

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.