

## U.S. Nuclear Regulatory Commission Public Meeting Summary

May 10, 2021

**Title:** Fitness for Duty Drug Testing Requirements Final Rule (Cumulative Effects of Regulation)

**Meeting Identifier:** 20210348

**Date of Meeting:** April 13, 2021

**Location:** Webinar

**Type of Meeting:** Information Meeting with a Question and Answer Session.

### **Purpose of the Meeting:**

To discuss the proposed effective date of the draft final rule for Fitness for Duty Drug Testing Requirements and to provide a summary of substantive public comments received on the proposed rule resulting in changes to the final rule.

This meeting also provided an opportunity for the NRC staff to obtain feedback from members of the public on the effective date of the final rule as it pertains to the cumulative effects of regulation.

### **General Details:**

The NRC conducted a public meeting scheduled from 10:00 a.m. – 11:00 a.m. eastern standard time that ran approximately 1 hour. The meeting was attended by 93 individuals, including 19 NRC staff and 74 members of the public. All attendees participated via WebEx and teleconference. Meeting participants included nuclear power reactor licensees (e.g., Energy Harbor, Exelon, Duke Energy), representatives from the nuclear industry (e.g., Nuclear Energy Institute), other stakeholders (e.g., Curtiss-Wright, Morgan Lewis & Bockius LLP), and a private citizen. The meeting was transcribed, and the transcript is available in the NRC's Agencywide Document Access and Management System (ADAMS) under Accession No. ML21096A011, and at Regulations.gov under Docket No. NRC-2009-0225. A list of attendees is provided as an attachment to this meeting summary.

### **Summary of NRC Presentation:**

The meeting began with an NRC presentation on the rulemaking background and final rule schedule. The NRC noted that 22 public comment submissions were received on the proposed rule. Next the NRC explained the concept of cumulative effects of regulation (CER) and its relationship to informing the implementation schedule for licensees to comply with the final rule requirements. The NRC proposed a 60-day compliance schedule based on CER and the substantive changes to the final rule.

The NRC summarized key proposed rule revisions on the drug testing panel, subversion attempt detection, and shy-bladder hydration process. The NRC discussed substantive public comments received in response to questions included in the proposed rule notice (84 FR 48750; September 16, 2019) on new test analytes (2017 HHS Guidelines) and directly observed specimen collections. The NRC explained final rule changes in response to the two questions. Specifically, expanding the drug testing panel to include hydrocodone, hydromorphone, oxycodone, and oxymorphone; and providing the option to collect an oral fluid specimen instead of a urine specimen under direct observation conditions.

The NRC discussed two public comments received on a question in the proposed rule notice on the 60-day effective date to comply with the final rule changes. One commenter requested a period of 120 days to comply with the revised requirements and the other requested 1 year. The NRC explained that the 60-day implementation schedule was proposed because the rule changes were not expected to result in CER impacts on effected licensees and other entities. The NRC provided three reasons for this decision: 1) no other pending 10 CFR Part 26 regulatory actions exist that would impact the site professionals responsible for implementing the rule requirements, 2) changes to the fitness for duty (FFD) policy, procedures, contracts, and training are minimal, and 3) implementation guidance will be issued with the rule. This completed the NRC's discussion on the rulemaking activity.

The NRC then opened the meeting for feedback and questions. The meeting concluded with a description of how to find information for this rulemaking at regulations.gov and use of the NRC public meeting feedback form.

The meeting transcript, which provides the complete meeting discussions, is available in ADAMS under Accession No. ML21096A011. Also, the NRC's presentation slides are available in ADAMS under Accession No. ML21096A010.

#### **Public Participation Themes:**

Feedback was received from one public participant, the Nuclear Energy Institute (NEI), during the discussion and question segment of the meeting. NEI was supportive of the proposed new rule changes and the resulting increased effectiveness of the FFD Program, but stated that a one-year implementation period was needed to comply with the final rule changes. The NEI representative's concern was that the 60-day implementation period did not provide sufficient time for management and staff to handle the significant operational challenges posed prior to, during, and after Spring and Fall outages, updates to the industry's training system (NANTeL), licensee information technology system changes, and the ongoing impacts of COVID and remote work status of staff. This and the NRC response are captured in the public meeting transcript.

#### **Action Items/Next Steps:**

- There were no action items as a result of the public meeting.
- Final rule will be provided to the Commission by early fall 2021.

**Additional Information:**

- Meeting notice and agenda: ADAMS Accession No. ML21084A074
- NRC staff presentation: ADAMS Accession No. ML21096A010
- Transcript: ADAMS Accession No. ML21096A011
- Meeting Summary: ADAMS Accession No. ML21096A015

**FITNESS FOR DUTY DRUG TESTING REQUIREMENTS FINAL RULE  
(CUMULATIVE EFFECTS OF REGULATION)**

**PUBLIC MEETING HELD ON 04/13/2021**

**CATEGORY: INFORMATION MEETING WITH A QUESTION AND ANSWER SESSION**

**LIST OF ATTENDEES**

<b>No.</b>	<b>First Name</b>	<b>Last Name</b>	<b>Affiliation</b>
1	Howard	Benowitz	NRC
2	Helen	Chang	NRC
3	Christian	Cowdrey	NRC
4	Kevin	Coyne	NRC
5	David	Desaulniers	NRC
6	Brian	Green	NRC
7	Paul	Harris	NRC
8	Glenna	Lappert	NRC
9	Tim	Mossman	NRC
10	James	O'Driscoll	NRC
11	Kevin	Ramsey	NRC
12	Stewart	Schneider	NRC
13	Fred	Schofer	NRC
14	Soly	Soto Lugo	NRC
15	Gregory	Suber	NRC
16	Brian	Thomas	NRC
17	Justin	Vazquez	NRC
18	Ilka	Verrius	NRC
19	Brian	Zaleski	NRC
20	Amy	Findley	Ameren Missouri
21	Mike	Haglund	Calloway Energy Center
22	Shane	Mecaskey	Comanche Peak Nuclear Power Plant
23	Latham	Meiers	Comanche Peak Nuclear Power Plant
24	Richard	Swanson	Comanche Peak Nuclear Power Plant
25	Jeff	Schwarting	Cooper Nuclear Station
26	Anna	Raleigh	Curtiss-Wright
27	Zack	Schwenk	Curtiss-Wright
28	Patrick	Anhalt	Dominion Energy
29	Richard	Hanson	Dominion Energy
30	Bobby	Hote	Dominion Energy
31	Adam	Murphy	Dominion Energy

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<b>No.</b>	<b>First Name</b>	<b>Last Name</b>	<b>Affiliation</b>
32	Cynthia	Bomyea	DTE Energy
33	Leah	Paul	DTE Energy
34	Cara	Davis	Duke Energy (Medical One Medical Group)
35	Terry	King	Duke Energy
36	Theodore (Teddy)	Reed	Duke Energy
37	Wendy	Wilder	Duke Energy
38	John	Coleman	Endevor
39	Alexander	Ellis	Energy Harbor
40	Vincent	Forbus	Energy Harbor
41	Maureen	Gulliford	Energy Harbor
42	Bryan	Jackway	Energy Harbor
43	Norbert	Schutte	Energy Harbor
44	Brenda	Thorbahn	Energy Harbor (Davis Besse)
45	Vanessa	Perez	Energy Northwest
46	Steven	Chambliss	Entergy Nuclear (Grand Gulf)
47	Stephanie	Colburn	Entergy Nuclear
48	Matthew	Deignan	Entergy Nuclear (Riverbend Station)
49	Kelly	Pettus	Entergy Nuclear
50	Chris	Pond	Entergy Nuclear
51	Karen	Murphy	Entergy Nuclear (Grand Gulf)
52	Scott	Summers	Entergy Nuclear (Palisades)
53	Jerry	Woods	Entergy Nuclear
54	Delores	Adams	Exelon
55	Andy	Anderson	Exelon
56	Stephen	Henry	Exelon
57	Mary	Scarce	Exelon
58	Tim	Chapin	INPO
59	Ben	Schaffer	INPO
60	Latham	Meier	Luminant
61	Richard	Swanson	Luminant
62	Lewis	Csedrik	Morgan Lewis

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63	Ariel	Braunstein	Morgan Lewis & Bockius LLP
64	Misty	Thomas	n/a
65	David	Vandercamp	NE Public Power District
66	Joseph	Garry	Neal R Gross & Co., Inc. (Court Reporter)
67	William	Gross	NEI
68	Johnny	Rogers	NEI
69	Don	Popp	NextEra Energy
70	Anonymous	Anonymous	NuScale Power
71	Kevin	Deyette	NuScale Power, LLC
72	Theresa	Jones	Palo Verde
73	Don	Townsend	PG&E
74	Cajya	Darling	PSEG
75	Elizabeth	Fox	PSEG
76	Tina	Gregory	PSEG
77	Trina	Washington	PSEG
78	John	Coleman	Software Vendor
79	Leslie	Lathrop	Southern California Edison Co.
80	Cheree	Montgomery	Southern Nuclear
81	Sara	Ledwig	STP Nuclear–South Texas Project
82	Clair	Manges	Susquehanna Steam Electric Plant
83	Michele	Hockenberry	Talen Energy
84	Mike	Palmer	Talen Energy (Susquehanna Nuclear)
85	Paul	Zaffuts	The Zaffuts Group
86	Bryan	Henderson	TVA
87	Patrick	Asendorf	TVA
88	Michael	Covert	Vistra
89	Sonya	Jones	Wolf Creek
90	Pam	Black	Wolf Creek
91	Dana	Hickey	Xcel Energy
92	David	Gerads	Xcel Energy