



Entergy

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December 21, 2005

Secretary, U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

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USNRC

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SUBJECT: Comments on 10 CFR Part 26, Fitness for Duty Programs (RIN 3150-AF12)

Dear Sir or Madam:

Entergy Operations, Inc. (Entergy) appreciates the opportunity to provide comments on the Fitness for Duty Programs (10 CFR Part 26). The enclosed attachment includes a detailed description of Entergy's comments.

Entergy requests an implementation period of one year from the date of approval of the regulation.

If you have any questions or require additional information, please contact Dana Millar at 601-368-5445.

Sincerely,

FGB/DM/bal

cc: C. Gaujacq
NSA Directors
NSA Licensing Managers
J. McCann
C. Kelley

Template = SECY-067

SECY-02

Entergy Operations, Inc. (Entergy) supports the comments made in NEI letter dated December 20, 2005, on the drug and alcohol testing provisions of 10 CFR Part 26. Entergy offers an additional comment:

26.31 (c)(3), Drug and Alcohol Testing

The proposed rule would have licensees perform for-cause testing on individuals whose human error caused or contributed to the event if the event resulted in a significant illness or personal injury, which within 4 hours after the event is recordable under the Department of Labor standards contained in 29 CFR 1907.4, and subsequent amendments thereto, and results in death, days away from work, restricted work, transfer to another job, medical treatment beyond first aid, loss of consciousness, or other significant illness or injury as diagnosed by a physician or other licensed health care professional, even if it does not result in those previously noted results. Entergy comments that the inclusion of the criterion regarding "medical treatment beyond first aid" may be an inappropriate threshold for for-cause testing. The categorization of injuries as medical treatment beyond first aid is exceedingly broad, including such things as bee stings to broken bones, and is often dependent on external pressures that influence the decision of the attending medical professional. There is real concern that setting the for-cause testing threshold at this level could have the unintended consequence of a chilling effect on the reporting of industrial safety incidents; those involved and receiving minor injuries may perceive the process as burdensome at a minimum. The benefit of establishing a testing criterion at this level is also questioned; the results of such testing have not identified evidence of substance abuse within our facilities. Further, Entergy believes the responsibility for determining the need for a for-cause testing at this level of incident is better handled within the Continuous Behavioral Observation Program. Entergy does support the rulemaking providing clear objective criteria as a guide to the decision regarding whether a test is required.

Entergy suggests the words "medical treatment beyond first aid" be deleted from the final rulemaking. Also, the citation of the OSHA regulation should refer to 29 CFR 1904.7.

The following comments are associated with 10 CFR 26, Subpart I, *Managing Fatigue*. Entergy supports the comments made by NEI in their letter dated December 20, 2005, on this subpart of the rulemaking and offers the following additional clarifications and comments.

26.197(e), General Provisions, Reporting

Entergy does not understand the need to provide a written report to the NRC that summarizes certain data related to the fatigue management program. Much of the information requested in the annual report is not meaningful. For example, an individual may work 73 hours in a 7 day period which was preceded by 48 hours off. The additional one hour does not imply the individual was fatigued or that the fatigue management program was inappropriately managed.

One of the reasons for providing the report to the NRC as stated in the proposed rule package is: *"the NRC does not have the resources to inspect every licensee's fatigue management program each year and collect this information by relying solely on NRC inspection personnel. Therefore, the proposed requirement for licensees to submit this information would be necessary to ensure that it would be available for the NRC's review and evaluation to identify*

licensees whose fatigue management programs do not appear to be meeting the objectives of this proposed subpart. This appears to be a transfer of burden from the NRC resident inspector to the licensee. In the last few years, the industry along with the NRC has made a concerted effort to eliminate many reporting requirements. The proposal to require this report is contradictory to the direction that has been in place to eliminate paperwork.

The proposed rule contains record keeping requirements in paragraph 26.197(d) and review requirements in paragraph 26.199(j). The record keeping requirements ensure that the records are available for review for up to three years or longer if required. In addition, any problems that are identified in maintaining control of work hours consistent with the specific requirements have to be included in the licensee's corrective action program.

Entergy recommends that the annual reporting requirement be deleted. The reporting requirements of 26.197(e) are unnecessary to protect public health and safety, unnecessary to facilitate NRC oversight of the revised rule, unduly burdensome to the licensee, and inconsistent with provisions of the Paperwork Reduction Act.

26.199(a), Work hour controls, Individuals subject to work hour controls

Entergy is concerned that the individuals subject to the work hour controls may be perceived to include groups beyond Operations, Maintenance, Health Physics, Chemistry, Fire Brigade and Security by the use of the phrase "on-site directing" in relationship to Operations and Maintenance. The definition of "directing" in paragraph 26.5 is: *"the exercise of control over a work activity by an individual who is directly involved, capable of making technical decisions, and ultimately responsible for the correct performance of that work activity."* The definition could be interpreted to include Engineering personnel.

One of the NRC's goals and objectives of the proposed rule making effort for Subpart I was to establish clear and enforceable requirements for the management of worker fatigue. The inclusion of "on-site directing" could result in a wide variance of interpretation across the industry.

While it is not Entergy's intent to work the Engineering staff an excessive number of hours, the inclusion of "on-site directing" in relationship to the operations and maintenance job duty groups may require many engineers to comply with the individual and collective work hour requirements so that they are available to provide the directing function if needed. Maintaining the records and performing the reviews of work hours for engineering personnel, as well as the job duty groups that are clearly defined, will present a tremendous burden to Entergy. It has been estimated that tracking the work hours may result in one additional full time employee.

Entergy proposes that the definition of "directing" in paragraph 26.5 and "on-site directing" be deleted from paragraphs 26.199(a)(1) and (2) or that the recommended change outlined in the comments provided by the Nuclear Energy Institute (NEI) on behalf of the industry be considered.

26.199(b)(1) Work hour controls, Calculating work hours – Individual work hours

Entergy supports the comments made by NEI.

26.199(b)(2) Work hour controls, Calculating work hours – Collective work hours

Calculating collective work hours is well explained and a method of calculating the work hours has been included in the security work hour order implementation guidance. Entergy believes that collective work hours should be applicable to only security (see comments below). As such, Entergy recommends a modification to paragraph 26.199(c)(2) to reflect its applicability to only the security job duty group.

26.199(c) Work hour controls, Work hour scheduling

Work hour scheduling is one of the key factors in managing fatigue and is not given adequate credit when viewing the rule in its entirety. The work schedule is the foundational basis for assisting in the management of fatigue.

26.199(d)(1) Work hour controls, Work hour controls for individuals

The individual work hour limits are similar to the current work hour limits that are outlined in Generic Letter 82-12. For over twenty years Entergy has applied the work hour limits contained in Generic Letter 82-12. Entergy appreciates the minor change that was made to these limits.

26.199(d)(2)(i) Work hour controls, 10-hour break

The change to the break requirement from 8 hours to 10 hours is a valuable part of the rule package. The 10-hour break helps to ensure there is adequate time away from the work site to gain the needed restorative sleep, which as been defined by sleep experts as 7 to 8 hours.

26.199(d)(2)(ii) and 26.199(d)(2)(iii) Work hour controls, 24 and 48-hour breaks

The need to have a 24-hour break in any 7-day period and a 48-hour break in any 14-day period is unwarranted. Paragraph 26.199(c) requires work schedules to be established that are consistent with the objective of preventing impairment from fatigue due to the duration, frequency, or sequencing of successive shifts. As such, the normal schedules that Entergy uses generally have more than an adequate number of days off during each complete shift rotation (e.g., for a 5 week 12-hour schedule, generally there are 17 days off that provide restorative rest).

Entergy supports the NEI proposed alternative to the break requirements and recognizes that the proposed alternative is more plausible.

Even though the requirement to have a 48-hour break every 14 days excludes the first two weeks of a plant outage, the 48-hour break requirement during plant outages is excessive. The individual limits, without consideration of granting waivers, ensure a 24-hour break every 7 days. In addition, the fatigue assessments and ability for an individual to state he or she is not fit for duty due to being fatigued provide adequate assurance that fatigue will not become a concern.

The 48-hour break requirement will present an unnecessary burden to the utility. In addition to creating a schedule for work activities, a parallel schedule of available employees who can perform the work activity will have to be prepared to ensure the break limits are satisfied. Maintenance personnel are task qualified and therefore at times the pool of individuals who are best qualified to perform specific tasks is small and would not accommodate continued work if this break requirement is imposed. An increase in the group size is not warranted for the occasional unplanned maintenance activities that these individuals are specifically qualified to perform. The delay in the work schedule may result in a financial burden to the facility.

Entergy, consistent with the proposal by NEI, requests that the 48-hour break requirement during outage periods be deleted.

26.199(d)(3)(i)(A) Work hour controls, Waivers

The ability for the licensee to grant waivers from the individual work hour limits is a necessary requirement in the rule making effort. However, as written, a waiver can only be granted if needed to mitigate or prevent a condition adverse to safety for non-security related events.

The limitation posed by the wording may represent a financial burden to the facilities. One example that might be considered is a condenser tube leak event that requires a reduction in power and isolation of condenser water boxes to plug the leaking condenser tubes. If this were to occur on the last day of the work week the ability to schedule 24 hour coverage to perform the repairs will be limited. Obviously, the delay associated with not being able to return to full power operations results in a decrease in revenue.

With the inclusion of the fatigue assessment and allowance for the individual to make a self-declaration of his or her inability to perform his or her duties due to fatigue, the limitation on the types of situations for which waivers can be issued is excessive.

Entergy endorses the proposed change provided by NEI that will allow senior management to authorize a waiver as needed for plant operations. Although not expected to be used on a frequent basis, the proposed change will allow the licensee to extend working hours based on business needs. The addition of this allowance also better supports paragraph (d)(3)(ii) which states that granting of waivers should be relied on only to address circumstances that could not have been reasonably controlled. The unplanned condenser tube leak is a perfect example of a circumstance that could not have been reasonably controlled yet warrants the ability to grant a waiver to expedite the repairs to restore the plant to full power operations.

26.199(d)(3)(B) Work hour controls, Supervisor self assessment

This requirement states that the individual who performs the fatigue assessment is qualified to direct the work to be performed by the individual. The phrase "qualified to direct the work to be performed" could inappropriately be linked to the definition of directing included in paragraph 26.5, Definitions.

If, for example, an instrumentation calibration is required during the night and the Shift Manager determines that the adjustment is needed to prevent or mitigate a condition adverse to safety, an I&C supervisor would be notified to request at least one, probably two task qualified

individuals to report to the plant. The individual will report to the control room supervisor, who assumes oversight responsibilities during the performance of the task. The control room supervisor, although trained on the system and system interactions, may not be able to provide technical input for the calibration function that is being performed. As such, if the phrase "qualified to direct the work to be performed" is linked to the definition of directing, the I&C supervisor would also have to report to the site just to perform the fatigue assessment. This would result in an unnecessary prolonged interruption in the sleep cycle of more individuals than seems appropriate.

Entergy suggests that the wording "A supervisor, who is qualified to direct the work to be performed" be changed to "A supervisor, who is qualified to provide oversight of the work to be performed..."

26.199(f) Work hour controls, Collective work hours

Entergy supports NEI's recommendation. The only job duty group that should have collective work hour limits is the security force.

As described in the NEI justification for eliminating this requirement for groups other than security, the proposed rule has many layers of "protection" against fatigue. The work schedule, the individual work hour limits, the individual break requirements, the fatigue assessment and the self-declaration all provide assurance that an individual will not work in a fatigued state. In addition most individuals will not continue to work an excessive number of hours each week, if no limit were imposed, as they view this as an interruption to their quality of life away from work. Simply said most people work to support their needs and activities away from work!

There are potential circumstances that would result in what was an adequately staffed group to appear to be inadequately staffed group. One example might be a year in which a dual unit site has two scheduled refueling outages. The refueling outages are scheduled for 35 days (normal outage) and 92 days (steam generator replacement outage) in the spring and the fall. To accommodate the scheduled outages the majority of the staff will have to take their vacation during the summer months which may result in an increase in overtime and ultimately challenge the collective work hour limit. Because this is not a normal occurrence, it is not reasonable to increase staffing levels to accommodate the collective work hour limits. As previously stated, the normal work schedule includes many days off to allow rest time away from work.

26.199(g) Work hour controls, Successive plant outages

Entergy appreciates that this allowance related to successive outages is included in the proposed rule and recommendations that the philosophy set forth can also apply to a long outage in which a functional group returns to a normal work schedule for at least two weeks during the outage period. Entergy supports the proposed change suggested by NEI.

26.199(h) Work hour controls, Common defense and security

Entergy recommends that the wording be changed from "...when informed in writing by the NRC..." to "...when informed verbal and followed up in writing by the NRC..." or some similar wording that would allow the NRC to verbally state that the licensee does not have to meet the

requirements of this section and at a later date the NRC could provide written confirmation of that verbal statement. This is similar to the approval of exemptions from code requirements.

26.199(i) Work hour controls, Plant Emergencies

Entergy values the clarity contained in this paragraph.

26.199(j) Work hour controls, Reviews

The details of the desired review are specific enough that the result should be consistent across the industry. However, the periodic review is not consistent with the desired information for the annual report described in 26.197(e). As previously stated, Entergy suggested the deletion of 26.197(e). However, if the data requested in 26.197(e) is valuable to the NRC, then the requested information could be moved to the 26.199(j). The documentation of the periodic review would be available to the NRC resident inspector upon request. There remains no need to provide an annual submittal to the NRC.

26.201 Fatigue Assessments

Entergy recognizes that the fatigue assessment is a valuable element of the rule package. It is also recognized that the time needed to develop and establish a fatigue assessment program, which includes training, may be the most time consuming aspect of implementing this rule. Therefore, Entergy requests a one year implementation period from the date of approval of the rule.

From: "BURFORD, FRANCIS G" <FBURFOR@entergy.com>
To: "SECY@nrc.gov" <SECY@nrc.gov>
Date: Wed, Dec 21, 2005 6:42 PM
Subject: Comments on Draft Rulemaking for Part 26

Attached find comments from Entergy Operations, Inc. on the 10 CFR 26 proposed rulemaking.

Jerry Burford

CC: "ANDERSON-LOPER, BARBARA A" <BANDERS@entergy.com>, "MILLAR, DANA" <DMILLAR@entergy.com>, "BURFORD, FRANCIS G" <FBURFOR@entergy.com>

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