

March 24, 2011

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

Stephen G. Burns
General Counsel

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

SUBJECT: STAFF REQUIREMENTS – SECY-11-0003 – STATUS OF ENFORCEMENT DISCRETION REQUEST AND RULEMAKING ACTIVITIES RELATED TO 10 CFR PART 26, SUBPART I, “MANAGING FATIGUE” AND SECY-11-0028 - OPTIONS FOR IMPLEMENTING AN ALTERNATIVE INTERIM REGULATORY APPROACH TO THE MINIMUM DAYS OFF PROVISIONS OF 10 CFR PART 26, SUBPART I, “MANAGING FATIGUE”

The Staff should address the 10 CFR Part 26, Subpart I implementation issues discussed in SECY-11-0003 and SECY-11-0028 through a combination of accelerated limited scope rulemaking and enforcement discretion as described below.

The staff should conduct an accelerated limited scope rulemaking that can be issued as final within four months. A proposed rule should be issued for publication within five weeks. Three days prior to submission to the *Federal Register*, the proposed rule and final rule should be provided to the Commission for information. To minimize the overall duration of this rulemaking:

- a. The scope of the rulemaking should be limited solely to providing an alternative to the current requirement for minimum days off for operations (i.e., non-outage) in Part 26, Subpart I with the new proposed requirement for a 54-hour per week average over a rolling period of up to six weeks for operations (i.e., non-outage).
- b. The staff should promulgate rule language consistent with the interim approach described by the staff at the February 8, 2011, Commission briefing, allowing an essentially like-for-like alternative to the current non-outage minimum days off requirements.
- c. The petitions for rulemaking concerning Part 26 and other changes being considered to the rule should be handled in a separate rulemaking effort.
- d. For this rulemaking, all rulemaking authority is delegated to the Executive Director for Operations. This delegation includes the proposed rule and final rule, unless substantive changes are made to the alternative that was presented at the February 8, 2011, Commission briefing. If substantive changes are made, the final rule should be provided to the Commission for approval.

- e. The lead office for this rulemaking should be the Office of General Counsel (OGC), because the staff has done sufficient technical work to establish an appropriate technical basis for the new proposed requirement.
- f. The offices assisting OGC in this effort should provide assistance on a priority basis.
- g. Because the staff has done sufficient work to establish an appropriate technical basis for the new proposed requirement, OGC should rely on existing technical work and regulatory analysis. Any additional internal technical reviews should be eliminated or minimized.
- h. Because of the public interaction held to date on the development of the proposed alternative requirement, the public comment period should be kept to 30 days with no extension of the public comment period.
- i. Specific comments should be sought on whether the alternative provides comparable assurance of fatigue management. Comments outside the limited scope of the rule change should not be considered or should be addressed under the separate rulemaking on Part 26.

In parallel with this accelerated limited scope rulemaking, the staff should prepare updated regulatory guidance on an expedited basis for issuance in four months.

(OGC /EDO)

(SECY Suspense: 4 months)

In the interim, the Commission has approved the staff's recommended SECY-11-0028, Option 4, to implement enforcement discretion for licensees failing to meet the requirements of 10 CFR 26.205(d)(3) and to publish the draft notice in the *Federal Register* as immediately effective.

The following changes should be made to the Federal Register Notice (SECY-11-0028, Enclosure).

- a. page 3, line 13, revise to read: "...through § 26.205(d)(6), while and apply the work hour limits and break requirements..."
- b. page 3, line 18, revise to read: "...regulations that which govern fatigue..."
- c. page 4, line 5, revise to read: "... along with the need for needing an alternative..."
- d. page 4, line 8, add a comma after "requirements"
- e. page 4, last line, add "the" before NEI.
- f. page 5, line 6, revise to read: "...number of days off that an individual..."
- g. page 5, line 9, revise to read: "...approach provides for greater the simplicity and flexibility desired by the industry."
- h. page 5, line 11, add "the" before NEI.

- i. page 5, line 14, revise to read: "...replacing the **current** MDO requirements..."
- j. page 6, line 2, revise to read: "...having only one ~~day off~~ in every nine **days off** or..."
- k. page 6, line 16, delete the extra period at the end of the line.
- l. page 8, last line, add a comma after "date"
- m. page 9, line 8, add a comma after "Typically"
- n. page 10, line 1, revise to read: "...violations **that** ~~which~~ occurred..."

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR