

PR 26  
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NUCLEAR ENERGY INSTITUTE

Marvin S. Fertel  
SENIOR VICE PRESIDENT AND  
CHIEF NUCLEAR OFFICER

April 24, 2007

DOCKETED  
USNRC

April 25, 2007 (9:30am)

The Honorable Dale E. Klein  
Chairman  
U.S. Nuclear Regulatory Commission  
Mail Stop O 16 C1  
Washington, DC 20555

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**Subject:** Staff Requirements, SECY-06-0244, "Final Rulemaking - 10 CFR Part 26, Fitness-For-Duty Programs"

**Project Number: 689**

Dear Chairman Klein:

On behalf of the nuclear industry, the Nuclear Energy Institute (NEI)<sup>1</sup> recognizes the sustained effort of the NRC staff and Commission that has resulted in amending 10 CFR Part 26, Fitness-For-Duty Programs. However, the industry has a significant concern with one item in the Staff Requirements Memorandum (M070417B) (SRM) approving the Part 26 final rule.

In the SRM, the Commission added what the industry considers to be a new requirement by modifying the draft final rule language. Specifically, the Commission directed that the staff replace "working on unit outage activities" with "solely performing outage activities" in the first sentence of 26.205(d)(4), and any other pertinent sections, to clarify the requirements (SRM Attachment #15) [emphasis added]. The public received no notice of this new requirement, which would have significant consequences if adopted. This new requirement will result in a significant negative impact on plant outage performance and will be impractical and onerous to implement.

The Commission also added a second new requirement, by adding personnel who actually perform independent quality control/verification (QC/QV) checks to the individual groups within the scope of work hour controls. The Commission directed the staff to determine if this provision of the rule requires re-notice and comment under the Administrative Procedure Act. Regardless of the decision on QC/QV personnel, NEI

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<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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requests that the new outage requirement be re-noticed to provide for public comment on this new and onerous requirement, or alternatively, that the SRM be revised as discussed below.

As a practical matter, site personnel at multi-unit sites work on both units regardless of the operating status of each unit. In general, maintenance, operations, chemistry, radiation protection, fire brigade, and security personnel work on a site-wide basis performing activities on both units. During an outage, many of these individuals will be primarily involved in outage activities; however, these employees may perform activities related to the operating unit(s). In addition, during an outage, supplemental workers hired for the outage will be working primarily on outage activities, but may also work on maintenance packages for the operating unit.

Adoption of this new requirement (i.e., work hour controls based on work solely on outage activities), will significantly restrict the number of personnel that can be placed under the outage work hours controls. As addressed in the enclosure to this letter, this new requirement will have a significant impact on outage performance.

Accordingly, we recommend the Commission revise the SRM or otherwise direct the staff to use the term "working on outage activities." Further, we ask the Commission to direct the staff to work with the industry and other stakeholders on regulatory guidance needed specifically for this section of the rule. In addition, the rule should be clarified to state that personnel working at multi-unit sites who do not perform outage-related activities during a unit outage, must remain in compliance with the non-outage days-off requirements defined in 26.205(d)(3).

The industry is encouraged that the Commission directed the staff to continue engaging the industry and other stakeholders to complete the associated regulatory guidance for this rule, and to ensure that it addresses the broad range of questions of interpretation and implementation. We look forward to that interaction.

If you have any questions, please feel free to contact me at 202.739.8125; [msf@nei.org](mailto:msf@nei.org).

Sincerely,



Marvin S. Fertel

Enclosure

c: The Honorable Edward McGaffigan Jr., Commissioner, NRC  
The Honorable Jeffrey S. Merrifield, Commissioner, NRC  
The Honorable Gregory B. Jaczko, Commissioner, NRC  
The Honorable Peter B. Lyons, Commissioner, NRC  
Mr. Luis A. Reyes, Executive Director for Operations, NRC

## **Implementation Issues with Outage Work Hour Controls at Multi-Unit Sites**

### **Background:**

The Commission directed that the staff should replace "working on unit outage activities" with "solely performing outage activities" in the first sentence of 26.205(d)(4), and any other pertinent sections, to clarify the requirements.

This new requirement states that personnel at multi-unit sites, who work on the operating unit(s) while the other unit is in an outage, comply with the more restrictive non-outage work hour controls. This requirement will consequently prevent personnel performing outage-related activities, whose work hours are in compliance with 26.205(d)(4) (i.e., the outage days-off requirement), from performing work on the operating unit since their work hours will most probably not be in compliance with 26.205(d)(3) (i.e., the non-outage days-off requirements). Implementation of this restriction is nearly impossible.

### **Implementation Issues:**

Many multi-unit site personnel do not work solely on outage activities. Site personnel at multi-unit sites often work on all units regardless of the operating status of each unit. In general, maintenance, operations, chemistry, radiation protection, fire brigade, and security work on a site-wide basis covering all units. During an outage, many of these individuals will be primarily involved in outage activities; however, they may also perform activities related to the operating unit(s).

A number of examples are presented below to specifically describe the implementation difficulties with the above new requirement.

Example 1: During a refueling outage, the Operations Department forms two "super crews" who work 12-hour shifts that relieve each other. These "super crews" operate both the outage unit and operating unit(s). If operations personnel performing outage-related tasks are prohibited from performing work on the operating unit, 3 or 4 additional "skeleton" crews would have to be formed to staff the operating units in order to comply with the non-outage days-off requirements. It is obvious that this new requirement poses a significant resource challenge to the operations staff.

Example 2: Health physics and chemistry personnel who are members of the on-site emergency response organization (ERO) are subject to the work hour controls defined in 26.205, "Work hours." Based on the above new requirement, health physics and chemistry ERO members would need to be in compliance with the non-outage days-off requirements at all times and could not work outage hours. Health physics and chemistry personnel are in high demand during an outage.

- Example 3: During an outage, the majority of the Maintenance Department personnel are assigned to outage-related activities; however, routine maintenance activities must continue to be performed on the operating unit. Maintenance technicians who are working on outage-related tasks, in compliance with the outage work hour controls, would be ineligible to work on operating unit activities without a waiver. It is impractical to segment the maintenance work force such that all necessary skill sets of maintenance technicians would be available to perform work on the operating unit, and remain in compliance with the non-outage work hour controls.
- Example 4: During an outage, the majority of security personnel are assigned to site activities, covering both the unit in operation and the unit in an outage. Based on the above new requirement, security personnel would need to be in compliance with the non-outage days-off requirements at all times and could not work outage hours.
- Example 5: The above new requirement also creates an extreme conflict with most union contract agreements. In order to comply with the outage and non-outage work hour limitations at multi-unit sites, the work force would need to be segmented into an "outage group" and a "non-outage group." It would be virtually impossible to equalize overtime, as required by nearly all union contract agreements, if one segment of the workforce was not eligible to work "outage hours."

**Conclusions:**

Implementation of the new proposed rule that only personnel "solely performing outage activities" be eligible to work "outage hours" in compliance with 26.205(d)(4) is impractical at multi-unit sites and would cause extreme resource challenges at nuclear power facilities. Implementation of this new constraint clearly does not enhance safety and only creates operational difficulties and labor relations problems during outage periods.

We recommend the Commission revise the SRM to direct the staff to use the term "working on outage activities" and to direct the staff to work with the industry and other stakeholders on regulatory guidance needed specifically for this section of the rule. In addition, the rule should be clarified to state that personnel working at multi-unit sites, who do not perform outage-related activities during a unit outage, must remain in compliance with the non-outage days-off requirements defined in 26.205(d)(3).

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**Subject:** Staff Requirements, SECY-06-0244, "Final Rulemaking - 10 CFR Part 26, Fitness For Duty Programs"  
**Creation Date** Tue, Apr 24, 2007 4:09 PM  
**From:** "FERTEL, Marvin" <msf@nei.org>

**Created By:** [msf@nei.org](mailto:msf@nei.org)

**Recipients**

Files	Size	Date & Time
MESSAGE	2893	Tuesday, April 24, 2007 4:09 PM
TEXT.htm	13700	
04-24-07_NRC_Final Rulemaking 10 CFR Part 26, FFD Programs.pdf	126334	
04-24-07_NRC_Final Rulemaking 10 CFR Part 26, FFd Programs - Implementation Issues_Enclosure.pdf	61239	
Mime.822	277353	

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