December 20, 2007

MEMORANDUM TO: Doug Huyck, Chief
Reactor Security Licensing and Programs Branch
Division of Security Policy
Office of Nuclear Security and Incident Response

FROM: Timothy S. McCune, Senior Security Specialist ***/RA/***
Reactor Security Licensing and Programs Branch
Division of Security Policy
Office of Nuclear Security and Incident Response

SUBJECT: MEETING WITH THE PUBLIC ON NOVEMBER 13, 2007 TO DISCUSS PLANS TO IMPLEMENT 10 CFR PART, 26 SUBPART K

Attached is the meeting summary for the November 13, 2007 stakeholder meeting on implementation plans for Subpart K of the Part 26 Fitness-for-Duty (FFD) rule. The meeting participants (Attachment 1) included representatives from the power reactor licensee community and the Nuclear Energy Institute (NEI) as well as the U.S. Nuclear Regulatory Commission (NRC) staff and contractors.

The focus of the meeting was to discuss the industry's plans to implement Subpart K [FFD Programs for Construction], which are being developed in NEI 06-06, Revision 1, "Fitness for Duty Program Guidance for New Nuclear Power Plant Construction Sites." This guidance is intended for endorsement by the NRC.

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ADAMS Accession Number: ML073320374

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DATE	12/18/07	12/20/07

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Meeting Summary
November 13, 2007
NEI 06-06 Implementation Guidance for 10 CFR, Part 26

On November 13, 2007, the NRC staff held a public meeting regarding the development of implementation guidance for Subpart K of the Part 26 Fitness-for-Duty (FFD) rule. The meeting participants (Attachment 1) included representatives from the power reactor licensee community and Nuclear Energy Institute (NEI), as well as NRC staff and contractors. The purpose of the meeting was for NRC to provide comments on NEI 06-06, Revision 1, "Fitness for Duty Program Guidance for New Nuclear Power Plant Construction Sites" and discuss necessary revisions.

The meeting was noticed on October 16, 2007. The notice is available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html. The public can gain entry into the NRC's Agency-wide Document Access and Management System (ADAMS), which provides text and image files of the meeting notice and agenda, and which may be found in ADAMS under accession number ML072760313.

The meeting began with introductions and a discussion of the purpose and goals of the meeting. This was followed by an NRC staff presentation on the technical basis for a 100% annual drug and alcohol testing rate for Subpart K programs and then a review of staff comments on NEI 06-06, Revision 1. The following summarizes the discussions and future actions.

Significant Meeting Items

1. Annual Random Drug and Alcohol Testing Rate

The NRC staff and industry representatives stated their respective positions and arguments in support of particular annual random testing rates for individuals subject to Subpart K.

The NRC staff repeated its position that the industry's proposed annual 25% random testing rate is too low to be effective, and that a 100% annual random testing rate is necessary. In support of this position, the NRC staff described the specific technical basis supporting the 100% annual drug and alcohol testing rate, including the following points:

- The latest Department of Health and Human Service's Substance Abuse and Mental Health Services Administration (SAMHSA) survey found that the construction industry ranks first or second in illicit drug use or heavy alcohol use when compared to all other industries and occupations. Also, illicit drug use and heavy alcohol use are significantly more common among younger workers (age 18-25) than for older workers. Illicit drug and heavy alcohol use are significantly more common among part-time workers and the unemployed than for full-time workers.[1]

- The NRC's FFD testing data show that short-term contractor positive test results were two to three times higher than licensee employee rates from 1998-2006 for pre-access testing, random testing, and for-cause (observed behavior) testing. Also, there are more

[1] Larson, S.L., Eyerman, J., Foster, M.S., Gfroerer, J.C. (2007). *Worker Substance Use and Workplace Polices and Program* (DHHS Publication No. SMA 0-4273, Analytic Series A-29), Rockville, MD: Substance Abuse and Mental Health Services Administration (SAMHSA), Office of Applied Studies.

for-cause tests conducted for short-term workers than for permanent licensee employees.

- The NRC's FFD testing data show more for-cause tests for short-term workers than for permanent licensee employees.

- An annual testing rate of 100% would result in a 65% chance of testing an individual worker who is on site for a full year. In contrast, a 25% annual testing rate would result in less than a 50% probability (specifically, a 22% probability) of a permanent worker being testing over the course of an entire year.

- The annual drug testing rates of several other federal programs (e.g., DOT, DOE, DOD, NSA) range from 50% to 100%.

- Industry has not provided a technical basis for any proposed annual testing rate below 100%, including the current proposed rate of 25%.

Industry representatives presented arguments against the 100% annual drug and alcohol random testing rate, including the following:

- The primary function of random testing is to serve as a deterrent. If workers view the random testing program as active, then a 25% annual rate would be as effective as a 100% rate, given that these two rates both equate to very low daily testing rates.

- The SAMHSA study is not specific to nuclear industry workers.

- With regard to the NRC FFD data, although the positive random drug and alcohol testing rates of short-term employees are higher than the positive rates of long-term employees, the rates are very low (below 1%), and do not warrant increasing the annual testing rate.

- Industry representatives asked whether the FFD "for-cause" testing data results include both "post-event" and "observed behavior" tests. They expressed concern that the "post-event "data was driving the FFD testing results, and they suggested that high positive testing rates of for-cause tests are a function of the work the individuals perform at the time they are selected for the test (i.e., rather than whether the individual is a short-term or long-term worker). The NRC staff agreed to research this issue further.

- Given that the functions performed by construction workers are less sensitive than those performed by workers at operating plants, it seems reasonable that the annual testing rate for construction workers should be lower, not higher, than the 50% annual testing rate for workers at operating plants.

- It is inconsistent to allow some construction workers who happen to be covered by a full Part 26 FFD program to be tested at a 50% annual rate while requiring other workers to be subject to a higher rate if they happen to be covered under a Subpart K FFD program. Industry representatives asked the NRC for the technical basis for the 50% testing rate in the full FFD program. The NRC staff responded that the higher testing rate should be considered within the context of the entire Subpart K program, which reduces some requirements and provides flexibility on others.

The NRC staff stated that, in the absence of a written technical basis adequately supporting industry's use of a lower annual random testing rate, the technical staff will be going forward with the 100% random testing rate for individuals subject to Subpart K. The testing rate will be decided by NRC senior management.

2. Implementation Option for Random Testing

The NRC staff described a concept to conduct random testing at a construction site. Under the portal-based approach, individuals subject to random testing would be distinguished from non-subject individuals by a badging or other equivalent system. Subject individuals would enter the construction site through a monitored portal, which would have a clearly labeled random number generator-type device. The individual would push a button (or perform another equivalent activity) to activate a random number generator that would select individuals and "light up" at the pre-programmed testing rate. The selected individuals would proceed to testing.

This approach attempts to solve several of the problems associated with implementing a random testing program. Selected individuals would immediately proceed to testing, thereby eliminating the need for them to be located and minimizing the amount of work disrupted. Testing would be conducted on a daily basis, which helps to ensure that short-term workers will be on site to be selected. Also, the clearly labeled indicator light would maximize awareness of the random testing program and would maximize deterrence. This approach would automatically apply the appropriate testing rate regardless of changes in the pool size and membership. The approach assumes that testing can occur when workers arrive. Also, the annual testing rate would be converted to a rate per worker.

3. Other NRC Comments on NEI 06-06

The NRC staff raised numerous editorial and substantive comments intended to clarify the guidance document. Industry representative stated that they will take the comments into consideration when developing the guidance document.

4. Meeting Follow-Up

After conducting further research on the question raised during the meeting of whether the FFD "for-cause" testing data results include both "post-event" and "observed behavior" tests, the NRC has concluded that the data did include both "post-event" and "observed-behavior" tests. The NRC also found, however, that the "post-event" data did not drive the results. The results show that short term contractor for-cause test positives are two to three times those of licensee employees regardless of whether considering only "observed behavior" tests or both "observed behavior" and "post-event" tests (Attachment 2).

There was discussion at the meeting of the schedule for development of the guidance document. The NRC has determined that, should the NRC conclude that implementation of NEI 06-06 would be an acceptable means of complying with the requirements of Subpart K of the new Part 26 (with any conditions or exclusions), then the agency would begin the process of developing a Regulatory Guide endorsing NEI 06-06 and would not issue an endorsement letter. The staff continues to investigate whether the NRC will need to seek public comments on a proposed Regulatory Guide, and if so, the required length of the comment period.

Attachment 1: November 13, 2007, Public Meeting to Discuss Implementation Guidance for Subpart K of 10 CFR, Part 26

Attendance List

NAME	AFFILIATION
Tim McCune	NRC/NSIR
Howard Benowitz	NRC/OGC
Jonathan Rund	NRC/OGC
Niav Hughes	NRC
Mark Orr	NRC/RES/DE
Yavor Ivanchev	NRC/RES
Chris Earls	NEI
Susan Techau	Exelon
Peter Defilippi	Westinghouse
R. Markovich	Unistar
John Oddo	Shaw, Stone, and Webster
Nelson Martin	Dominion
Kay Wallace	TVA
Lisa Matula	STPNOC
John Collier	ICF
Brian Zaleski	ICF

Attachment 2: NRC FFD For-Cause Testing Data, 1998-2006

Exhibit 1: Percent Positive Results for For-Cause (Observed Behavior) Test Category by Work Category from 1998-2006

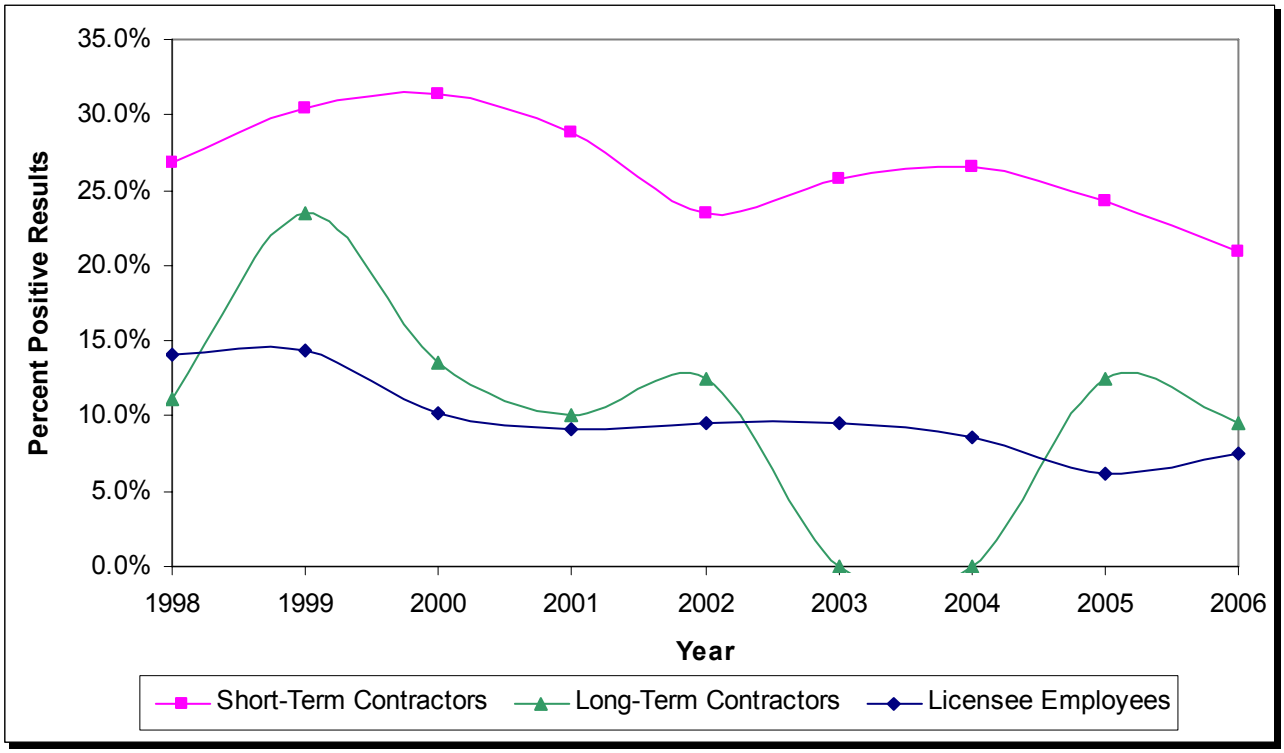

Exhibit 2: NRC FFD Test Results, For-Cause (Observed Behavior), 1998 to 2006

Year	LICENSEE EMPLOYEES			SHORT-TERM CONTRACTORS			LONG-TERM CONTRACTORS		
	Number Tested	Positive Tests	Percent Positive	Number Tested	Positive Tests	Percent Positive	Number Tested	Positive Tests	Percent Positive
1998	185	26	14.05%	261	70	26.82%	9	1	11.11%
1999	203	29	14.29%	286	87	30.42%	17	4	23.53%
2000	205	21	10.24%	315	99	31.43%	89	12	13.48%
2001	219	20	9.13%	267	77	28.84%	20	2	10.00%
2002	243	23	9.47%	366	86	23.50%	8	1	12.50%
2003	232	22	9.48%	393	101	25.70%	12	0	0.00%
2004	266	23	8.65%	417	111	26.62%	18	0	0.00%
2005	309	19	6.15%	346	84	24.28%	16	2	12.50%
2006	322	24	7.45%	373	78	20.91%	21	2	9.52%

For Cause (Observed Behavior) Trends 1998-2006

- Short-term contractor positive rates two to three times higher than licensee employees