

June 2, 2006

MEMORANDUM TO: Sher Bahadur, Chairman  
Committee to Review Generic Requirements

FROM: Christopher I. Grimes, Director */RA/*  
Division of Policy and Rulemaking  
Office of Nuclear Reactor Regulation

SUBJECT: COMMITTEE TO REVIEW GENERIC REQUIREMENTS REVIEW OF  
THE PROPOSED RULEMAKING 10 CFR PART 26, "FITNESS-FOR-  
DUTY PROGRAM"

In response to your September 3, 2004, letter, the staff requests that the Committee to Review Generic Requirements (CRGR) review this proposed rule. The staff also is preparing to brief the Committee on June 20, 2006, and will discuss the staff's approach to applicable regulatory backfits to this revision of the fitness-for-duty (FFD) requirements in 10 CFR Part 26. Implementation of this rule would require licensees to submit license amendments for their FFD programs or facilities.

In SECY-05-0074, dated April 28, 2005, the staff requested Commission approval to revise and republish 10 CFR Part 26 to improve FFD programs. The Commission approved the staff's request, and the staff published the proposed rule in the *Federal Register* (70 FR 50624) on August 26, 2005, for a 120-day comment period that ended on December 27, 2005. The current version of the proposed rule package can be found in the Agencywide Documents Access and Management System (ADAMS) under accession number ML050970502.

As published for comment, the proposed rule would establish requirements for fatigue management at nuclear power plants and clarify that the fitness-for-duty requirements of 10 CFR Part 26 apply to licensees of new reactors. Furthermore, the proposed rule would apply those requirements in the current 10 CFR Part 26 to facilities under active construction and to 10 CFR Part 52 licensees (during construction), as well as to manufacturing licenses. The proposed fatigue management provisions would limit the use of extended work hours at the individual level to only the short term (e.g., individuals will be required to have a 24-hour break in any 7-day period and a 48-hour break in any 14-day period). It also would limit the routine use of extended work hours by establishing average work hour requirements (i.e., collective work hours) for functional groups (e.g., operators, security personnel) for periods of up to 13 weeks.

After the proposed FFD rule was published in August 2005, stakeholders commented that the fatigue provisions do not provide sufficient flexibility for the typical work schedules of a licensee's operations and security personnel. The staff also received comments that the FFD

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program and the access authorization requirements as proposed for manufacturing licenses and new reactor construction were not appropriate for construction sites. After assessing the comments, the staff developed alternative concepts that addressed fatigue management requirements governing work-hour control provisions. The staff also developed a modified FFD program and access authorization requirements for manufacturing licensees and new reactor construction. These concepts were published in the *Federal Register* (71 FR 13782) on March 17, 2006. The staff presented these concepts to stakeholders at a Category 3 public meeting on March 29, 2006 (ADAMS ML060650535).

During the meeting, stakeholders commented that there was no particular danger to public health and safety nor to common defense and security during nuclear power plant construction. Therefore, the access control program typical of a major non-nuclear construction program should be sufficient prior to fuel receipt. The staff has continued to discuss the access control program with stakeholders during the rulemakings for 10 CFR Part 52 and Section 73.56. The staff recommends in SECY 06-XXX (ADAMS ML061020247) that a separate rulemaking for the modified FFD program and access authorization requirements for construction sites be initiated with a proposed rule to be provided to the Commission in December 2006. A separate rulemaking would allow the staff to coordinate these requirements with the requirements of other rulemakings. The staff has included a detailed discussion of SECY 06-XXX as an enclosure to this memorandum. This initiative is in concurrence and will not delay the completion of the final rule for 10 CFR Part 26.

The staff believes that the concept, as modified and discussed in SECY 06-XXX, addresses the majority of stakeholder comments. Specifically, the staff believes it addresses the stakeholder comments and a subsequent NEI letter, dated April 27, 2006 (ADAMS ML0612404420), on an alternate concept for work-hour controls provisions of the proposed requirements. In addition, the staff addressed comments regarding the specific number of days off during plant operation, outages and increased threat conditions. The staff believes that the alternative concept, as modified, provides sufficient flexibility to licensees to conduct outage activities and react to increased threat conditions, while continuing to maintain plant safety. The staff also believes that the conclusion of the current regulatory analysis remains unchanged. The staff performed a qualitative analysis to support these modified work-hour control provisions and demonstrated that this approach eases licensees' burdens with no change to the public's health and safety.

The staff is committed to providing the final rule to the Commission for consideration by no later than December 31, 2006.

Enclosures:

1. SECY 06-XXXX, Modified Approach for Fitness-for-Duty and Access Control Requirements for Construction and Staff Alternative Concept for Work Hour Controls for Fatigue Management in 10 CFR Part 26
2. SECY 05-0074, Proposed Rule to Amend the Fitness-for-Duty Requirements in 10 CFR Part 26
3. *Federal Register* 71 FR 13782

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