your chairs.

24 You can fill those out and either hand
25 them up to us and if we receive them, during the

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1 meeting, as we have time we will go through those, and
2 we will read those off.

3 Or if you -- and that way they will be
4 read into the transcript. But if you would prefer we
5 also have a comment box, that empty xerox box up
6 there, that you can just slip them in there.

7 We do accept -- you can put your name on
8 there, and your affiliation, any contact information
9 is very helpful to us. However, if you do not feel
10 comfortable providing any of that information we
11 accept anonymous comments.

12 And, again, you can put those into the
13 box. Ones that are placed in the box, we will docket
14 those as comments on the rule making, but they won't
15 end up on the transcript, or as part of the meeting
16 summary. We will just accept those as comments that
17 have been submitted to the NRC.

18 We also have computer work stations over
19 on the side here. So if anybody would prefer to type
20 in their comments, that is obviously helpful to us.
21 And we have somebody who will be over there to help
22 you with that, if you want to use those computer work
23 stations.

24 You can also, obviously, through
25 teleconferencing in this meeting provide those

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1 comments. It is important to note that today is the
2 meeting for receiving those comments.

3 Tomorrow's meeting is not transcribed and
4 the point is just to discuss the logistics on the
5 guidance document, not to receive comments in any
6 form, in that meeting.

7 After the meeting you can, obviously,
8 follow any of the instructions for submitting
9 comments. They are in the Federal Register Notice.
10 You can mail, email, fax, or hand deliver, following
11 those instructions.

12 And there is a handout in the Federal
13 Register notice. If anybody doesn't have that, there
14 is copies in the back.

15 Your input is, obviously, sought and
16 appreciated. Obviously, just to remind you, some of
17 our rules of participation in the public meetings,
18 obviously, we are not going to discuss any safeguards
19 or classified information.

20 There is, also, we have a feedback form in
21 the back. And we would appreciate, on the feedback
22 forms, if you can provide any feedback on how we ran
23 this public meeting. Please do not put public
24 comments on the rule making itself, on those feedback
25 forms, use the index cards, or a piece of paper, that

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1 you drop in the box, for those.

2 We are also going to, following this
3 meeting, issue a meeting summary and our participant
4 list. And we will also have the transcript made
5 public as part of that, as well.

6 I want to provide the opportunity for any
7 opening remarks. So far I have Jim Davis and Todd
8 Newkirk, who would like to provide opening remarks.
9 Is there anybody else who is planning on providing
10 opening remarks that didn't get a chance to sign up?

11 (No response.)

12 MS. KARAS: Okay. Oh, you wanted closing
13 remarks? You don't have any opening remarks, then?
14 Okay, all right. Jim, then, if you want to go ahead.
15 If you can keep it fairly short, about five minutes or
16 so? So we can keep on time.

17 MR. DAVIS: It will be a challenge.

18 MS. KARAS: You have seven minutes.

19 MR. DAVIS: Good morning. I'm Jim Davis,
20 Nuclear Energy Institute. I want to express my
21 appreciation for the opportunity to make comments
22 today.

23 I think public meetings, as well as the
24 written comments, are probably useful in the process.
25 You are probably going to hear a lot of negative

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1 comments and concerns before the day is over. I guess
2 that is what these meetings are really for.

3 We don't always talk about the things that
4 are good or positive in the Rule when we go through
5 that part of it. So before we get to that let me make
6 a statement that this round of drug and alcohol rule
7 making has been very effective.

8 It has been successful, and the Staff
9 should be complimented on their effort to date, for
10 getting the Rule to where it is today.

11 I personally support the drug and alcohol
12 rule as it exists to date. I also want to make a
13 recommendation. I would recommend that the Commission
14 conduct a formal study of this rule making, which has
15 gone on since 1991.

16 Because I think there are some lessons
17 learned that would significantly improve some rule
18 makings in the past. The process we have seen, in the
19 last three years, has been effective in generating a
20 very complex rule, and has achieved a high degree of
21 clarity in the requirements that are in the Rule.

22 Multiple, the large staff effort issuing
23 multiple draft texts, meetings, and meaningful
24 discussions, honest attempts to address issues, is
25 very important in the process. A lot of staff work

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1 has gone into this.

2 But ultimately, I think, there is a
3 savings for both the NRC and the industry, when we get
4 to the implementation phase of this rule and avoid
5 multiple clarification meetings, FAQs, and a variety
6 of other issues that we sometimes have seen in the
7 past.

8 The reason I'm recommending this formal
9 review is I think you need to compare it to the
10 secretive process used between 1994 and 2001 which,
11 ultimately, produced a rule with significant
12 unintended consequences.

13 I also agree with one of the
14 Commissioners. The backfit process is not the
15 problem, it is not the issue, it is not what we should
16 have been analyzing in 2001.

17 I, personally, do not intend to look at
18 the backfit analysis on the drug and alcohol portion
19 of the Rule. I don't need to, I can look at the Rule
20 itself, and I'm satisfied in that area.

21 I want to make sure I didn't mislead
22 anybody in my comments. There have been some issues
23 that the industry didn't prevail in, but that is part
24 of the process. I still feel that we are overly
25 restrictive on the MRO and including them in the

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1 program is probably not wise.

2 But we got our best shot at it and you are
3 not going to hear from us again on that one in the
4 formal comment period. I'm also concerned that we are
5 going to have to, probably, shut down most on the on-
6 site labs because of the quality assurance
7 requirements. Again, we have taken our best shot, and
8 I guess you understand that part of the issue.

9 Today we do have a few comments and they
10 will be presented by various members of the industry
11 taskforce that has been working this for many years.
12 Probably only two of those comments are of any
13 significance.

14 So 26.3(E) discusses new plant
15 requirements during new construction. I know it is
16 the same that was in the last rule, but now that we
17 are going to build a plant we probably need to look at
18 that and fix the lack of clarity and what we really
19 intend in that particular area. We will discuss that
20 a little later on.

21 We also still have some concerns with
22 26.69, and what the requirements are when there is
23 potentially disqualifying information on an
24 individual. The reviewing official is not being
25 offered enough latitude in making rational decisions

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1 when some events occur, like a single DUI.

2 Not all potentially disqualifying
3 information is the same, and I think we will hear some
4 more discussion on that.

5 Have I finished my seven minutes yet?
6 Thank you.

7 MS. KARAS: Okay, thanks Jim. I do
8 realize that I forgot to introduce my own boss,
9 Stephanie Coffin. And so, hopefully, she will forgive
10 me for that. She is Dave's and my boss.

11 I also wanted to let everybody know that
12 there are more seats up at the table. If there is
13 anybody who is intending to speak, you know, please go
14 ahead and sit up at the table, or anybody else.

15 Now I would like to turn it over to Tim.
16 Tim is going to briefly go over an overview of the
17 drug and alcohol testing changes, the more significant
18 ones. And then we will go into the comments at that
19 point.

20 MR. MCCUNE: Thanks, Becky. We had a
21 number of objectives, as you all know, with the
22 Proposed Rule. Chiefly among them was to update the
23 Proposed Rule with the drug testing requirements from
24 the Health and Human Services Department, for which
25 all the technical basis derives for this program, and

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1 many federal programs.

2 And the alcohol provisions that the DOT
3 provides. We wanted to strengthen the program,
4 management of worker fatigue, and we think we have
5 done that.

6 Dave, obviously, will be talking about
7 that, Dave Desaulniers, this afternoon, so I won't go
8 into that, in any detail.

9 As Jim said, we wanted to make the program
10 more effective, and efficient, and I think we have
11 done that as well. We wanted to achieve consistency
12 between the FFD and access authorization programs.

13 This is no small matter. As many of you
14 know the "fitness-for-duty" program in many cases is
15 a precursor to access authorization. So it is
16 imperative that the two programs are linked, and we
17 think we have done that in subpart C.

18 We want to reduce the burden, where
19 appropriate, and I will talk a little bit more about
20 that. Improve clarity, as Becky mentioned, and I
21 think we have done a pretty good job of that.

22 And, lastly, we wanted to protect, or
23 increase the protections, and due process rights to
24 individuals subject to the Rule.

25 Well, under the area of strengthening the

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1 program, primarily we have implemented specimen
2 validity testing. And that verifies that the specimen
3 is unadulterated human urine. We do that through
4 specimen tampering, using adulterates.

5 We can detect that, we think, pretty well
6 with the new requirements, as well as dilution, or
7 substitution. We changed the drug and alcohol cutoff
8 testing levels. For example, the cutoff level for
9 marijuana was cut in half, from 100 nanograms per
10 milliliter, to 50.

11 And in the area of alcohol we recognized
12 that if someone came up for a random test, while on
13 duty, or any other type of test, while they are at
14 work, and tested positive for alcohol, there was the
15 chance that they would have imbibed either at work, or
16 significantly before work.

17 And so we have dropped that level after a
18 two hour period being on-shift, from .04 to .02. And,
19 lastly, all workers would be trained on the "fitness-
20 for-duty" program at the supervisory level.

21 In the area of more stringent sanctions,
22 because there still are ways to subvert the testing
23 program, and I won't go into those in any detail, for
24 obvious reasons, we have implemented, or proposed to
25 implement a permanent denial for a first attempt to

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1 subvert the testing process, or a refusal to test.

2 A five year denial is also in the Proposed
3 Rule. If an individual resigns to avoid removal for
4 a "fitness-for-duty" violation, an unfavorable
5 termination of authorization for 14 days is required
6 for a first confirmed positive, and a five year denial
7 after a second.

8 Also a permanent denial for any "fitness-
9 for-duty" violation following a five year denial. I
10 mentioned increased worker protections and rights.
11 Largely based on the science, and the fact that it is
12 possible to ingest, for instance, a large quantity of
13 poppy seeds and come up positive on a test for
14 opiates, we have raised the opiate cutoff level from
15 300 nanograms per milliliter, to 2000.

16 We have strengthened the requirement for
17 independence of the MRO. Jim Davis went into that,
18 briefly, but we feel very strongly that the MRO can
19 work, the MRO staff can be under the employ of the
20 licensee.

21 But the MRO staff must take direction
22 solely from the MRO. We are requiring licensees to
23 obtain independent forensic toxicologist certification
24 in two instances. Where they want to test for drugs
25 not included in the HHS panel, or if they want to test

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1 for a more stringent cutoff level.

2 I think Jim also alluded to some savings
3 to the industry. I think we've accomplished that
4 through some relaxations. We are not going to, any
5 longer, require blood testing for alcohol. Only one
6 alcohol breath test is going to be required.

7 We are also allowing saliva devices
8 instead of breath for the first test. And instead of
9 doing "fitness-for-duty" performance reporting on a
10 twice a year basis, we are multiplying that
11 periodicity to once a year, which should help.

12 Some auditing requirements are also
13 relaxed. I think we all know that some other
14 programs, like the DOT's, dwarf the NRC program. They
15 have, approximately, twelve million people in their
16 program, we have approximately 104,000.

17 And so for that reason we are not
18 requiring that the HHS labs be audited on the same
19 periodicity.

20 I mentioned that we are based on the HHS
21 requirements as almost all drug testing programs are.
22 But we do differ from the HHS guidelines in some
23 cases. Generally we are consistent, but we did not
24 follow all of the proposed new policies from the HHS
25 that looks at alternate processes.

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1 Their process is moved a little bit
2 quicker than the Part 26 process. But the Proposed
3 Rule would include some aspects of proposed HHS
4 guidelines to provide additional licensee flexibility
5 to use non-instrumented testing.

6 And I think that is something that should
7 save the industry some money down the line, as well.
8 We have differences from these guidelines, but you
9 might be wondering why. The difference is centered in
10 the basic difference of the missions between the HHS
11 and the NRC.

12 The HHS mission centers on assisting
13 federal agencies with health issues for federal
14 employees. At the NRC we have the requirement to
15 ensure that nuclear facilities, and nuclear reactors,
16 are operated in a safe manner.

17 And so that is, primarily, why we have
18 some of the policies in the Proposed Rule that aren't
19 resident in the HHS policy.

20 And that is about all I have. Becky, I
21 will turn it back over to you.

22 MS. KARAS: Okay, thanks, Tim. How we are
23 going to go through this is, initially, we want to try
24 and go through the questions for public comment that
25 were, specifically, asked in the Federal Register

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1 notice.

2 They are also attachment 2 to this meeting
3 notice. And we are going to go through the ones that
4 are drug and alcohol testing related, or related, in
5 general, to Part 26 this morning. Then when we get
6 done receiving any comments on those specific
7 questions, then we will receive general comments on
8 any other provisions.

9 But we will leave the specific fatigue
10 questions for public comment until the afternoon. So
11 I'm not going to read through, I guess, the entire
12 thing for each one of these, but I'm going to
13 paraphrase a little bit.

14 We go to question number 1 for public
15 comment, off of attachment 2. Basically what the
16 Proposed Rule would do is it would increase sanctions
17 in certain areas, as Tim had just explained off of his
18 slides.

19 And a couple of those, specifically, are
20 for acts, or attempted acts to subvert the testing
21 process would result in permanent denial of
22 authorization. And that is for a first attempt.

23 In addition any individual who previously
24 had a five year denial, if they have a subsequent
25 violation, that subsequent violation would result in

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1 permanent denial.

2 So we are specifically requesting comments
3 regarding these proposed changes, especially when
4 compared to the five year ban available through the
5 agency's enforcement policy for other acts of
6 deliberate misconduct.

7 If there is anybody who would care to
8 comment on that? Randy?

9 MR. CLEVELAND: Yes, this is Randy
10 Cleveland with the Nuclear Management Company. Our
11 comment on this is that many in the industry are
12 currently implementing policies of permanent denial as
13 an individual sanction, and a program to deter such
14 acts.

15 And the industry may submit written
16 comments, additional written comments on this topic in
17 December.

18 MS. KARAS: Are there any other comments?

19 (No response.)

20 MS. KARAS: If not we will move on to
21 question number two. And this is on the "shy-lung"
22 procedures. Basically what Part 26 would do is it
23 would establish a process called "shy-bladder" for
24 determining whether there is a medical reason that a
25 donor is unable to provide a urine specimen of at

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1 least 30 milliliters.

2 We had adapted that from DOT's procedures.
3 But DOT also has additional processes for determining
4 whether there is a medical reason that a donor is
5 unable to provide a specimen of oral fluids, or a
6 breath specimen.

7 And we are inviting comments on whether
8 the NRC should consider incorporating these procedures
9 for insufficient oral fluids and breath specimens,
10 into Part 26.

11 Are there any comments on that? Susan?

12 MS. TECHAU: Susan Techau, Exellon
13 Nuclear. The industry sees no need for a "shy-lung"
14 provision. We did a quick poll of industry and felt
15 that there was very, very few if any instances where
16 that would apply.

17 We believe that 26.85(B)(3) requires an
18 alcohol collector qualifications, that we have to have
19 procedures to address that issue, and feel that that
20 is enough to address the problem.

21 But we do reserve the right to provide
22 comments in December, and we may provide that, at that
23 time.

24 MS. KARAS: Are there any other comments?

25 (No response.)

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1 MS. KARAS: We will move on to question
2 three, then, on the forensic toxicologist.

3 The Proposed Rule would permit licensees
4 to specify more stringent cutoff levels, or to test
5 for drugs and drug metabolites in addition to those we
6 specify, without informing or obtaining the written
7 approval of the NRC.

8 However, in these instances we would
9 require them to be evaluated and certified in writing
10 by a qualified independent forensic toxicologist,
11 except in three circumstances.

12 The first one is if HHS issues more
13 stringent cutoff levels, or if HHS guidelines are
14 revised to include the additional drug or drug
15 metabolite, or if the licensee would receive written
16 approval from the NRC for that situation.

17 We are requesting comments regarding those
18 proposed changes.

19 MR. CLEVELAND: Randy Cleveland with the
20 Nuclear Management Company. The industry is currently
21 studying this proposal and has no comment at this
22 time. We may provide written comment in December.

23 MS. KARAS: Are there any other comments?

24 (No response.)

25 MS. KARAS: We will move on to question 4,

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1 then, on the changes to opiate testing.

2 The Proposed Rule would raise the cutoff
3 levels for opiates from 300 nanograms per milliliter
4 to 2,000 nanograms per milliliter. We would also
5 require testing for 6-AM, a metabolite that only comes
6 from heroin.

7 The proposed cutoff levels in the new test
8 would be consistent with those used by HHS and DOT.
9 We are inviting comments on those proposed changes.

10 MR. DEFILIPPI: Pete Defilippi,
11 Westinghouse Electric Company. The industry strongly
12 agrees with the proposed requirement, as it does
13 increase the efficiency of the "fitness-for-duty"
14 programs.

15 However, we do reserve the right to,
16 again, comment in December. Thank you.

17 MS. KARAS: Are there any comments on
18 that?

19 (No response.)

20 MS. KARAS: We will move on to question 5.
21 I guess we will go through 5-A, first. We would add,
22 in the Proposed Rule, new requirements for validity
23 testing in order to detect specimens that may have
24 been adulterated, substituted, or diluted.

25 These have been adapted from HHS

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1 guidelines. And we are inviting public comments on a
2 couple of issues. We will go through A first.

3 We would establish quality assurance and
4 quality control requirements, and we are seeking any
5 input regarding any technical and methodological
6 barriers to implementing those requirements at
7 licensee testing facilities.

8 Are there any comments on the QA/QC
9 requirements?

10 MS. TECHAU: Susan Techau, Exellon
11 Nuclear. The industry is studying the proposal of
12 this aspect of the Proposed Rule. And we will
13 commenting on that in December.

14 MS. KARAS: Are there any comments on 5-A?

15 (No response.)

16 MS. KARAS: On 5-B, the Proposed Rule
17 would establish criteria and procedures for
18 determining whether a specimen has been substituted.
19 A specimen will be reported, by the HHS lab, to the
20 MRO as substituted, if it has a creatinine
21 concentration of less than 2 milligrams per deciliter,
22 and a specific gravity of less than, or equal to,
23 1.001, or equal to or greater than 1.02.

24 For them to report it as substituted,
25 results in those ranges would be necessary in both the

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1 initial and the confirmatory test, on two separate
2 aliquots of the specimen.

3 We are inviting comments on those proposed
4 provisions.

5 MS. TECHAU: Susan Techau, Exellon
6 Nuclear. Again, the industry is looking at this issue
7 and we will provide comments in December.

8 MS. KARAS: Thank you. Are there any
9 comments on 5-B?

10 (No response.)

11 MS. KARAS: We will move on to question 6,
12 on MRO training. The Proposed Rule would require that
13 the MRO be knowledgeable of this part, and of the
14 "fitness-for-duty" policies of the licensees.

15 We are inviting comments on whether Part
16 26 should establish specific training requirements for
17 the MRO.

18 MR. CLEVELAND: Randy Cleveland with the
19 Nuclear Management Company. The industry does not
20 believe the NRC should regulate training for MROs.
21 MROs are licensed by individual states and will be
22 certified as required by the Proposed Rule.

23 Additional regulation is not required to
24 ensure MROs understand licensee policies and
25 procedures. We may submit additional comments in

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1 December.

2 MS. KARAS: Are there any other comments
3 on this question?

4 (No response.)

5 MS. KARAS: We will move on to question 7,
6 on testing bottle B. The Proposed Rule would prohibit
7 licensees from initiating testing of the specimen in
8 bottle B, or from retesting an aliquot from a single
9 specimen without the donor's written permission.

10 However, we are considering an alternative
11 approach that would permit a licensee initiating
12 testing of the specimen in bottle B, or retesting an
13 aliquot without the donor's written permission, if
14 three conditions are met.

15 And the first would be that if the first
16 results, from the specimen, were confirmed as non-
17 negative, by the MRO. Secondly, that the donor has
18 also requested a review, or initiated legal
19 proceedings.

20 And, finally, that the testing is
21 conducted in accordance with proposed 26.165(C)
22 through (E), which is basically as a retest. And
23 under the proposed provisions, or the alternative
24 approach, the Rule would require the licensee to
25 administratively withdraw the donor's authorization

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1 until the results from bottle B, or the retest, are
2 available.

3 We are inviting public comment on both the
4 Proposed Rule provisions and also the alternative
5 approach. Are there any comments?

6 MR. WILSON: Glenn Wilson with Dominion.
7 The industry is studying this and we will be providing
8 comments, in December, on it. We have no comment at
9 this point.

10 MS. KARAS: Are there any other comments?

11 (No response.)

12 MS. KARAS: Then we will move on to
13 question 8 on the rule making issues. For non-
14 instrumented validity testing the NRC is considering
15 incorporating future changes to draft HHS guidelines
16 related to the permission that we provided, in
17 proposed Part 26, for licensees to use non-
18 instrumented validity tests.

19 Proposed Part 26 would permit them for
20 validity screening test in lieu of instrumented
21 validity testing. If any changes are made to those
22 draft HHS guidelines between issuing the Proposed Rule
23 and issuing the Final Rule, those changes would be
24 considered for incorporation.

25 We want to know if there are any comments

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1 related to the potential incorporating of those
2 changes.

3 MR. CLEVELAND: Randy Cleveland with the
4 Nuclear Management Company. The industry disagrees
5 with the proposal. Changes to HHS guidelines should
6 not be incorporated into NRC regulations without going
7 through the complete rule making process.

8 We may submit additional comments in
9 December.

10 MS. KARAS: Are there any other comments?

11 (No response.)

12 MS. KARAS: We will move on to question 9,
13 then.

14 The NRC is considering amending other
15 portions of its regulations in order to exclude
16 certain future changes to Part 26 from current backfit
17 requirements.

18 The scope of the exclusions would be
19 limited to only those changes to Part 26 necessary to
20 incorporate relevant revisions to the HHS guidelines.

21 And you can see what those are listed in
22 your handout. The NRC is requesting comment on
23 excluding such future changes to Part 26 from backfit
24 analysis requirements.

25 Are there any comments?

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1 MR. DIPIETRO: Yes. It is Nick Dipietro
2 with First Energy. Industry believes that any future
3 changes made to Part 26 should have a backfit analysis
4 and plan to submit comments, on this topic, in
5 December.

6 MS. KARAS: Are there any other comments?
7 (No response.)

8 MS. KARAS: Then we will move to question
9 10 on the reporting burden. We are seeking comments
10 regarding the administrative reporting burden that the
11 Proposed Rule provisions would create.

12 MR. CLEVELAND: Randy Cleveland with the
13 Nuclear Management Company. With respect to the drug
14 and alcohol provisions, excepting subsection I, the
15 industry does not have any comment at this time.

16 MS. KARAS: Are there any other comments?
17 (No response.)

18 MR. DAVIS: This is Jim Davis, NEI. I
19 think it is important to get on the record that the
20 reporting requirements associated with the drug and
21 alcohol part of the Rule, we do not feel that those
22 reports are needed for the regulator to meet their
23 requirements to regulate the industry, and protect
24 public health and safety. That is not the purpose of
25 those reports.

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1 However, we do support the reporting
2 associated in the drug and alcohol rule in that
3 somebody needs to collate the data and see what is
4 going on in the environment that we all live in, and
5 work in, that is beyond the control of the NRC, beyond
6 the control of the industry.

7 And whether a particular drug set is
8 becoming more popular or less popular. And that an
9 annual summary of that information is a worthwhile
10 effort. And that the NRC is probably the best person
11 to do it.

12 And, therefore, we support that portion,
13 we support the reporting requirements for that
14 purpose. I make this comment because I have a little
15 bit of heartburn with the claim that those reports are
16 needed to meet oversight requirements.

17 I don't think that is necessary. With
18 that all said, we support the reporting requirements.

19 MS. KARAS: Are there any other comments?

20 (No response.)

21 MS. KARAS: That is what we had for the
22 questions for public comment. And now we will enter
23 the portion of the agenda where we basically open it
24 up for any other comments, or clarifying questions on
25 other drug and alcohol provisions, or general rule

1 making issues.

2 And we will keep going until 10:30, where
3 we will have a break. So if anybody would like to
4 comment, and just step into one of the microphones, be
5 sure to say who you are and your affiliation, if that
6 is appropriate.

7 And if you feel you are not getting a
8 chance to get to the microphones just raise your hand
9 and we will acknowledge you, and we will give you a
10 turn.

11 MR. DAVIS: I would like to go back to
12 question one for a minute. If I could just inject
13 that into my first comment?

14 In evaluating this provision, making a
15 decision, I think the Staff needs to consider other
16 requirements that are out there; realize that the
17 licensee has a requirement to determine that the
18 individual is not only fit for duty, but they are
19 trustworthy and reliable.

20 And I think you need to think of this in
21 the trustworthy and reliable area, as well as whether
22 there is or is not a "fitness-for-duty" issue for the
23 individual.

24 Because ultimately the licensee is going
25 to have to look at that piece of the equation in

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1 making this decision when we have a testing program
2 like that.

3 MS. KARAS: We will move on to the next
4 comment.

5 MR. CLEVELAND: Randy Cleveland with the
6 Nuclear Management Company. This comment is regarding
7 the call-in reporting requirements, reference is
8 26.27(C) (3) (I), requiring an individual who has called
9 in, when scheduled to work, to state whether they
10 consider themselves fit for duty, or whether they have
11 had alcohol within the pre-duty abstinence period.

12 We would like to see a change in the
13 regulation with respect to this section, to move to a
14 report by exception philosophy. Currently licensees
15 are training individuals on the expectation with
16 respect to call-outs, to report whether they consider
17 themselves unfit, and whether they have had alcohol in
18 the abstinence period.

19 We would like to see the language, and we
20 will be submitting a comment in December, providing
21 suggested language, that moves us to a report by
22 exception, specifically that individuals called in --
23 being called in would be required to declare, as
24 stated in the licensee program, when they consider
25 themselves unfit for duty, or have consumed alcohol

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1 within the pre-duty abstinence period, as stated in
2 the policy.

3 And, again, this will be covered by
4 training. So rather than across the board requiring
5 every individual to make a statement, we would train
6 individuals on the requirements, and expect that the
7 report be made as required by exception in the
8 licensee policy, to the appropriate licensee entity.

9 Ultimately the industry considers that the
10 burden of having every individual make this
11 declaration unnecessary.

12 MS. KARAS: Thank you. Next comment?

13 MS. TECHAU: Susan Techau, Exellon
14 Nuclear. The industry has a concern about requiring a
15 suitable enquiry to present employer, when that
16 present employer was, the individual was hired the day
17 of, and processing.

18 And the reference for the Proposed Rule is
19 26.63(C), where it currently states: A licensee or
20 other entity shall conduct a suitable enquiry on a
21 best-effort basis that question both present and
22 former employers.

23 The reasoning for this is that when an
24 individual is in processing, or coming to one of our
25 nuclear sites, they are possibly being hired that day.

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1 And the suitable enquiry questions that are being
2 asked are based on past history, that they have, on
3 that individual.

4 The employers have no history on the
5 individual and they may have been on the payroll for
6 five minutes, and they have no documentation to
7 support or answer those questions.

8 So the proposed language, or suggested
9 language, that we would like to see is 26.63(C) to
10 state, the licensee or other entity shall conduct the
11 suitable enquiry, on a best-effort basis, by
12 questioning both present employed prior to the day the
13 individual completed the self-disclosure, and former
14 employers.

15 MS. KARAS: Okay, thank you. Next
16 comment?

17 MR. CLEVELAND: Randy Cleveland with the
18 Nuclear Management Company. The industry is concerned
19 with section 26.69, particularly (C)(2). Those are
20 the provisions regarding granting of authorization
21 with potentially disqualifying "fitness-for-duty"
22 information.

23 An example that I will use to demonstrate
24 our concern here would be an individual that has
25 disclosed on a personal history questionnaire an open

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1 bottle conviction within the applicable scope of the
2 background.

3 This would qualify as potentially
4 disqualifying information, and the licensee would be
5 forced, under these provisions, to suitable enquiry
6 every employer that was listed on the personal history
7 questionnaire, and would not have the ability to go
8 with the non-PDA provisions allowing four years, two
9 and three, for example, on an initial, to just
10 suitable enquiry the employer of greatest length in
11 each month.

12 The industry believes that an across the
13 board requirement to cover every employer is
14 unnecessarily burdensome, overly reactive, here. And
15 what we would like to see is additional flexibility
16 built into the Rule.

17 We will be providing language as such to
18 allow for reviewing official, and professional, for
19 example MRO interaction, to determine the need to do
20 additional investigation.

21 Ultimately the industry has had 15-plus
22 years of experience proving that the information that
23 we are getting from employers, as a general rule, is
24 not going to be beneficial in dispositioning the
25 "fitness-for-duty" issue that the proposed regulation

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1 would require, in terms of making a "fitness-for-duty"
2 determination.

3 So we would like to see is the flexibility
4 built in to allow the reviewing official to assess
5 what it is that has been developed, either through
6 disclosure, or conduct, of the suitable enquiry, and
7 do the appropriate level and type of investigation,
8 rather than having an across the board requirement to
9 go back and cover every employer.

10 MS. KARAS: Thank you. Next comment?

11 MS. TECHAU: Susan Techau, Exellon
12 Nuclear. In addition to the 26.69(C) area,
13 26.69(C)(1), the industry believes that the language
14 currently states should verify that the individual's
15 self-disclosure and employment history addresses the
16 applicable period.

17 And 25.61(B)(3), we believe it should also
18 state and C. And the reason behind that is because
19 the action in 26.69(C)(1) is indicating that we have
20 to verify the individual's self-disclosure, and
21 employment history, should be covered.

22 And 26.61(B)(3) addresses self-disclosure,
23 but (C) addresses employment. And we believe that
24 that needs to be included, in order to be consistent
25 with the language.

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1 MS. KARAS: Thank you. Next comment?

2 MR. CLEVELAND: Randy Cleveland with the
3 Nuclear Management Company. The next comment that the
4 industry would like to submit is concerning the
5 requirement, in 26.189(C), that a determination of
6 fitness that is conducted, for-cause, must be
7 conducted through face-to-face interaction between the
8 subject individual and the professional making the
9 determination.

10 The industry acknowledges that in certain
11 cases, such as odor of alcohol, or a fatigue related
12 determination, that a face-to-face is not necessarily
13 required.

14 However, there are other circumstances
15 wherein a licensee may initiate a for-cause evaluation
16 which would not warrant a face-to-face interaction
17 with the appropriate professional.

18 We, again, would like to see the
19 flexibility built into the Proposed Rule to allow the
20 licensee, again, to interact. An interaction between
21 the reviewing official and appropriate professional,
22 be it MRO, SAE, psychologist, to determine, based on
23 the circumstances that are before the licensee, the
24 need to have a face-to-face interaction.

25 MS. KARAS: Thank you. Next comment?

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1 MR. DESAULNIERS: I just want to clarify.
2 I heard you say, in the case of odor of alcohol, or
3 fatigue, not face-to-face, did you say not face-to-
4 face, or face-to-face?

5 MR. CLEVELAND: Not face-to-face.

6 MS. KARAS: Next?

7 MS. TECHAU: Susan Techau, Exellon
8 Nuclear. In the Proposed Rule 26.39(C), which
9 addresses the "fitness-for-duty" review process, the
10 current language states that the procedure must ensure
11 that the review is conducted by more than one
12 individual, and that the individuals that conduct the
13 review are not associated with the administration of
14 the "fitness-for-duty" program.

15 And the description of the "fitness-for-
16 duty" personnel in 26.25(A)(4), we believe that
17 currently, and we have been doing this for
18 approximately 15 years, where the access authorization
19 and the "fitness-for-duty" process appeal, or review,
20 are the same.

21 And we currently have language that in our
22 current process, that has been endorsed by the NRC
23 through NEI 0301, that has different language, and we
24 would like to see if we could become standard, so that
25 the licensees didn't have to have two different

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1 processes, one for access authorization and one for
2 "fitness-for-duty" for the review and appeal of the
3 denial of unescorted access.

4 And the current language, which we would
5 like to see in 26.39(C), or the proposed language,
6 would provide the opportunity to have the decision,
7 together with any additional information, review by
8 another designated management level employee of the
9 licensee, who is equivalent or senior to, and
10 independent, of the individual who made the initial
11 decision to deny or terminate unfavorably UAA/UA.

12 The determination from this review is
13 final. We believe by incorporating those proposed
14 words, that it would be consistent with access
15 authorization and "fitness-for-duty", and wouldn't be
16 burdensome to the licensee to have two separate
17 processes for each rule.

18 MS. KARAS: Thank you. Next comment?

19 MR. DIEC: I just sort of wondered if
20 there is anybody, I mean, the industry is sort of
21 hogging the mike here. If somebody wants to make a
22 comment?

23 MS. KARAS: Does anybody on the
24 speakerphone wish to make a comment?

25 (No response.)

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1 MS. KARAS: Can you hear us on the
2 speakerphone?

3 (No response.)

4 MR. DIEC: Can anybody hear us? Are you
5 on a conference call with us still?

6 (No response.)

7 MS. KARAS: I heard a couple of beeps,
8 they may have dropped off.

9 Is there anybody else who hasn't made a
10 comment yet, sitting back? I want to make sure that
11 we are not monopolizing, just the people on the table.

12 (No response.)

13 MS. KARAS: Randy, Sue, or Nick, any of
14 you have further comments?

15 MR. DAVIS: It sounds like, let's talk
16 about 26.3(E) at this point. I'm sort of worried
17 about the pace of this thing. We've gotten, I think
18 we got mike fright here, or something, that we are not
19 -- we are talking, but I'm not sure whether we are
20 providing good input.

21 So let's see if maybe we can have a little
22 more discussion on this one, realizing you are taking
23 comments, but maybe you need to ask us a few more
24 questions.

25 And I will tee-off the discussion on

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1 26(3) (E), and then turn it over to Tom Houten to talk
2 about it for a few minutes. He is on our new plant
3 taskforce and has been involved in working on this.

4 But I think, probably, to highlight the
5 problem is in 26(3) (E) we are talking about combined
6 license holders, prior to the point that they get the
7 permission from the Commission to load fuel, and move
8 new stuff.

9 So we are talking, basically, about the
10 construction process, right? And it says: Comply
11 with 26.23, 41 and 189. And when I go to 26.23, 26.23
12 is, if I can find it in my little handout here, it
13 basically provides overarching performance objectives
14 for the Rule.

15 And you read those performance objectives,
16 I have some auditors that would probably tell me that
17 the only way I'm going to meet those performance
18 objectives is to follow each and every element in the
19 rest of the Rule.

20 And then I've got some lawyers that tell
21 me that if you don't need to follow each and every
22 element in the Rule to meet these performance
23 objectives, then the rest of that, those pieces of the
24 Rule ought to go away.

25 So I think we are conflicted in what we

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1 are trying to do. And, obviously, as it is written,
2 it is probably fortunate we never tried to build a
3 plant with this in place.

4 We don't provide very good guidance to the
5 companies that are out there trying to build a new
6 plant, as to what our expectations are. And I will
7 let Tom Houten talk about it.

8 I have recommended that the industry
9 develop some language that makes 26.3(E) stand-alone,
10 totally by itself. And the reason I did that, without
11 any references to anything else in the document, and
12 the reason I recommended that is during the rule
13 making process there was an attempt to figure out how,
14 in this Rule, to address shutdown plants and ISFSIS.

15 And at one point, as I remember, and
16 correct me if I'm wrong, Garmon, actually in the scope
17 of the Rule we had shutdown plants and ISFSIS, and
18 then we were going to do 26.25 one, but not two, and
19 three, but not four, and that kind of stuff.

20 And we actually had several meetings on
21 it. And at one meeting we finally brought in all the
22 people from, you know, the responsible people from the
23 shutdown plants, and from the ISFSIS, and we sat down,
24 we went through the Rule, and we tried to figure out
25 how to parse it.

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1 And my experience in that area finds that
2 this Rule is sort of written all or nothing. It is a
3 rule that is aimed at power reactor licensees with
4 protected areas fully established, a security
5 perimeter, and operating a plant.

6 And you've got to be trustworthy,
7 reliable, and fit for duty in the highest level. And
8 if you try to parse it any other way you start, it
9 starts falling apart.

10 It wasn't written in a manner that you can
11 piece parse it. It was hard enough to write it in a
12 manner that made sense, and had a logical flow. And
13 we had a lot of arguments about what ought to be in C,
14 and D, and E, and get rid of the appendix, and all
15 that kind of stuff.

16 So I personally believe that it will be
17 very hard, in 26.3(E), to refer to any other parts of
18 the Rule and not generate downstream an implementation
19 as the new plants are trying to figure out what to do.
20 Horrendous arguments in that area.

21 Tom?

22 MR. HOUTEN: I'm Tom Houten. We have a
23 new plant --

24 MS. KARAS: Tom, could we get you to use
25 a microphone?

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1 MR. HOUTEN: I'm Tom Houten at NEI. We
2 have a new plant security taskforce, which is working
3 on issues related to the construction period of new
4 plants, including plants that would be built adjacent
5 to currently operating plants.

6 The approach that we are taking is to
7 develop an appendix to the security template, which is
8 an NEI document 0312. This appendix would address all
9 issues related to both security and Part 26, and
10 access authorization.

11 The template would be a template that the
12 licensees would use to develop their own security
13 plan, with this appendix. The aspects of it would be
14 phased in. That would be explained in the template.

15 And that template would be approved by NRC
16 and then used in the COL applications. The industry's
17 intent is to develop a drug and alcohol free
18 workplace. We believe it ought to be phased in.

19 We believe that the aspects of the Rule,
20 as written, may not, as Jim was saying, may not be
21 appropriately written for this new construction and
22 the phasing in from a site which is, which starts from
23 excavation on up to the point at which there are
24 protected areas.

25 That is the approach that we are looking

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1 at. In terms of the current rule, as written, we are
2 concerned about some confusion in it. For instance,
3 Part 26.25 states that it applies to individuals who
4 have unescorted access to the nuclear power plant
5 protected area.

6 There won't be any protected areas during
7 construction, until close to fuel load. We think that
8 needs to be addressed. That basically is the
9 approach. We think consideration needs to be taken
10 for that.

11 There are, perhaps, one or two other
12 places where there appears to be inconsistency in the
13 Rule, as written, as to application to new
14 construction sites.

15 Perhaps another one would be whether the,
16 while the performance objective talks about effects of
17 fatigue, the section, the subpart I, on managing
18 fatigue, section 26.195, does not apply to section
19 26.3(E).

20 I would be happy to provide more
21 information, or more input to this, at any time you
22 prefer.

23 MS. KARAS: Yes, you can -- I think we
24 have a fair amount of time. There doesn't seem to be
25 anybody lined up at the mikes. So you can feel free

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1 to continue.

2 MR. HOUTEN: Another point, actually my
3 last point I wanted to make, is that there is a
4 Proposed Rule language out for part 52, conforming
5 changes.

6 And apparently when that was prepared the
7 conforming changes, to Part 26, used the current
8 regulation as opposed to what is proposed here. So we
9 would suggest that there might need to be coordination
10 of those efforts.

11 MS. MCKENNA: Let me just comment on that.
12 I think we recognize the coordination element. Under
13 the Federal Register rules, when we put out a Proposed
14 Rule, we can only reference a rule that is currently
15 in force.

16 But we do realize that there is language,
17 in this Proposed Rule, and presumably in the Proposed
18 Rule in part 52, in conforming changes, that we hope
19 to have to the Commission in the not too distant
20 future.

21 And it is an issue we will have to deal
22 with when they approach the Final Rule stage, to make
23 sure that we use the right language, and make things
24 consistent.

25 MR. HOUTEN: And that people are

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1 commenting on the one you want them to comment on.

2 MS. MCKENNA: Exactly, yes. And it is a
3 challenge for us because, you know, the timing of
4 these is going to overlap, in some respect. Although,
5 perhaps, this comment period will close before that
6 one opens, depending on how quickly the Commission
7 responds.

8 But we do realize that there is this
9 overlap.

10 MS. KARAS: But you are encouraged to
11 comment on both of those proposed rules.

12 MS. MCKENNA: Yes. If you have language,
13 if you find one preferable to the other, you know,
14 certainly those are the kinds of comments that we
15 would be interested in.

16 MS. KARAS: Right. And, again, please
17 provide it on both rule making efforts, so that those
18 comments get answered under either one.

19 Because, you know, as Eileen stated, I
20 mean, it is really going to be a timing issue as to
21 which one becomes, you know, goes up as a Final Rule
22 first.

23 So if you have comments, or issues, in
24 that area we encourage you to submit them, as
25 comments, on both of those rule making efforts.

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1 MR. HOUTEN: Those were the main points
2 that we wanted to bring up. Do you have questions?

3 MS. KARAS: I have a clarifying question.
4 Did you have any comment regarding the level of what
5 we are asking for, new construction, like the level of
6 the program?

7 I guess I'm looking under E2 and E3.

8 MS. KARAS: We do have some suggestions in
9 that area. We have to share something today. Let me
10 share some preliminary thoughts in that area, we are
11 still working on.

12 I guess I was going to ask a question
13 first. Is -- we are not aware of any document,
14 anything that better establishes expectations in this
15 area for new construction.

16 Are you aware of anything else that is out
17 there? And I suspect the answer is no. I mean, we
18 haven't tried to build a plant since the "fitness-for-
19 duty" rule went in place.

20 So I presume there is nothing in place.
21 But if there was something in place it might help us
22 in understanding what the expectations were.

23 MR. MCCUNE: Not to our knowledge.

24 MR. DAVIS: We feel that the lead-in
25 portion of E, my colleagues tell me, is just fine.

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1 And I admit that I have a great difficulty getting
2 between 52103, and 5010E3, and all those other
3 references.

4 But apparently it covers the rights kinds
5 of people. We would clearly delete the lead-in
6 language in subparagraph 1 that says comply with
7 26.23, 41, and 189.

8 And instead some general words that
9 require the establishment of a policy, such as
10 establish drug and alcohol free workplace policy,
11 including sanctions that may be imposed.

12 We think it would be appropriate to
13 implement a pre-employment drug and alcohol testing
14 program and a for-cause testing program. And, of
15 course, you need to make provisions for an objective
16 and impartial review of any sanction decisions, and
17 provide for protection of information and records.

18 And I also believe that at this stage,
19 probably very difficult, in Part 26 to, in fact,
20 provide the same level of detail that exists in the
21 rest of it, for the other plants, based on the reasons
22 we discussed earlier.

23 So, I mean, the important piece is to look
24 to, for example, the implementing guidance that would
25 be developed in the new construction area. I think

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1 there are going to be a whole number of issues that we
2 find have to be addressed, uniquely, for this
3 situation in new construction, as we go from ground
4 breaking to almost the point of getting permission to
5 load fuel.

6 And I think it is important to realize
7 that the break point in this is up in, I think,
8 26.3(A), or somewhere, where once the Commission has
9 authorized the loading of fuel, that is the right
10 words, isn't it?

11 Once they have authorized the loading of
12 fuel you are now fully compliant with all the
13 provisions of Part 26, at that point, going forward.
14 And I presume that it is also the point you comply
15 with a whole lot of other things.

16 That you have a protected area, so it
17 ought to make sense in that arena. And, obviously,
18 did somebody say it yet? We will make comments in
19 December, at the proper protective phase at the end of
20 it.

21 MS. KARAS: Let me ask a question, then,
22 on -- you made a comment that you would delete E1,
23 that has the cross references, and I have a question
24 in that area.

25 When you list 26.41 and 26.189, 26.41 is

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1 the audit requirements and 26.189 is the determination
2 of fitness. Are you saying to delete E1 because you
3 don't believe that audits and determination of fitness
4 should be requirements for construction?

5 Or is it because you believe that the
6 cross referencing, that the idea of using that cross
7 referencing creates confusion?

8 MR. DAVIS: The problem is, if you go to
9 26.41, and you start looking at the audit
10 requirements, that is built for a fully functional
11 power reactor site, with a fairly extensive program.

12 And it tells you to do a lot of things
13 that I believe are unnecessary in a new construction
14 area. You need to maintain the quality of the
15 program, you've got quality requirements in various
16 other areas.

17 So 26.189 is the same thing. The breadth
18 and depth of this requirement is too extensive for the
19 nature of the program that you are trying to manage.

20 MS. KARAS: Okay, I think I understand
21 that now.

22 MR. DAVIS: We sort of got a -- I'm sorry,
23 I will keep talking. But it sounds like we got some
24 time.

25 When I looked at this one of the problems,

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1 one of the reasons we have this problem is 26.3 is
2 trying to define the scope of the Rule, and who it
3 applies to.

4 And it does a pretty good job, as you look
5 at all the sections, it is talking about what kinds of
6 people are in this thing, and bits of pieces of it
7 apply to, until we get to 26.3(E) and suddenly we are
8 trying to describe in there program elements and what
9 the requirements are for everybody else.

10 Those requirements are specified in the
11 follow-on sections. So we've got an anomaly in the
12 Rule with 26(E) trying to specify requirements when it
13 is talking about scope. And there is probably no way
14 around that.

15 But I think that is how we backed into the
16 particular problem in this area.

17 MS. KARAS: Is there anybody who has any
18 other comments?

19 MR. DAVIS: Have we really covered
20 everything on the list, or have we just lost track of
21 who is next?

22 MR. CLEVELAND: Randy Cleveland with the
23 Nuclear Management Company. I want to go back to
24 section 26.69(C), and I have a clarifying question.

25 Again, this is dealing with the granting

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1 authorization with potentially disqualifying "fitness-
2 for-duty" information, and particularly 26.69(C)(2),
3 where the expectation, as the industry has understood
4 it, to date, is that where we have PDI developed, we
5 would have to go back and cover every employer for the
6 applicable scope in 26.63.

7 The clarifying question is this. Was the
8 NRC's intent that the industry go back and cover every
9 employer where through the conduct of the appropriate
10 suitable enquiry PDI was developed?

11 A scenario I will give you is if we are
12 doing an initial individual where we are covering
13 three years, and we are back in year two, and we
14 developed some PDI through the conduct of the suitable
15 enquiry.

16 Was it your intent, at that point, that we
17 then cover every employer, or was it your intent that
18 if somebody comes in and completes a personal history
19 questionnaire, i.e., makes a disclosure of an open
20 bottle, that we then cover every employer?

21 That is the clarifying question. And I
22 will reference, just for additional clarification here
23 on the question, in the statements of consideration,
24 on Federal Register page 505.13, we are discussing
25 26.69(C)(2), you do say that if potentially

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1 disqualifying FFD information was identified during
2 the conduct of a suitable enquiry, in accordance with
3 26.63(F), which identifies the periodicity that we
4 have to cover, that we would be expected to cover
5 every employer disclosed.

6 MR. MCCUNE: Yes, I think that is the
7 correct clarification.

8 MR. CLEVELAND: Thank you.

9 MS. KARAS: And the idea there, just to
10 clarify, or make sure everybody understands what was
11 written in the section by section, was that in this
12 case it is a little different than an individual whose
13 last period of authorization was terminated favorably.

14 And so the intent was to go back to every
15 employer for those instances where it wasn't
16 favorable. Are there any other comments?

17 (No response.)

18 MS. KARAS: Are you guys through your
19 comment list?

20 MR. DAVIS: This is unusual. I mean, how
21 do we manage this? Maybe we have formalized the
22 process so much everybody is afraid to make any
23 comments at this point.

24 You are probably going to get more than
25 this on December 27th, right? Although I don't plan

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1 to work on Christmas writing the comments.

2 I mean, it sounds like Todd is the only
3 one that has anything to say now. Is that where we
4 are?

5 MS. KARAS: Did you have any comments on
6 the drug and alcohol testing portion --

7 MR. DAVIS: He wanted to close. I opened,
8 I will let Todd close. But maybe what you ought to do
9 is go ahead and take a break at this point to allow 15
10 minutes, and everybody run around and get their heads
11 clear to make sure we don't have anything else that
12 anybody would want to put on the table.

13 I mean, I think people probably would say
14 things, but they are afraid of the microphones, and
15 the recorder down there, and management reading the
16 report.

17 MS. KARAS: We have lots of index cards if
18 anybody has any fear of reading -- you don't have to
19 hand them up for us to read them, you can just put
20 them in the box.

21 But, yes, I think that is a real good
22 suggestion, Jim. And I wanted to let everybody know,
23 also, that there are, we know of, at least several
24 stakeholders that are planning on coming only for the
25 afternoon, for the fatigue portions.

1 And we have even received specific
2 requests that we only start fatigue on time after
3 lunch. So basically we will go through, if we don't
4 receive more comments after the break, on drug and
5 alcohol testing, then we will break and we will resume
6 after lunch and start fatigue on time, for that.

7 But we will, obviously, have everything
8 set up here where you can enter comments in the
9 computers, or anything like that, during that time.
10 But we do believe in this instance it is important to
11 follow the agenda to make sure everybody is here who
12 wanted to be here for the fatigue portions.

13 MR. DAVIS: You might also, in the break,
14 decide whether you want to question us on some of the
15 things to get more -- I mean, if you need more
16 clarification on any issue.

17 MS. KARAS: Yes, I think that is a good
18 idea. We can take the break earlier, and why don't we
19 go ahead and everybody come back at 10, then. That is
20 about 17 minutes, and then we will resume.

21 (Whereupon, the above-entitled matter
22 went off the record at 9:42 a.m. and
23 went back on the record at 10:00 a.m.)

24 MS. KARAS: We will start up again with
25 any follow-on comments. I did learn, during the

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1 break, that Todd Newkirk, from IBEW, does have some
2 comments.

3 Todd, did you want to go ahead and present
4 those at a microphone?

5 MR. NEWKIRK: On behalf of IBEW we also
6 appreciate the opportunity to continue further
7 stakeholder comment at this time.

8 As industry has conveyed, this is a great
9 opportunity, and we would like to take full advantage
10 to put some more input into potential further molding
11 of legislation.

12 We had 31 comments submitted on subsection
13 B, D, E, F, G, and H. And I want to briefly, I want
14 to submit it into the record when we are done. But,
15 basically, just hit some of the highlights that some
16 of the labor folks put back our way, reviewing the
17 regulation, and we have been working on this, as much
18 as we could, since about last December, when we
19 started going to the meetings.

20 So they have had some time to take some
21 decent input on this. On 26.23(B), there is a concern
22 on the reasonable assurance of an individual for
23 making sure that the level of integrity, and to ensure
24 the privacy of the individual, subject to testing.
25 That it is also covered on the individual side of it,

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1 on 26.23.

2 On 26.27 we are a little concerned of, you
3 know, if there is going to be screening for drugs, in
4 addition listed in that part, you know, we probably
5 need to know what they are up front.

6 And it doesn't seem like those, there is
7 a missing item there in 26.27, of how it is worded, of
8 how it is being aligned. And also pertaining to 26.29
9 in that same mode of making sure to identify the
10 proper type of drugs, upfront.

11 On 26.31, drug and alcohol testing,
12 medical conditions, we think maybe in 5(II), should
13 say treatment must not be delayed to conduct drug and
14 alcohol testing.

15 On 26.37, protection of information,
16 subpart D, I think the representative should be
17 allowed access to the donor's FFD records, at any
18 time, with permission of the donor, not just in a case
19 of a positive, or a non-negative, but to ensure that
20 no records exist that should not be there, so we have
21 an opportunity to review our records.

22 So that was a concern brought forward for
23 that situation. On 26.75, sanctions --

24 MR. DAVIS: What was the reference?

25 MR. NEWKIRK: It was 26.31(5)(ii).

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1 MR. DAVIS: That was a treatment delayed
2 one, the donor should be able to see his records --
3 what was that one, I'm sorry?

4 MR. NEWKIRK: It was 26.37(D).

5 MR. DAVIS: Okay.

6 MR. NEWKIRK: On 26.75(D), I will just go
7 ahead and say it, but there is some folks that would
8 like to start this program with a clean slate. You
9 know, there is a question whether past violations will
10 be brought forward in this new program.

11 And there is some clarity there that needs
12 to be addressed, for sure, in 26.75, whether they are
13 starting with a clean slate with this program, or if
14 they are bringing everything forward. So I think they
15 just wanted to make sure that was conveyed forward.

16 On 26.89(E), preparing to collect the
17 specimens for testing, this is basically a supervisor
18 contact methodology. They want to make sure that you
19 have a face-to-face positive ID when you are summoned
20 to go because tardiness could result in removal of
21 access to the drug screening.

22 So in 26.89(A), I will go ahead and read
23 it, since tardiness in reporting for the test can
24 result in loss of clearance and, further, since
25 management can determine tardiness was a subversion of

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1 testing, there should be language requiring positive
2 contact with the individual being called for a test,
3 including the individual's FFD supervisor.

4 You have to provide the ID when you get
5 tested, the same requirement should apply when you are
6 called, since a phone ID is impossible, face-to-face
7 communication should be the preferred method in that.

8 MS. KARAS: And are you asking for that
9 face-to-face from the FFD supervisor, or the
10 individual supervisor?

11 MR. NEWKIRK: The contacting supervisor.

12 MS. KARAS: The contacting supervisor?

13 MR. NEWKIRK: Yes. On 26.89(B)(1),
14 preparing to collect specimens for testing, the
15 potential to have a claim, but not having a photo ID
16 can be construed as an attempt to subvert testing
17 can't be avoided.

18 Direct identification by those
19 individuals, or the FFD supervisor, should be an
20 acceptable form of identification for testing. It is
21 not pre-access testing.

22 If the FFD supervisor can be trusted to
23 observe the individual, then he or she should
24 certainly be trusted to verify the identity of the
25 individual. So, again, it puts more leeway back to

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1 the FFD supervisor who is making that contact.

2 On 26.91, acceptable devices for
3 conducting initial determinatory test for alcohol and
4 methods of use, we are getting into the question of
5 quality assurance, quality control.

6 And paragraph 3 it talks about calibration
7 checks. We just think copies of external calibration
8 checks should be provided to the donor or
9 representative upon request. That should be an
10 opportunity there.

11 On 26.99, determining the need for
12 confirmatory test for alcohol, we do believe it should
13 be strongly worded to ensure for test below .02, no
14 further actions or sanctions against the donor may be
15 taken.

16 Apparently a lot of places counsel. You
17 discuss it with your supervisor and check for work, go
18 back and check for the work, and fall above .01, below
19 .04 to have that.

20 Conducting a confirmatory test for
21 alcohol, we think 26.91, 26.101 have that same
22 comments that should be looked at. On 26.103,
23 determine a confirmed positive test for alcohol, and
24 what we are looking for here is we need to indicate
25 the positives for call-outs must be handled and

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1 declared differently.

2 And I think we heard some talk this
3 morning about call-out situations, you know, looking
4 at the regulation before you have a confirmed test for
5 alcohol, in a call-out situation, that is a concern
6 that we will be addressing some questions in, on that
7 piece of the article.

8 We did have 26.105, and 107(B), and also
9 in 107(A) (3), about preparing for the collections and
10 specimens of urine that we will be addressed in -- I
11 would just read these, but it would be taking forever
12 if I went through all their comments now. I just want
13 to let you know we are going to put those in.

14 On 26.111, checking the validity of the
15 urine specimen, so basically that one is hand in hand
16 with the other two provisions up front. And 26.115,
17 collecting urine specimen under direct observation,
18 subsection A1, talks about invalid sample questions.

19 Preparing urine for specimens, for storage
20 and shipping, there is a question in 26.111(7),
21 determining "shy bladder". And 26.109, something we
22 don't always get to hear about, obviously, in the drug
23 testing business.

24 But to question somebody that has an issue
25 with a medical situation that can't make the cutoff,

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1 and he has specialists validating that, why can't that
2 be examined? Someone with diabetes, for example.

3 On 26.125, testing facility personnel,
4 there is no requirement on subsection F to ensure that
5 testing personnel are not color blind, since color
6 metric testing strips are used, one would expect the
7 tester would be able to distinguish the colors. So I
8 thought that was a pretty humorous one there, you
9 know, that somebody could be color blind looking at
10 that test strip.

11 Procedures, 26.127(B), the written chain
12 of custody procedures should include guidance on what
13 happens if the chain of custody is broken.

14 On 26.129, assuring specimen security,
15 chain of custody and preservation, in subsection A and
16 B, there is some concerns on integrity and
17 identification of specimens in question.

18 On 26.131, cutoff levels for validity of
19 the screening, and initial validity of test, I have a
20 concern with examples provided there. And 26.135
21 split specimens in subsection B, talking about the
22 time of business days versus ten days, you know,
23 definition of the days needs to be examined.

24 On 26.137 quality assurance/quality
25 control, subsection D2, talking about the pool program

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1 with internal QC program. So I see some definition
2 clarification there as a request.

3 Subsection G, 26.153, using certified
4 laboratories for testing urine specimens, concerns in
5 subsec D and F2, and F4. And, basically, one of the
6 things I read here, that was pretty important, was the
7 ability of an employer/authorized representative to be
8 part of the process for using these records, if needs
9 be.

10 On 26.159, assuring specimen security,
11 chain of custody, and preservation, subsection J,
12 again talking about the pooling issue, the internal QC
13 program, and specimens. You need to be looking at
14 what we do with the ones that are negative and valid,
15 since they have been certified, already, to HHS
16 standards.

17 On 26.161, the cutoff levels for validity
18 testing, specimen C and 8, and G, again, talking about
19 some of the questions of calibrations, and things of
20 that nature with the QC program.

21 And I'm really about done, two more. On
22 26.165, testing split specimens and retesting single
23 specimens, A4 references three business days, you
24 know, the question about what kind of days we are
25 talking about.

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1 And F1 should not be allowed for loss of
2 failure of clearance, as administratively was done the
3 way the test of the sample B. So a lot of concern out
4 there if you are in the B sample, you know, what
5 happens to your pay, which is more of an internal
6 issue, not a regulatory issue, in my opinion. But I
7 read the comment.

8 On 26.167, quality assurance and quality
9 control, talking about the QC test being done, start
10 at the testing period, and go through and talking
11 specifically about how the sampling is done for QC
12 checking, and giving reports to the MRO showing that
13 the machine did pass those QC tests, prior to making
14 a decision, in 26.167, providing the QC records for
15 those machines.

16 That is all I have in those subparts at
17 this time. IBEW would like to reserve the right to
18 provide written comments by December 27th, when we
19 will be with the full house of folks in early
20 December. Thank you.

21 MS. KARAS: And, Todd, are you planning on
22 leaving a copy of that here, and submitting that?

23 MR. NEWKIRK: I will introduce these in,
24 on the way out. I will have to copy.

25 MS. KARAS: All right, thank you. Did

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1 anybody else come up with any additional comments
2 during the break?

3 MS. TECHAU: Susan Techau, Exellon
4 Nuclear. I wanted some clarification on validity
5 screening and validity testing, and the difference
6 between the initial test validity, and validity
7 screening.

8 And there are two different definitions,
9 and you can do one prior to the other, and initially
10 we had a concern with the definition for validity
11 screening, because it only referenced non-instrumented
12 devices that could be used.

13 And we thought that may be too
14 restrictive. But then after reading into it, it
15 allows you to use that, instead of it going to initial
16 validity testing.

17 I just wanted some clarification of, if
18 you do the validity screening do you not have to do
19 the initial validity testing? And if someone could
20 just talk to that a little bit, for some
21 clarification?

22 MS. KARAS: And I know I'm not the best
23 person. I don't know if you want to -- do you want to
24 address that, or do we want to suggest that she get --
25 that we get her the information later?

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1 MR. MCCUNE: Can we do that?

2 MS. TECHAU: Absolutely.

3 MS. KARAS: Are you just going to be here
4 for the morning?

5 MS. TECHAU: I will be a little bit into
6 the afternoon.

7 MS. KARAS: If we can come up with it over
8 lunch we will introduce that.

9 MR. MCCUNE: Yes, it is something we
10 probably ought to think a little bit about, and
11 coordinate. We don't want to give you an off the cuff
12 answer.

13 MS. KARAS: Yes, I don't want to give you
14 the simple answer and then that not be -- are you
15 specifically asking about for using a non-
16 instrumented, if you use those for screening, whether
17 or not you need to send that off to the lab, is that,
18 that is not where you were going, or --

19 MS. TECHAU: Just the process for the
20 validity, and just so we understand and are clear on
21 what is the key expectation.

22 MS. KARAS: Okay. We will try and look
23 into that and get with you quickly. Did anyone else
24 have any comments on the drug and alcohol testing
25 portions?

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1 MR. DAVIS: Maybe.

2 MS. KARAS: Did you say maybe?

3 MR. DAVIS: I'm worried that we are
4 confused on 26.69. I mean, we had some discussion on
5 the side, and I'm not sure I want the record to show
6 that we are confused on 26.69, but that is okay, I
7 will continue.

8 Do we need to walk through this and make
9 sure we understand what it says? Sue, do you think we
10 need to walk through it? Can I do that, can I walk
11 through 26.69 for a minute and make sure we understand
12 what it says?

13 We think we have a problem, then we don't
14 think we have a problem, then we think we have a
15 problem, and that worries me. Because the people that
16 are involved in this agreement, the people that have
17 been working on this for at least ten years with us,
18 and if we are confused on what the requirement on it
19 is, we have a problem.

20 Now, at one point we had recommended that
21 some of the stuff in 26.69 go back to the area of
22 initial, and that kind of stuff. I mean, it has taken
23 a slightly different approach than we take now, in
24 that you decide what type of investigation you do, and
25 then you follow through that investigation, and within

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1 that investigation, if potentially disqualifying
2 information is developed, you know what to do, and
3 where to go.

4 The confusion is that you might start an
5 investigation, it is an initial under the preceding
6 section, or an update, you get partway through the
7 investigation and suddenly you find that there is PDI
8 and all of a sudden you are leaping from there into
9 26.69.

10 So it generates a little bit of a
11 disconnect. And I think in subpart C, that is
12 probably the only place where we really have had some
13 problems jumping back and forth.

14 And a lot of time and attention has gone
15 into subpart C, you know it is my favorite section.
16 But this is the one area where I think that in
17 discussing it with the industry, and then implementing
18 it, it is probably where we are going to have a little
19 bit of discussion.

20 So I'm not sure we have an issue. Let me
21 make sure, and I wouldn't do this if we didn't have
22 the time. But it was one of our top two issues coming
23 into this thing.

24 And I'm looking at the text. The section
25 defines the manager's actions, the licensee, and other

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1 entity who are subject to this part shall take an
2 audit grant, or maintain at the licensee, and other
3 entities discretion, the authorization of an
4 individual who is in the following circumstances.

5 The first issue, of course, is
6 authorization. In the context, when we use
7 authorization in this rule, I think what we mean is
8 authorization to perform activities under this part.

9 Unfortunately the industry uses the term
10 unescorted access authorization, unescorted access,
11 and this term authorization has another meaning in the
12 grand scheme. But in the context of the Rule
13 authorization means only to perform activities under
14 this part.

15 I think that -- I don't think there is any
16 disagreement on that. Maybe confusion but no
17 disagreement.

18 Potentially disqualifying FFD information,
19 within the past five years, has been disclosed, or
20 discovered about the individual, by any means,
21 including -- but I presume that the descriptive phrase
22 is any means.

23 You are aware a PDI makes no difference
24 where it comes from. This is not an exclusive list,
25 it is inclusive. This and any other way you became

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1 aware of the PDI.

2 And I think we want to go to C next? I
3 mean, I don't think we have the problem with
4 authorization after a first confirmed positive drug or
5 alcohol test result or a five year denial of
6 authorization.

7 So in C, granting authorization with other
8 potentially disqualifying FFD information. And by
9 other I think we mean other than that discussed in B,
10 right?

11 I need to bring my little map with me to
12 get through this. Requirements of this paragraph
13 apply to an individual who has applied for
14 authorization, and about who potentially disqualifying
15 FFD has been discovered, or disclosed, that has not
16 been confirmed, before granting authorization to the
17 individual, the licensee or other entity shall.

18 Verify that the individual's self-
19 disclosure and self-employment history, address the
20 applicable period in 26.61(B)(3). And that is three
21 years for initial, since last favorable termination,
22 is it favorable termination, or termination?
23 Favorable termination for an update, and within the
24 last year for a reinstatement.

25 Is it favorable termination? Okay,

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1 because that was an issue at one point. Complete a
2 suitable enquiry with every employer by whom the
3 individual claims to have been employed during the
4 period addressed in the self-disclosure, in accordance
5 with the requirements of 26.63, and obtain and review
6 any records that other licensees who are subject to
7 this part, may have developed with regard to
8 potentially disqualifying FFD information of the
9 individual within the last five years.

10 I don't know what you are talking about a
11 clean slate. And I think here is where the problem
12 is, 26.63, what does 26.63 tell us we have to do?

13 MR. MCCUNE: 26.63 aligns with the
14 existing provisions we have in both 0301 on the access
15 side, with respect to scoping the period of employment
16 that you ave to cover.

17 And, as an example, for an initial we are
18 doing all employers in the last year, the second and
19 third years we are doing the longest employer in each
20 calendar month.

21 MR. DAVIS: I think that is where we are
22 getting the confusion. What is that? Is the intent
23 to follow the guidance in 26.63 on who you conduct the
24 suitable enquiry with?

25 I mean, the problem is that you go to

1 26.63 and you end up, towards the end of it, licensee
2 or other entity shall conduct a suitable enquiry as
3 follows, for the first year immediately preceding the
4 date upon which the individual applies for
5 authorization, a licensee or other entity shall
6 conduct a suitable enquiry of every employer.

7 For the remaining two year period the
8 licensee, or other entity, shall conduct a suitable
9 enquiry with the employer by whom the individual
10 claims the longest within any calendar month.

11 I think that is sort of the crux of the
12 problem, what is the -- we bounced around a couple of
13 times, and I think there are some that are reading
14 that, that says, conduct a suitable enquiry in
15 accordance with 26.63, which tells you to do everybody
16 in the first year.

17 That is, obviously, not an issue. And
18 then the longest during the second and third year.
19 And others are saying no, 26.69 says every employer
20 for that entire period.

21 MS. KARAS: I think I understand what you
22 are saying. Do you have a suggestion, a comment, or
23 a suggestion, as to what would remove that confusion,
24 or --

25 MR. DAVIS: I guess the first, the

1 question is, what was the NRC's intent in 26.69, was
2 the intent to tell you to do the suitable enquiry in
3 accordance with 26.63, and the time periods there?

4 Or was the intent every employer for the
5 last, you know, for the period?

6 MS. KARAS: I believe the intent, when I
7 look at it, is that -- Tim, you can reserve the right
8 to correct. That the intent was the past five years.
9 And I believe the intent was with the method described
10 in 26.63.

11 But I understand what you are --

12 MR. DAVIS: I'm not sure that --

13 MS. KARAS: -- saying, that the time
14 periods, is what you are saying that the time periods
15 are shorter here under F, in 26.63(F)?

16 MR. DAVIS: In 26.63(F) you are allowed to
17 do the longest employment in a month, during the
18 second and third year. If you have PDI on the
19 individual you are allowed to do the longest, not
20 every.

21 And I think that is the fundamental
22 question, is it every, or is it the longest?

23 MR. CLEVELAND: Randy Cleveland with the
24 Nuclear Management Company. Again, echoing the
25 clarifying question I submitted prior to the break,

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1 this may help all of us in the discussion here.

2 If you go to the Federal Register page
3 505.13, the statements of consideration on this, I'm
4 going to read from the statements of consideration.

5 Proposed 26.29(C)(2) would require the
6 licensee, or other entity, to conduct a suitable
7 enquiry with every employer for the period that would
8 be addressed in the self-disclosure and employment
9 history.

10 If the potentially disqualifying
11 information was identified during the course of
12 conducting a suitable enquiry, in accordance with
13 proposed 26.63(F), which again, as we have discussed,
14 is getting back to that scoping, so if you have an
15 initial here, you are doing every employer in the last
16 year, longest in each calendar month years two and
17 three.

18 If you develop anything, while doing that,
19 the expectation was that you would then cover every
20 employer listed during that period on the self-
21 disclosure.

22 So, again, the issue is where you've got
23 PDI, you are in section 26.69(C)(2), and I will use
24 the example, somebody has completed the PHQ, they give
25 us an open bottle conviction.

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1 We are now in 26.69, we know we have to do
2 a "fitness-for-duty" determination, as deemed by our
3 program. The question is, what is the scope of the
4 background need to be? And is it that you go back to
5 26.63(F), and you follow that, and if you develop
6 anything, while conducting that suitable enquiry you
7 then do every employer?

8 Or right out of the gate, because you have
9 PDI on a self-disclosure are you doing every employer?

10 MR. MCCUNE: I think the answer is the
11 former there. If you discover anything in the conduct
12 of it, then you would go back to the five year period.
13 I think that is the intent as specified in the
14 statements of consideration.

15 MR. DAVIS: So I think, to bring this one
16 to closure, I think we will work on providing you a
17 comment on this section that probably has two elements
18 to it.

19 One to see if we can clarify the linkage
20 so that it doesn't lead to confusion. I hope we
21 understand what the confusion is. And, two, we feel
22 that that is overly restrictive for some of the PDI
23 that is identified in there, for example, a single
24 DUI.

25 And I realize we won't discuss that. But

1 I think we feel that the reviewing official ought to
2 have an opportunity, on some PDI, to make a
3 determination that they don't need to do all the
4 background, you know, all the elements, because of the
5 circumstances around that particular case.

6 So that will be the second piece of what
7 you will be seeing before this is all over. So you at
8 least have some -- I knew we were confused. And I
9 think unless somebody else challenges me on it, I
10 think we were confused because we were mixing two
11 elements together.

12 And one is the clarity of the reference
13 back, and the second one, which is an easy one to fix,
14 and the second one is that we feel that there ought to
15 be a relaxation there. So hopefully we will
16 understand that one there.

17 MR. MCCUNE: Okay, great, thanks for your
18 comment.

19 MS. TECHAU: Susan Techau, Exellon
20 Nuclear. I do have a follow-up question. So when you
21 have an individual, let's say the individual's last
22 unescorted access was terminated favorably, and they
23 are coming back in an update type situation.

24 And, well, let's address update first.
25 And the last unescorted access was two and a half

1 years ago. So in here it says that you have to verify
2 the individual's self-disclosure and employment
3 history, and the written self-disclosure must address
4 the shortest of the following periods.

5 And so it is going to only address the
6 past two and a half years. And then if potentially
7 disqualifying information is discovered, what I
8 thought I heard you say is that you have to go back
9 five years and get additional information and conduct,
10 with every employer, this, where we only have two and
11 a half years of employment at this point.

12 So we are going to have to go back to the
13 individual, get an additional two and a half years of
14 employment, and then go back and -- is that the intent
15 also?

16 MR. MCCUNE: Yes. I think it is. And I
17 think the reasoning behind that is alluded to in the
18 statements of consideration. And, again the point is,
19 if while you are doing the two and a half year review
20 you discover the PDI, we think there is justification
21 for going back and doing the every four or five year
22 period.

23 MR. BOUTHON: David Bouthron, Florida
24 Power & Light. So what we are asking is, if we
25 develop this information, we are going to ask the

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1 individual now to provide years two, three, four and
2 five, of every employer? As I understand it.

3 Is that what I'm understanding?

4 MR. MCCUNE: Yes.

5 MR. DAVIS: Would someone take me in the
6 Rule and show me the paragraph?

7 MS. KARAS: If you go to 26.57 for the
8 update, and you go to 26.57(B), if PDFFDI is disclosed
9 or discovered, the licensee or other entity may not
10 grant authorization to the individual, except in
11 accordance with 26.69.

12 So then I go over to 26.69.

13 MR. DAVIS: Okay, that takes me to 26.69
14 Charlie, right?

15 MS. KARAS: Yes.

16 MR. DAVIS: -- the individual self-
17 disclosure and employment history addresses the
18 applicable period in 26.61(B)(3). That is the three
19 year period for an initial since his last termination,
20 favorable, for an update, and last favorable
21 termination for reinstatement. Is that correct?

22 MS. KARAS: Yes, right, it throws you back
23 in there for that period. I guess I'm looking at 2,
24 at the end of 2.

25 MR. DAVIS: Complete a suitable enquiry

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1 with each employer by whom the individual claims to
2 have been employed during the period addressed in the
3 self-disclosure, addressed in the self-disclosure, in
4 accordance with requirement 26.63, and obtain and
5 review any records that any other licensee, or
6 entities, who are subject to this part, may have
7 developed with regard to potentially disqualifying FFD
8 for the past five years.

9 I think the five years is referring to
10 obtain the records, and not to the suitable enquiry.
11 The suitable enquiry is for the period required for an
12 initial update or reinstatement.

13 MS. KARAS: I agree. That is the way --
14 I apologize for any confusion. That is the way that
15 I read that.

16 MR. CLEVELAND: Randy Cleveland with the
17 Nuclear Management Company. That also aligns with
18 26.61, which is speaking to a five year disclosure of
19 suitable enquiry, and then a three year disclosure of
20 employment history.

21 So an interpretation of how to implement
22 this is that if you developed PDI in the conduct of
23 the 26.63(F) scoping, you would go back and cover all
24 employers listed, as listed under 26.61, and then take
25 a look at any other record that may be out there.

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1 And I will give you an example here. If
2 we are talking about an update situation, where
3 somebody has been in the industry for a number of
4 years, been out of it for two years, you would have
5 the benefit of going back and looking at a data point
6 such as the shared industry data base, to ascertain
7 the five.

8 MS. KARAS: I think that is right.

9 MR. MCCUNE: You are right, this is
10 confusing. And we would appreciate comments
11 attempting to clarify this.

12 MR. DAVIS: I'm sorry?

13 MR. MCCUNE: No, I just mentioned that you
14 were right, it is confusing, and we would appreciate
15 the recommendations of the industry in a comment form,
16 to clarify it.

17 MR. DAVIS: I have another question. Sue,
18 how long have you been working on this, since when?

19 MS. TECHAU: Since '98, maybe.

20 MR. DAVIS: Since '98. When did you start,
21 Randy?

22 MR. CLEVELAND: I would have to pull my
23 birth certificate on this one. BACK in 1990.

24 MR. DAVIS: The three of us are confused.
25 How long are we going to have to implement? We've got

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1 other people out there we have to train on this. How
2 long are we going to have to implement this rule?

3 Is that in the package somewhere? I
4 haven't seen it. I can't remember finding it.

5 MS. KARAS: No, we accept public comments
6 on the implementation period, that is one of the
7 things that we do. But that is determined at the
8 Final Rule stage.

9 MR. DAVIS: I just -- we will make a
10 recommendation. I didn't think it was in there, we
11 will make a recommendation. But, for the record, note
12 that it is going to require some significant effort to
13 train people on the provisions of this rule, as we
14 move forward, and get it right the first time.

15 Having made several transitions in the
16 program, due to orders, and everything else, it is
17 amazingly, it is amazing how hard it is to move from
18 what people have been doing, to what people are
19 supposed to be doing in the next step.

20 The amount of training and time required
21 to do that, to rewrite procedures, to train people,
22 and get everybody to do the right thing the first time
23 around, is much more time consuming and intensive than
24 I think most of us recognize.

25 So I just ask you to consider that, as you

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1 think about that piece of it. And we will make a
2 recommendation at the other end of the process.

3 MS. KARAS: Thank you.

4 MR. DAVIS: That was a good lead-in to a
5 question, wasn't it?

6 MS. KARAS: No, I just wanted to say that
7 if anybody does have comments on the implementation
8 period we would appreciate those comments. And we
9 would also, what is helpful to us, is if you can also
10 provide information on why the specific challenges to
11 implementing, and why you believe that that
12 implementation period is justified, that will help us
13 in evaluating those comments.

14 Did anybody else have any other comments
15 on drug and alcohol testing portions?

16 MR. DIPIETRO: Nick DiPietro with First
17 Energy. I would like to get some additional
18 clarification on the MRO staff referencing part
19 26.183. And we talked a little bit about it in the
20 beginning, but I just need a clearer understanding of
21 what the expectation is, is on the independence of the
22 MRO staff.

23 MS. KARAS: Is there a specific, I mean,
24 a specific portion of 183 that is causing the
25 confusion as to what would meet or would not meet the

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1 Rule?

2 MR. DIPIETRO: Well, yes, the physical
3 location of the MRO, and the section talking about
4 meaningful direction of the MRO staff activities, and
5 how that relationship is with consideration to the
6 licensee staff that conduct "fitness-for-duty"
7 collections and notifications, and processing of
8 results.

9 MS. KARAS: Are you looking under D1, is
10 that --

11 MR. DIPIETRO: Yes.

12 MR. MCCUNE: I think the intent there,
13 under D1, was to make sure that there wasn't any
14 actual or perceived conflict of interest with respect
15 to the licensee and the MRO.

16 Not that there have been, but again, what
17 we intended to do there is to make sure that the MRO
18 staff, as currently briefed, may certainly work for
19 the licensee.

20
21 But we want to make sure that we are
22 stating up front that that staff does not take
23 direction that could conflict with direction that is
24 given by the MRO. And that is the intent there.

25 MS. KARAS: Were you finding -- you are

1 questioning a lot on the location, I think, for the
2 MRO versus the MRO staff, is that what I heard
3 earlier?

4 MR. DIPIETRO: There is a lot of language
5 in here that makes it sound like the MRO is completely
6 independent, they have their own staff that is
7 completely independent, and the MRO has a lot more
8 authority over what may or may not be the licensee
9 staff.

10 And I'm not sure how that is supposed to
11 be implemented in relationship to the things that we
12 are doing now, and going forward.

13 MS. KARAS: You are from one of the plants
14 that has the MRO staff on site?

15 MR. DIPIETRO: I have both. I have plants
16 that have MRO on-site, and MRO at an alternate
17 location.

18 MR. MCCUNE: So you would be looking at II
19 and the responsibilities there, of the MRO in
20 directing the MRO staff?

21 MR. DIPIETRO: Yes.

22 MR. MCCUNE: And all --

23 MS. KARAS: And I guess is there a
24 question that there is one of those that you think --
25 are you questioning whether or not you could meet some

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1 of those with one MRO and staff that weren't co-
2 located, is that --

3 MR. DIPIETRO: Yes.

4 MS. KARAS: I'm not -- okay. Which was
5 the specific --

6 MR. DIPIETRO: Well, I mean, if you have
7 an MRO at a location I think it is pretty explanatory,
8 it explains it in enough detail, other than the MRO
9 having meaningful direction, personal oversight of
10 staff members work, personal involvement in their
11 performance evaluation, hiring and firing, and line
12 authority over staff direction, decisions, directions,
13 and control, and regular contact and oversight
14 concerning drug testing program matters.

15 Regular contact and oversight, if you have
16 an MRO at a remote location, you know, what is the
17 intent of that language there?

18 MS. KARAS: I'm sorry, are you under II?
19 Where are you reading from?

20 MR. DIPIETRO: Well, I'm reading under
21 26.183(D)(1), and then --

22 MS. TECHAU: Susan Techau, Exellon
23 Nuclear. He is looking at the statements of
24 consideration.

25 MR. MCCUNE: Not at the Rule language?

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1 MS. TECHAU: Yes, and within that area it
2 talks about that the MRO will be involved with the
3 hiring, firing, performance reviews, and I think the
4 issue is the MRO may be a contractor, the MRO staff is
5 a licensee employee, and you are going to have co-
6 employership issues. Page 50.567. The bottom of the
7 middle page, up to the -- the middle column to the top
8 of --

9 (Pause.)

10 MS. KARAS: The intent was, clearly, not
11 that they need to share the same physical space.

12 MR. MCCUNE: Again, I think that the
13 intent there, through the management of the MRO staff,
14 is to address the perceived, potential for perceived
15 conflict of interest.

16 And so if the intent is to have the MRO
17 staff working solely for the MRO, with no appearance
18 that they are under the control of the licensee, then
19 these examples, with respect to the management of that
20 staff, promotion, hiring, I think are essential into
21 achieving that segregation, so that we don't have an
22 appearance of a conflict of interest.

23 In other words, if you are hired by the
24 licensee, and you know they do your performance
25 appraisals, they are in charge of hiring and firing,

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1 and they control your daily life, I think it is going
2 to be difficult to convince someone that you've
3 adequately addressed a perceived conflict of interest
4 situation.

5 Because, realistically, they are not --
6 you can't show that the MRO has the control over that
7 staff that, I think, is essential.

8 MS. KARAS: I think the intent, though,
9 when it says performance evaluation, hiring, and
10 firing, was really that the MRO would not be forced to
11 work with somebody on their staff that they weren't
12 comfortable with, not necessarily that the licensee
13 would be required to fire them, just move them off of
14 the MRO staff.

15 MR. DIEC: I guess the question that Susan
16 asked and correct me if I'm misinterpreting it, is the
17 question whether or not there is a possibility for co-
18 employment opportunity for the MRO because he or she
19 has a direct oversight responsibility?

20 And if there is a possibility for co-
21 employment opportunity how are we going to deal with
22 that?

23 MS. KARAS: Yes. I guess what I thought
24 your question was for those sites that have MRO staff
25 that are licensee employees, and then you contract out

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1 to an MRO that is out of a different office? Is that
2 your question?

3 Because the licensee right now does their
4 performance appraisals, and makes the decisions about
5 firing, and everything else, and how that would fit
6 under the new rule?

7 MS. TECHAU: Well, if you've got a
8 contractor who is dictating to the licensee isn't that
9 type of -- as far as performance, and pay, appraisals,
10 and hiring and firing, co-employment type issues,
11 legally?

12 I think we would be in space that that
13 would not allow us to have that situation. It would
14 force the licensee to either have an employee that is
15 an MRO, the MRO staff as employees, or have them all
16 contractors.

17 MS. KARAS: I think we understand that,
18 and I think we will certainly take that comment back
19 and look at that.

20 MS. TECHAU: And if that is the intent
21 there is going to be a cost burden.

22 MS. KARAS: Yes, I think we understand
23 that, thank you.

24 Did anybody else have any other comments?

25 (No response.)

1 MS. KARAS: All right, if we don't have
2 any further drug and alcohol testing comments, then
3 what we will do is we will break for a really long
4 lunch.

5 And, certainly, during this time period
6 feel free to write up any other comments, if you think
7 of them, or you can go over and use the laptop
8 computers and type them in.

9 It asks you for a lot of information on
10 the laptop computers, but you don't have to enter all
11 your contact information if you don't want to. You
12 can submit anonymous ones through there, too, or only
13 give some contact information.

14 We ask that you return, then, at one
15 o'clock, and at that time Dave Desaulniers will give
16 an overview of fatigue management and then we will go
17 through, again, like we did this morning, the
18 questions for public comment, first on fatigue, and
19 then open it up after that.

20 I guess that is it, I will see you back at
21 one, I guess.

22 (Whereupon, at 10:52 a.m., the above-
23 entitled matter was recessed for lunch.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:00 p.m.

MS. KARAS: For those of you who weren't here for the morning portion I'm just going to, real briefly, go over a few of the opening things that we discussed in the morning, or that I went over in the morning, for those of you who are here for the first time this afternoon.

I'm Becky Karas, I'm the project manager for this rule making, or one of the project managers. Dave Diec is the other project manager for this. If you picked up the handout of the slides, it has all my contact information, and everybody else on the team.

Tim McCune is from the Office of NSIR, and he is the expert for the drug and alcohol testing portions, and also involved in the fatigue portions for security guards.

MR. DESAULNIERS: For those of you that don't know, NSIR is the Office of Nuclear Security and Incident Response.

MS. KARAS: And Dave Desaulniers is from NRR, also, and he is the technical lead for the worker fatigue portions of the rule making. We also have Jay Persensky, and Molly Keefe, who are from the Office of Research.

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1 And they are both involved, also, in the
2 fatigue aspects of the rule making. Since we do have
3 a transcriptionist for this, again, like we did in the
4 morning, if you plan to speak or provide a comment, if
5 you can move to one of the microphones, and if you can
6 also make sure, whenever you are providing a comment,
7 to state your name and your affiliation.

8 We also have multiple ways that you can
9 comment during this meeting. You can, obviously,
10 provide comments verbally. There are also index cards
11 that are, I think, at most of the seating locations.
12 And we have extra index cards in the back.

13 You can either bring them up to one of us
14 to read as a comment, or you can drop them in the
15 comment box, and we will be sure they are docketed as
16 a comment on the rule making.

17 We also have computer workstations set up
18 in the corner. If you would like you can provide a
19 comment through that computer workstation, either
20 during the meeting, or during a break, or anything
21 like that. And we will make sure that those get
22 docketed as comments, as well.

23 And after the meeting you can also email,
24 mail, fax, or hand deliver comments to us that we will
25 consider on the rule making. The comment period

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1 closes December 27th, on the Rule, and it closes on
2 September 26th for the information collection aspects.

3 More information on what I went over at
4 the beginning of the meeting, for those of you who are
5 just coming in, in the afternoon, is also available in
6 the handouts, the slide handouts.

7
8 At this time I know Jim Davis and another
9 gentleman, I can't read your name tag from here,
10 wanted to provide opening remarks. So I guess, Jim,
11 since you went first in the morning, I will let Pete
12 go.

13 If you want to go ahead and make your
14 opening remarks? And if we can try and keep them
15 fairly brief, like five minutes or so, then we will
16 move over to Jim.

17 MR. STOCKTON: We've spent a good deal of
18 time interviewing guards at various nuclear power
19 plants. And we are up to, I don't know, we are well
20 over 200 guards at this point.

21 And we would like to see it go away. We
22 thought we had solved the problem with fatigue with
23 the Order, which is not true at all. POGO has real
24 problems with the current fatigue order for security
25 officers, particularly group hours and self-

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1 declaration.

2 POGO had a case study where we had a high
3 percentage of guards working between 60 and 72 hours,
4 some well over 72 hours. First Energy initially
5 admitted that they were in violation of group hours,
6 then claimed they were not in violation.

7 The NRC found them in violation on
8 individual hours, but not group hours. Who is in the
9 group? And the NRC won't tell us who is in the group.
10 Are they all armed responders according to the
11 security plan? We don't know that.

12 And the guards at Beaver Valley couldn't
13 believe there were enough armed responders, well under
14 48 hours, to average out the ones working 72 hours.
15 Under scrutiny from POGO and the NRC, First Energy has
16 resolved most of these problems by hiring more
17 security officers, and changing their attitude toward
18 the security officers. They also removed a
19 substantial number of security supervisors right in
20 the middle of this whole investigation.

21 So it really is kind of a good news story.
22 And Steve Whitely, who was going to be here today,
23 from Beaver Valley could have expanded on this
24 situation.

25 When individuals are fatigued their

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1 ability to respond is degraded. As one guard pointed
2 out, if I'm working 72 hours and fatigued, someone
3 working 30 hours can't sleep for me.

4 And as the great poet over here,
5 Blochbaum, says if I'm tooling along a road at 80
6 miles an hour in a 60 mile an hour speed limit, and I
7 get stopped by a cop, I can't point to some old man
8 coming along at 40 miles an hour and say you can't
9 give me a ticket, because the group, the two of us are
10 within the 60 miles an hour.

11 POGO believes that the group hours are
12 irresponsible and should be deleted from the Rule.
13 POGO has interviewed security officers who work
14 between 60 and 72 hours, they were in no condition to
15 respond to the withering fire from RPGs, 50 caliber
16 sniper rifles, API rounds, powder charges, torpedoes,
17 that the intelligence community believes that they
18 would face during a terrorist attack.

19 Of course these weapons are not included
20 in the NRC DBT. And the great strides that NRC has
21 made in force-on-force, and all of that, almost become
22 irrelevant because the DBT is so dumbed-down, that it
23 is really shocking.

24 NRC claims that security officers' unions
25 push for overtime to increase the income of these

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1 underpaid guards. We have dealt with a lot of these
2 unions, and we are not even sure whose side they are
3 on, whether they are on the side of the guards, or on
4 the side of the security contractors.

5 There is an overriding national interest
6 here. The guards want to work -- if the guards want
7 to work 60 to 72 hours per week, they can get another
8 job. POGO believes that the NRC should closely
9 oversee the self-declaration process.

10 We found examples of self-declaring guards
11 being fired, sent to psychiatrists, and given
12 undesirable schedules. Ergo they are simply afraid to
13 self-declare.

14 If, indeed, there is evidence of
15 retaliation for self-declaration, the NRC should take
16 enforcement action and levy significant fines against
17 the utilities.

18 POGO believes that the draft rule on
19 fatigue should be changed. No group hours, a limit of
20 48 hours. Only under the following conditions can
21 hours increase to 60 hours per week. And that is for
22 refueling and heightened security alerts.

23 So that is my two and a half minutes.

24 Thank you.

25 MS. KARAS: Thank you. Jim, you had some

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1 opening remarks?

2 MR. DAVIS: Good afternoon. Jim Davis
3 with NEI. I want to thank you for the opportunity to
4 comment on this rule making, participate in this
5 particular meeting.

6 I want to make sure that it is clear, from
7 the offset, because it seems like sometimes there has
8 been some confusion. The industry does support the
9 concept of work hour rule.

10 It has been a long-standing support. In
11 August 17th, 2001, a letter to the NRC chairman the
12 industry supported the rule making to provide the
13 clarity and consistency that is needed in this
14 particular rule.

15 There may have been other ways to solve
16 the issues, but we have supported the Rule since 2001.
17 The industry supports a rule making effort to codify
18 the requirements of generic letter 82.12, and in the
19 process provide clear, concise language.

20 It needs to provide clarity of the
21 requirements, it needs to ensure consistency across
22 the industry. We support the individual limits that
23 have been proven by time.

24 The 16 hours and 24, the revised 26 hours
25 in a 48 hour period, and the 72 hours in any seven day

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1 period. They are reasonable points which management
2 needs to review and evaluate, and conduct an
3 evaluation.

4 Based on 20 years experience, and these
5 limits have been workable in the past. There have not
6 been significant events that are fatigue related, a
7 point that we have made a number of times throughout
8 this rule making process.

9 We also support the increased break time
10 from 8 hours to 10 hours. We believe it is probably
11 the most significant change that is being made in the
12 process.

13 I think our contention is somewhat
14 supported by reviewing the rule package just issued by
15 the Department of Transportation. I find it
16 interesting that they have also gone from an 8 hour
17 minimum break to a 10 hour break. Their package is
18 much more supportive in that area.

19 Other elements of the FFD program, such as
20 training, behavioral observation, are key factors that
21 we sometimes lose sight of when we are reviewing only
22 subpart I.

23 We recognize the need for procedures to be
24 in place for individuals who feel that they are not
25 fit for duty, to make declarations and have their

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1 concerns taken care of.

2 Fatigue assessments fit with the concepts
3 that have been introduced in the rest of the Rule.
4 The industry does have, or had some problems, with the
5 issues that are created by the layering requirements
6 that has occurred in this rule.

7 The collective impact of all the proposed
8 requirements removes operational flexibility needed by
9 the industry. The impact is disproportionate to the
10 safety, or even the operational benefits.

11 We see significant unintended
12 consequences, which will have a negative impact on
13 safety. For example, under the current rule
14 requirements, the 8 hour shift schedule is at risk.

15 We don't see how anybody can continue to
16 man eight hour shifts in a cycling schedule. The
17 extensive layering is not supported by industry
18 experience and extensive review of human performance
19 data that has been conducted by the industry in the
20 last few months.

21 The proposed requirements have not been
22 based on an objective approach to the science
23 available, resulting in a significant burden from
24 overstatement of the cumulative fatigue issue.

25 Many of the conclusions are contrary to

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1 solid and objective evidence in the industry. We have
2 collected significant human performance data in the
3 last few months. It does not trend as the rule
4 package analysis would predict.

5 But then to move on to attachment 4, it is
6 particularly disturbing in its unrealistic
7 conclusions. I would like to add, also, that the
8 reporting requirements, in the Rule, in this
9 particular section of the Rule, are not necessary.

10 Significantly different than our opinion
11 on the reporting requirements in the "fitness-for-
12 duty" part of the Rule. We will make some
13 observations, today, as we go through the questions
14 and discussion, regarding issues we see with the Rule.

15 But we will ultimately be submitting
16 constructive alternatives to improve subpart I. And
17 in the discussion we may not comment on every question
18 that is in the Rule, so we don't have to repeat
19 ourselves every time.

20 We, obviously, reserve the right to
21 comment, again, at the end of the rule making process,
22 even if we comment on one of the questions. Thank
23 you.

24 MS. KARAS: All right. Those are the only
25 people that I had signed up for opening remarks. Was

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1 there anyone else that had planned opening remarks?

2 (No response.)

3 MS. KARAS: Then we will move into -- Dave
4 Desaulniers is going to go over the proposed fatigue
5 management provisions in kind of a synopsis, the same
6 as we did for the drug and alcohol provisions in the
7 morning.

8 Dave, I will turn it over to you.

9 MR. DESAULNIERS: Thank you, Becky. Is
10 everybody able to hear me okay? We have many familiar
11 faces, some new faces, so a quick overview, I think,
12 is in order.

13 We will try to make this quick because the
14 objective of this meeting is to get your input, so we
15 want to reserve most of the time for that.

16 What we have listed, here on the screen,
17 are the major provisions of the Rule. And each of my
18 subsequent slides will touch upon one of these areas.
19 I will note that we refer to this as the fatigue
20 management provisions because this does go beyond just
21 work hour controls.

22 Work hour controls probably has gotten the
23 most significant discussion, in past meetings, but the
24 fatigue management approach goes beyond that, as you
25 will see here.

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1 In particular we have a training provision
2 in the proposed rule making, consistent with other
3 "fitness-for-duty" training. This will be training
4 provided at the supervisory level to all workers and
5 supervisors.

6 The main objectives of this training is to
7 touch upon these three areas that we have listed here,
8 prevention, detection, and mitigation of fatigue. It
9 is, essentially, to provide the staff the tools, the
10 knowledge and abilities that they need to be able to
11 effectively participate in fatigue management,
12 recognize what workers can do to come to work fit for
13 duty, refreshed and alert, and how supervisors can
14 recognize if someone may be suffering from fatigue,
15 and what can be done, effectively, to address those
16 circumstances.

17 We have also included a provision for
18 self-disclosure. Essentially provisions for what the
19 worker and supervisors responsibilities are. If
20 someone believes they are too tired to work
21 effectively.

22 The objective here is to really focus on,
23 particularly, if there is a difference of opinion
24 between the worker and the supervisor making the
25 assessment. What are the responsibilities, how do you

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1 move forward under those situations.

2 There are, of course, the work hour
3 controls, personnel that in contrast to the other
4 provisions, which broadly apply to all personnel
5 subject to the "fitness-for-duty" program, the work
6 hour controls apply to a subset of the personnel at
7 the site.

8 Here are listed the general groups, here,
9 also noting that within these group the work hour
10 controls apply to a subset of the personnel within
11 each of these groups principally focused on personnel
12 performing safety or risk significant functions,
13 emergency response functions.

14 This is an area that we are specifically
15 soliciting comments, so we will be discussing this
16 scoping. The individual work hour controls, the work
17 hour limits are very similar to those that are in NRC,
18 current NRC policy and plant technical specifications.

19 There are minor changes, there, to the
20 work hour limits. The most significant change here is
21 the addition of the break requirements. The change,
22 as Jim Davis noticed, of the change from the 8 hour
23 break requirement to the 10 hour break requirement,
24 plus the 24 hour and 48 hour break requirement.

25 Consistent with the past NRC policy on the

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1 work hour limits, shift turnover time is not included
2 when calculating work hours for a determination of
3 compliance with these requirements.

4 With the policy, and the technical
5 specifications, there was provision there for a plant
6 manager, or designee, to authorize what we refer to as
7 a deviation from those requirements.

8 The language has changed here to being
9 referred to as a waiver. The concept is, therefore,
10 very similar. Though what has changed, principally,
11 here is that there are limitations placed on the
12 conditions upon which a waiver can be authorized.

13 We have established certain criteria for
14 when those waivers can be used. And, also, the
15 process that needs to be gone through in order to
16 issue that waiver would require a face-to-face
17 supervisory assessment of the individual.

18 Moving on to the next slide, in addition
19 to the individual work hour controls, a new concept
20 was introduced to address an old issue. And that is
21 the group work hour controls are there to
22 operationalize, as I refer to it, the concept that was
23 in the original policy statement of the objective of
24 a 40 hour workweek.

25 The intent here is to address the

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1 potential for fatigue that results from long term use
2 of heavy work hours. The idea here is that there is an
3 average for the specified groups of individuals,
4 those listed on the prior slide, during operational
5 conditions, non-outage conditions, the group average
6 would be 48 hours over a period not to exceed a period
7 of 13 weeks.

8 There are, also, provisions here to
9 address how that requirement would work under outage
10 conditions. That is there would be an exception for
11 the first eight weeks of an outage, and then the
12 averaging period would restart following eight weeks
13 of an outage.

14 There are similar requirements for group
15 work hours. I should have noted that upfront. On the
16 last slide it said except for security. The group
17 work hour controls also apply to security personnel as
18 noted on this slide.

19 They are slightly different, somewhat more
20 stringent for security personnel. A key difference
21 here is that during an outage, rather than an eight
22 week exclusion period, where there is no group work
23 hour limit, there would be a 60 hour per week average
24 requirement.

25 There are also provisions to address

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1 unplanned security system outages and increased threat
2 conditions.

3 In addition we have included provisions to
4 address the group work hour controls to address
5 unusual circumstances, such as an extended outage, or
6 a problem during operation, that would make compliance
7 with the eight week waiver period, I shouldn't say
8 waiver here, the eight week exception period.
9 impractical.

10 There is an alternative to use a 54 hour
11 week average, under certain circumstances, as
12 described here. Or an alternative is allowed to submit
13 to the NRC a plan to address such circumstances that
14 could be approved.

15 Fatigue assessment are assessments of
16 individuals. These would be performed under the
17 circumstances listed here, for a cause, self-
18 disclosure, and post event.

19 And they would provide a documented basis
20 for subsequent fatigue management actions under those
21 circumstances. Provisions would require that these
22 assessment be conducted face-to-face.

23 And they also address who may perform
24 those assessment, essentially, to minimize the
25 potential for bias in those assessments.

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1 The proposed requirements would also
2 address licensee reviews. Those reviews would be done
3 for each averaging period. The reviews focus on the
4 work hour and performance of individuals who are most
5 likely to be affected by fatigue, essentially the
6 outliers in certain groups, those with the highest
7 work hours, those with more waivers, those that have
8 been assessed for fatigue, for any of the reasons
9 previously listed.

10 This review would also be intended to
11 address the staffing adequacy within the groups,
12 recognizing that there will be, as others have already
13 noted, variations within a group. Some individuals
14 will be working more hours, some less.

15 The review would be focusing on that
16 aspect, as well, to ensure that there is not some
17 subgroup, within the overall group, that is working
18 excessive hours, and that is reflected in their
19 performance.

20 The last area is annual reporting. The
21 objective of the reporting requirements is to support
22 the effective and efficient oversight of the
23 implementation of the Rule.

24 Briefly, these reporting requirements
25 would cover information concerning waivers that were

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1 actually worked, the collective work hours of any
2 group that exceeded the group work hour limits, and
3 fatigue assessments, and subsequent actions resulting
4 from those assessments.

5 And that concludes my overview.

6 MS. KARAS: Thanks, Dave. We are going to
7 have the same format that we used in the morning. And
8 that is that there are, I guess, seven questions for
9 public comment that were published in the Federal
10 Register notice.

11 We will go through each one of those and
12 collect comments on them first. And then we will open
13 it up, after that, for additional comments on other
14 aspects of the fatigue requirements.

15 So if you go to attachment 2 of the
16 handout, that was the meeting notice, and we will
17 start at question 11 on the proposed fatigue
18 management provisions.

19 And this question was with relation to the
20 rest break provisions. The Proposed Rule would
21 require licensees to provide individuals with certain
22 breaks. Those include one 24 hour rest break in any
23 seven day period, and at least one 48 hour rest break
24 in any 14 day period.

25 And the 48 hour rest break in a 14 day

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1 period doesn't apply during the first 14 days of any
2 outage. And then there are certain other
3 circumstances for security force personnel.

4 The NRC invites comment on those rest
5 break provisions, and we will accept comments at this
6 time on that.

7 MR. FEE: I'm John Fee from Southern
8 California Edison.

9 The industry has significant concerns with
10 these two provisions. It will have an impact on
11 operations, during normal operations. As Mr. Davis
12 said, it will have an impact on eight hour shifts.

13 It will probably impact at least half of
14 the operating plants, right now, in the United States.
15 We will prepare an alternative that addresses needed
16 operational and scheduling flexibility, and submit
17 that during the comment period.

18 MS. KARAS: Does anyone else have any
19 comments on this question?

20 MR. RIZZO: I'm Anthony Rizzo, Jr. I'm
21 from Salem Hope Creek Nuclear power plant. And, like
22 he said, to give somebody a 40 hour break would
23 probably just destroy the schedules, the way we work.

24 The object is to stay away from
25 consecutive days, that is what you have to hit on.

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1 Because when you get the Rule, it is consecutive. I
2 was here for the first rule making.

3 Now, where there are a lot of mistakes at
4 is that your declaration, as you said the waivers, now
5 you call them, they do nothing. Because when we work
6 72 hours, they bring us the waiver a week later.
7 There is no sense to give me this now, you didn't give
8 it to me before I worked the 72.

9 That is a mistake right there that has to
10 be fixed. You have to hit them before they go to 72,
11 on that 60th hour. In other words, if you are on a 12
12 hour shift, your fifth consecutive day, you have to
13 stop them from working that sixth day. That puts them
14 at 72.

15 After I work the 72 hours, then the
16 following week they give the forms to everybody, we
17 did the payroll, we found out you went over. And you
18 sign a waiver. It is after the fact, and it is too
19 late. That is a problem there.

20 But to give somebody, during an outage
21 especially, a 48 hour consecutive break, that is going
22 to be hard to do, because I'm on 12 hour shifts.

23 I mean, the bottom line is you have to
24 have enough people, and you won't have none of this
25 problem. That is where the problem is at. The 40

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1 hour break, like he said, he is on an eight hour
2 schedule, I'm on a 12 hour schedule, we have a set
3 schedule, three on, two off, two on, two off, three
4 on, and it pretty much messes everything up.

5 You have to work on the consecutive days
6 in a row, that has to be stopped.

7 MS. KARAS: Why don't you pass the mike?

8 MR. TEFAYE: Getachew Tesfaye,
9 Constellation Energy. I have a question for you,
10 Becky. Did I hear you say that the 24 hour rest break
11 and 7 days doesn't apply for the first 14 days of the
12 outage?

13 MS. KARAS: No, that is not correct. The
14 24 hour rest break, in any seven day period, does
15 apply. It is the 48 hour break in any 14 day period,
16 that would not apply, during the first 14 days of any
17 outage.

18 The 24 hour break would still apply. That
19 applies under all conditions.

20 MR. TEFAYE: All right, thank you.

21 MS. KARAS: Jim?

22 MR. DAVIS: I'd like to clarify a couple
23 of points. As I remember the Rule package implied
24 that the major impact would be during the outage, and
25 it wouldn't have a significant impact during normal

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1 operations of the 48 hour and 14 day requirement.

2 In fact it appears in the Rule package,
3 the Rule package overstates the potential cumulative
4 fatigue issue, and the justification for half a
5 million dollars per facility, per year.

6 And it would not meet a rational backfit
7 analysis. During the -- in one of the letters we
8 submitted we asked did this provision have a separate
9 backfit? We are very disappointed that it did not get
10 a separate backfit, and that it is not properly
11 accounted in the analysis.

12 I mean, that is a problem. The second
13 issue that I want to emphasize, that this provision
14 does have significant consequences during normal
15 operations.

16 For example, many of the maintenance crews
17 that work Monday through Friday, eight hour schedules,
18 normally 40 hour weeks, if there is an unplanned
19 contingency, and the best one is you may need to do
20 some diesel maintenance starting on Friday, it puts
21 you in a position that you can't get that maintenance
22 done, in the optimum manner, for safety reasons, when
23 a piece of equipment goes out of service.

24 The industry has worked 24-7 to get that
25 piece of equipment back on line. I think it is a

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1 philosophy that we have followed for many years, and
2 there are direct implications of getting that
3 equipment back on line as quickly as you can.

4 Now you are in a position, you try to work
5 these maintenance people over the weekend, you come in
6 conflict with the 24, 48, and the -- I'm sorry, I'm
7 getting my words mixed here, the 24 and 7, and 48 and
8 14 requirements that has the potential for limiting
9 the personnel available to perform that particular
10 maintenance.

11 So I think we need to recognize that
12 normal operations are significantly impacted by this
13 particular rule.

14 Let me expand on that. I don't know
15 whether to expand on it here, or expand on it later.
16 You need to recognize that if the Rule goes forward,
17 as it is written, the 8 hour shift for operating crews
18 is a thing of the past.

19 With these requirements you do not have
20 the flexibility needed, with an individual, on an 8
21 hour cycle. And let me, and I may as well go ahead
22 and give my example now.

23 You take, and you can put a lot of
24 examples on the table. It is probably more
25 appropriate to one of your questions later on, but I'm

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1 running.

2 You take a crew, five section rotation,
3 operations personnel. They are on an 8 hour shift,
4 they are going to stand 21 days of watch, it is
5 mathematics, in a 35 day period.

6 If you put them on 12 hour rotations they
7 will stand 14 days of watch. You do five days of
8 training, the people on the 8 hour shift will have
9 nine days off.

10 I don't care how you parse it, in a 35 day
11 period they will get nine days off. If you put them
12 on 12 hour shifts you get them up to 15 days off. And
13 you are more capable of handling this requirement.

14 So you ought to recognize this. During
15 normal operations it is going to put significant
16 stress on people who are still operating in an 8 hour
17 shift routine, and force them to go to the 12 hour
18 shift rotation. That is our analysis.

19 I think that is enough on this particular
20 item. Thank you.

21 MS. KARAS: Are there any other comments
22 on this question?

23 MR. NEWKIRK: Todd Newkirk, International
24 Brotherhood of Electrical Workers. I will just convey
25 that we do have six plants that will be removed from

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1 8 hour shifts, based on not being able to build a
2 proper 8 hour rotation, operations, fire brigade,
3 without violating the current regulation as written.

4 And a lot of effort has gone into trying
5 to design an hour shift schedule to comply.
6 Impossible.

7 MS. KARAS: Other comments?

8 MR. DESAULNIERS: I would just like to ask
9 that those that have already commented, and I
10 anticipate they will be providing written comment, if
11 you are providing written comment on this, to expand
12 upon your comment, as Jim Davis has, in terms of an
13 analysis and example, specific as to why it is
14 impossible to meet this requirement. That will be
15 helpful to our analysis.

16 MS. KARAS: All right, question 12 is on
17 the waivers of the work hour controls. The Proposed
18 Rule would permit licensees to waive individual work
19 hour limits, and rest break requirements only in
20 certain circumstances including those that Dave
21 elaborated on earlier.

22 When it is necessary to mitigate or
23 prevent a condition adverse to safety, or to maintain
24 the security of the facility. It would also require
25 licensees to report the number of waivers granted in

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1 a year.

2 We are inviting comment on the provisions
3 for granting waivers of the work hour controls. Are
4 there any comments?

5 MR. RIZZO: The problem I have is to
6 maintain the security of the facility. I have been
7 working at Salem Creek for 19 years. What I have
8 gathered, we have to meet NRC requirements, we can
9 keep you working for as long as we need to keep you
10 working.

11 You need to clarify exactly what you are
12 talking about there, because that is just way too
13 general. That gives the utilities a chance not to
14 hire people. They have to hire enough people to
15 maintain their security plan.

16 When they start losing people they are
17 going to say, we have to force you here, we have to
18 force you here, because they have to meet the
19 requirements of the security plan. So that is just
20 way too vague, it has to be exact.

21 MS. KARAS: Other comments?

22 MR. GORMAN: Jim Gorman, TXU. We also, we
23 have been looking at these, closely, trying to make
24 certain we understand them, because we believe that
25 the Rule, as written, is actually going to increase

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1 the number of waivers that we need to consider.

2 Since the Rule has added extra
3 requirements to when you can and cannot work, we
4 figure the workers are going to be running into more
5 and more opportunities to trip over one of those
6 requirements, we will have to stop and reconsider.

7 So the waiver process we are looking
8 closely at.

9 MS. KARAS: Are there any additional
10 comments?

11 MR. DAVIS: I've got one. I'm worried
12 about the impact on non-safety related tasks for
13 workers that somewhere on the process have worked on
14 a safety-related function, and then get to one of the
15 various limits, but they are working on non-safety
16 related issues.

17 Again, the layering of the requirements in
18 the Rule makes the breadth of when you have to worry
19 about a waiver, or when you are reaching a limit on a
20 condition, much broader. And it goes well beyond
21 whether the worker is working on safety, or non-safety
22 related equipment, when you run into this particular
23 issue.

24 I'm not sure I have an answer to the issue
25 but you realize that the layering has complicated this

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1 significantly. I thought it was interesting to expand
2 on Jim Gorman's comment.

3 One of the stated objectives, very early
4 in the process, is to remove the need for waivers.
5 And yet, as I look at the layering, I think what the
6 net outcome, the unintended consequence, is a
7 significant increase in the use of waivers, in this
8 particular, as a result of this particular rule.

9 I mean, that is going to be one of the
10 things that happens with the Rule as it is written
11 right now, today. Thank you.

12 MS. KARAS: Are there any other comments
13 on this question?

14 (No response.)

15 MS. KARAS: All right, we will move on to
16 question 13, then. This is on a 48 hour per week
17 collective work hour limits.

18 The Proposed Rule would prohibit job duty
19 group, subject to the work hour controls, from working
20 more than a maximum collective average of 48 hours per
21 person, per week, except during the first eight weeks
22 of any outage, as well as other circumstances for
23 security force personnel.

24 We are inviting comment on those
25 collective work hour provisions. Are there any

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1 comments? Jim?

2 MR. DAVIS: This provision has generated
3 a lot of comments from other people along the way.
4 And I think I understand what the problem is. With
5 the layering of the Rule requirements we seriously
6 question whether the cumulative fatigue issue, by the
7 time you get to this particular point.

8 When I look at the Department of
9 Transportation rule making that was just conducted,
10 they make a very strong case for their 10 hour break,
11 and the restorative rest that an individual can get
12 with a 10 hour break.

13 Significant discussion in that rule
14 package. I also find significant discussion in that
15 rule package about the scientific process they went
16 through to eliminate thousands and thousands of
17 studies and reports that were irrelevant to the
18 situation at hand.

19 And that conclusion is the ten hour break
20 was a significant change that they made in their
21 process. I also find it interesting that they give
22 significant credit to the 34 hour break, and its
23 ability to address all issues related to cumulative
24 fatigue.

25 It provides two sleep opportunities plus

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1 a day off. Thirty-four hours is picked to fit
2 precisely with the 14 hours a day that an individual
3 can work, normally, in that process.

4 And in that rule making they feel that
5 they have addressed the cumulative fatigue at that
6 particular point. In fact they have so much
7 confidence in 34 hour break, unless I have misread
8 something, that you can reset the clock, at any time,
9 by giving the individual a 34 hour break.

10 I'm not sure whether my math is right or
11 not, but I calculated that a long-haul trucker,
12 working for a company that works 7 days a week, under
13 the provisions of that rule could average, day in,
14 week in week out, year in, year out, 81.6 hours per
15 week, if he really wanted to operate at the limits of
16 the rule.

17 He works 6 days, gets 70 hours of rest, he
18 takes, gets 70 hours of work, he resets his clock by
19 taking a day off, and he can work six more days.

20 With the other provisions, in the Proposed
21 Rule, there is no need for an additional layer to
22 address cumulative fatigue. Therefore we seriously
23 question the need for the group work hour limit in
24 this rule.

25 And I think we would recommend, also,

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1 taking out the group work hour limit, totally.
2 Cumulative fatigue is adequately addressed without
3 that.

4 I want to make sure I'm clear. We do not
5 believe that providing quarterly and annual limits, on
6 individuals, is a fix to that particular issue. That
7 is equally unnecessary.

8 The discussion of whether it is group work
9 hour limits, or individual annual limits, is
10 irrelevant, because we don't have a cumulative fatigue
11 issue at that point. The other layers in this rule
12 have addressed that piece of the issue.

13 We also point out, again, as we pointed
14 out a number of times last year, that the
15 implementation of a long term individual limit is
16 virtually impossible, particularly for any individual
17 who works within the industry, and outside of the
18 industry at the same time.

19 Which, of course, many of our outage
20 support people, supplemental people, and a variety of
21 the other people do. So I think that, you know, to
22 summarize, I think that is the heart of all the
23 concern that we have.

24 We have put a limit in here to address
25 cumulative fatigue that doesn't exist, and it isn't

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1 making any sense to anybody. So we would recommend,
2 also, taking out the cumulative fatigue limit for
3 group work hours, or annual or quarterly limits, that
4 is adequately addressed by the other provisions in the
5 Rule. Thank you.

6 MS. KARAS: Are there other comments on
7 this question?

8 MR. RIZZO: This is from a security
9 standpoint when I talk about it. So you are saying
10 that you can work 6-12s, take a day off, and reset
11 yourself and come back and work six more 12s, take a
12 day off, reset yourself, come back and work six more
13 12s, and reset yourself? That is not going to happen.

14 MR. DAVIS: My comment pointed out what
15 the Department of Transportation rule, Final Rule,
16 after lawsuits, after being withdrawn, after being
17 reworked, issued on August 25th of this year, would
18 allow a long term trucker to do. That is what I
19 pointed out.

20 MR. RIZZO: But that wouldn't work in
21 security, because if you work six 12s, you get a day
22 off, you work six 12s, you get a day off, you are
23 going to be burned out in no time at all.

24 So that day off, that is when you have to
25 catch up on your sleep, and get everything else you

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1 have to get done in your life. And you are working a
2 12 hour shift, you don't have time to do anything. So
3 that is not going to work.

4 MS. KARAS: Are there any other comments?

5 MR. STOCKTON: I think I understand the
6 fatigue of truck drivers, and all that business. But
7 I think that security guards if, indeed, something
8 happened, in the military they call it "shock and
9 awe".

10 When all of a sudden all hell breaks lose
11 and you are on your 72 hours, and your ability to
12 respond to something like that is seriously impaired.

13 And the military has done a number of studies on
14 this, as you probably know.

15 And it just is simply, you know, in the
16 face -- we usually call it, you know, violence of
17 action, where all of a sudden all hell breaks loose
18 and guys are screaming that they have blown off a leg
19 and all this business.

20 And to try to respond under the
21 circumstances, we have just learned that in a number
22 of these facilities now, that they allow guards to
23 actually watch movies in the BREs. And they turn
24 their radios down so that that doesn't bother the
25 movie.

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1 Now, you can imagine an RPG hitting one of
2 these PREs in the middle of a movie, and all of a
3 sudden the guy is going to leap up and respond to
4 this. And we are not criticizing, or even raising
5 questions about the courage of the guards, it is just
6 a fact of life.

7 MS. KARAS: Are there any further
8 comments?

9 MR. DESAULNIERS: I have a request for
10 clarification for Jim Davis. Jim, you were indicating
11 that you saw no need for the group work hour averaging
12 requirements, given the layering of the other
13 requirements, yet you have already referred to some
14 other requirements which you believe are unnecessary.

15 And so when you are taking credit, I'm not
16 sure what other requirements you are taking credit
17 for, when you say this one is not necessary.

18 MR. DAVIS: I lose track of where we are
19 in the discussion. Hang on a second.

20 MR. DESAULNIERS: In this case we are
21 talking about --

22 MR. DAVIS: I understand about that part
23 of it.

24 MS. KARAS: I think he is just asking,
25 Jim, that when you say the group work hour limits are

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1 not necessary because of the layering of the other
2 requirements, which specific other requirements were
3 the ones that you thought provided the necessary
4 protection for cumulative fatigue?

5 I think that is what you were saying in
6 your comments.

7 MR. DAVIS: I think the other provisions
8 that we see is, one, we have the long -- the
9 individual limits that have been there for a long
10 period of time, the 16 hour, the 26 and 48, and the 72
11 hour limit.

12 We also see the ten hour break as being a
13 major feature. The other limits are a significant
14 feature because, in fact, it is probably not
15 adequately acknowledged in the Rule package, with the
16 other limits, in fact, the 12 hour break is the normal
17 break.

18 You can't use the 10 hour break in a
19 repetitive manner, because you run into one of the
20 other limits in the Rule. The normal limit that the
21 industry works with is a minimum 12 hour break.

22 And, occasionally, you may be able to use
23 a ten hour break. But 26 hours adds up pretty quick
24 in a 48 hour period, for example, in that arena.

25 The other provision is the concept of a

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1 periodic time off that we discussed earlier. We have
2 some concern with the 48-14, and the way it is
3 structured.

4 And I'm trying to remember if at that
5 point -- we are looking to provide an alternate
6 proposal that provides time off and yet protects the
7 flexibility that is needed for the schedule, for
8 example, to do diesel maintenance, and various other
9 things in that area.

10 And, frankly, I had sort of hoped to have
11 that proposal fleshed out and ready to put on the
12 table today. But I'm having trouble getting my arms
13 around the science, and what really is fatigue, and
14 what is sports fatigue, and when is there fatigue, and
15 how much time does anybody need off when.

16 And we hear a lot of anecdotal evidence,
17 and we have a lot of discussion. But I'm trying to
18 figure, I mean, it seems like we haven't gotten our
19 arms around that.

20 And we will, ultimately, provide a
21 proposal as an alternative to the 48 and 14; that
22 tries to achieve that equivalent effect. So in my
23 mind, I'm sorry, in my mind I'm taking credit for that
24 piece of it, also.

25 MS. KARAS: That clarified it, I think.

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1 MR. DESAULNIERS: Yes, that helps, thank
2 you.

3 MR. BAUER: Joe Bauer from Exellon. Just
4 to continue on with the theme that Jim was making.
5 The way I look at the rest periods, and the time off,
6 there are like four layers.

7 If you look at the first layer inherent in
8 the "fitness-for-duty" rule, there is some inherent
9 alertness abilities that an individual has to exhibit.
10 And there are supervisory overviews, etcetera, that
11 are inherent in the "fitness-for-duty" Rule.

12 The second layer is the individual work
13 hour limitations, the 16&24, 26&48, etcetera. So
14 there is another barrier. The third barrier is the
15 time off requirements, which are the 10 hours between
16 breaks, or between shift periods.

17 The one day and seven, the two days off
18 every 14, or some alternative that would accomplish
19 the same goals, but yet preserve the eight hour shift
20 routine.

21 And then, finally, the fourth limit, or
22 tier, layer would be the group average rules. So I
23 think the point is that once you get to the fourth
24 layer, the group average rules, hopefully at that
25 point fatigue is already going to be prevented by the

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1 other limitations that are already in place. Thanks.

2 MS. KARAS: Are there other comments on
3 this question?

4 MR. RIZZO: From a security standpoint the
5 group average is, not that I'm trying to agree with
6 NEI, I never have. But they really don't help as far
7 as from a security standpoint. You have to stick with
8 the individual.

9 Because if I'm working 72 hours,
10 constantly, and you are averaging me in with somebody
11 who is on vacation, they are not there to work. The
12 only ones who should count, because the way you do it
13 now, you count supervisors, armed and unarmed. They
14 are three different groups.

15 You should break it down to how much
16 supervision work, because they are the ones that are
17 supposed to be leading, how much do armed officers
18 work, how much do monitors work.

19 To take everybody as a group, and I really
20 don't understand why, I agree with him there too, if
21 you stay with the individual, and you stay on top of
22 it, as it is gone.

23 Because to give you an annual breakdown of
24 how many hours they work really doesn't stop the
25 fatigue, the fatigue is already done with. If they

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1 stay on top of it, you hit it before it happens.

2 To do the whole security force, and let
3 them average it out, it doesn't work, because the only
4 ones they should be averaging are the ones who are
5 actually working. People who are away on vacation,
6 people out on medical leave, things like that, they
7 shouldn't be counted in with the hours, they are not
8 there working. They can't be fatigued because they
9 ain't there.

10 You have to count the ones that are
11 actually working at the time.

12 MR. DESAULNIERS: Just for clarification,
13 so that -- you referred to an annual average. The
14 averaging is done over no more than a 13 week period,
15 essentially quarterly.

16 In terms of averaging individuals, in the
17 averaging pool, they have to be there at least 75
18 percent of the scheduled hours, such that the intent
19 there is that individuals on extended absence, either
20 for substantial periods of vacation, or out due to
21 medical disability, would not be included in the
22 average.

23 MR. RIZZO: You know, you have a group of
24 supervision, which is where they are supposed to be.
25 It is where you get to the armed officers, their man

1 is not where he is supposed to be.

2 When you count the group in, when they
3 have plenty of people, they very rarely ever have
4 overtime. But you are throwing them in with the armed
5 officers, and you are bringing the whole armed
6 officers group down. So you are not getting a good
7 reading of it.

8 And it matters if you have any unarmed, or
9 people out of your plant, they usually have plenty of
10 them. It is the armed officers that are taking the
11 beat. The supervisors should be taken out of the
12 group, the unarmed people should be taken out of the
13 group, they should have their own group.

14 That is how you break it down who is
15 working the hours.

16 MS. KARAS: Do we have any other comments
17 on this issue?

18 (No response.)

19 MS. KARAS: Then we will go on to question
20 number 14, which is on alternate work scheduling
21 examples. The NRC is seeking public comment on work
22 scheduling examples that meet the requirements of the
23 Proposed Rule, and whether such schedules are for it,
24 or reasonable degree of flexibility to licensee
25 management.

1 I think we have heard some comment in this
2 area in response to other questions. Are there any
3 further comments?

4 MR. MCCABE: Good afternoon. My name is
5 Brian McCabe, and I'm with Progress Energy.

6 The industry has an excellent safety
7 record with both 8 and 12 hour work shifts. Many of
8 the 8 hour rotations involve schedules that include
9 more than six consecutive days.

10 Such schedules would not be permitted
11 under the Proposed Rule. Thus the 24-7, and 48-14
12 break provisions, as written, have the greatest impact
13 on licensees with 8 hour shift rotations, and will
14 undermine the viability of these rotations in the
15 future.

16 Ultimately the Proposed Rule would drive
17 licensees to 12 hour work schedules, and make 8 hour
18 shifts a thing of the past. As Jim Davis stated,
19 earlier, the industry supports many of the provisions
20 of the Proposed Rule.

21 It believes these provisions are prudent.
22 Regulatory framework centered around these provisions
23 would protect public health and safety, would allow
24 the industry to continue both 12 And 8 hour shift
25 rotations.

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1 I encourage the NRC to reconsider the
2 unnecessary layering requirements that address
3 cumulative fatigue in the Proposed Rule. Such an
4 extensive layering scheme does not appear to be
5 soundly based, will have unintended consequences, will
6 result in unnecessary regulatory burden, will
7 undermine the 8 hour shift rotation that was supported
8 by the Commission in generic letter 82.12.

9 And it could, ultimately, threaten to
10 undermine the future of this rule making effort. The
11 industry intends to address these, and other issues,
12 in a more detailed response in our December comment
13 package on the Proposed Rule.

14 I appreciate the opportunity to comment
15 today.

16 MS. KARAS: Are there further comments?

17 MR. NEWKIRK: We did challenge alternative
18 work schedule examples, specifically through our 8
19 hour groups in the field. The closest we have that
20 almost makes the regulation, on an 8 hour rotation,
21 for operators, would come from some testimony from
22 Point Beach, from a reactor up there.

23 So it will be on the record. But for
24 alternative work scheduling examples to comply, for
25 some of the 8 hour shifts rotations, we tried hard to

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1 provide some examples, and got one as close as we
2 could.

3 I think Crystal River tried hard and
4 couldn't get close. But Point Beach got very close
5 with a shift that almost would work.

6 So my point is, I think the NRC should
7 provide a prototype 8 hour rotation that they would
8 support for the workers. Because when you look at the
9 research of shift workers, they are the sacred vehicle
10 of a shift worker as a schedule.

11 And usually they have a long history of a
12 mutual agreement, and sitting down and trying to
13 figure out what works best for the company and the
14 workers. And research provides, if you look at the
15 Cicadian Institute's publications, if you go into the
16 Stockholm University's publications of shift work, any
17 time a shift is designed by the employees, in that
18 particular company, no matter how many days they work,
19 as long as they get quantitative sleep, 10 hours for
20 example, it is a good thing when they agree to those
21 conditions.

22 So, again, I would agree that 14 will, at
23 this point, and we tried to resolve with an alternate
24 shift to fit everything, we can't get there. And we
25 will provide those examples of trying to get there.

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1 MS. KARAS: All right. Are there further
2 comments on that issue?

3 (No response.)

4 MS. KARAS: Then we will move on to
5 question 15 on outage work scheduling. The NRC is
6 seeking comments on the exclusions from certain work
7 hour controls that would be allowed during maintenance
8 and refueling outages, and how those exclusions could
9 affect human error.

10 The NRC is specifically interested in
11 whether a more precisely defined rule scope with more
12 limited outage exclusions, would better meet the
13 stated objectives of the Rule.

14 Are there comments on that?

15 MR. ZIEBELL: Good afternoon. I'm David
16 Ziebell with Electric Power Research Institute.
17 Industry would first point out that the nature of
18 nuclear power is such that intensely focused outage
19 periods are a very effective means of assuring and
20 improving overall safety. That is how we work.

21 Available scientific evidence, and plant
22 experience, indicate that, for example, two super
23 crews working six 12 hour shifts have been effective
24 during outage periods, for a reasonable period, up to
25 ten weeks.

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1 No increase in human performance errors,
2 and safety of the plant has improved. The industry
3 also points out that the Proposed Rule would have
4 impact on about 15 percent of the plant outages in
5 2004, and in the future directly impacts outages that
6 support major plant improvements, which take some time
7 to do.

8 Therefore in answer to the question which
9 is, in effect, does the Rule need to be more
10 restrictive than the current rule? The answer is no.

11 MS. KARAS: Are there additional comments
12 on this issue?

13 MR. NEWKIRK: Todd Newkirk, IBEW. There
14 has been some comments placed with IBEW that the
15 success of the industry, and reliability and capacity
16 factor, also needs to be looked at, pre-outage.

17 There is a lot of package walk-downs, and
18 package preps, where you get into a pre-outage mode,
19 four weeks prior to the outage, to make sure you have
20 your game ready to go.

21 It is not an outage situation for, like,
22 a storm, where we turn the breakers off and go do
23 work. We plan our work a long term in advance, and
24 get it in those hours.

25 Four to six weeks prior to an outage,

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1 workers and management are moved into the transition
2 successfully, and pre-plan that outage to the T, and
3 walking everything down.

4 And that window also needs to be looked at
5 in definition for the outage, what is the outage.

6 MR. RIZZO: Again, this is from the
7 security standpoint, because those guys work a bunch
8 of different hours than we do.

9 My argument has been with the company,
10 forever, is that outages are planned years in advance,
11 you know when that outage is coming. You have a
12 chance to beef up for it, get ready for it from a
13 security standpoint.

14 So there is no reason we should be working
15 a whole lot more hours than you do normally, really.
16 You should be ready for it the whole time. That is
17 the heartache I have.

18 The outages are planned. You are talking
19 about refueling outages. They know, well in advance,
20 when these outages are going to happen. They should
21 be ready for them.

22 MS. KARAS: Are there additional comments
23 on that issue?

24 (No response.)

25 MS. KARAS: We will move on to question 16

1 on alternatives for addressing cumulative fatigue.
2 The NRC is seeking public comment on alternatives to
3 the group work hour controls that could also address
4 cumulative fatigue, such as individual work hour
5 limits, based on a longer term, such as monthly or
6 quarterly.

7 I know we have heard a little bit of
8 comment on this, already. Are there any additional
9 comments on that question?

10 (No response.)

11 MS. KARAS: If not, we will move on to
12 question 17 on defining job duty groups. The Proposed
13 Rule would require any individual who performs duties
14 within specified job duty groups, to be subject to
15 work hour control provisions.

16 Other individuals might substantially
17 impact the outcome of risk significant work, such as
18 certain engineers, like shift technical adviser.

19 The NRC is requesting comment on the
20 inclusion of other individuals within the scope. We
21 are also seeking comments on an alternative approach
22 for identifying the specific job functions that would
23 be subject to these requirements.

24 Specifically the NRC is interested in
25 whether, as an alternative, the scope should instead

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1 be structured to define attributes of the job
2 functions, that would fall within the scope of the
3 proposed work control provisions.

4 Under such an alternative the licensee
5 would then be required to identify the specific job
6 functions that define the attributes. Are there any
7 comments on that issue?

8 MS. MILLAR: Dana Millar with Entergy.
9 First of all, from the industry's perspective, as far
10 as the having impact on other individuals, such as
11 engineers, we don't feel that that would appropriate,
12 because the "fitness-for-duty" rule actually has built
13 into it the layering effect that we have already
14 talked about.

15 We will have behavioral observations that
16 will take place, and we will have the ability to have
17 self assessment, self-disclosures, and assessments at
18 any time that a supervisor, or another individual
19 would see someone fatigued.

20 So we don't feel that there is,
21 necessarily, a need to broaden the scope. We also
22 feel that the groups that are already defined are the
23 critical groups.

24 They are the ones that have the hands-on,
25 and the ones that actually would potentially have the

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1 impact of any safety issues that would occur
2 inappropriately.

3 So that group is the most appropriate
4 group. We do have a bit of a problem with the
5 definition of directing, in that it could lead to a
6 belief that someone like an engineer would be
7 involved, or included in this Rule. And we don't feel
8 that that individual should be.

9 And as far as defining alternate groups,
10 or functions in a different way, again, we considered
11 a maintenance group, we tried to consider different
12 ways that that could have been broken.

13 And we really, at this point, are unable
14 to define that in a good grouping. Thank you.

15 MS. KARAS: Thank you. Are there any
16 comments on that issue?

17 MR. DESAULNIERS: Before we move on I
18 would just like to go back to the concern with the
19 definition of directing. Could you please elaborate
20 on that?

21 MR. DAVIS: Yes, I would be happy to. In
22 the preparation of this rule there was a lot of
23 discussion of who, in operations and in maintenance,
24 should be subject to the group work hour limits.

25 In the operations area I think the word

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1 directing was put in there, and the discussion around
2 that, as I remember it, is you have an SRO who is
3 directing an RO. And I think we all agree that it
4 should be clear that that SRO, even though he is not
5 physically performing the function he is, in fact, in
6 charge, is responsible for the outcome, and is
7 directing the RO in the performance of the duties.

8 And between the SRO and the RO there is
9 clearly direction being provided to the NLOs that are
10 performing the other functions in the field.

11 In maintenance the discussion was much
12 more difficult in that we were trying to figure out
13 who is, in fact, directing. And I think the
14 discussion, as I remember it, we were talking about
15 the team leader, in the field, at the job site, who is
16 responsible for the proper execution of the job, to
17 ensure that the bearing is put in right side up, not
18 upside down, and is in a position to see that that
19 happens.

20 When combined with quality assurance,
21 procedures that have been prepared, and all those
22 other things, we felt that was adequate. I went back
23 and looked at the definition, directing, that is in
24 the front -- we forget that there is a definition of
25 directing, it is not in subpart I, it is up there in

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1 front.

2 And I think we have become concerned that,
3 one, the question in the package that says, asks you
4 to parse this. And, two, the discussion in the
5 Federal Register notice that starts talking about
6 certain engineers being part of this maintenance
7 directing group, called the operations directing
8 group.

9 That clearly indicates that the
10 understanding that was developed in the Rule package
11 is already coming apart, and we need to go back and
12 more clearly define, explicitly define, what we really
13 mean by directing.

14 We thought it was clear, we are now
15 confused. And we don't want to see this expanding
16 pool of people who are considered in that area. And
17 I think the reason the pool, or there is a press to
18 expand it, is that people are forgetting that the
19 expectation that each and every individual who is
20 inside the protected area, and has unescorted access,
21 shall be fit to perform the functions which he is
22 performing.

23 It is a requirement. We have behavioral
24 observation, we have training, we have a whole bunch
25 of things that establish that expectation, and

1 establish reasonable measures to ensure that those
2 expectations are met. Totally independent of how many
3 hour somebody has worked, and how long they have been
4 on shift, we expect everybody to be fit when they are
5 performing the function.

6 We expect them to be fit when they walk in
7 the door, we expect them to be fit when they walk out
8 of the door. So there is, clearly, a problem between
9 what was discussed in various public meetings leading
10 up to this, and what we see in some of the language in
11 the Rule package.

12 And that, obviously, generates a concern
13 for the industry in that particular area. And we've
14 had the discussion a number of times about the
15 critical group of individuals in various areas.

16 We had this discussion, extensively, in
17 the security arena, when the security order was being
18 prepared. We've had the same discussion, again, when
19 we were trying to figure out who was critical to the
20 safe operation of the plant, who is the one that
21 actually responds when there is an upset, who is the
22 one that keeps it inside the box.

23 And I think of all the groups the licensed
24 operators, and their associated NLOs, there are a
25 variety of other places in the Rule that you see

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1 unique requirements surrounding those particular
2 individuals that seems to say that everybody is
3 excepted, that operations, a licensed operator, are
4 somehow different from everybody else in the plant.

5 They are the only ones with a license, the
6 only ones with an explicit rule, training
7 requirements, and the ones that are required to be
8 examined by the NRC, they are required to have
9 physical examinations on a certain periodicity,
10 etcetera.

11 Operations. We have had some discussions
12 in the security arena which I can't go into all the
13 details of, but there was agreement that for other
14 reasons armed security officers, anyone who carries a
15 weapon, armed responders, which is actually a subset
16 of armed security officers, watch persons, CAS and SAS
17 operators, would be parsed in this critical group of
18 people who have to be under some sort of special
19 consideration.

20 That decision was made with the Order, and
21 was reinforced in another area of discussion. Those
22 two boxes seem to be fairly tight and contiguous. It
23 is when you start talking about maintenance that it
24 really gets fuzzy, and we are really struggling in
25 that particular area to look at trying to answer all

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1 the questions that people are asking.

2 And I know that the Commission has some
3 questions, and we have asked people to look at their
4 maintenance organization, how do you parse the work
5 out by functionality, or something? And the multi-
6 tasking, and the cross-tasking, the answers I have
7 gotten so far, preliminary answer, is the maintenance
8 organization that does the safety related maintenance,
9 and the non-safety related maintenance, on the plant,
10 is a single organization multi-tasked, and cross-
11 functional.

12 And it is hard to find one individual that
13 you task as a safety guy, and another individual who
14 isn't. The closest we have come is a few facilities
15 that may have a plant maintenance group, and a
16 facility maintenance group, where the facility
17 maintenance group is, in fact, a buildings and grounds
18 kind of group.

19 But not everybody does that. But that is
20 the closest you can come to parsing it in that area.
21 So we have some more work to do in this area. But I
22 think -- I told my team I would get out of the box one
23 before this was all over.

24 So we are having trouble struggling with
25 some of the questions that have been asked, and the

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1 suggestion that maybe we can cut things a little bit
2 differently.

3 And I'm sure you would understand that we
4 are struggling with this attempt to make the box
5 bigger, and bigger, and bigger. Ultimately you can
6 make an argument that everybody who is in the
7 protected area has some impact on public health and
8 safety, including the administrative assistants who
9 are working in the admin building inside the protected
10 area.

11 We absolutely agree with that, that
12 everybody in the protected area is expected to be fit
13 to perform their functions. We do not argue that
14 issue. And we have spent a lot of time trying to make
15 sure that happens.

16 Did that clarify your question?

17 MR. DESAULNIERS: A couple of months ago.
18 Thank you, Jim.

19 MR. DAVIS: I don't want to disappoint
20 you, Dave.

21 MS. KARAS: Do we have other comments on
22 that question?

23 (No response.)

24 MS. KARAS: If not then we will move into
25 the general comments portion of the meeting. We have

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1 a few minutes, yet, before our break at 2:30. So I
2 can just take a few quick comments, and then we will
3 move into the break.

4 MR. LOCHBAUM: Dave Lochbaum with the
5 Union of Concerned Scientists. I just had a couple of
6 process questions, more than anything.

7 One is that the industry stated, a couple
8 of times during this session, of its intention of
9 providing alternative means of meeting the Rule, or
10 changes to the proposed rule making.

11 If the NRC staff concurs with these
12 alternatives, is it the Staff's plan to republish the
13 revised rule for public comment, or just issue it as
14 a final in some kind of bait and switch move?

15 MS. MCKENNA: Let me just comment on that.
16 Obviously when we publish the proposal we try to give
17 you an idea of the bounds and scope of what our
18 requirements are, and where alternatives, whoever they
19 are offered by, we feel fall within that, the agency
20 could determine to go forward with the Final Rule.

21 If we find that there are proposals that
22 we think fall outside the bounds of what was
23 available, and on the table for comment, generally our
24 process has been to repropose. So I just can't speak
25 not knowing what their specific proposals are.

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1 MR. LOCHBAUM: Fair enough, I appreciate
2 that. The second process question is related to the
3 meeting tomorrow, that is somewhat related to this
4 activity, with the industry to talk about development
5 of proposed guidance.

6 You could look at the timing of this
7 meeting, and that meeting, and draw a conclusion that
8 the Rule is final, and this public comment period was
9 just for show. Because, otherwise, why would the
10 industry start developing guidance for something that
11 was a work in progress?

12 So we have a concern in that area. The
13 question I have is, does that concern have any
14 validity?

15 MS. KARAS: I can answer on the meeting
16 for tomorrow morning. The intent is, really, not to
17 go over specifics of guidance. It is to go over
18 schedule and level of detail, to understand better
19 industry's plans for submitting something, so that we
20 can work that into our resource manning, and
21 everything.

22 It is not in any way meant to construe
23 that, you know, we are going forward, it is final.
24 That is not what we were intending to convey.

25 MR. LOCHBAUM: I appreciate it, thank you.

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1 MR. DAVIS: Could I comment on that?

2 MS. KARAS: Sure.

3 MR. DAVIS: At least once in the meeting
4 I have to agree with the comments made by David
5 Lochbaum. But I think, so everybody understands, there
6 are some elements of Part 26 where the industry
7 already has guidance.

8 For example in the area of training, in
9 the area of the drug and alcohol portion of the Rule,
10 subpart C and D, we have guidance in that area.
11 Obviously as this rule goes forward we have to address
12 and figure out how to change it.

13 And that is probably the easy part. And
14 one of the questions we also, the industry has, is
15 what is the timing, and how can we do anything until
16 the Rule is final, and that kind of stuff? And that
17 is one of the questions that we will be addressing at
18 the discussion tomorrow.

19 Because I personally hope that the subpart
20 I is not a done deal, and final, since we obviously
21 have some changes that we would like to make to it.
22 Thank you.

23 MR. MCCABE: Actually one follow-on
24 question to Dave's question with regard to process.
25 Now, he put it in the context of the alternate means,

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1 and adopting alternate means, and republishing.

2 Help me with the process with respect to
3 if you did adopt an alternate means proposed by one of
4 the stakeholders but, instead, changed a significant
5 provision in the Rule, is it the intent to republish
6 a Proposed Rule?

7 MS. MCKENNA: I think I would give you a
8 similar answer. I think we have to look at what the
9 Proposed Rule was, what we are thinking about doing as
10 a result of the comment process, and see whether we
11 feel that, you know, either we drop something that
12 could be viewed as a significant provision, or
13 substantially altered a provision that was part of the
14 Proposed Rule, and came with an entirely new
15 provision.

16 And all of those, I think, would lead us
17 to say that we would need to republish. Now, to say
18 that we are going to change the reporting requirement
19 from annual to some other frequency, you know, we
20 might conclude that that is not substantial enough to
21 require a reproposal since the annual, for example,
22 was part of the Rule for comment, and people said it
23 was too high, or too low.

24 We would feel that was within the scope of
25 what had been on the table, under consideration. But,

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1 you know, if we came up with some totally new way of
2 trying to address cumulative fatigue, you know, that
3 nobody has even heard of yet, you know, I think that
4 one would seem to fall outside the bounds of what we
5 included in our Rule, we would have to give very
6 serious consideration to reproposal.

7 MR. MCCABE: Yes, because I think as this
8 rule making process has evolved, and new things were
9 put on the table, as you get input from stakeholders,
10 you are finding unintended consequences that were not
11 envisioned when it was put on the table.

12 And so that is the context of the
13 question.

14 MS. MCKENNA: Yes, certainly. And, you
15 know, if it really is that different I think it
16 warrants, you know, make sure that in our attempt to
17 solve the first set of problems we haven't created new
18 problems.

19 MR. MCCABE: Thanks.

20 MR. DAVIS: That sounds like a
21 recommendation to remove some part and publish the
22 rest of the Rule, and come back to subpart I. Oh, we
23 made that already, didn't we?

24 MS. KARAS: I guess that is one good segue
25 into also just mentioning that this brings up a good

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1 point as to why it is important not only to comment on
2 the parts of the Proposed Rule that you don't like,
3 but it is also important to comment on the parts of
4 the Proposed Rule that you do support.

5 Because we look at those, as well. If we
6 receive one stakeholder saying they don't support part
7 of the Rule and giving us an alternative, but then we
8 have other stakeholders saying they do support it,
9 that paints a different picture than if you only have
10 a stakeholder that complains about that provision of
11 the Rule.

12 So please do include, in your comments,
13 any support for any portions that you do wish to
14 remain in the Final Rule. We can take a couple more
15 comments before we break.

16 MS. MILLAR: You talked about
17 implementation and that we should put our
18 implementation requests to date, and our comments.

19 The "fitness-for-duty" rule portion,
20 versus the fatigue portion could potentially have a
21 need to have different implementation dates. Would
22 you all consider that?

23 MS. MCKENNA: We would certainly consider
24 it. I think it goes back to what Becky said, earlier,
25 to understand the reasons why, you know, saying this

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1 is new proposals, or more modified, or whatever.

2 And there has been precedent, in the past,
3 where we have said these sections become effective on
4 one date, and these other sections become effective on
5 a different date. So it is something we can do for
6 good reason.

7 MS. KARAS: Are there any other shorter
8 comments that we can take?

9 MR. BAUER: Joe Bauer from Exelon. I
10 would just like to make one somewhat rhetorical
11 comment. And that might be due to the fact that I'm
12 sitting this close to Jim Davis.

13 I really think that everyone in this room,
14 the NRC, the licensees, and all the stakeholders,
15 really have a common goal in mind. And that is to
16 have nuclear workers come to work alert and fully
17 capable of performing their function in an error free
18 manner.

19 That is, really, what this is all about.
20 And the only thing that we are debating here are the
21 details as to how to implement and achieve that goal.
22 So I really believe that we are looking and striving
23 toward the same end.

24 And the only thing that we would like to
25 do is ensure that the Rule, as published in its final

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1 format, allows us some of the flexibility that we will
2 be needing in operational space.

3 So, you know, given that, that is the
4 genesis of a lot of our comments. I just wanted to
5 note. Thank you.

6 MS. KARAS: We've got about five minutes
7 before break. Are there any other comments anyone
8 wants to introduce?

9 (No response.)

10 MS. KARAS: We can go ahead and take a
11 break until 2:45, and be back in here at 2:45, and
12 then we will continue with comments on the fatigue
13 management portions.

14 (Whereupon, the above-entitled matter
15 went off the record at 2:24 p.m. and
16 went back on the record at 2:45 p.m.)

17 MS. KARAS: We are going to go ahead and
18 continue on, then, with comments on the fatigue
19 management portions of the Rule.

20 Would anybody like to continue on with any
21 comments?

22 MR. DAVIS: Jim Davis, NEI. A question,
23 can you tell me what the purpose of addendum 1 to
24 attachment 4 is?

25 MS. KARAS: And I think you are referring

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1 to, for everybody else here, addendum 1 to attachment
2 4 is an addendum to the regulatory analysis, which
3 provides the methodology for quantifying the financial
4 impact, and the financial savings of the work hour
5 provisions.

6 And the purpose of that really, as you
7 know, for those of you who have read the regulatory
8 analysis, the main body, what that did is that
9 established the cost and savings resulting from the
10 Proposed Rule.

11 And it also discussed the benefits of the
12 Proposed Rule. In some cases ones that were not
13 quantifiable. And what we -- or that were not
14 quantified.

15 And what we came to the conclusion in that
16 was that, in terms of, for instance the fatigue
17 management provisions, that the Rule was justified on
18 the basis of the qualitative benefits, even keeping in
19 mind the costs that were associated with it.

20 However, what we did provide, to the
21 Commission, because the Staff had developed it, was
22 addendum 1 which presented a methodology for
23 quantifying some of those benefits. Not all of the
24 benefits, but some of the benefits of the work hours
25 provision.

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1 And what that was it was basically to try
2 and present, in that quantitative fashion, what those
3 benefits could be to industry. Not that they were
4 necessary, or required, for the regulatory analysis.

5 It was, merely, to provide additional
6 support. And so that is why we had placed it in
7 there, was to provide additional support, and
8 additional reasons for going forward with the Proposed
9 Rule.

10 MR. DAVIS: Is that considered, in any
11 way, in the backfit justification of the Rule?

12 MS. KARAS: No. Basically all of the --
13 everything that was done for justifying it in terms of
14 backfit, in terms of the regulatory analysis, that all
15 took into account the qualitative benefits alone.

16 Again, it was only provided in terms of
17 additional support for the rule making.

18 MR. DAVIS: I guess the reason for -- I'm
19 trying to decide whether to comment on that particular
20 section. And if I do comment what impact it has on
21 anything.

22 I think you probably would not be
23 surprised that some of us have great difficulty
24 believing that the conclusions that that section comes
25 to comports with reality.

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1 And the fact that it doesn't comport with
2 reality, you wonder why it is there, and whether there
3 is any advantage to pointing out, ultimately, that it
4 doesn't comport with reality.

5 You know that statement that it isn't
6 taken into consideration with the backfit analysis,
7 and yet it is added in, put another 200 or 300 pages
8 in a 1,635 page package, makes me wonder why it is
9 there, and what its purpose is.

10 And so I guess I still don't have an
11 answer to it. I spend the time to comment on it, what
12 does it do? It sounds like it doesn't do much of
13 anything.

14 MS. KARAS: I guess what I would say is
15 that any comments that you can provide on any portion
16 of the package are valuable to us. Just because it
17 didn't factor into the base regulatory or backfit
18 analysis at the Proposed Rule stage, I think wouldn't
19 necessarily prohibit a commissioner, or the
20 Commission, making the determination at the Final Rule
21 stage, that they did want to credit it.

22 You know, it is possible that that could
23 occur. So I think any comments that you would make in
24 that area would be valuable. I don't know if you have
25 any other thoughts on it?

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1 MR. DESAULNIERS: Becky correct me if I
2 misspeak here. But just to add that I think that what
3 needs to be recognized is that we have guidance from
4 the Commission, when doing these analyses to quantify,
5 where possible.

6 And that was an attempt to do a
7 quantification in an area that is very difficult to
8 quantify. And we made our best effort at trying to
9 address that, and significant work. Whether you agree
10 with the results or not, obviously, a significant
11 effort was put into that to try to quantify this area.

12 And staff saw no reason to not share that
13 part of the work that it had done on this rulemaking,
14 with the Commission.

15 MR. DAVIS: Well, it won't surprise you
16 that we don't agree with the conclusions of that
17 particular enclosure. I suspect if we spent the time
18 and energy we could come up with a pretty sound basis
19 for not agreeing with that.

20 That is what I'm trying to figure out, is
21 how much resources to put on showing that that is not
22 a reasonable conclusion of what impact it has in the
23 grand scheme of things.

24 The proposed increase in productivity just
25 doesn't make any sense, it doesn't. You take the

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1 facts, start looking at the facts, and try to figure
2 out how this fits in is very difficult.

3 I think you, I guess you have answered my
4 question. I mean, the most important thing is, from
5 a legal standpoint, is whether it is or is not part of
6 the backfit justification.

7 You are saying it is not considered as
8 part of the backfit justification?

9 MS. KARAS: That is correct, in the
10 Proposed Rule package it is not considered --

11 MR. DAVIS: In the legal review of the
12 backfit, whether backfit has or has not been met, that
13 shouldn't be considered as part of your backfit
14 analysis, is that a correct statement?

15 MS. KARAS: Right. What I'm saying is
16 that the package has been put forward it is not
17 considered as part of the backfit determination. That
18 is another reason it is moved into an addendum to the
19 regulatory analysis, and backfit analysis document.

20 It is not, it does not factor into that
21 decision, whether or not it passes backfit.

22 MR. MCCABE: However, I mean, getting to
23 your question, though, while it is not part of the
24 benefit, I would say that that information is used by
25 the Commission, could be used by the Commission in

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1 reaching a decision on whether to move forward or not
2 to move forward with the rule making.

3 MR. MCCUNE: I would only add that I
4 believe that is correct. And that while it is not
5 tied to the decision criteria, or the backfit as we
6 have described, as Becky mentioned, it would not
7 prevent a commissioner from saying, this is something
8 that I either think has merit, and in support of it in
9 some way, although unweighted, if you will.

10 So I would suggest that you comment on
11 that section, because it would help us in the
12 furtherance of fatigue management to know what your
13 feelings in the industries are in that regard.

14 MR. DAVIS: Okay, I get it.

15 MR. COWAN: I want to make overall
16 comments. My name is John Paul Cowan, and in this
17 capacity I'm the Chairman of the Executive Oversight
18 Committee for the work hour taskforce with NEI.

19 And I want to summarize, give a
20 perspective of the Rule from an executive level, which
21 represents the chief nuclear officers view of the
22 overall rule.

23 First we recognize the need for many of
24 the provisions that are in the Rule. And I don't
25 think we should lose sight of that, and I'm speaking

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1 specifically on the work hour portion.

2 For example, we agree with the need for a
3 ten hour break. We also support the need for some
4 kind of break in consecutive work days. But we don't
5 believe that the 14-48, or the 7-24, really address
6 the practical issues with implementation.

7 It is as if there is an appearance that
8 something magical happens after the sixth day, or
9 after the 14th day, without regard to what is done in
10 those six days.

11 For example, some schedules, as we said,
12 half the schedules that I think Jim referred to, will
13 work something like five days of training, eight hours
14 a day, and then work into 3 days of 12 hour days in
15 the normal shift rotation.

16 Most operators would certainly tell you
17 that six days, or seven days, or eight days of eight
18 hours, is significantly different than six days, seven
19 days, eight days of 12 hours, or you have six days of
20 different work, or eight days of different types of
21 work, significantly less of an impact than seven or
22 eight days of the same type of work.

23 So we think there is an alternative, or
24 alternatives, that better meet the intent, that offer
25 better control by those of us who are responsible for

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1 implementation, and we will provide those in writing.

2 We are also supportive of the recognition
3 that exceptions or alternatives are needed for
4 outages. We don't believe the rule fully recognizes,
5 though, the impact on major equipment outages that
6 this will have.

7 As was pointed out, 15 percent of the
8 outages last year would have been impacted. And as
9 pointed out by somebody earlier that, in fact, some of
10 the outage preparations begin four to six weeks
11 earlier.

12 And we are already into a work schedule.
13 But that type of work is significantly different than
14 the work that is being done in the execution of the
15 outage.

16 But, on the other hand, we want to
17 address, specifically, again you have heard us talking
18 about the layering of requirements that we believe
19 makes the cumulative group hours unnecessary.

20 The purpose of Jim referencing the DOT
21 rule making isn't that the industry necessarily
22 supports the specifics of that with 34 hours, or
23 whatever is necessary.

24 But what we do point out is that rule
25 making found cumulative type of requirements to be

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1 unnecessary, by putting in individual requirements,
2 such as the 16-24, 26-48, 72-7 days, similar to what
3 the Rule 82.12 has, although they have their own
4 version.

5 But we want to make it equally clear,
6 though, that it is impractical to implement quarterly
7 or annual limits in an industry where workers come in
8 and out of the industry.

9 For example, many technicians, many
10 welders, will work in the nuclear side of the
11 business, they will work on fossil sides of the
12 business, they will work in chemical industry.

13 And it is just not practical for us to be
14 controlling, or evaluating, what implementation, or
15 what the impacts are of their hours that they work
16 external to our facilities.

17 Finally we think the reporting is
18 burdensome and it creates more paper than action.
19 When the data can be kept for inspection, if needed.
20 We really can't see the basis for reporting
21 information that has no real context behind it, and
22 how that would be used for inspection purposes.

23 For example, Jim gives the example of
24 working the diesel on the weekend. If I work two
25 crews for 12 hours to finish that diesel, or feed

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1 pump, which by the way the Rule wouldn't apply to.
2 But we get back to the fact that those workers work
3 Friday, potentially on a safety related item, and may
4 work Monday on a safety related item. That is what
5 Jim referred to.

6 But if work two crews of five people on
7 the diesel, on day seven I have ten waivers, on
8 Saturday or Sunday, depending on what happened the
9 previous week. When it gets to the end of that week,
10 they are back off the diesel working regular work.

11 But if I haven't given them additional
12 time off I'm writing another additional ten waivers,
13 because I'm running into the 14 day rule, potentially,
14 the 14 day limit. Depending on, again, what happened
15 the week before.

16 So one task results in maybe 20 or more
17 waivers. And that is the type of information that
18 would be reported, and we really don't see the basis
19 for how that information would be used for inspection,
20 or auditing, or reporting purposes, when that data can
21 be kept on site where a person that looks at the data
22 could say, yes, I understand that diesel maintenance
23 caused this number of waivers to occur, and why you
24 did it.

25 But overall, again, the industry is very

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1 supportive of many of the provisions in the Rule. We
2 do believe, though, there are alternatives that make
3 the Rule more practical in implementation.

4 MS. KARAS: Move on to any other comments?

5 (No response.)

6 MS. KARAS: Is there anybody in the
7 teleconference bridge who hasn't received an
8 opportunity to comment, that would like to make any
9 comments?

10 (No response.)

11 MS. KARAS: It is going to be a short
12 meeting. Pass down the mike, please.

13 MR. STOCKTON: The work that we have done
14 in the security area, with the security officers, is
15 very clear what the problem is with fatigue, there.
16 First of all, it is the fact that the utilities refuse
17 to spend the money to hire enough guards. It is as
18 simple as that.

19 And the situation that I was talking
20 about, at Beaver Valley, that was remedied, you know,
21 in large part by hiring more guards, and treating the
22 guards better. I mean, that is another issue, but we
23 won't get into that at this point.

24 The whole issue of self-declaration has
25 been such a joke, I mean, it is unbelievable that now

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1 they are saying they are going to be very sensitive to
2 the guards, and they will counsel them, and talk to
3 them face-to-face about their problems with fatigue.

4 What the hell have they been doing all
5 this time? I mean, when guys come in and say, hey
6 boss, I think I'm too fatigued, and either he gets
7 fired, and there have been examples of that, as you
8 know, and sent off to psychiatrists.

9 And then all of a sudden they get lousy
10 schedules. So it is fairly simple to us. All this
11 complication baffles me, I have to tell you.

12 MR. RIZZO: Have you ever thought about
13 letting each plant -- I know you are trying to get a
14 general idea, like at Salem Creek we have a set
15 schedule. Do you follow what I'm saying?

16 All 12s, we have a set schedule. Have you
17 ever thought about maybe letting each utility try to
18 come up with something for their plant? Because I
19 work a 36 to 48 hour week. To avoid all this, you
20 know, we would let somebody work one day off on a 48
21 hour week, two days off on a 36 hour week.

22 The way our schedule runs the most you
23 would ever work was four 12s in a row, have a day or
24 two off, maybe work three more 12s, have a couple days
25 off. We are still meeting the many requirements.

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1 But sometimes on the back end we will run
2 into problems because everything is consecutive,
3 because you have the back when you do your work hours,
4 you have to go forward, and you have to plan, you
5 know, what does this person work this week, and how it
6 is going to run out on the floor.

7 But a lot of times people on set schedule,
8 at least with 12s, like with the 8s I can't help you
9 guys with that, because we are on 12s. But if we
10 could do it by plant, and just come up with something
11 to show you, you know, that -- let us come up with not
12 our own fatigue rule, but you can work one day off on
13 a 48 hour week, two days off on a 36 hour week, and
14 that was it, we won't let anybody else work.

15 And you just go on down the line, and you
16 spread the overtime out to where nobody could do it.
17 But it is hard to do because we have to go into a
18 fatigue rule. And have you ever thought about
19 looking, okay, your plant does this, what can yours
20 work out, to you, to the NRC, to try to keep
21 everything happy. It might work better like that.

22 I don't know if it would be too much of a
23 pain, but it could help.

24 MR. DESAULNIERS: I guess I just want to
25 make sure I understand your comment. Are you

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1 proposing that we would consider approving schedules
2 on a site-specific basis?

3 MR. RIZZO: I think it would work a lot
4 better. We have been doing this schedule since 1998,
5 and it works pretty good. If the fatigue rule works
6 good for us, but in some ways it kind of hurts a
7 little bit, too.

8 If we could come up with a set thing and
9 maybe just submit to you, this is the way that people
10 want to work. Do you know what I mean? Unless you
11 have, like you said, outages are planned, refuel
12 outages.

13 But there is also, in our industry, from
14 a security standpoint, we have unplanned security
15 outages. Things could go wrong, and bam, things are
16 crazy. Then the fatigue rule helps because you can
17 only go on so long and they have to correct it.

18 But, like I said, the way we used to do
19 it, like you say, you are allowed to work one day in
20 a 48 hour week, two days in a 36 hour week. And the
21 most you would ever work was four 12s in a row, and
22 you would have that break.

23 Because once you get to that fifth 12, and
24 that sixth 12, that is when you start getting yourself
25 hurt, as far as staying awake. I can't speak for

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1 anything else, but just that part of it.

2 MR. DESAULNIERS: Since you presented it
3 as a question I will just say that we had not
4 considered approving schedules on a site-specific
5 basis.

6 Our intent, in developing this rule
7 making, was to establish requirements at a high enough
8 level that it would allow for a variety of approaches
9 at a site-specific level, and still meet the overall
10 requirements.

11 Certainly we have heard several commenters
12 note that they do not see the flexibility there. And,
13 you know, we have taken note of that and we will be
14 looking forward to future comment on that area.

15 But, really, the objective was for them to
16 still be able to set their own schedules within
17 certain higher level constraints. Does that answer
18 your question?

19 MR. RIZZO: Yes.

20 MR. DIEC: I just would like to note that
21 as part of the rule making process, the example that
22 you provided certainly gives us some insights as to
23 how the Rule will be implemented, from a different
24 perspective, altogether.

25 So as part of the consideration for the

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1 Final Rule going forward, certainly the information
2 provides us some insight.

3 MS. MCKENNA: Also, just to comment on
4 your point, and what Dave Desaulniers was saying, I
5 think the intent is to try to write the Rule at a
6 certain level, you know, the kind of, what schedules
7 would work to meet those requirements, I think is
8 something that in the Rule and the guidance, to say
9 here are several examples of ways that a schedule
10 could be laid out that would satisfy the various rule
11 provisions.

12 And then the various utilities which
13 could, you know, if they found one that was suitable
14 to them, they could use that model to work from. But
15 we hadn't really envisioned, I think, putting the
16 schedules themselves in the Rule, or reviewing them,
17 as was suggested, on an individual basis.

18 MS. KARAS: Todd?

19 MR. NEWKIRK: I will go ahead and finish
20 up some general comments that we brought as
21 observations. Todd Newkirk, IBEW.

22 We generally think that codifying 82.12
23 long day, a long time ago, probably we wouldn't be
24 having a subpart I discussion today, if we had done
25 that a long time ago on 82.12, because that is still

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1 being seen in the workforces, truly the commandments
2 that drive how work is done, and should be done.

3 And we understand that there has been a
4 history that that wasn't always the case in certain
5 plants. The 2 day 48 hours in every 14 days with an
6 aging workforce, if industry is not successful, and
7 the stakeholder is not successful, I'm questioning
8 whether that is a requirement during the outage, you
9 get into a permissive question with some aging worker.
10 You know, is that my choice or not, is that going to
11 be part of an alternative if it is going to be that
12 way.

13 You know, is there going to be a choice
14 where I can't have that second day off, if there is
15 any latency delivered in that area. The ten hour
16 break was very welcomed.

17 I think we are saying it is a good thing
18 throughout, as a positive step. However, the 8 hour,
19 it throws a monkey wrench for 8 hour shift workers,
20 you know, the unforeseen consequences to 8 hour
21 shifters.

22 The self-reporting, 26.197, has been
23 pretty much thought of as a good thing to be able to
24 do, with fatigue training going hand in hand with it.
25 They appreciate the work industry has done, and NRC,

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1 and all the stakeholders, in those two areas, on how
2 to report the fatigue side of it.

3 Still there is a lot of -- and we sit
4 50/50 on this, that is labor from IBEW. So we are not
5 even, I will go ahead and say it now, we reserve the
6 right to give you written comment on December 27th,
7 since we are going to caucus convene the first week of
8 December, and get to the final answer on where we
9 stand.

10 But it is a majority of us saying that
11 eight weeks, industry deserves more than eight weeks,
12 without going through exotic permission status of an
13 outage, especially for major equipment. The aging
14 plants, we have a lot more steam generators, a lot
15 more big components looking at us in the future.

16 And the eight weeks seems too low, the
17 outage exclusion for the work hour. And, again, we do
18 have six plants today that are in 8 hour shifts, with
19 one of those providing written comment through some
20 operators, at least one operator, to the NRC.

21 Point Beach is trying to solve the riddle
22 of 8 hour shift rotation. And very concerned, because
23 they have very successful history of working 8 hour
24 rotations, and they are trying to find resolution for
25 working together.

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1 If anybody can get some Einstein math
2 together, and make it work, we just come up short on
3 how an 8 hour rotation works. So we have effective
4 dialogue ongoing, currently, in the field.

5 We have been teleconferencing over the
6 last two months, getting input from various local
7 unions, and we will be reporting back by December 27th
8 with written comments.

9 MR. MCCABE: Brian McCabe from Progress
10 Energy. One process question that NEI is submitting
11 for comments, on behalf of the industry, and it
12 believes that the new reporting requirements aren't
13 consistent with the provisions of the Paperwork
14 Reduction Act.

15 Where does the OMB process, and the NRC
16 rule making process, come together with respect to the
17 reporting provisions?

18 MS. MCKENNA: Before we publish a Proposed
19 Rule we have to provide a package to OMB that we call
20 supporting statement, where we go through an analysis
21 of what are the changes in recordkeeping, and
22 reporting requirements resulting from the activity we
23 are undertaking.

24 And, you know, who is affected, how many
25 licensees, how many hours we estimate, and that

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1 information is available for review. And then,
2 generally, OMB will give us -- essentially we have to
3 get their approval before we publish the Proposed
4 Rule. Excuse me, at the Proposed Rule stage we have to
5 send it to OMB before we publish it. When they
6 receive comments from stakeholders on rules. And they
7 either give us an approval, or they may say, depending
8 on whether they get comments, the nature of the
9 comments, they may say, no you bring us a revised
10 package once you -- when you are at the Final Rule
11 stage, where we have addressed the comments and,
12 perhaps, requirements have changed as a result of the
13 comments.

14 And we resubmit an OMB package, and we
15 have to get an approval before we can publish the
16 Final Rule. Sometimes, you know, that can be the
17 pacing item on issuance of the Rule because they are
18 not going to look at it until it is, indeed, final
19 from the agency's point of view.

20 And then they have their 30 day review
21 process, and things like that. So that is kind of
22 where they weigh in at the Final Rule stage.

23 MR. MCCABE: Great, thanks a lot, that
24 helps me.

25 MR. DAVIS: As I'm thinking through the

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1 comments we made earlier, I think -- and I talked
2 about unintended consequences at one point. I think
3 there is one that is probably worth making you aware
4 of, at this particular point, that for some reason we
5 haven't brought out yet.

6 One of the challenges that we feel is
7 coming out of this Rule, particularly during the
8 outage period, is the ability to attract qualified
9 supplemental worker.

10 I think one of the unintended consequences
11 is we are already having a challenge getting qualified
12 supplemental workers to come in. We are having a
13 challenge getting the repeat rate that we would like.

14 And that, obviously, is a significant cost
15 and issue, you need a certain number of people coming
16 back in that have experience in this area. Attracting
17 the best qualified welders, and other people.

18 And virtually every one of our plants is
19 in competition, usually during the fall and spring,
20 with other industries for the supplemental workers.
21 And in most cases they have reported, to us, that they
22 measure -- one of the measures that they use is how
23 much work are they going to get, and what kind of
24 hours are going to be available to them.

25 For example, right now, I have just gotten

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1 a couple of reports that we may be having some
2 difficulty in the fall outage period. We haven't run
3 across it, I mean, we haven't confirmed it yet, but it
4 appears a significant number of our supplemental
5 workers are moving south to help in the reconstruction
6 in the New Orleans area, because they are being
7 offered 12 hour days, seven days a week, and as much
8 work as they want.

9 And they are going where the money is.
10 There are two factors in the Rule that impact. One,
11 the provision, the 48 hour provision that would
12 restrict an individual from 72 down to 66 hours, on
13 average, during the outage.

14 And the second one is the eight week
15 provision. I mean, I ask you to go and think about a
16 major equipment replacement, like a steam generator,
17 that is going to take 90 days.

18 And what is going to happen when you take
19 the thousand supplemental workers that you need to
20 support that particular evolution, and tell them, at
21 the eight week point, that they are now only going to
22 get 48 hours a week going forward from that point.

23 We think that there is a major challenge
24 there. Even if the replacement individuals were
25 available, which I don't think they are, we know that

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1 we are going to lose a significant number of those
2 people when we get to that point, they are going to go
3 somewhere else, where the work is available, unless
4 there is a major change in the economy, that we don't
5 foresee.

6 And you will see some of this coming. But
7 the multiplicity of impacts that come out of changing
8 the way that we work outages, is very significant.
9 Even we are having trouble getting our arms around
10 some of the impacts that are coming out of this Rule.

11 And, unfortunately, I personally feel that
12 we are not going to identify all the impacts, for you,
13 before the Rule is issued. If the Rule was issued as
14 it is I'm sure we are also going to be surprised by
15 some of the impacts and the consequences that are
16 going to come out of this process.

17 So I just give you that as one example,
18 the supplemental worker issue is very important. It
19 is very important to us, this Rule notwithstanding,
20 that we have had a major effort, ongoing, to try to
21 identify and get more people available to support the
22 supplemental work force, major issues in training, and
23 attracting people, and advertising, and working with
24 community colleges, and other areas, because of the
25 shortfall that is occurring in supplemental workers,

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1 like HPs and others, that are needed throughout the
2 industry.

3 And so there is great concern, within the
4 taskforce that is working this particular area, with
5 others in the industry, that we have the potential of
6 making that situation worse, not better, with some of
7 the provisions that are in this rule.

8 So you will hear more from us on that, I
9 guarantee you. But you need to think about that. I
10 mean, that is also part, that is part of the reason
11 for some of the excitement that you hear from us
12 today.

13 And, perhaps, it is part of the reason
14 behind, what do I want to say, the apparent confusion,
15 or the fact that we are not quite ready to give you
16 alternatives at this point, is we are finding that
17 there is complexities with any alternative that you
18 put on the table.

19 And we would like to be able to put the
20 alternatives on the table that provides the greatest
21 assurance that the workers are fit for duty, and has
22 the least unexpected, unintended consequences in the
23 process.

24 So perhaps I should have brought that one
25 up a little earlier in the discussion, but I sort of

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1 missed that one. Thank you.

2 MS. KARAS: Did you have a comment?

3 MR. RIZZO: What Jim was saying, he is
4 right. Like I said, I have been with Salem Hope Creek
5 for 19 years. When outages come along we used to have
6 the same people come back every year, you knew when
7 they would be back, because they would come there, and
8 they would make the money.

9 But through the years, here, and I will
10 tell you these guys, and girls, HPs, welders, or
11 whatever they do, they live in two different states.
12 They don't pay here, and they also send money home.

13 And they will tell you, if I'm not making
14 no money here, I'm not coming back. They have to go
15 where the money is. And you are starting to see,
16 where you see strange faces, instead of seeing the
17 same people you used to see come back all the time.

18 And as far as they are concerned, doing
19 that, you will have a hard time. Because the
20 security, and more and more we don't see many of the
21 same people come back. They are going to go where the
22 money is at. So you don't know who you are going to
23 get down the road.

24 MS. KARAS: Other comments?

25 MR. DAVIS: Fifteen seconds.

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1 MS. KARAS: Well, I knew you couldn't be
2 done.

3 MR. DAVIS: No, I mean, you wait 15
4 seconds and somebody will say something.

5 (Pause.)

6 MR. DAVIS: I'm done.

7 (Laughter.)

8 MS. KARAS: We can move on to --

9 MR. BAUER: Joe Bauer, from Exelon.
10 Implementing the Rule as currently written would at
11 least cause us, and I think a lot of the licensees, to
12 have to renegotiate a lot of our bargaining unit
13 contracts.

14 Could you give me a rough idea, a best
15 case scenario, when the Rule might possibly be
16 published? So given the December 27th comment, end of
17 comment date, AND then the review by the Commission,
18 going to OMB, etcetera, neglecting any implementation
19 period, when best case scenario would the Rule
20 potentially be published in its final format?

21 MS. KARAS: Are you talking about best
22 case from the standpoint soonest, or latest? I wasn't
23 sure what best would be from your point of view.

24 MR. BAUER: Soonest.

25 MS. KARAS: The soonest. Obviously the

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1 Commission will provide us with a schedule for when to
2 provide them with the Final Rule. And at this point
3 we don't have the answer for that.

4 I mean, I could take a guess for you, at
5 when, you know, it might be likely that we might be
6 told that we need to provide a Final Rule. I think
7 the Commission did provide us with a final rule making
8 schedule for a couple of other rules, recently.

9 For the final I think there were some that
10 we got recently, in early June. Oh, they are all
11 proposed, okay. I mean, one can postulate that the
12 Commission, a lot of times, will ask for things in
13 early June, given the expiration of certain
14 commissioner's terms.

15 It is -- I mean, it is possible --

16 MS. MCKENNA: I think, clearly in this
17 case, early June for something that ends in December
18 is not in the realm of possibility. This is not a
19 simple rule, there is a lot of issues.

20 Just going through and analyzing the
21 comments, and deciding what action the Staff is going
22 to recommend, and then providing the package that gets
23 reviewed by everybody, and goes back to the
24 Commission, it wouldn't happen, I don't see that,
25 realistically, before June.

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1 And then, obviously, the Commission has to
2 deliberate. And then whatever changes they have, it
3 has to get published, depending on whether or not OMB
4 has given us an approval, or not, and we have to get
5 a final review.

6 I mean, I personally, I would say end of
7 next year is probably about the soonest I personally
8 would see. And that is just kind of based on the
9 factors I just went through. There is a lot of
10 perturbations, uncertainties in there.

11 If we decide that we want to make
12 substantial enough changes, as was mentioned, and we
13 go back out for comment, obviously the schedule is
14 changed even more.

15 If the Commission acts quickly, it can
16 move up a little the other way. But I think current
17 practice is they take their time to review, make sure
18 they understand things. This one was, probably,
19 actually between the proposed, the paper going up and
20 the SRM was probably fairly quick timing in the scheme
21 of things.

22 But, you know, that is probably on the
23 shorter end. But given what we have done, already, in
24 terms of the number of comments, I think there is
25 going to be a lot of material for the Commission to

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1 consider.

2 MS. KARAS: Yes. As Eileen mentioned,
3 really, it depends on many, many different factors.
4 And it is really difficult for us to try and estimate
5 that at this time. It just depends on when the
6 Commission wants the Rule to be sent up to them.

7 It is dependent on how many comments we
8 receive during the public comment period, and how
9 substantial those comments are, and the changes that
10 we would see made based on those comments.

11 What I can tell you is that if you keep a
12 close watch on when the final SECI paper would go up,
13 which the Commission typically makes public shortly
14 after they receive it, then you know that there is, at
15 least, a couple of months between that and when we get
16 the SRM.

17 We actually go to send the publication
18 off, and then there is, potentially some time for OMB
19 to get -- and in addition to that, after that, there
20 is the whole implementation period, which you would
21 know at least what we were proposing based on the SECI
22 paper.

23 So you should know that fairly early on,
24 once the SECI paper comes up, as to about how long the
25 delay after that would be expected to be. But

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1 deepening on the ESRM that we would receive from the
2 Commission, I mean, if they would want substantial
3 changes to it, it will take longer for us to turn
4 around.

5 You know about how long it took to get
6 this Proposed Rule turned around, and there were very
7 few changes that the Commission made in its SRM. If
8 they make more substantial changes it takes much
9 longer to get to the point where you would actually go
10 out and publish that Final Rule.

11 So that is why it is all very difficult
12 for us to really give you an estimate as to when that
13 time would be. But, again, like I mentioned earlier,
14 I would encourage you to comment on things like the
15 implementation period, and how long you believe, and
16 why you believe you need the implementation period you
17 do.

18 MR. BAUER: Thank you.

19 MR. DIPIETRO: Nick DiPietro, First
20 Energy. And I'm thinking about this, as far as how it
21 relates to me as a "fitness-for-duty" program manager.

22 And I'm trying to understand the
23 philosophy behind the waivers. I know it is supposed
24 to get management's attention if somebody went over a
25 certain amount of hours for their work schedule.

1 But looking at it from a perspective of,
2 you know, what is the NRC going to do with that
3 information, is 50 waivers going to be considered too
4 many, or 100 waivers, or 700 waivers?

5 You know, we are going to be submitting
6 this information to the Commission on an annual basis.
7 And I was just wondering what the philosophy was
8 behind it. Because just thinking about, if we are in
9 an outage in the fall, and we are going to switch from
10 daylight savings time, back to standard time, you are
11 going to have 700 people on site, you may have to
12 have, if they are on a 12 hour schedule, to work that
13 extra hour.

14 So now I'm going to have to submit 700
15 deviations as part of my annual report. And I just --
16 I didn't know if that was taken into consideration
17 when you were setting up some of the requirements of
18 this Rule.

19 So that is just a comment that I had, that
20 I wanted captured for the record, I guess.

21 MR. DESAULNIERS: With regard -- I guess
22 the comment and the question, the question, as I
23 understood it was what is the philosophy for having
24 the waivers reported?

25 The reporting requirements, let me back up

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1 and say, overall -- although we heard the comment with
2 regard to the constraints that this rule would put on
3 licensee flexibility, the Staff believes that actually
4 substantial flexibilities were built into this rule.

5 And the idea of the averaging, which
6 allows licensee discretion with respect to who works
7 more hours, who works less hours, who is more capable
8 of doing it or not.

9 The approach here of continuing to
10 authorize waivers, and that is these are conditions
11 where you are, it is necessary to prevent or mitigate
12 a condition adverse to safety. So this is not
13 inconsequential situation that you are allowing an
14 individual to work many more hours on.

15 This is something that you believe is
16 important from a safety perspective, yet you are
17 allowing an individual who, given the number of hours
18 they may have worked, more than 72 hours in 7 days
19 now, is that a high potential for fatigue?

20 We believe that these are instances here
21 now where you are providing the flexibility, but we
22 also want to ensure that that flexibility is being
23 exercised with appropriate discretion, and that safety
24 is not being compromised.

25 So overall the reporting requirements are

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1 generally focused on those areas where that discretion
2 is being used. And to answer your specific question
3 about how many waivers would, you know, categorize,
4 put a plant into a problem versus not a problem, with
5 respect to waiver use, it is not the intent for the
6 NRC to establish some quantitative number.

7 We would be looking at this information,
8 trending this information, looking at the specifics of
9 how those waivers might be used in conjunction with
10 how many self-declarations are we seeing, how many
11 for-cause assessments are being performed.

12 So it would have to be, obviously, a
13 composite look and I don't think there is going to be
14 any black or white answer, which would trip some clear
15 flag here.

16 I understand the comment with respect to
17 one work case could generate many waivers. We realize
18 that, that is not something that is there today, in
19 the current system.

20 And for some reason it is appropriate that
21 one case generate several waivers, because if the
22 individual still hasn't had a chance to get a rest
23 break then, yes, they are going to continue to
24 generate waivers, because they haven't had time off.

25 But they also happen to have had a rest

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1 break, so that is another day they are working at
2 potential risk. So there is actually some information
3 that is appropriate there.

4 So, hopefully, that answers your question
5 with respect to the philosophy overall, and what we
6 are asking to report, and how we will be responding to
7 it.

8 MS. KARAS: And I just wanted to clarify,
9 too, to chime in with Dave, I guess the question that
10 was posed about a certain instance generating multiple
11 waivers.

12 And although we only require the reporting
13 of certain things, or we would only require the
14 reporting of certain things with regards to waivers,
15 there is obviously nothing prohibiting a licensee for
16 adding any additional information into that report, if
17 they feel that additional explanations, or anything,
18 are of value, to put any of the data that is being
19 reported in context.

20 So you can always report or supply us with
21 additional information that you feel would be useful.
22 So that would be one opportunity you could have to do
23 that.

24 MR. DESAULNIERS: I also want to add, too,
25 just a point that I didn't make earlier. I think I

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1 mentioned it in the slides, when I referenced
2 efficiency of NRC oversight.

3 Clearly, you know, the comments, these
4 records will be available on-site. NRC can come out
5 and inspect them. And we could do that, and we could
6 go from site, to site, to site and expand substantial
7 resources and, perhaps, gain little information.

8 What we are trying to do here is to look
9 at an approach that provides us some way of, perhaps,
10 focusing our resources. It wouldn't be until we
11 looked more deeply into any one of these particular
12 situations, so we could come away with any
13 conclusions.

14 MS. MILLAR: Does that mean you would not
15 run an inspection, possibly?

16 MS. KARAS: Would you hand her a
17 microphone?

18 MS. MILLAR: This is Dana Millar with
19 Entergy. Does that mean that you might not consider
20 the possibility of writing an inspection manual for
21 the resident inspectors to use?

22 MR. DESAULNIERS: Correct me if I'm wrong,
23 but we do have an inspection procedure for the
24 "fitness-for-duty" programs. I anticipate that if
25 this Rule goes final we would amend that inspection

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1 procedure in order to address the work hour
2 provisions?

3 MR. MCCUNE: That is correct.

4 MS. KARAS: While we are waiting to see if
5 anybody has another comment, for tomorrow morning's
6 meeting, can I just get a show of hands on about how
7 many people plan on attending? I'm just trying to
8 make sure the room is going to accommodate everybody.

9 So how we will do that is if you will all
10 kind of pool in the lobby area, we will be sending
11 people down periodically as the meeting draws near, to
12 escort groups of people up.

13 So if you call up from security stand up
14 to my phone you will get a vacation message, because
15 I'm soon to leave on vacation. So stay down there and
16 we will come and get you, we will be sending people
17 down.

18 I guess if anybody is running really late,
19 and you are only there for part of the meeting, we
20 have someone --

21 MS. MCKENNA: As Becky said, for the
22 meeting tomorrow the intent would be, obviously,
23 people are expected to be there on time, that we can
24 collect them. It is only if somebody is delayed, or
25 whatever, for those reasons.

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1 And you still want to come to the meeting
2 -- I mean, I've had occasions where the guards have
3 called up but sometimes the phone numbers in the room
4 don't match the phone numbers on the list. So I will
5 give you another number to call just in case.

6 My number, which is 301-415-2189. And you
7 can either -- I'm sorry, 2189 is the last four digits.
8 Hopefully you will get me. If not I think there is a
9 message to roll over to our secretary.

10 I will try to keep myself around at least
11 for the hour or so after the meeting is supposed to
12 start, you know, to be available. I don't have
13 anything scheduled that would take me out of the
14 office that time.

15 MS. KARAS: We are going to have the
16 speakerphone tied up. So if you can't get Eileen,
17 dial through zero and just ask for any of the rule
18 making team, and explain to them you are here for a
19 public meeting, and it has already started.

20 And I'm sure one of them will be more than
21 happy to take care of you.

22 Has anybody thought of any remaining
23 comments?

24 (No response.)

25 MS. KARAS: If not I think we -- Todd, did

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1 you want to make closing remarks? You closed on your
2 previous -- okay.

3 Does anybody have any additional closing
4 remarks that they would like to make?

5 (No response.)

6 MS. KARAS: If not then I thank you all
7 for attending. If anybody has any additional comments
8 please, again, put them on the index cards, and drop
9 them in the box, or enter them into one of the laptops
10 that we have set up.

11 We will be here for a little while yet.
12 Or you can send them in through any of the normal
13 means, through the Federal Register notice following
14 this meeting. Thank you.

15 (WHEreupon, at 3:40 p.m., the above-
16 entitled meeting was concluded.)
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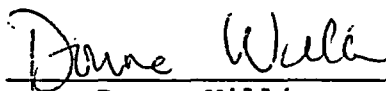
Fitness For Duty

Public Meeting

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