

DOCKET NUMBER
PROPOSED RULEMAKING 26
(70FR 50442)

DOCKETED
USNRC

December 27, 2005

December 28, 2005 (11:49am)

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Attention: Office of Secretary, Rulemakings and Adjudications Staff

62

Re: IBEW Comments on NRC Fitness for Duty Rule, 10CFR26-Subpart I,
Fatigue Management, FEDERAL REGISTER NOTICE (70 FR 50442)

Dear Secretary:

On behalf of the 750,000 members of the **International Brotherhood of Electrical Workers (IBEW)** I write to convey my concerns with the proposed 10CFR26, Subpart I rule. The IBEW represents 220,000 utility industry members, of which 15,000 are directly engaged in the day-to-day operation of the nuclear generation industry and will be impacted by this pending rule. For the past several years, prior to September 11, 2001, events and after, the IBEW Utility Department has been actively involved in stakeholder comments as the NRC has been formulating a revised Fitness for Duty Rule. The proposed rule has been modified for stricter facility-access security-clearance guidelines, tighter controls on alcohol- and drug-testing guidelines, and the inclusion to codify worker-fatigue management.

Several aspects for security clearance requirements were mandated by the Homeland Security Department to the NRC, in which limited stakeholder comment was allowed based on "*safeguards information*" and "*design base threat (DBT)*" analysis specific to the nuclear generation industry. The IBEW expressed its dismay to the commission when post-September 11 security-enhancement requirements were announced in various security orders and, ultimately, placed into effect with pending regulation. The majority of these changes were implemented without public comment, or the opportunity to review specific changes. These changes were construed to be "Safeguards Information" or "DBT" areas for required rulemaking amendments contained in 10CFR73.56 and 10CFR26. Nevertheless, the enhanced security-order requirements have been incorporated into licensee fitness-for-duty programs. Union representatives have already been required to represent numerous long term employees when they are challenged with the immediate Fitness for Duty and DBT modifications.

Much of our stakeholder participation comments on 10CFR26 Drug and Alcohol Testing are under consideration by the commission. Many of our comments were technical in nature and not meant to delay or obstruct workplace testing amendments directed by the Department of Health and Human Services. The nuclear industry has long been a leader of workplace safety in this area, and the IBEW is committed to ensuring that our nation's nuclear facilities are safe, secure, drug-free, and healthful.

My remaining focus on the pending rule will be directed to Subpart I, Fatigue Management. This area of the pending rule will have the potential to impact worker

Template = SECY-067

SECY-02



**INTERNATIONAL
BROTHERHOOD
OF ELECTRICAL
WORKERS.**

300 Seventh Street, NW
Washington, DC 20001
202.833.7000
<http://www.ibew.org>

EDWIN D. HILL
International President

ION F. WALTERS
International
Secretary-Treasurer



**INTERNATIONAL
BROTHERHOOD
OF ELECTRICAL
WORKERS®**

NRC Secretary
December 27, 2005
Page 2

earnings, long term established work schedules, and day to day traditional work management and assignments. The NRC seeks to ensure workers are well-rested and to direct licensees to hire more employees where needed by the use of collective work-hour averaging. The IBEW appreciates the commission's efforts in this rulemaking area that will ensure workers are properly rested. Licensees will be tasked to seriously consider proper workforce staffing levels to comply with a final fatigue rule. The IBEW would like to work with the NRC to modify and redefine the scope of the pending rule as it relates to collective work-hour averaging.

The IBEW has been active with other industry stakeholders. Open communication has been maintained with these stakeholders throughout the process. While the IBEW agrees that significant changes need to be made to the proposed rule in Subpart I, Fatigue Management, several solutions have different approaches than other stakeholders may or have introduced. The IBEW firmly believes today, if industry employers would have respected existing NRC recommendations for proper work hour limitations made in 1982, we would not be in the regulatory predicament for fatigue management. Some of our facilities have done an outstanding job of ensuring a well rested workforce, while other facilities have simply ignored the recommended work hour limitations or relied on other mechanisms to exceed 72 hours per work week. The result is an overreaching proposed fatigue rule by the NRC. The proposed rule will inject a complex fatigue-management program that will be a significant burden to industry, controversial to many work groups and potentially cause significant workplace challenges that may well compromise nuclear safety.

IBEW has carefully drafted the following enclosed comments. Although the comments may be initially viewed as confusing, the language proposals developed are to focus on common-sense approaches. My comments acknowledge the need for ensuring restorative sleep while working to eliminate acute and cumulative fatigue from industry workers.

I believe my comments will help the industry to achieve regulatory stability and regulators to attain a meaningful fatigue management program. The IBEW's desire is to meet the goals of the NRC for implementing guidance, enforcement, and performance-based trending programs. This should create an effective and efficient fatigue program for industry and labor alike.

Season's Greetings!

Sincerely yours,

Edwin D. Hill
International President

EDH:pf
Enclosures



IBEW Principles for 10CFR26, Subpart I, Rulemaking

When reviewing IBEW comments, we seek to modify the proposed rule in the following manner:

1. Support the requirement for every worker not to exceed 16 hours in a 26-hour period.
2. Support the requirement for every worker not to exceed 26 hours in a 48-hour period.
3. Support the requirement for every worker not to exceed 72 hours in a seven-day period.
4. Support the continued licensee ability for all workers to work up to 72 hours per seven-day period.
5. Continue to allow an eight-hour work day that is often utilized in rotating shift work that does not exceed eight consecutive days of scheduled duty or work-hour limitation requirements.
6. Enable or require for all workers to activate and observe 24 hours off duty every seven or eight days based on the type of shift being worked and the station operational mode of outage or normal operations.
7. Enable or require all workers to activate and observe 48 hours off-duty every fourteen days based on the type of shift being worked and the station operational mode of outage or normal operations.
8. Enable the NRC to impose regulatory collective work group hours quarterly to track mechanisms in operations and security departments that will aid the NRC in enforcement and identification of workforce staff-level issues.
9. Protect non-operator and non-security worker classifications work-flow patterns by excluding certain workers from regulatory collective work group hours averaging programs. Exclude Maintenance, Health Physics, Chemistry, Emergency Plan, and Fire Brigade from collective work-hour averaging programs.
10. Enable workers to support overtime requirements based on local policies by the exclusion of certain work groups identified in number nine above.

11. Protect traveling outage contract workers or licensee shared resource employees by excluding these workers in regulatory collective work group hour-averaging programs the NRC desires in the Maintenance and Health Physics departments at facilities.
12. Support the pending rule allowing the licensee when, and when not, requiring collective work group averaging for security and operations personnel as defined by the proposed rule.
13. Support the pending rule for the ability for all workers to self-declare fatigue without fear or repercussion.
14. Support the pending rule requiring fatigue assessments for licensees to access workers prior to such workers exceeding work-hour limitations.
15. Maintain the ability for local unions and licensees to negotiate mandatory subjects of bargaining, such as work schedules, without requirement to only work those mandated schedules provided in final regulation or other stakeholder comments.
16. Enable the NRC to trend self-declared fatigue instances and/or individuals exercising off-duty needs of 24 and/or 48 hours for aiding enforcement and identification of workforce staff-level issues, and monitoring acute and cumulative management oversight.
17. Allow non-operations or security personnel to perform emergent and/or limited condition of operation (LCO) work by the continued use of work-hour waiver provisions and inclusion of fatigue assessments. This type of situation would normally be weekend-type work requiring seven days of duty by specialized workers or work groups that have worked six previous days who have not, or will not, exceed 72 hours working the seventh consecutive day.

IBEW Rule Recommendations to 10CFR26

In Subpart I, Managing Fatigue, the IBEW opposes any comments or recommendations from industry stakeholders or the commission that would prescribe or limit certain type of shifts as “acceptable or recommended” for industry to unilaterally utilize and implement. Shift schedules are mandatory subjects of bargaining covered by the National Labor Relations Act in unionized workplaces. Unionized workplaces require the ability upon the final rule being implemented to negotiate with their employers to discover and construct workable shift rotations and schedules that comply with any final rule published in Subpart I for 10CFR26 “Managing Fatigue”. IBEW is not opposed for the final rule to have examples of shift schedules that comply or fail to properly manage fatigue per the rule.

Add Item (iv):

26.197(b)(1)(iv)

(iv) For individuals working a nominal rotation shift cycle containing a majority of 8 hour shifts for 7 work days not to exceed 8 work days of continuous duty with each work shift providing a break period as described in 26.199.d.2.(i); describe the process to be followed when an individual requests to observe a 24 Hour and/or a 48 Hour break period prior to the licensee soliciting or assigning further work to an individual exceeding the last scheduled day containing the 7 or 8 continuous work days as allowed by 26.199 (d) (2) (ii), 26.199 (d) (2) (iii) and 26.199 (d) (4).

Add Item (v):

26.197(b)(1)(v)

(v) Describe the process to be followed when an individual requests to observe a 48 Hour break period for individuals working a nominal rotation shift cycle containing a majority of scheduled hours above 8 hours per shift as allowed by 26.199 (d) (2) (iii) (a) and 26.199 (d) (4).

Add Item 26.197(d)(6):

26.197(d)(6)

(6) Documentation of individual requested rest breaks and final licensee disposition of the requested break in accordance with Sec. 26.199(d)(2)(ii) and 26.199(d)(2)(iii).

Basis/Guidance

A rest period provision at facilities desiring to continue utilizing 8 hour shift work scheduling for shifts that contain a majority of 8 hour shifts in the work periods scheduled. This allows an 8 hour shift rotation to continue and allow workers participating in these type of shifts to exercise the option to have a 24 Hour break similar to the 24 Hour break observed every 7 days contained in 26.199(d)(2)(ii). This type of break would be requested prior to Work Period Day 8 or prior to Work Period Day 9. This article will not be available to workers exceeding work hours contained in 26.199(d)(1)(i)(ii)(iii) who are being tracked by licensee work hour

waivers. It is expected this type of break request would be activated by employees where licensees staff 8 hour shift rotations by the routine use of holdover or prearranged overtime on a regular basis. Collective work group hours averaging can be utilized by licensees and regulators for security and operations personnel to monitor fatigue and staffing concerns in addition to the described licensee process activated and archived from workers utilizing this provision described in 26.197(b)(1)(iv) and (v). This change is a fatigue countermeasure for cumulative fatigue relief.

Pg. 37 of the pending rule, the NRC states:

(3) the need to implement fatigue countermeasures (e.g., naps, rest breaks). The purpose of the controls and conditions would be to mitigate the risks to public health and safety or the common defense and security that a fatigue-induced human error could pose, as discussed in Section IV. D.

Modify Item (i):

26.199 (b)(1)(i) Shift turnover includes only those activities that are necessary to safely transfer information and responsibilities between two or more individuals between shifts. Shift turnover activities may include, but are not limited to, discussions of the status of plant equipment, and the status of ongoing activities, such as extended tests of safety systems and components. Relieved individuals observing rest break(s) contained in Sec. 26.199(d)(2) that are contacted by telephone to discuss job continuity and/or technical assistance by the licensee is considered shift turnover and is excluded for work hours accounting purposes. Licensees may not exclude work hours worked during turnovers between individuals within a shift period due to rotations or relief within a shift. Activities that licensees may not exclude from work hours calculations also include, but are not limited to, shift holdovers to cover for late arrivals of incoming shift members; early arrivals of individuals for meetings, training, or pre-shift briefings for special evolutions; and holdovers for interviews needed for event investigations

Basis/Guidance

It is not unusual for a worker to be contacted after being released from work for a technical question. This activity happens and is critical to successful LCO work and critical path activities in outages. We need to keep the "phone line" open, keeping this critical tool working that goes on behind the scenes for job continuity. IBEW has several contracts with language describing how offsite technical assistance is handled. Do employees get called at home after being relieved for information? Yes. Often? No, some people more than others, especially facilities that utilize Subject Matter Experts and Maintenance Ownership programs. The need for offsite technical assistance contacting needs addressed. How will industry respond if the proposed rule does not address the issue when "Joe Mechanic" claims fatigue because he was called at home during his restorative rest time about a work question? Sometimes turnover does not capture every intricate detail that may cause a question to arise later after the worker has been relieved. This appears to be more susceptible during critical maintenance work evolutions than operations or security daily operations.

Modify 26.199(d)(1)

26.199(d)(1)

(1) Except as permitted under paragraph (d)(3) and/or (d)(4) of this section, licensees shall ensure that any individual's work hours do not exceed the following limits:

Basis/Guidance

(d)(4) allows consideration of licensees who work 8-hour shift rotations for 7 or 8 days consecutively for a nominal rotation cycle of 14 days or more.

Modify and Add 26.199(d)(2)(ii) into 2 subparts:

26.199(d)(2)(ii)

(ii) A 24-hour break in any 7-day period; ~~and~~ or

26.199(d)(2)(ii)(A)

(A) During licensee normal operations for individuals identified in 26.199(d)(4), a 24-hour break after completing 7 or 8 consecutive days of scheduled 8 Hour Shifts in any 14-day period activated as an individual option requiring reasonable notice by individuals to the licensee to observe the break period. Individuals who do not exercise this option do not require the licensee to adhere to individual waiver requirements in 26.199(c)(3) unless subject to Section 26.199(d). During plant outages 26.199(d)(2)(ii)(A) is not applicable and 26.199(d)(2)(ii) and 26.199(d)(2)(iii) is applicable to 26.199(d)(4) individuals.

Modify and Add 26.199(d)(2)(iii) into 2 subparts:

26.199(d)(2)(iii)

(iii) A 48-hour break in any 14-day period, ~~except during the first 14 days of any plant outage if the individual is performing the job duties listed in paragraph (a)(1) through (a)(4) of this section.~~ A 48-hour break in any 14-day period activated as an individual option requiring reasonable notice by individuals to the licensee to observe the break period. Individuals who do not exercise this option do not require the licensee to adhere to individual waiver requirements in 26.199(c)(3) unless subject to Section 26.199(d), or

26.199(d)(2)(iii)(A)

(A) During licensee normal operations for individuals identified in 26.199(d)(4), a 48-hour break in any 14-day period during licensee normal operations. During plant outages 26.199(d)(2)(iii)(A) is not applicable and 26.199(d)(2)(ii) and 26.199(d)(2)(iii) is applicable to 26.199(d)(4) individuals.

Basis/Guidance

Licensees need the ability to schedule up to (outage or non outage) 6 - 12's for planning and executing work. Workers who desire to utilize the break period, may do so with reasonable notice, without fear or repercussion. IBEW proposed 26.197(b)(1) (iv) and (v) to have licensees describe criteria that should be proceduralized for workers to activate the 24/48 Hour optional rest period. The facilities can derive individual reasonable notice criteria. This definition will likely have different time values based on facility. Some unions will likely desire to bargain the time notice requirement for "reasonable". Worker fatigue sources can be traced to many factors. One factor at work that should be taken into consideration is certain work functions, certain classification task duty that has different human energy expenditure and work environments that may cause a worker to activate this provision to heed off acute fatigue symptoms. The worker option encourages to stop acute fatigue and reduce cumulative fatigue effects. These rule proposal areas containing a worker requested rest period, granted or not by the licensee, should prove to be a very helpful tool to the industry and the commission. Trending work force staff fatigue, while monitoring acute and cumulative fatigue will provide benchmarking and feedback in this area.

Add 26.199(d)(4)

(4) During licensee normal operations for individuals working 7 or 8 days of consecutive work periods scheduled for 8 hours each contained in a nominal shift rotation cycle of 14 days or more 26.199(d)(2)(ii)(A) and 26.199(d)(2)(iii)(A) is applicable for rest periods with 26.199(d)(2)(ii) and 26.199(d)(2)(iii) being inapplicable for normal operations rest periods. For plant outages 26.199(d)(2)(ii) and 26.199(d)(2)(iii) are applicable to individuals scheduled for 8 hour shift rotations for rest periods with 26.199(d)(2)(ii)(A) and 26.199(d)(2)(iii)(A) being inapplicable for plant outage rest breaks.

Basis/Guidance

Work groups/crews who continue the desire to work rotating shifts that contain 8 hours should be afforded the opportunity to do so without 26.199(d)(2)(ii) vetoing existing 8 hour shifts at facilities. IBEW proposed 26.197(b)(1)(iv) to have licensee describes criteria that licensees should proceduralize for workers to activate as an optional rest period when licensees seek to have workers on duty for Day 8 or Day 9 consecutively without exceeding work hour limitations contained in 26.199.d.1.(i)(ii)(iii).

Modify 26.199(f) Collective work hour limits

26.199(f)

(f) Collective work hour limits. In addition to controlling individuals' work hours in accordance with paragraph (d) of this section, licensees shall control the collective work hours of each group of individuals who are performing similar job duties, as

listed in paragraphs ~~(a)~~ (a)(1) and (a)(5) of this section. Licensees shall ensure collective work hours of each job duty group do not exceed an average of 48 hours per person per week in any averaging period, except as follows:

Modify 26.199(f)(1)

26.199(f)(1)

(1) The licensee need not impose the collective work hour controls required in this paragraph on the job duty groups specified in paragraphs ~~(a)(1) through (a)(4)~~ (a)(1) of this section during the first 8 weeks of a plant outage;

Modify 26.199(f)(3)

26.199(f)(3)

(3) The collective work hours of any job duty group listed in paragraphs ~~(a)~~ (a)(1) and (a)(5) of this section may exceed an average of 48 hours per person per week in one averaging period if all of the following conditions are met:

Basis/Guidance

To only include personnel in Operations Departments and Security Departments for Collective Work Hours Averaging fatigue monitoring program.

Operations and Security departments are not normally augmented or mixed with contractors to meet licensee duty requirements. Maintenance and Health Physics/Chemistry personnel often experience support from temporary contractors. Fire Brigade and Emergency Response organizations often comprise workers from many groups and other non-identified groups at facilities. Collective work group hour management will not be the best fatigue management for groups (a) 2, (a) (3), and (a) (4). Fatigue management for these excluded groups can be trended by the review of issued waivers and workers enacting 48-hour and 24-hour break periods. The IBEW recommended provision focuses on security and operations department. The IBEW recommendation promotes situations for work assignments derived from local overtime policies to solicit the workers who want to support the work effort requiring additional hours than the workers who have traditionally not and would rather not. The NRC proposed rule will excessively burden the industry and supporting contractors for accurately tracking average collective work hours for employees defined in (a) 2, (a) 3, and (a) 4 which have a high occurrence of mobility within the industry. Licensees and workers need to maintain the ability to utilize labor resources for (a) 2, (a) (3), (a) (4) job duties within all licensee properties without the burden of collective work hours tracking. The proposed rule in this area will be more of a problem than a solution at this time for the good of the industry and public safety. The NRC should hold licensees accountable to excessive waivers usage. The NRC should use the waivers and employee requested rest periods for staffing level analysis in these work group areas of (a) 2, (a) 3, and (a) 4 without implementing collective work group hours averaging.

Subpart I--Managing Fatigue--IBEW placed into the proposed rule. December 22, 2005

Sec. 26.195 Applicability.

The requirements in this subpart apply only to the licensees and other entities identified in Sec. 26.3(a) and (d).

Sec. 26.197 General provisions.

(a) Policy. Licensees shall establish a policy for the management of fatigue and incorporate it into the written policy required in Sec. 26.27(b).

(b) Procedures. In addition to the procedures required in Sec. 26.27(c), licensees shall develop, implement, and maintain procedures that--

(1) Describe the process to be followed when any individual who is subject to an FFD program under Sec. 26.25(a)(1) or (2) makes a self-declaration that he or she is not fit to safely and competently perform his or her duties for any part of a working tour as a result of fatigue. The procedure must--

(i) Describe the individual's and licensee's responsibilities related to self-declaration;

(ii) Describe requirements for establishing controls and conditions under which an individual may be permitted or required to perform work after that individual declares that he or she is not fit due to fatigue; and

(iii) Describe the process to be followed if the individual disagrees with the results of a fatigue assessment that is required under Sec. 26.201(a)(2);

(2) Describe the process for implementing the work hour controls required under Sec. 26.199 for the individuals who are performing the duties listed in Sec. 26.199(a);

(iv) For individuals working a nominal rotation shift cycle containing a majority of 8 hour shifts for 7 work days not to exceed 8 work days of continuous duty with each work shift providing a break period as described in 26.199.d.2.(i); describe the process to be followed when an individual requests to observe a 24 Hour and/or a 48 Hour break period prior to the licensee soliciting or assigning further work to an individual exceeding the last scheduled day containing the 7 or 8 continuous work days as allowed by 26.199 (d) (2) (ii), 26.199 (d) (2) (iii) and 26.199 (d) (4).

(v) Describe the process to be followed when an individual requests to observe a 48 Hour break period for individuals working a nominal rotation shift cycle containing a majority of scheduled hours above 8 hours per shift as allowed by 26.199 (d) (2) (iii) (a) and 26.199 (d) (4).

(3) Describe the process to be followed in conducting fatigue assessments under Sec. 26.201; and

(4) Describe the sanctions, if any, that the licensee may impose on an individual following a fatigue assessment.

(c) Training and examinations. Licensees shall add the following KAs to the content of the training that is required in Sec. 26.29(a) and the comprehensive examination required in Sec. 26.29(b):

(1) Knowledge of the contributors to worker fatigue, circadian variations in alertness and performance, indications and risk factors for common sleep disorders, shiftwork strategies for obtaining adequate rest, and the effective use of fatigue countermeasures; and

(2) Ability to identify symptoms of worker fatigue and contributors to decreased alertness in the workplace.

(d) Recordkeeping. Licensees shall retain the following records for at least 3 years or until the completion of all related legal proceedings, whichever is later:

(1) Records of work hours for individuals who are subject to the work hour controls in Sec. 26.199;

(2) The documentation of waivers that is required in Sec. 26.199(d)(3)(iv), including the bases for granting the waivers;

(3) The documentation of work hour reviews that is required in Sec. 26.199(j)(3);

(4) The documentation of fatigue assessments that is required in Sec. 26.201(g); and

(5) Documentation of the collective work hours of each job duty group, as calculated in accordance with Sec. 26.199(b)(2).

(6) Documentation of individual requested rest breaks and final licensee disposition of the requested break in accordance with Sec. 26.199(d)(2)(ii) and 26.199(d)(2)(iii).

(e) Reporting. Licensees shall include the following information in the annual FFD program performance report required under Sec. 26.217:

(1) A summary of the number of instances during the previous calendar year in which the licensee waived any of the work hour controls specified in Sec. 26.199(d)(1) and (d)(2) for individuals within each job duty group in Sec. 26.199(a). The report must include--

(i) Only those waivers under which work was performed; and

(ii) Each work hour control that was waived in Sec. 26.199(d)(1) and (d)(2), including all of the work hour controls that were waived for any single extended work period for which it was necessary to waive more than one work hour control;

(2) The collective work hours of any job duty group listed in Sec. 26.199(a) that exceeded an average of 48 hours per person per week in any averaging period during the previous calendar year, in accordance with Sec. 26.199(f)(3) and (f)(5). The report must also include--

(i) The dates that defined the averaging period(s) during which collective work hours exceeded 48 hours per person per week;

(ii) The job duty group that exceeded the collective work hours limit; and

(iii) The conditions that caused the job duty group's collective work hours to exceed the collective work hours limit; and

(3) The number of fatigue assessments conducted during the previous calendar year, the conditions under which each fatigue assessment was conducted (i.e., self-declaration, for cause, post-event, followup), and the management actions, if any, resulting from each fatigue assessment.

Sec. 26.199 Work hour controls.

(a) Individuals subject to work hour controls. Any individual who performs duties within the following job duty groups is subject to the requirements of this section:

(1) Operating or on-site directing of the operation of systems and components that a risk-informed evaluation process has shown to be significant to public health and safety;

(2) Performing maintenance or on-site directing of the maintenance of structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety;

(3) Performing Health Physics or Chemistry duties required as a member of the on-site emergency response organization minimum shift complement;

(4) Performing the duties of a Fire Brigade member who is responsible for understanding the effects of fire and fire suppressants on safe shutdown capability; and

(5) Performing security duties as an armed security force officer, alarm station operator, response team leader, or watchperson, hereinafter referred to as security personnel.

(b) Calculating work hours. (1) Individual work hours. For the purposes of this subpart, licensees shall calculate an individual's work hours as the amount of time that an individual performs any duties for a licensee who is subject to this subpart, including all within- shift break times and rest periods during which there are no reasonable opportunities or accommodations appropriate for restorative sleep, but excluding shift turnover.

(i) Shift turnover includes only those activities that are necessary to safely transfer information and responsibilities between two or more individuals between shifts. Shift turnover activities may include, but are not limited to, discussions of the status of plant equipment, and the status of ongoing activities, such as extended tests of safety systems and components. Relieved individuals observing rest break(s) contained in Sec. 26.199(d)(2) that are contacted by telephone to discuss job continuity and/or technical assistance by the licensee is considered shift turnover and is excluded for work hours accounting purposes. Licensees may not exclude work hours worked during turnovers between individuals within a shift period due to rotations or relief within a shift. Activities that licensees may not exclude from work hours calculations also include, but are not limited to, shift holdovers to cover for late arrivals of incoming shift members; early arrivals of individuals for meetings, training, or pre-shift briefings for special evolutions; and holdovers for interviews needed for event investigations.

(ii) Other than shift turnover, only that portion of a break or rest period during which there is a reasonable opportunity and accommodations for restorative sleep may be excluded from the licensee's calculation of an individual's work hours.

(iii) Licensees need not calculate the work hours of an individual who is qualified to perform the job duties listed in paragraph (a) of this section but has not performed such duties during the applicable calculation period. However, if the individual begins or resumes performing any of the job duties listed in paragraph (a) of this section, the licensee shall include in the calculation of the individual's work hours all work hours worked, including hours worked

performing duties that are not listed in paragraph (a) of this section, and control the individual's work hours in accordance with the requirements of paragraph (d) of this section.

(2) Collective work hours. For the purposes of this subpart, licensees shall calculate collective work hours as the average number of work hours worked among each group of individuals who perform the duties listed in paragraphs ~~(a)~~ (a)(1) and (a)(5) of this section, within an averaging period that may not exceed 13 weeks, as follows:

(i) Licensees may define broad job duty groups comprised of individuals who perform the job duties listed in paragraph ~~(a)~~ (a)(1) and (a)(5) of this section, or may define smaller groups of individuals who perform similar duties. The groups must collectively include all individuals who perform the job duties listed in paragraph (a) of this section;

(ii) Licensees shall include in the average for each job duty group the work hours of any individual who performs the job duties of the group at the licensee's site, except if, during the averaging period the individual worked less than 75 percent of the group's normally scheduled hours;

(iii) The days included in an averaging period must be consecutive or separated only by days that licensees are permitted to exclude from the collective work hour calculation under Sec. 26.199(f)(1) through (f)(3) and (f)(5), (h), and (i);

(iv) Licensees shall include within an averaging period all days that are not excluded from collective work hour controls under Sec. 26.199(f)(1) through (f)(3) and (f)(5), (h), and (i); and

(v) Licensees may not include in the collective work hour calculation for an averaging period any work hours that are included in a collective work hour calculation for any other averaging period.

(c) Work hours scheduling. Licensees shall schedule the work hours of individuals who are subject to this section consistent with the objective of preventing impairment from fatigue due to the duration, frequency, or sequencing of successive shifts.

(d) Work hour controls for individuals. Licensees shall control the work hours of individuals, as follows:

(1) Except as permitted under paragraph (d)(3) and/or (d)(4) of this section, licensees shall ensure that any individual's work hours do not exceed the following limits:

- (i) 16 work hours in any 24-hour period;
- (ii) 26 work hours in any 48-hour period; and
- (iii) 72 work hours in any 7-day period, or.

(2) Licensees shall ensure that individuals have adequate rest breaks. For the purposes of this subpart, a break is defined as an interval of time that falls between successive work periods, during which the individual does not perform any duties for the licensee other than shift turnover. At a minimum, licensees shall ensure that individuals who are subject to this section have the following breaks:

(i) A 10-hour break between successive work periods or an 8-hour break between successive work periods when a break of less than 10 hours is necessary to accommodate a crew's scheduled transition between work schedules or shifts;

(ii) A 24-hour break in any 7-day period; ~~and or~~

(A) During licensee normal operations for individuals identified in 26.199(d)(4), a 24-hour break after completing 7 or 8 consecutive days of scheduled 8 Hour Shifts in any 14-day period activated as an individual option requiring reasonable notice by individuals to the licensee to observe the break period. Individuals who do not exercise this option do not require the licensee to adhere to individual waiver requirements in 26.199(c)(3) unless subject to Section 26.199(d). During plant outages 26.199(d)(2)(ii)(A) is not applicable and 26.199(d)(2)(ii) and 26.199(d)(2)(iii) is applicable to 26.199(d)(4) individuals.

~~(iii) A 48-hour break in any 14-day period, except during the first 14 days of any plant outage if the individual is performing the job duties listed in paragraph (a)(1) through (a)(4) of this section. A 48-hour break in any 14-day period activated as an individual option requiring reasonable notice by individuals to the licensee to observe the break period. Individuals who do not exercise this option do not require the licensee to adhere to individual waiver requirements in 26.199(c)(3) unless subject to Section 26.199(d), or~~

(A) During licensee normal operations for individuals identified in 26.199(d)(4), a 48-hour break in any 14-day period during licensee normal operations. During plant outages 26.199(d)(2)(iii)(A) is not applicable and 26.199(d)(2)(ii) and 26.199(d)(2)(iii) is applicable to 26.199(d)(4) individuals.

(3) Licensees may grant a waiver of the individual work hour controls in paragraphs (d)(1) and (d)(2) of this section, as follows:

(i) In order to grant a waiver, the licensee shall meet both of the following requirements:

(A) An operations shift manager determines that the waiver is necessary to mitigate or prevent a condition adverse to safety, or a security shift manager determines that the waiver is necessary to maintain the security of the facility, or a site senior-level manager with requisite signature authority makes either determination; and

(B) A supervisor, who is qualified to direct the work to be performed by the individual and trained in accordance with the requirements of Sec. 26.29 and 26.197(c), assesses the individual face to face and determines that there is reasonable assurance that the individual will be able to safely and competently perform his or her duties during the additional work period for which the waiver will be granted. At a minimum, the assessment must address the potential for acute and cumulative fatigue considering the individual's work history for at least the past 14 days, the potential for circadian degradations in alertness and performance considering the time of day for which the waiver will be granted, the potential for fatigue-related degradations in alertness and performance to affect risk-significant functions, and whether any controls and conditions must be established under which the individual will be permitted to perform work;

(ii) To the extent practicable, licensees shall rely upon the granting of waivers only to address circumstances that could not have been reasonably controlled;

(iii) Licensees shall ensure that the timing of the face-to-face supervisory assessment that is required in paragraph (d)(3)(i)(B) of this section supports a valid assessment of the potential for worker fatigue during the time the individual will be performing work under the waiver. Licensees may not perform the face-to-face assessment more than four hours before the individual begins performing any work under the waiver; and

(iv) Licensees shall document the bases for individual waivers. The documented basis for a waiver must include a description of the circumstances that necessitate the waiver, a statement of the scope of work and time period for which the waiver is approved, and the bases for the determinations required in paragraph (d)(3)(i) of this section.

(4) During licensee normal operations for individuals working 7 or 8 days of consecutive work periods scheduled for 8 hours each contained in a nominal shift rotation cycle of 14 days or more 26.199(d)(2)(ii)(A) and 26.199(d)(2)(iii)(A) is applicable for rest periods with 26.199(d)(2)(ii) and 26.199(d)(2)(iii) being inapplicable for normal operations rest periods. For plant outages 26.199(d)(2)(ii) and 26.199(d)(2)(iii) are applicable to individuals scheduled for 8 hour shift rotations for rest periods with 26.199(d)(2)(ii)(A) and 26.199(d)(2)(iii)(A) being inapplicable for plant outage rest breaks.

(e) Self-declarations during extended work hours. If an individual is performing, or being assessed for, work under a waiver of the requirements contained in paragraphs (d)(1) and (d)(2) of this section and declares that, due to fatigue, he or she is unable to safely and competently perform his or her duties, the licensee shall immediately stop the individual from performing any duties listed in paragraph (a) of this section, except if the individual is required to continue performing those duties under other requirements of this chapter. If the subject individual must continue performing the duties listed in paragraph (a) of this section until relieved, the licensee shall immediately take action to relieve the individual. Following the self-declaration or relief from performing the duties listed in paragraph (a) of this section, as applicable, the licensee--

(1) May reassign the individual to duties other than those listed in paragraph (a) of this section, but only if the results of a fatigue assessment, conducted in accordance with the requirements of Sec. 26.201, indicate that the individual is fit to safely and competently perform those other duties; and

(2) Shall permit or require the individual to take a rest break of at least 10 hours before the individual returns to performing any duties listed in paragraph (a) of this section.

(f) Collective work hour limits. In addition to controlling individuals' work hours in accordance with paragraph (d) of this section, licensees shall control the collective work hours of each group of individuals who are performing similar job duties, as listed in paragraphs ~~(a) (a)(1)~~ and ~~(a)(5)~~ of this section. Licensees shall ensure that the collective work hours of each job duty group do not exceed an average of 48 hours per person per week in any averaging period, except as follows:

(1) The licensee need not impose the collective work hour controls required in this paragraph on the job duty groups specified in paragraphs ~~(a)(1) through (a)(4)~~ ~~(a) (a)(1)~~ of this section during the first 8 weeks of a plant outage;

(2) For job duty groups comprised of security personnel--

(i) The group work hour average(s) may not exceed 60 hours per person per week during the first 8 weeks of a plant outage or a planned security system outage;

(ii) The group work hour average(s) may not exceed 60 hours per person per week during the actual conduct of force-on-force tactical exercises (i.e., licensee exercises and NRC-observed exercises);

(iii) The licensee need not impose any collective work hour controls for the first 8 weeks of an unplanned security system outage or an increased threat condition;

(iv) If an increase in threat condition occurs while the site is in any plant outage or a planned security system outage and the increased threat condition persists for a period of 8 weeks or less, the licensee need not impose collective work hour controls on security personnel for the duration of the increased threat condition. However, if during any such outage, the threat condition returns to the least significant threat condition that was in effect at any time within the past 8 weeks, then the licensee shall limit the collective work hours of security personnel to an average of 60 hours per person per week for the first 8 weeks of the outage for the periods prior to and following the increased threat condition, and shall limit the collective work hours of security personnel to an average of 48 hours per person per week following the first 8 weeks of the outage;

(v) If additional increases in threat condition occur during an unplanned security system outage or increased threat condition, the relaxation of the collective work hour limits that is permitted in paragraph (f)(2)(iii) of this section may be extended with each increase in the threat condition, but only for a period that is the shorter of either the duration of the increased threat condition or 8 weeks;

(vi) If the threat condition decreases during an unplanned security system outage or increased threat condition, the applicability of the relaxation of the collective work hour limits that is permitted in paragraph (f)(2)(iii) of this section must be based upon the date upon which the current threat condition was last entered as a result of an increase;

(3) The collective work hours of any job duty group listed in paragraphs ~~(a)~~ (a)(1) and (a)(5) of this section may exceed an average of 48 hours per person per week in one averaging period if all of the following conditions are met:

(i) The circumstances that cause the group's collective work hours to exceed 48 hours per person per week cannot be reasonably controlled;

(ii) The group's collective work hours do not exceed 54 hours per person per week; and

(iii) The additional work hours that result in the group's collective work hours exceeding 48 hours per person per week are worked only to address the circumstances that the licensee could not have reasonably controlled.

(4) The collective work hours of any job duty group may not exceed 48 hours per person per week if the collective work hours for the job duty group exceeded 48 hours per person per week--

(i) In the previous averaging period; or

(ii) In any other averaging period that ended within the past 26 weeks.

(5) Licensees may also exceed any collective work hour limits in this paragraph if the licensee has received prior approval from the NRC of a written request that includes, at a minimum,--

(i) A description of the specific circumstances that require the licensee to exceed the applicable collective work hour limit, the job duty group(s) affected, and the collective work hours limit(s) to be exceeded;

(ii) A statement of the period of time during which it will be necessary to exceed the collective work hour limit(s); and

(iii) A description of the fatigue mitigation strategies, including, but not limited to, rest break requirements and work hour limits, that the licensee will implement to ensure that the individuals affected will be fit to safely and competently perform their duties.

(g) Successive plant outages. If two or more plant outages occur at the licensee's site and the interval(s) between successive outages is less than 2 weeks, the licensee shall apply the requirements in paragraphs (d)(2)(iii), (f)(1), (f)(2)(i), and (f)(2)(iv) of this section based upon the number of days that have elapsed since the first plant outage in the series began.

(h) Common defense and security. Licensees need not meet the requirements of this section when informed in writing by the NRC that these requirements, or any subset thereof, are waived for security personnel in order to assure the common defense and security, for the duration of the period defined by the NRC.

(i) Plant emergencies. Licensees need not meet the requirements of paragraphs (c) through (f) of this section during declared emergencies, as defined in the licensee's emergency plan.

(j) Reviews. Licensees shall review the control of work hours for individuals who are subject to this subpart for each averaging period. Licensees shall complete this review within 30 days of the end of the averaging period. If any outages or increased threat conditions occurred since the licensee completed the most recent review, the licensee shall include in the review an assessment of the control of work hours during the outages or increased threat conditions.

Licensees shall--

(1) Review the work hours and performance of individuals to assess the effectiveness of the licensee's work hour controls in achieving the objective of reasonable assurance that fatigue due to work hours does not compromise individuals' abilities to safely and competently perform their duties. At a minimum, the licensee's review must address--

(i) Individuals who were granted more than one waiver during the review period;

(ii) Individuals who were assessed for fatigue in accordance with Sec. 26.201 during the review period;

(iii) Individuals who performed the job duties listed in paragraph (a) of this section whose average work hours per week exceeded 54 hours during any averaging period for which the collective work hour limit is 48 hours in this section; and

(iv) Any security personnel whose average work hours per week exceeded 66 hours in any averaging periods for which the collective work hours limit in this section is 60 hours per person per week;

(2) Review individuals' hours worked and the waivers under which work was performed to assess staffing adequacy for all jobs subject to the work hour controls of this section;

(3) Document the methods used to conduct these reviews and the results of the reviews;

and

(4) Record, trend, and correct, under the licensee's corrective action program, any problems identified in maintaining control of work hours consistent with the specific requirements and performance objectives of this part.

Sec. 26.201 Fatigue assessments.

(a) Licensees shall ensure that fatigue assessments are conducted under the following conditions:

(1) For-cause. In addition to any other test or determination of fitness that may be required under Sec. Sec. 26.31(c) and 26.77, a fatigue assessment must be conducted in response to an observed condition of impaired individual alertness creating a reasonable suspicion that an individual is not fit to safely and competently perform his or her duties, except if the condition is observed during an individual's break period. If the observed condition is impaired alertness with no other behaviors or physical conditions creating a reasonable suspicion of possible substance abuse, then the licensee need only conduct a fatigue assessment. If the licensee has reason to believe that the observed condition is not due to fatigue, the licensee need not conduct a fatigue assessment;

(2) Self-declaration. A fatigue assessment must be conducted in response to an individual's self-declaration to his or her supervisor that he or she is not fit to safely and competently perform his or her duties for any part of a working tour because of fatigue, except if, following the self-declaration, the licensee permits or requires the individual to take a rest break of at least 10 hours before the individual returns to duty;

(3) Post-event. A fatigue assessment must be conducted in response to events requiring post-event drug and alcohol testing as specified in Sec. 26.31(c). Licensees may not delay necessary medical treatment in order to conduct a fatigue assessment; and

(4) Followup. If a fatigue assessment was conducted for cause or in response to a self-declaration, and the licensee returns the individual to duty following a rest break of less than 10 hours in duration, the licensee shall reassess the individual for fatigue as well as the need to implement controls and conditions before permitting the individual to resume performing any job duties.

(b) Either a supervisor or a staff member of the FFD program, who is trained in accordance with the requirements of Sec. 26.29 and Sec. 26.197(c), shall conduct the fatigue assessment face to face with the individual whose alertness may be impaired.

(1) In the case of a fatigue assessment conducted for cause, the individual who observed the condition of impaired alertness may not conduct the fatigue assessment.

(2) In the case of a post-event fatigue assessment, the individual who conducts the fatigue assessment may not have--

(i) Performed or directed the work activities during which the event occurred;

(ii) Performed, within 24 hours before the event occurred, a fatigue assessment of the individuals who were performing or directing the work activities during which the event occurred; and

(iii) Evaluated or approved a waiver of the limits specified in Sec. 26.199(d)(1) and (2) for any of the individuals who were performing or directing the work activities during which the event occurred, if the event occurred while such individuals were performing work under that waiver.

(c) A fatigue assessment must provide the information necessary for management decisions and actions in response to the circumstance that initiated the assessment.

(1) At a minimum, the fatigue assessment must address the following factors:

- (i) Acute fatigue;
- (ii) Cumulative fatigue; and
- (iii) Circadian variations in alertness and performance.

(2) Individuals shall provide complete and accurate information that may be required by the licensee to address the factors listed in paragraph (c)(1) of this section. Licensees shall limit any inquiries to obtaining from the subject individual only the personal information that may be necessary to assess the factors listed in paragraph (c)(1) of this section.

(d) The licensee may not conclude that fatigue had not or will not degrade the individual's ability to safely and competently perform his or her duties solely on the basis that the individual's work hours have not exceeded any of the limits specified in Sec. 26.199(d)(1) or that the individual has had the minimum rest breaks required in Sec. 26.199(d)(2), as applicable.

(e) Following a fatigue assessment, the licensee shall determine and implement the controls and conditions, if any, that are necessary to permit the individual to resume performing duties for the licensee, including the need for a rest break.

(f) Licensees shall document the results of any fatigue assessments conducted, the circumstances that necessitated the fatigue assessment, and any controls and conditions that were implemented.

From: Carol Gallagher
To: Evangeline Ngbea
Date: Wed, Dec 28, 2005 10:39 AM
Subject: Comment letter on FFD Proposed Rule

Van,

Attached for docketing is a comment on the above noted proposed rule from Edwin D. Hill, IBEW, that I received via the rulemaking website on 12/27/05.

Carol

Mail Envelope Properties (43B2B18F.6E8 : 3 : 886)

Subject: Comment letter on FFD Proposed Rule
Creation Date: 12/28/05 10:38AM
From: Carol Gallagher
Created By: CAG@nrc.gov

Recipients

nrc.gov
owf5_po.OWFN_DO
ESN (Evangeline Ngbea)

Post Office
owf5_po.OWFN_DO

Route
nrc.gov

Files	Size	Date & Time
MESSAGE	630	12/28/05 10:38AM
1602-0057.pdf	3025327	12/28/05 10:34AM

Options

Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard