December 4, 2006

MEMORANDUM TO: Robert Carlson, Branch Chief
Financial, Policy and Rulemaking Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

FROM: David T. Diec, Project Manager ***/RA/***
Financial, Policy and Rulemaking Branch
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SUBJECT: SUMMARY OF NOVEMBER 7, 2006, PUBLIC MEETING TO PRESENT TECHNICAL BASIS OF FITNESS-FOR-DUTY PART 26, SUBPART K

On November 7, 2006, the staff held a public meeting with stakeholders to present the technical basis for Subpart K, "FFD Programs for Construction," of the draft final rule and to describe the fitness monitoring option that Subpart K permits in lieu of random testing of certain construction workers. The staff indicated that the NRC is imposing regulatory requirements for FFD programs during construction for four primary reasons: (1) quality of work could be adversely affected by construction workers where studies indicate that members of this group have the highest rates of substance abuse problems among occupational groups in the U.S. (e.g., Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Sevices' National Household Survey on Drug Abuse (NHSDA) covering the years 2000-2001), (2) those that abuse illegal drugs are susceptible to coercion as demonstrated by example in the current investigation at Los Alamos of a lab archivist trading information for methamphetamine, (3) past experience also demonstrated that errors during construction can adversely affect subsequent plant operations (e.g., NUREG/CR-6819, Vols. 1-4, "Common Cause Failure Event Insights," (May 2003) and NUREG-1837, "Regulatory Effectiveness Assessment of Generic Issues 43 and Generic Letter 88-14," (October 2005)) and (4) quality control by design uses a sampling process. The staff stated that, despite having a high degree of confidence in the effectiveness of quality assurance and ITAAC programs to detect construction errors, it is prudent to require an FFD program during construction to provide reasonable assurance that impaired construction workers do not introduce faults in safety-related structures, systems, or components (SSCs) that may cause the SSCs to fail when called on to function. In addition, the staff expressed concern that some construction personnel who have substance abuse problems will have access to sensitive information that could be useful to an adversary, as well as physical access to safety-related SSCs that may provide opportunities for malicious acts.

The staff acknowledged, in part, that the full defense-in-depth approach of the FFD program for operating plants is not appropriate for all construction workers because construction activities, before fuel arrives on site, do not impose immediate radiological risks. As such, the

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requirements as stipulated in Subpart K are definitive in scope and more simplified. The requirements provide certain holders of and applicants for COLs and CP more flexibility in implementing FFD programs for construction, and greater flexibility than permitted under the current rule. The staff also acknowledged that industry stakeholders continue to maintain that only an industrial safety program is appropriate during new reactor construction.

Stakeholder responses to the staff's presentation varied. Industry stakeholders asserted that FFD requirements should not be imposed by the NRC during construction until fuel is on site. Industry stakeholders also indicated that the costs associated with FFD requirements for construction are not warranted because (1) all applicable licensees, applicants, and permit holders will implement an FFD program for business and industrial safety purposes that includes pre-employment, for-cause, and post-accident drug and alcohol testing, and behavioral observation performed by trained personnel, and (2) the absence of fuel on site means that construction activities pose no immediate threat to public health and safety or the common defense and security. Industry stakeholders also commented that the fitness monitoring program is an unfamiliar concept and asked several implementation questions. The staff indicated that it intends to work with stakeholders to develop a guidance document.

By contrast to the industry's positions, a representative from a public interest group stated that the Subpart K requirements are necessary for FFD during construction. However, this representative questioned the staff's concerns about construction workers having unfettered access to sensitive information as partial justification for the FFD requirements prior to fuel receipt. This individual stated that safety considerations, independent of any potential security concerns, warrant regulations for FFD programs for construction prior to fuel receipt.

Enclosures:
1. Attendance List
2. NRC Presentation Materials

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