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Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
ATTN: Rulemaking and Adjudications Staff

**Subject:** Summary of NEI Comments Provided during April 13, 2021, Public Meeting on the Effective Date of Part 26 Rulemaking, "Fitness for Duty Drug Testing Requirements" [Docket ID NRC-2009-0225]

**Project Number: 689**

On April 13, 2021, the U.S. Nuclear Regulatory Commission (NRC) conducted a public meeting to discuss the proposed effective date of the Final Rule, "Proposed Rulemaking: Fitness-for-Duty Drug Testing Requirements."<sup>1</sup> The Nuclear Energy Institute (NEI)<sup>2</sup> submitted comments<sup>3</sup> to the NRC on the proposed rule on December 2, 2019. Attachment 1 of that submittal included a comment on the proposed effective date of the Final Rule and requested the NRC to permit a 12-month period for implementation. The NRC's presentation<sup>4</sup> shown during a public meeting for the April 13, 2021, indicates a belief that 60 days for implementation is not expected to result in a cumulative impact on affected licensees because the "changes to FFD policy, procedures, contracts, and training are minimal." This letter summarizes the comments NEI provided at the April 13<sup>th</sup> public meeting and are being transmitted by this letter to ensure the NRC has the best available information with which to set the effective date for the Final Rule.

Licensee access authorization and fitness-for-duty staff would be directly involved in the implementation of the Final Rule. They would review the new requirements, and evaluate and oversee implementation of needed changes to policies, program descriptions, implementing procedures, and contracts with drug testing laboratories and supporting personnel. During the spring and fall outage season, access authorization and

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<sup>1</sup> The proposed rule was made publicly available in 84 Fed. Reg. 48750 (September 16, 2019).

<sup>2</sup> The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

<sup>3</sup> NRC Agencywide Documents Access and Management System (ADAMS) Accession Number [ML19338D255](#)

<sup>4</sup> ADAMS Accession Number [ML21096A010](#)

fitness-for-duty program personnel are fully engaged in processing workers several weeks prior to the beginning of an outage. Their work continues through the outage and after as they complete the out-processing of workers no longer requiring access. In sum, their outage support work generally requires a dedicated commitment of approximately eight weeks. Depending on the publication date of the final rule, program personnel may not be available for nearly all of the proposed 60-day implementation period.

Implementation of the anticipated expanded drug testing panel (described in the Proposed Rule) will require changes to both licensee and third-party information technology systems. The third-party system will require development of a requirements specification, software updates, and testing and quality assurance verification and validation. Licensees must then perform acceptance testing, integration of the changes into their systems,<sup>5</sup> and training of site personnel on the changes. Further, associated changes will also be required to the industry's NANTeL Fitness for Duty training course;<sup>6</sup> it is anticipated that these changes will require considerable time to implement. All of these activities cannot be accomplished within the proposed 60-day implementation period.

The one-year implementation period requested in our 2019 comment submittal accommodates the above needs and would allow licensees to address the new rule requirements without the need for exemption requests. In addition, a one-year period is consistent with those permitted to implement previous changes to FFD requirements. For example, in 2008, the NRC issued updated FFD requirements<sup>7</sup> and permitted a one-year period for implementation. Consequently, NEI continues to encourage the NRC to consider a 12-month implementation period for the Final Rule.

If you have any questions or require additional information, please contact Johnny Rogers at (202) 739-8032 or [jdr@nei.org](mailto:jdr@nei.org), or me.

Sincerely,



William R. Gross

c: Mr. Stewart Schneider, Rulemaking Project Manager, NMSS/REFS/RRPB, NRC  
Mr. Brian Zaleski, Technical Lead, NSIR/DPCP/RSB, NRC  
NRC Document Control Desk

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<sup>5</sup> Many sites impose a blackout period around outages during which information technology system changes are not permitted.

<sup>6</sup> Maintained by the Institute of Nuclear Power Operations (INPO).

<sup>7</sup> Refer to 73 Fed. Reg. 16965 (March 31, 2008).