

## Issue 1: Minimum days off requirements during outages

### Explanation of the Issue:

The issue involves the eligibility of covered workers to work the less restrictive outage minimum days off at multi-unit stations with one unit in an outage and other unit(s) operating. The issue impacts all covered groups with the exception of security workers.

This disagreement does not effect the security category of workers as the industry and the NRC staff agree that security workers at a multi-unit station has duties on both the outage and at power unit and are eligible for the outage minimum days off requirements. The industry supports this agreement for covered security workers and believes it should be extended to all categories of covered workers. The industry notes that the rule requirement for outage minimum days off applies to all covered workers, not just security workers.

### Background:

In the attached April 17, 2007, Staff Requirements Memorandum approving the Part 26 final rule, the Commission changed a requirement for outage work hour controls by modifying the draft final rule language (see SRM Attachment item 15). Specifically, the Commission directed the staff to 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.

The industry responded to this change by the attached letters dated April 24, 2007 and May 8, 2007 to the NRC Chairman stating this language change (1) will result in a significant negative impact on plant outage resources and/or schedule, (2) will lead to unequal distribution of work hours between operating unit and outage unit personnel, a violation of collective bargaining agreements at many utilities, and (3) could have a negative impact on nuclear safety.

On July 3, 2007 Chairman Klein issued the attached "REQUEST FOR RECONSIDERATION OF THE WORDING OF 10 C.F.R. § 26.205(d)(4) AS AFFIRMED ON APRIL 17, 2007." In his request for reconsideration he stated the following:

One specific change from the proposed draft final rule, based on my initiative during the development of the SRM, was to replace "working on unit outage activities" with "solely performing outage activities" in the first sentence of § 26.205(d)(4). See SRM of April 17, 2007 (Item 15 of the Comments and Changes to the Final Rule in SECY-06-0224). This section of the rule addresses the limits on plant personnel work hours and distinguishes between work performed on an operating plant and a plant that is in an outage. The change to the wording was intended as a simple clarification. I now believe it was a mistake for me to suggest it without fuller consideration. It could result in unintended consequences that are potentially significant and could impede final implementation of the rule. The Nuclear Energy Institute has submitted letters of April 24, 2007, and May 8, 2007, in which it alleges potential impacts on nuclear safety, staffing, collective bargaining agreements, and costs of implementation. I am also concerned that the change in language may prompt much greater consideration of waiver requests, which is an undesirable outcome for a new rule provision.

In my view, sufficient questions are raised by this particular late change in rule language to warrant a Commission decision, as a matter of policy, to revert to the language "working on unit outage activities" as proposed by staff in the draft final rule that was before the Commission and available to the public when the Commission affirmed the final rule on April 17, 2007. As planned, the staff should continue to engage the industry and other stakeholders to complete the regulatory guidance for this rule, with the restored language.

Therefore, I recommend that the Commission agree to reconsider the change in language in 26.205(d)(4) and support prompt affirmation on this proposal to modify the final rule by restoring the words "working on outage activities" in place of "solely performing outage activities" in the first sentence of § 26.205(d)(4) and any other pertinent sections.

The attached record of the Affirmation Session, Tuesday, July 24, 2007; the Commission approved reconsideration of this one provision of the rule and approved the final rule as affirmed on April 17, 2007, with this modification. The NRC Commission directed that the word "solely" be removed from section 26.205 of the rule and be replaced with "while working outage activities." The final rule reflects the Commission's action on the issue of "solely performing outage activities." The final rule uses the phrase "while those individuals are working on outage activities."

Additionally, the Statements of Considerations of the published rule are contrary to the Commission's action on the issue of "solely performing outage activities." Statements of Considerations state the following: "If at any time during a unit outage an individual performs duties specified in § 26.4(a)(1) through (a)(4) on or for a unit that is not disconnected from the electrical grid, the individual is subject to the minimum day off requirements of § 26.205(d)(3) while the individual is performing those duties, except as permitted by § 26.205(d)(6)."

In plain language, the statement is, if at any time during a unit outage an individual covered by work hours restrictions performs duties (except security) on or for a unit that is operating, the individual is subject to the minimum day off requirements for normal operations. This statement is clearly equivalent to "solely performing outage activities." The industry believes this statement is in conflict with the Commission's actions on "solely performing outage activities."

Rule Language from §26.205 Work Hours:

4) During the first 60 days of a unit outage, licensees need not meet the requirements of paragraph (d)(3) of this section for individuals specified in § 26.4(a)(1) through (a)(4), while those individuals are working on outage activities. However, the licensee shall ensure that the individuals specified in § 26.4(a)(1) through (a)(3) have at least 3 days off in each successive (i.e., nonrolling) 15-day period and that the individuals specified in § 26.4(a)(4) have at least 1 day off in any 7-day period;

d(3) Licensees shall ensure that individuals have, at a minimum, the number of days off specified in this paragraph. For the purposes of this subpart, a day off is defined as a calendar day during which an individual does not start a work shift. For the purposes of calculating the average number of days off required in this paragraph, the duration of the shift cycle may not exceed 6 weeks. (i) Individuals who are working 8-hour shift schedules shall have at least 1 day off per week, averaged over the shift cycle; (ii) Individuals who are working 10- hour shift schedules shall have at least 2 days off per week, averaged over the shift cycle; (iii) Individuals who are working 12- hour shift schedules while performing the duties described in § 26.4(a)(1) through (a)(3) shall have at least 2.5 days off per week, averaged over the shift cycle; (iv) Individuals who are working 12- hour shift schedules while performing the duties described in § 26.4(a)(4) shall have at least 2 days off per week, averaged over the shift cycle; and (v) Individuals who are working 12- hour shift schedules while performing the duties described in § 26.4(a)(5) shall have at least 3 days off per week, averaged over the shift cycle.

26.4 FFD program applicability to categories of individuals. (a) All persons who are granted unescorted access to nuclear power reactor protected areas by the licensees in § 26.3(a) and, as applicable, (c) and perform the following duties shall be subject to an FFD program that meets all of the requirements of this part, except subpart K of this part: (1) Operating or onsite 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 health physics or chemistry duties required as a member of the onsite emergency response organization minimum shift complement; (3) Performing the duties of a fire brigade member who is responsible for understanding the effects of fire and fire suppressants on safe shutdown capability; (4) Performing maintenance or onsite directing of the maintenance of SSCs that a risk-informed evaluation process has shown to be significant to public health and safety.

NRC Staff Position:

The following NRC Staff Position has been provided to the industry.

*We understand that the guidance in Section 8.3 of NEI-06-11, Draft D would permit individuals whose planned work activities included at least a nominal 25% “outage activities,” as described in the draft guidance document, to be eligible to work in accordance with the relaxed work hour limits applicable to individuals “while working on outage activities,” as described in § 26.205(d)(4). Rather than this approach, the staff would endorse guidance that excludes from eligibility those individuals who comprise the operator minimum shift complement, including the operator at the controls, as specified in 10 CFR 50.54, for an operating unit at a multi-unit site.*

*The staff’s position is based on the rules and guidance associated with the minimum crew complement, including the operator at the controls (i.e., 10 CFR 50.54(m) and (k)). The primary responsibility of these individuals is to ensure that the unit is operating safely and to be prepared to prevent and mitigate any operational problems. As described in the NRC’s Policy Statement on the Conduct of Nuclear Power Plant Operations (54 FR 3424, January 29, 1989), “the operator at the controls and the immediate supervisor must be continuously alert to plant conditions and ongoing activities affecting plant operations...” and “licensed operators must be alert and attentive to instruments and controls...using all*

*their senses, ... to prevent or mitigate any operational problems.” Further, RG 1.114, Rev. 2, 1989, “Guidance to Operators at the Controls and to Senior Operators in the Control Room of a Nuclear Power Unit” states, “The operator must be alert to ensure that the unit is operating safely and must be capable of taking action to prevent any progress toward a condition that may be unsafe.”*

*Therefore, staff recommends that NEI add to Section 8.3 of the guidance the following statement:*

*“The minimum shift complement, as specified in 10 CFR 50.54(m), including the operator at the controls, as specified in 10 CFR 50.54(k), that are assigned to the operating unit are not eligible for outage work hour restrictions.”*

Industry Position:

The industry’s position is stated in NEI 06-11 “Managing Personnel Fatigue at Nuclear Power Reactor Sites” Draft E and is summarized below.

The industry position is that covered workers assigned only outage activities are eligible for the outage minimum days off requirements and that covered workers at multi-unit sites that are assigned both outage activities and activities on the operating unit are eligible for the outage minimum days off requirements.

The industry position is that covered workers that are not assigned outage activities would not be eligible for the outage minimum days off requirements.

This eligibility should be established on an individual or defined group basis and the eligibility should be evaluated each 15 days for each individual or defined group during the outage.

Discussion:

The guidance in NEI 06-11 Draft E complies with the rule requirement that the minimum days off relaxation is applied while working outage activities and provides a clear set of conditions for when the relaxation is applicable. The basis for this position is that the industry expects the same level of alertness for covered workers at operating or outage nuclear reactors.

The minimum days off requirements are only one barrier included in the rule that manages fatigue in workers; others include work hour restrictions, break requirements, behavioral observation, self-declarations and training.

This guidance together with the rule requirement that only allows the outage minimum days off requirement for a maximum of 60 days provide reasonable assurance of proper fatigue management of workers during an outage period. The industry believes this is best exemplified by NRC and industry consensus that for outage durations of less than 60 days, all security workers are eligible for outage minimum days off rule requirements. We believe that not applying this same logic during outage periods to other work groups is contradictory.

The industry position meets the rule requirement of working on outage activities and the intent of the commission removal of the word solely. The NRC staff position is not a requirement of the rule.

The industry does not agree that an exclusion of the minimum operating staff including the operator at the controls is a requirement of 10 CFR 26. In addition, the requirements of 10 CFR 50.54 that are listed below do not address workers performing outage activities and do not provide clarity in which crew members of the table would be excluded.

i) Each licensee shall meet the minimum licensed operator staffing requirements in the following table:

Minimum Requirements Per Shift for On-Site Staffing of Nuclear Power Units by Operators and Senior Operators Licensed Under 10 CFR Part 55

Number of nuclear power units operating <sup>2</sup>	Position	One Unit	Two units		Three units	
		One control room	One control room	Two control rooms	Two control rooms	Three control rooms
None	Senior Operator	1	1	1	1	1
	Operator	1	2	2	3	3
One	Senior Operator	2	2	2	2	2
	Operator	2	3	3	4	4
Two	Senior Operator		2	3	3	3
	Operator		3	4	5	5
Three	Senior Operator				3	4
	Operator				5	6

**Requested Action:**

The industry requests that the staff reconsider their position on eligibility for outage minimum days off and endorse the industry position in NEI 06-11 "Managing Personnel Fatigue at Nuclear Power Reactor Sites" Draft E. Additionally, the industry request that the statements of consideration for 10 CFR Part 26 be revised to reflect the Commission's action to remove solely from the rule.

## Issue 2: Minimum Days Off Requirements

### Explanation of the Issue:

This issue has two parts. The first part involves transition of workers into or between covered work categories. The rule is silent on requirements for transition of workers. The rule provides requirements on covered workers while they are assigned covered work but does not define requirements for workers prior to beginning covered work or transitioning between differing requirements.

The second part involves the impact of overtime on required minimum days off. The rule defines minimum days off by the shift schedule of the worker. The rule does not specify if this shift schedule is the assigned work schedule or a schedule that is determined historically by average hours worked in a defined period.

### Rule Language from §26.205 Work Hours:

(3) Licensees shall ensure that individuals have, at a minimum, the number of days off specified in this paragraph. For the purposes of this subpart, a day off is defined as a calendar day during which an individual does not start a work shift. For the purposes of calculating the average number of days off required in this paragraph, the duration of the shift cycle may not exceed 6 weeks.

(i) Individuals who are working 8-hour shift schedules shall have at least 1 day off per week, averaged over the shift cycle;

(ii) Individuals who are working 10-hour shift schedules shall have at least 2 days off per week, averaged over the shift cycle;

(iii) Individuals who are working 12-hour shift schedules while performing the duties described in § 26.4(a)(1) through (a)(3) shall have at least 2.5 days off per week, averaged over the shift cycle;

(iv) Individuals who are working 12-hour shift schedules while performing the duties described in § 26.4(a)(4) shall have at least 2 days off per week, averaged over the shift cycle; and

(v) Individuals who are working 12-hour shift schedules while performing the duties described in § 26.4(a)(5) shall have at least 3 days off per week, averaged over the shift cycle.

*Eight (8)-hour shift schedule* means a schedule that averages not more than 9 hours per workday over the entire shift cycle.

*Ten (10)-hour shift schedule* means a schedule that averages more than 9 hours, but not more than 11 hours, per workday over the entire shift cycle.

*Twelve (12)-hour shift schedule* means a schedule that averages more than 11 hours, but not more than 12 hours, per workday over the entire shift cycle.

(b)(3) Beginning or resuming duties subject to work hour controls. If an individual begins or resumes performing for the licensee any of the duties listed in § 26.4(a) during the calculation period, the licensee shall include in the calculation of the individual's work hours all work hours

worked for the licensee, including hours worked performing duties that are not listed in § 26.4(a), and control the individual's work hours under the requirements of paragraph (d) of this section.

26.4 FFD program applicability to categories of individuals. (a) All persons who are granted unescorted access to nuclear power reactor protected areas by the licensees in § 26.3(a) and, as applicable, (c) and perform the following duties shall be subject to an FFD program that meets all of the requirements of this part, except subpart K of this part: (1) Operating or onsite 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 health physics or chemistry duties required as a member of the onsite emergency response organization minimum shift complement; (3) Performing the duties of a fire brigade member who is responsible for understanding the effects of fire and fire suppressants on safe shutdown capability; (4) Performing maintenance or onsite directing of the maintenance of SSCs that a risk-informed evaluation process has shown to be significant to public health and safety. (5) Performing security duties as an armed security force officer, alarm station operator, response team leader, or watchperson, hereinafter referred to as security personnel.

NRC Staff Position:

The following NRC Staff Position has been provided to the industry.

*As stated in the staff's comments on Draft B of the subject document provided to you on April 10, 2008 [ML080850613], the implementation guidance for transitions should ensure that individuals who transition to shift schedules or job duties with more stringent MDO requirements meet the MDO requirements for the new duties at the time the individual begins the new schedule or assumes the new duties. This comment reflects the staff's interpretation of § 26.205(b)(3) as applied to the implementation of the MDO requirements.*

*The staff understands the guidance in Section 7.4, of NEI 06-11, Draft D to require a minimum of 1 day off in the last 7-day period prior to beginning or resuming covered duties. The staff finds that an approach based on a minimum number of days off in the preceding 7-day period is acceptable for meeting the MDO requirements during transitions from non-covered to covered duties. In addition, the staff believes that such an approach is appropriate and applicable to transitions between covered groups. However, as described, the staff does not consider 1 day off in the preceding 7-day period to be adequate for meeting the MDO requirements for all transition circumstances.*

*The staff notes that although a 7-day "look-back" would be acceptable, the rule permits licensees to show compliance with the MDO requirements by calculating the average number of days off over the preceding period of up to 6-weeks.*

*We understand that the "periodic overtime" implementation guidance in Section 7.1 of Draft D would permit licensees to establish a schedule for a shift duration (e.g., 8-hour shifts) that would include sufficient days off to meet the MDO requirements for that shift duration, but then assign or permit unscheduled work hours that may result in individuals working shift*

*lengths that would be associated with higher MDO requirements (e.g., 10 or 12-hour shifts). The licensee would review its performance at meeting the established schedule annually and evaluate deviations from the established shift schedules within the corrective action program.*

*The staff recognizes industry's need for flexibility in scheduling personnel work hours. However, as noted in the statements of consideration for the rule, the MDO requirements in the rule provide substantial scheduling flexibility by permitting licensees to distribute the minimum days off over a period up to 6 weeks. In addition, the MDO requirements permit an average work week of 48 to 60 hours. As a consequence, the MDO requirements accommodate periods of increased work hours for emergent work and planned periods of increased work (e.g., pre- and post-outage).*

*As we communicated on February 14, 2008 [ML 080460586], "the staff considers the section on periodic overtime to be unnecessary and potentially in conflict with the requirements of the rule. The MDO requirements of § 26.205(d) are based on the average duration of the shift and the definitions of shift durations described in § 26.5. A change in schedule will be deemed to have occurred if the average hours worked by an individual differs from the definition of the shift duration to which the individual is assigned. The applicable MDO requirements will be determined by comparing the average shift duration to the shift duration definitions in § 26.5."*

#### Industry Position:

The industry's position is stated in NEI 06-11 "Managing Personnel Fatigue at Nuclear Power Reactor Sites" Draft E and is summarized below.

#### Section 7.1 Periodic Overtime

Periodically, workers and supervisors will need to work overtime to meet station needs. Periodic Overtime is considered to be when overtime is scheduled for more than two days in a work week for more than a few weeks. Incidental overtime is overtime required on a non-periodic basis to meet emergent station needs. Periodic overtime should be evaluated for a shift duration change. Incidental overtime does not to be evaluated for a shift duration change since it is required on a non-periodic basis to meet emergent station needs. This differentiation is drawn to reduce the burden on licensees to track each hour worked to determine if a shift duration change has occurred.

#### Section 7.3 Transitioning Onto a Shift

Except as permitted by waivers and exceptions, licensees shall ensure that individuals have the following breaks and minimum days off:

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.

A 34-hour break in any 9-calendar day period.

If the individual joins a shift after the start of a shift cycle, they shall meet the minimum days off requirement going forward and they shall meet the minimum days off requirement for the shift they have transitioned from.



#### Section 7.4 Transitioning Between Covered Groups Or Into a Covered Group

If an individual begins or resumes performing covered work during the calculation period, the licensee shall include in the calculation of the individual's work hours all work hours worked for the licensee, including hours worked performing duties that are not covered and control the individual's work hours under the requirements of their covered work group. The individual shall have had a minimum of 1 day off in the last 7 days prior to beginning or resuming covered work.

A covered individual that is in one covered group may transition to another covered group. The individual shall meet the work hours requirement for the group they are in at that time. When the individual transitions to another covered group, they shall meet the Minimum days off requirements for the group from the time they enter the new group going forward and a look back for the new group is not required

#### Part 1

The rule does not explicitly require a look back period for workers transitioning to covered work or between covered work groups. The implementation guidance added a 1 day off requirement in the preceding 7 day period as a simple and reasonable assurance that the worker had been provided recent accommodations for rest. The recommendation provided by the staff adds complexity to an already complex set of rule requirements, is unnecessary for providing assurance that the worker is fit for duty, and is not a requirement of the rule.

#### Part 2

The rule is written such that the MDO requirements are based on the workers scheduled hours. The averaging interpretation provided by the staff is not a rule requirement. The rule provides a barrier against abuse by monitoring for average hours worked greater than 54 hours per week and requires reviews for performance feedback on workers working hours outside of the scheduled hours.

#### Discussion:

#### Part 1

The minimum days off requirements are only one barrier included in the rule that manages fatigue in workers; others include work hour restrictions, break requirements, behavioral observation, self-declarations and training.

The rule does not address transitions in much detail. The rule does not address transitions between covered groups at all. The implementation guidance added a 1 day off requirement in the preceding 7 day period as a simple and reasonable assurance that the worker had been provided recent accommodations for rest. This has been acknowledged by the NRC Staff. "The staff notes that although a 7-day "look-back" would be acceptable, the rule permits licensees to show compliance with the MDO requirements by calculating the average number of days off over the preceding period of up to 6-weeks."

The Staff's Position for transitions is that individuals who transition to shift schedules or job duties with more stringent MDO requirements meet the MDO requirements for the new duties at the time the individual begins the new schedule or assumes the new duties. The Staff's

position is overly complex, requires forecasting of future events and is not required by the rule. The industry's position is that the rule requires that the covered individual meet all minimum days off going forward based on the covered work performed.

## Part 2

The rule requires minimum days off be scheduled for an assigned work schedule. The rule further defines the assigned work schedules with upper and lower hour bounds to include schedules that have non-paid breaks and lunch time or have hybrid schedules such as the 9-80 schedule, a common work schedule that includes one 8 hour and eight 9 hour days in each two week period. The industry implementation guidance describes the use of periodic overtime to state that use of overtime is necessary and does not result in a schedule change. This section was written to avoid inspectors interpreting a period of scheduled overtime as a schedule change.

The position that the NRC staff has provided would result in a running average of hours work during a work cycle to determine the minimum days off in that work cycle. This guidance provides an inefficient means for scheduling overtime that is not a rule requirement. If this guidance were implemented it would result in any 12 hour shift worker that worked a single hour of overtime to be outside of the rule.

The definition of a 12 hour shift is a schedule that averages more than 11 hours, but not more than 12 hours, per workday over the entire shift cycle.

A 12 hour shift worker would average more than 12 hours after 1 hour of overtime worked and be outside the rule definition.

### Requested Action:

The industry requests that the staff reconsider their position on minimum days off and endorses the industry position stated in NEI 06-11 "Managing Personnel Fatigue at Nuclear Power Reactor Sites" Draft E.

## Issue 3: Predictive Maintenance

### Explanation of the Issue:

This issue is the extent of predictive maintenance activities that can be excluded from covered work. The rule defines work hour restriction as applicable to workers performing maintenance or onsite directing of the maintenance of SSCs that a risk-informed evaluation process has shown to be significant to public health and safety. Most predictive maintenance activities are data gathering activities, such as thermography and vibration, that are non-intrusive and do not pose significant risk to public health and safety from a worker fatigue error.

Rule Language from §26.5 Definitions

*Maintenance* means, for the purposes of § 26.4(a)(4), the following onsite maintenance activities: Modification, surveillance, post-maintenance testing, and corrective and preventive maintenance.

NRC Staff Position:

*The implementation guidance discusses the exclusion of certain predictive maintenance activities from covered maintenance work given that those activities do not result in a change of condition or state of a structure, system, or component (SSC). As indicated in a letter to NEI, dated April 10, 2008, the staff's position is that predictive maintenance activities that are required by technical specifications should not be part of this exclusion*

Industry Position:

The industry's position is stated in NEI 06-11 "Managing Personnel Fatigue at Nuclear Power Reactor Sites" Draft E and is summarized below.

Work hour controls do not apply to the following individuals and activities:

Predictive maintenance activities that do not result in a change of condition or state of a structure, system, or component (SSC) are excluded from covered maintenance activities such as, non-destructive analysis (NDE), thermography, vibration analysis, data collection and analysis.

Note: At times a predictive maintenance activity requires starting or stopping a piece of equipment. The worker starting or stopping the equipment would be performing covered work under the operating category; however, the predictive maintenance activity would not be considered a covered work activity.

Discussion:

The basis for the exclusion of predictive maintenance from covered work is that the non-intrusive nature of the activity precludes the risk of a worker fatigue error on safety significant equipment. The source requirement of the predictive maintenance activity do not change the risk and including technical specifications requirements as a qualifier increase the complexity of the implementation guidance without benefit. In addition the staff's position could introduce inconsistency in application of the requirement to exclude technical specification predictive maintenance. Technical specifications vary from plant to plant. It is possible one plant would have a predictive maintenance task as covered work and another plant with the same predictive task not include in the technical specifications and it would not be covered work. This type of differences would lead to regulatory and inspection inconsistencies.

Requested Action:

The industry requests that the staff reconsider their position on predictive maintenance and endorses the industry position in NEI 06-11 "Managing Personnel Fatigue at Nuclear Power Reactor Sites" Draft E.

IN RESPONSE, PLEASE  
REFER TO: M070417B

April 17, 2007

MEMORANDUM FOR: Luis A. Reyes  
Executive Director for Operations

John F. Cordes, Director  
Office of Commission Appellate Adjudication

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 12:55  
P.M., TUESDAY, APRIL 17, 2007, COMMISSIONERS'  
CONFERENCE ROOM, ONE WHITE FLINT NORTH,  
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-06-0244 - Final Rulemaking--10 CFR Part 26 – Fitness-For-Duty Programs

The Commission approved a final rule which amends 10 CFR Part 26 governing the domestic licensing of production and utilization facilities to revise, reorganize, and clarify drug and alcohol testing programs; establish requirements for managing worker fatigue at operating nuclear power plants; and partially grants two petitions for rulemaking; subject to the attached changes.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO) (SECY Suspense: 5/18/07)

The staff should continue engaging the industry and other stakeholders to complete the associated regulatory guidance for this rule, and ensure that it addresses the broad range of questions of interpretation and implementation.

II. SECY-07-0030 - Final Rulemaking on Limited Work Authorizations

The Commission approved a final rule which amends 10 CFR Parts 2 and 50 to revise the requirements for limited work authorizations (LWA) and preparation activities at the prospective site of a nuclear power plant.

The Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO) (SECY Suspense: 5/18/07)

References to "a LWA" in the final rule (e.g., 2.102(a) and 2.104(d)) and Federal Register package should be changed to "an LWA" throughout (note the inconsistency on p. 91 of the final rule).

The staff should make any conforming changes to this final LWA rule that are necessary to reconcile it with the Staff Requirements Memorandum dated April 11, 2007, for the final Part 52 rule, recognizing that this final LWA rule approval is the later Commission action.

The staff should work with external stakeholders to develop and publish the necessary implementation guidance. This should be given a high priority. Part of the guidance should include a discussion of optional voluntary site visits that may ultimately assist in processing a future COL application for the site.

The staff should keep the Commission informed of progress in implementing this new process, and should forward to the Commission any substantive policy or implementation question for resolution.

III. SECY-07-0064 - Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), Docket No. 52-011-ESP, Certified Question

The Commission approved a Memorandum and Order responding to a certified question from the Atomic Safety and Licensing Board in LBP-07-03 which requested authority to go forward with merits litigation for Southern Nuclear Operating Company on the Early Site Permit for the Vogtle ESP Site on admitted environmental contentions prior to issuance of the final environmental impact statement. The Memorandum and Order does not authorize or require a merits hearing on the admitted environmental contentions prior to the issuance of the final environmental impact statement.

(Subsequently, on April 17, 2007, the Secretary signed the Memorandum and Order.)

Attachments:           Comments and Changes to the Final Rule in SECY-06-0244

cc:     Chairman Klein  
          Commissioner McGaffigan  
          Commissioner Merrifield  
          Commissioner Jaczko  
          Commissioner Lyons  
          EDO  
          OGC  
          CFO  
          OCAA  
          OCA  
          OIG  
          OPA  
          Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
          PDR

**Comments and Changes to the Final Rule in SECY-06-0244**

1. The provisions for minimum days off during normal operating conditions (e.g. 26.205(d)(3)) should provide maintenance personnel within the scope of 26.4(a)(2) a minimum of 2 days off per week when working 10 or 12 hour shifts and 1 day off per week when working 8 hour shifts, as averaged over a 6 week shift cycle.
2. The provisions for minimum days off during outage conditions (e.g. 26.205(d)(4)) should provide maintenance personnel within the scope of 26.4(a)(2) a minimum of 1 day off per week.
3. The staff should include in § 26.5 “Definitions” an appropriate definition of ‘maintenance’ reasonably consistent with the NRC’s existing guidelines in Generic Letter 83-14.
4. The staff should ensure that personnel who actually perform independent quality control/verification (QC/QV) checks under the licensee's NRC-approved Quality Assurance Program are subject to the same Subpart I provisions as operating personnel defined in category § 26.4(a)(1). If staff and OGC determine that this provision of the rule requires re-notice and comment under the APA, staff should issue the final rule without this provision. In that case, staff should separately initiate the additional appropriate noticing for this provision.
5. The staff should delete § 26.205(d)(7).
6. The requirement for licensees to evaluate the effectiveness of their control of work hours of individuals who are subject to this rule should be revised to a frequency of once per year.
7. The staff should delete proposed § 26.203(e)(2)(i) through (iv) and replace it with a revised § 26.203(e)(2) as follows: “A summary of corrective actions, if any, resulting from the analyses of these data, including fatigue assessments.” The deleted items should be moved to an appropriate location in § 26.211 Fatigue Assessments.
8. When construction activities begin, full Part 26 fitness-for-duty (FFD) program, except Subparts I and K, should apply to the following personnel at the site where the plant will be operated:
  - security personnel required by the NRC
  - those who perform quality assurance / quality control / quality verification activities related to safety-related or security-related construction activities
  - individuals directly involved in witnessing or determining inspections, tests, and analyses (ITAAC) certification
  - designated individuals to monitor the fitness of individuals
  - individuals responsible for oversight and implementation of the licensee fitness-for-duty and access authorization programs.
  - second-level and higher supervisors and managers

9. For construction workers and first level supervisors, the Subpart K FFD program elements required for detecting and deterring substance abuse should be:
  - pre-assignment, for-cause, and post-accident drug and alcohol testing, and
  - either a fitness monitoring program, or a random drug and alcohol testing program and behavioral observation program
10. The supporting documents to the Commission paper, particularly the Federal Register notice, should be amended to reflect the EDO's resolution of the different staff positions, as further modified by the Commission.
11. The staff should clarify the Statements of Consideration regarding the acceptability of Evidential Breath Testing (EBT) device calibration methods currently in use.
12. The staff should revise the Summary section on page 1 of the final rule package to include that this rule also applies to facilities possessing Category 1A material.
13. Change the word "sanctions" to "disciplinary actions" in § 26.203(b)(4).
14. The staff should delete § 26.401(b) since the requirement to submit a description of the fitness-for-duty program will be required by the new § 52.79(a)(44). The staff should verify that a Part 50 applicant would be similarly required to submit a description of the fitness-for-duty program under existing regulation; if not, the staff should modify 26.401(b) as necessary to create a requirement for Part 50 applicants.
15. 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.





NUCLEAR ENERGY INSTITUTE

**Marvin S. Fertel**  
SENIOR VICE PRESIDENT AND  
CHIEF NUCLEAR OFFICER

April 24, 2007

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

**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.

The Honorable Dale E. Klein

April 24, 2007

Page 2

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 task 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).



NUCLEAR ENERGY INSTITUTE

**Marvin S. Fertel**  
SENIOR VICE PRESIDENT AND  
CHIEF NUCLEAR OFFICER

May 8, 2007

The Honorable Dale E. Klein  
Chairman  
U.S. Nuclear Regulatory Commission  
Mail Stop O 16 C1  
Washington, DC 20555-0001

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

**Project Number: 689**

Dear Chairman Klein:

This letter is a follow-up to the letter we sent to the Commission on April 24, 2007, informing you that the industry has a significant concern with the changed language from the draft final rule concerning outage work hour requirements. This letter provides quantitative information on the impact of the rule language change for outage work hour controls.

In the Staff Requirements Memorandum (M070417B) (SRM) approving the Part 26 final rule, the Commission changed a requirement for outage work hour controls by modifying the draft final rule language. Specifically, the Commission directed the staff to 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). This language change (1) will result in a significant negative impact on plant outage resources and/or schedule, (2) will lead to unequal distribution of work hours between operating unit and outage unit personnel, a violation of collective bargaining agreements at many utilities, and (3) could have a negative impact on nuclear safety.

Specific site personnel at multi-unit sites usually work on both units, regardless of the operating status of each unit. For example, maintenance, operations, chemistry, radiation protection, fire brigade and security personnel work on a site-wide basis performing activities on both units. Therefore, adoption of the 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. This change can have a negative impact on nuclear safety due the complexity

The Honorable Dale E. Klein

May 8, 2007

Page 2

of command and control introduced by operating under two different work hour controls: outage and non-outage work hour controls. Continuity and teamwork would be affected due to different shift rotations reflecting different days-off requirements. Response to an event on the operating unit could adversely impact nuclear safety when determining whether outage personnel can respond to an operating unit event, because some individuals may be concerned about intentionally violating the more restrictive non-outage work hour controls. Also, this change will require more utility employees to work on the operating unit and more contractors on the outage unit, increasing the need for oversight of contractors.

NEI has conducted a survey of five fleet utilities that operate multi-unit sites to determine the impact that this requirement would have on outage resources and duration. The impact for a "typical" dual unit site is tabulated and discussed in the enclosure to this letter. As seen in the enclosure, this new requirement will have a significant impact on outage resources and/or duration. The "typical" dual-unit site would need 53 additional full-time staff, or if additional personnel are not available, the outage would be extended 4 days. The impact to the industry due to outage extensions is estimated to be more than \$190 million per year. This is a substantial impact with no significant improvement in nuclear safety, and with the unintended consequence of a potential negative impact on nuclear safety as described above.

Furthermore, this requirement would necessitate the addition of licensed personnel. The addition of licensed personnel to the site requires an extensive training, qualification, and licensing process that takes about two years for reactor operators and three years for senior reactor operators. The work hour controls are to be implemented within 18 months of the publication of the final rule in the *Federal Register*. New licensed personnel may not be available when required by the final rule implementation date. This requirement would necessitate the hiring of 144 new licensed operators.

The industry and the NRC staff have been working on implementation guidance for this rule for several months. NEI has developed NEI 06-11 "Fatigue Management for Power Reactors (Draft)," and will seek NRC endorsement of the final version by an NRC regulatory guide. The draft document has been provided to the NRC for comment. The NRC has held two public meetings on this document to discuss the contents and several challenging implementation issues have already been addressed.

Industry reviews of plant operating and human performance data provided to the NRC during this rulemaking have shown no correlation between fatigue and actual human performance at power reactor sites. In this regard, we believe that we can also adequately address any concerns about outage work hour controls (without the phrase "solely performing outage activities") in the guidance document, as we have done with other implementation issues. The industry believes that criteria in the guidance document that address factors such as outage tasks, frequency of outage tasks, and duration of outage tasks can lead to acceptable implementation guidance.

The Honorable Dale E. Klein


May 8, 2007

Page 3

In conclusion, 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 work hours controls during outage conditions.

If you have any questions, please contact me at 202.739.8125, [msf@nei.org](mailto:msf@nei.org), or Jack Roe at 202.739.8138, [jwr@nei.org](mailto:jwr@nei.org).

Sincerely,

A handwritten signature in cursive script that reads "Marvin S. Fertel".

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  
NRC Document Control Desk

### **Work Hour Controls Language Change Impact Table Typical Dual Unit Site**

If the phrase "solely working on outage activities" is included in the final rule, we estimate the following resource or schedule impact will occur for a "typical" dual-unit site with one unit in an outage. We have used a nominal 30 day outage for this analysis.

The "typical" dual-unit site would need 53 additional personnel, or if additional personnel are not available, the outage would be extended 4 days. This is a substantial impact with no significant improvement in nuclear safety

Table 1 is the change in the days off requirements from outage to non-outage work hour controls for each work group on 12-hour shifts.

Table 2 is the increase in number of days off from outage to non-outage work hour controls for each work group on 12-hour shifts for a nominal 30 day outage.

Table 3 is the additional personnel required to maintain the outage schedule.

Table 4 is outage schedule extension if additional personnel are not available. The tables 3 and 4 are either/or and not additive.

**Table 1: Work Hour Controls Change from Outage to Non-Outage**

<b>Group</b>	<b>12- hour shift Days off</b>
Maintenance	From 1 day off per week to 2 days off per week
Operations, HP, Chemistry, Fire Brigade	From 3 days off in each successive (i.e., non-rolling) 15-day period to 2.5 days off per week
Security	From 4 days off in each successive (i.e., non-rolling) 15-day period to 3 days off per week

**Table 2: Increase in Number of Days Off from Outage to Non-Outage Work Hour Controls For A 30 Day Outage**

<b>Group</b>	<b>12- hour shift Days off</b>
Maintenance	Increase of 4 days off for the nominal 30 day outage (Outage days off is 1 day per week times 4 weeks for a total of 4 days, non-outage is 2 days off per week times 4 weeks for a total of 8 days. The difference is 4 days.)
Operations, HP, Chemistry, Fire Brigade	Increase of 4 days off for the nominal 30 day outage (Outage days off is 3 days off in each successive (i.e., non-rolling) 15-day times 2 for the two 15-day periods for a total of 6 days, non-outage is 2.5 days off per week times 4 weeks for a total of 10 days. The difference is 4 days.)
Security	Increase of 4 days off for the nominal 30 day outage (Outage days off is 4 days off in each successive (i.e., non-rolling) 15-day times 2 for the two 15-day periods for a total of 8 days, non-outage is 3 days off per week times 4 weeks for a total of 12 days. The difference is 4 days.)



**Table 3: Additional Personnel Required to Maintain Outage Schedule**

Group	Additional Personnel Required	Discussion – Why the increase for additional personnel
Operations	9	<p>As a practical matter, the majority of Operations will work on both outage tasks and operating reactor tasks. Members of the Fire Brigade are in Operations and therefore may respond to a fire in the operating unit. The change in days off for Operations would increase from 3 days off in each successive (i.e., non-rolling) 15-day period to 2.5 days off per week.</p> <p>In order to provide for the increased number of days off, it would be necessary to add another crew of nine operators (five non-licensed operators, two reactor operators, two senior reactor operators).</p>
Maintenance	31	<p>The change in days off for Maintenance would increase from 1 day off per week to 2 days off per week.</p> <p>Due to some of the workforce not being assigned to a specific unit, some assignments being dual-unit and the complexity of tracking job responsibilities, it would be necessary to add 7 Electricians, 8 Mechanics, 7 I &amp; C Technicians and 9 Helpers to ensure that the utility can support the current workload on the operating unit with the other unit in an outage.</p>
Health Physics or Chemistry duties required as a member of the on-site ERO minimum shift complement	HP: 2 Chemistry: 1	<p>The change in days off for Health Physics or Chemistry would increase from 3 days off in each successive (i.e., non-rolling) 15-day period to 2.5 days off per week.</p> <p>This change would require us to limit the hours of the emergency response organization (ERO) minimum shift complement to non-outage controls. The impact would be 2 technicians for HP and 1 technician for Chemistry.</p>
Fire Brigade Leader	None	Fire brigade included in Operations.
Security	10	<p>The change in days off for Security would increase from 4 days off in each successive (i.e., non-rolling) 15-day period to 3 days off per week.</p> <p>It would be necessary to add 10 personnel to support the increased vehicular search and escort requirements will be required on multiple shifts with security placed on non-outage work hour controls.</p>
<b>TOTAL ADDITIONAL PERSONNEL</b>	<b>53</b>	These personnel would be full-time employees added to the site staff. They would need to be trained and qualified for the positions. The reactor operators and senior reactor operators would need to be licensed.

**Table 4: Outage Schedule Extension if Additional Personnel Are Not Available**

<b>Group</b>	<b>Extension of Outage if additional personnel are not available</b>	<b>Discussion of why the extension of Outage if additional personnel are not available</b>
Operations	4 days	The increase of 4 days off for the nominal 30 day outage will impact the outage 4 days if additional Operations personnel are not available. Operations resources will be critical path. (See Table 2)
Maintenance	Up to 4 days	<p>The increase of 4 days off for the nominal 30 day outage will impact the outage up to 4 days if additional Maintenance personnel are not available. (See Table 2)</p> <p>It would be necessary to establish dual-unit tasks and operating unit tasks. Non-outage and outage unit personnel would be separated. The work hours of people that work on the outage unit, but give limited support to the non-outage unit, would be reduced to couple with the non-outage work hour controls.</p>
Health Physics or Chemistry duties required as a member of the on-site ERO minimum shift complement	None	The change in days off for Health Physics or Chemistry would not impact the outage, since only 3 people are limited to non-outage work hours.
Fire Brigade Leader	None	Counted in Operations response.
Security	1 day	<p>It is mandatory to meet the minimum requirements for armed responders and other security personnel as stated in the Site Security Plan at all times. We can not reduce the staffing level and extend the outage.</p> <p>The security staff's ability to process vehicular moves and equipment within the facility will impact large component moves such as large motors, turbine generator equipment, ISI equipment, etc. This will also require the utility to maintain support personnel on site longer pre-outage and post-outage for equipment ingress and egress from the unit.</p>
OUTAGE EXTENSION	4 days due to Operations and Maintenance	Operations and potentially Maintenance resources will be critical path under the "solely working on outage activities" version of the rule.

July 3, 2007

MEMORANDUM TO: Annette L. Vietti-Cook, Secretary

FROM: Chairman Klein /RA/

SUBJECT: REQUEST FOR RECONSIDERATION OF THE WORDING OF  
10 C.F.R. § 26.205(d)(4) AS AFFIRMED ON APRIL 17, 2007

As documented in the Staff Requirements Memorandum (SRM) dated April 17, 2007, the Commission affirmed and approved on that date a final rule amending 10 CFR Part 26 governing the domestic licensing of production and utilization facilities to revise, reorganize, and clarify drug and alcohol testing programs. The final rule also establishes requirements for managing worker fatigue at operating nuclear power plants. The Commission voted to approve the publication and implementation of this final rule, subject to the comments and changes provided in the attachment to the Affirmation Notice. The fatigue requirements in the rule are not to be effective until 18 months after publication of the final rule.

One specific change from the proposed draft final rule, based on my initiative during the development of the SRM, was to replace "working on unit outage activities" with "solely performing outage activities" in the first sentence of § 26.205(d)(4). See SRM of April 17, 2007 (Item 15 of the Comments and Changes to the Final Rule in SECY-06-0224). This section of the rule addresses the limits on plant personnel work hours and distinguishes between work performed on an operating plant and a plant that is in an outage. The change to the wording was intended as a simple clarification. I now believe it was a mistake for me to suggest it without fuller consideration. It could result in unintended consequences that are potentially significant and could impede final implementation of the rule. The Nuclear Energy Institute has submitted letters of April 24, 2007, and May 8, 2007, in which it alleges potential impacts on nuclear safety, staffing, collective bargaining agreements, and costs of implementation. I am also concerned that the change in language may prompt much greater consideration of waiver requests, which is an undesirable outcome for a new rule provision.

In my view, sufficient questions are raised by this particular late change in rule language to warrant a Commission decision, as a matter of policy, to revert to the language "working on unit outage activities" as proposed by staff in the draft final rule that was before the Commission and available to the public when the Commission affirmed the final rule on April 17, 2007. As planned, the staff should continue to engage the industry and other stakeholders to complete the regulatory guidance for this rule, with the restored language.

Therefore, I recommend that the Commission agree to reconsider the change in language in 26.205(d)(4) and support prompt affirmation on this proposal to modify the final rule by restoring the words "working on outage activities" in place of "solely performing outage activities" in the first sentence of § 26.205(d)(4) and any other pertinent sections.

cc: Commissioner McGaffigan  
Commissioner Jaczko  
Commissioner Lyons  
OGC  
EDO

IN RESPONSE, PLEASE  
REFER TO: M070724B

July 24, 2007

MEMORANDUM FOR: Luis A. Reyes  
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:55 P.M.,  
TUESDAY, JULY 24, 2007, COMMISSIONERS' CONFERENCE  
ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND  
(OPEN TO PUBLIC ATTENDANCE)

I. COMDEK-07-0004 - REQUEST FOR RECONSIDERATION OF THE WORDING OF 10  
CFR § 26.205(d)(4) AS AFFIRMED ON APRIL 17, 2007

On April 17, 2007, the Commission approved a final rule which amended 10 CFR Part 26 governing the domestic licensing of production and utilization facilities to revise, reorganize, and clarify drug and alcohol testing programs and establishing requirements for managing worker fatigue at operating nuclear power plants. Subsequently, the Chairman submitted a Request for Reconsideration to modify the final rule by restoring the words "working on outage activities" in place of "solely performing outage activities" in the first sentence of 10 CFR § 26.205(d)(4) and any other sections related to this specific matter.

The Commission approved reconsideration of this one provision of the rule and approved the final rule as affirmed on April 17, 2007, with this modification.

Following incorporation of the changes noted in the SRM dated April 17, 2007 (M070417B) and this modification, the Federal Register notice should be forwarded to OMB for approval, reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

11/8/07)

cc: Chairman Klein  
Commissioner McGaffigan  
Commissioner Jaczko  
Commissioner Lyons  
EDO  
OGC  
CFO  
OCAA  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR