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Public Meeting

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RULEMAKINGS AND  
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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

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4 PART 26 RULEMAKING

5 PUBLIC MEETING

6 + + + + +

7 Wednesday,

8 September 21, 2005

9 + + + + +

10 ROCKVILLE, MARYLAND

11 The Public Meeting was held in the  
12 Randolph/Congressional Rooms, at the Ramada Inn, 1775  
13 Rockville Pike, Rockville, Maryland, Becky Karas,  
14 Facilitator, presiding.

15 APPEARANCES:

16 BECKY KARAS, NRC

17 JIM DAVIS, NEI

18 TOM HOUTEN, NEI

19 PETE S. STOCKTON, POGO

20 JOHN FEE, SCE

21 ANTHONY RIZZO, SALEM & HOPE CREEK

22 GETACHEW TEFAYE, CONSTELLATION

23 JOSEPH BAUER, EXELLON

24 GLENN WILSON, DOMINION

25 J. PERSENSKY, NRC-RES

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## 1 APPEARANCES: (CONT.)

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3 BRIAN MCCABE, Progress Energy

4 DAVID ZIEBELL, EPRI

5 DANA MILLAR, ENTERGY

6 DAVE LOCHBAUM, Union of Concerned Scientists

7 JOHN P. COWAN, NMC

8 DAVE DESAULNIERS, NRC/NRR

9 TIM MCCUNE, NSIR

10 PETER DEFILIPPI, Westinghouse

11 DAVID DIEC, NRC

12 EILEEN MCKENNA, NRC/NRR

13 GARMON WEST, NRC/NSIR

14 LEE BANIC, NRC

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18 ERIC SKARPAK, NRC

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P-R-O-C-E-E-D-I-N-G-S

8:30 a.m.

MS. MCKENNA: Good morning. I want to welcome you to our meeting this morning. My name is Eileen McKenna, I'm the acting program director for policy and rulemaking in the Office of Nuclear Reactor Regulation at NRC.

Our meeting today is to collect comments on our Proposed Rule Part 26, "fitness-for-duty". Our purpose is, really, to hear from you, what your comments are.

We do have staff here, available, to answer any clarifying questions about what the Commission intended in issuing its document. But I want to remind everyone this is not a comment resolution meeting.

So I hope you will understand if, in some cases, we say thank you for your comment, and we move on. I know we have had a lot of meetings, in the past, on this subject. And now we have a very full agenda, so now I'm going to turn it right over to Becky to get right into the heart of the meeting.

MS. KARAS: A lot of you know me already. I'm Becky Karas, I'm one of the project managers for this rule making. Dave Diec has joined me as a co-

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1 project manager for completing this final rule.

2 Again, I wanted to join Eileen in thanking  
3 you all for taking the time, out of your very busy  
4 schedules, to attend this meeting. The purpose,  
5 again, is to solicit comments on the Proposed Rule,  
6 and we will also be available to provide any necessary  
7 clarifications, as Eileen has stated.

8 On tomorrow's agenda, as most of you know,  
9 this is a two-part public meeting. The second  
10 portion, which is a morning portion, is held at NRC  
11 headquarters. And that is, really, just to discuss  
12 industry plans for implementation, guidelines for the  
13 managing fatigue portion.

14 And, really, the scheduling was just for  
15 that. Again, that will be over at NRC headquarters.  
16 What we are planning on doing, as far as the agenda  
17 today, is to go through the drug and alcohol portions  
18 in the morning, receive comments on those. And, after  
19 lunch, go into any comments on the worker fatigue  
20 portions of the Rule.

21 As I mentioned, just for some  
22 introductions, I guess, Dave and I will have the lead  
23 for the rule making, for the project management of it.  
24 And Tim McCune, from the office of NSIR, has got the  
25 technical lead for the drug and alcohol testing

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1 portions.

2 Dave Desaulniers at the office of NRR has  
3 the technical lead for the worker fatigue portions of  
4 the rule making. Lee Banic is also here, from the  
5 Nuclear Regulatory Commission. She has been, also,  
6 assisting Dave and I with some of the logistics with  
7 the rule making portions.

8 And Garmon West is Tim McCune's section  
9 chief in the office of NSIR, dealing with the drug and  
10 alcohol testing portions, again.

11 I just also wanted to have anybody who is  
12 on the speakerphone -- we have a lot of people here,  
13 so I really didn't want to go through full  
14 introductions with everybody that is here.

15 But so that everybody knows who is on the  
16 speakerphone, anybody who is tied in, if you could  
17 please introduce yourself and your affiliation?

18 (No response.)

19 MR. DIEC: Is anybody on the line? Good  
20 morning.

21 (No response.)

22 MR. DIEC: I think Deanne Raleigh, from  
23 Information Services was on the line.

24 MS. KARAS: I also want to remind  
25 everybody that since this meeting is being

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1 transcribed, and that is really so that we have a  
2 complete set of comments that are provided during this  
3 meeting, if you can please say your name, when you are  
4 speaking or providing a comment, especially if you  
5 don't have a name tag out in front of you.

6 And if you can, also, try and get a  
7 microphone close to you when you are speaking, so that  
8 it is recorded on the transcript, that will help us  
9 out greatly.

10 On to some other logistics. The rule  
11 comments, the date for commenting on the Proposed Rule  
12 provisions, the final date for receiving those  
13 comments is December 27th.

14 The information collections aspects, the  
15 comments are due September 26th. So that is coming up  
16 very soon. You can also provide comments, at this  
17 meeting, and there are multiple ways that we have set  
18 up here for you to do that.

19 You can either provide them verbally,  
20 through the microphones, as we are going through the  
21 different portions of this meeting, or you also have  
22 little index cards that I have passed out in a lot of  
23 your chairs.

24 You can fill those out and either hand  
25 them up to us and if we receive them, during the

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1 meeting, as we have time we will go through those, and  
2 we will read those off.

3 Or if you -- and that way they will be  
4 read into the transcript. But if you would prefer we  
5 also have a comment box, that empty xerox box up  
6 there, that you can just slip them in there.

7 We do accept -- you can put your name on  
8 there, and your affiliation, any contact information  
9 is very helpful to us. However, if you do not feel  
10 comfortable providing any of that information we  
11 accept anonymous comments.

12 And, again, you can put those into the  
13 box. Ones that are placed in the box, we will docket  
14 those as comments on the rule making, but they won't  
15 end up on the transcript, or as part of the meeting  
16 summary. We will just accept those as comments that  
17 have been submitted to the NRC.

18 We also have computer work stations over  
19 on the side here. So if anybody would prefer to type  
20 in their comments, that is obviously helpful to us.  
21 And we have somebody who will be over there to help  
22 you with that, if you want to use those computer work  
23 stations.

24 You can also, obviously, through  
25 teleconferencing in this meeting provide those

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1 comments. It is important to note that today is the  
2 meeting for receiving those comments.

3 Tomorrow's meeting is not transcribed and  
4 the point is just to discuss the logistics on the  
5 guidance document, not to receive comments in any  
6 form, in that meeting.

7 After the meeting you can, obviously,  
8 follow any of the instructions for submitting  
9 comments. They are in the Federal Register Notice.  
10 You can mail, email, fax, or hand deliver, following  
11 those instructions.

12 And there is a handout in the Federal  
13 Register notice. If anybody doesn't have that, there  
14 is copies in the back.

15 Your input is, obviously, sought and  
16 appreciated. Obviously, just to remind you, some of  
17 our rules of participation in the public meetings,  
18 obviously, we are not going to discuss any safeguards  
19 or classified information.

20 There is, also, we have a feedback form in  
21 the back. And we would appreciate, on the feedback  
22 forms, if you can provide any feedback on how we ran  
23 this public meeting. Please do not put public  
24 comments on the rule making itself, on those feedback  
25 forms, use the index cards, or a piece of paper, that

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1 you drop in the box, for those.

2 We are also going to, following this  
3 meeting, issue a meeting summary and our participant  
4 list. And we will also have the transcript made  
5 public as part of that, as well.

6 I want to provide the opportunity for any  
7 opening remarks. So far I have Jim Davis and Todd  
8 Newkirk, who would like to provide opening remarks.  
9 Is there anybody else who is planning on providing  
10 opening remarks that didn't get a chance to sign up?

11 (No response.)

12 MS. KARAS: Okay. Oh, you wanted closing  
13 remarks? You don't have any opening remarks, then?  
14 Okay, all right. Jim, then, if you want to go ahead.  
15 If you can keep it fairly short, about five minutes or  
16 so? So we can keep on time.

17 MR. DAVIS: It will be a challenge.

18 MS. KARAS: You have seven minutes.

19 MR. DAVIS: Good morning. I'm Jim Davis,  
20 Nuclear Energy Institute. I want to express my  
21 appreciation for the opportunity to make comments  
22 today.

23 I think public meetings, as well as the  
24 written comments, are probably useful in the process.  
25 You are probably going to hear a lot of negative

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1 comments and concerns before the day is over. I guess  
2 that is what these meetings are really for.

3 We don't always talk about the things that  
4 are good or positive in the Rule when we go through  
5 that part of it. So before we get to that let me make  
6 a statement that this round of drug and alcohol rule  
7 making has been very effective.

8 It has been successful, and the Staff  
9 should be complimented on their effort to date, for  
10 getting the Rule to where it is today.

11 I personally support the drug and alcohol  
12 rule as it exists to date. I also want to make a  
13 recommendation. I would recommend that the Commission  
14 conduct a formal study of this rule making, which has  
15 gone on since 1991.

16 Because I think there are some lessons  
17 learned that would significantly improve some rule  
18 makings in the past. The process we have seen, in the  
19 last three years, has been effective in generating a  
20 very complex rule, and has achieved a high degree of  
21 clarity in the requirements that are in the Rule.

22 Multiple, the large staff effort issuing  
23 multiple draft texts, meetings, and meaningful  
24 discussions, honest attempts to address issues, is  
25 very important in the process. A lot of staff work

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1 has gone into this.

2 But ultimately, I think, there is a  
3 savings for both the NRC and the industry, when we get  
4 to the implementation phase of this rule and avoid  
5 multiple clarification meetings, FAQs, and a variety  
6 of other issues that we sometimes have seen in the  
7 past.

8 The reason I'm recommending this formal  
9 review is I think you need to compare it to the  
10 secretive process used between 1994 and 2001 which,  
11 ultimately, produced a rule with significant  
12 unintended consequences.

13 I also agree with one of the  
14 Commissioners. The backfit process is not the  
15 problem, it is not the issue, it is not what we should  
16 have been analyzing in 2001.

17 I, personally, do not intend to look at  
18 the backfit analysis on the drug and alcohol portion  
19 of the Rule. I don't need to, I can look at the Rule  
20 itself, and I'm satisfied in that area.

21 I want to make sure I didn't mislead  
22 anybody in my comments. There have been some issues  
23 that the industry didn't prevail in, but that is part  
24 of the process. I still feel that we are overly  
25 restrictive on the MRO and including them in the

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1 program is probably not wise.

2 But we got our best shot at it and you are  
3 not going to hear from us again on that one in the  
4 formal comment period. I'm also concerned that we are  
5 going to have to, probably, shut down most on the on-  
6 site labs because of the quality assurance  
7 requirements. Again, we have taken our best shot, and  
8 I guess you understand that part of the issue.

9 Today we do have a few comments and they  
10 will be presented by various members of the industry  
11 taskforce that has been working this for many years.  
12 Probably only two of those comments are of any  
13 significance.

14 So 26.3(E) discusses new plant  
15 requirements during new construction. I know it is  
16 the same that was in the last rule, but now that we  
17 are going to build a plant we probably need to look at  
18 that and fix the lack of clarity and what we really  
19 intend in that particular area. We will discuss that  
20 a little later on.

21 We also still have some concerns with  
22 26.69, and what the requirements are when there is  
23 potentially disqualifying information on an  
24 individual. The reviewing official is not being  
25 offered enough latitude in making rational decisions

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1 when some events occur, like a single DUI.

2 Not all potentially disqualifying  
3 information is the same, and I think we will hear some  
4 more discussion on that.

5 Have I finished my seven minutes yet?  
6 Thank you.

7 MS. KARAS: Okay, thanks Jim. I do  
8 realize that I forgot to introduce my own boss,  
9 Stephanie Coffin. And so, hopefully, she will forgive  
10 me for that. She is Dave's and my boss.

11 I also wanted to let everybody know that  
12 there are more seats up at the table. If there is  
13 anybody who is intending to speak, you know, please go  
14 ahead and sit up at the table, or anybody else.

15 Now I would like to turn it over to Tim.  
16 Tim is going to briefly go over an overview of the  
17 drug and alcohol testing changes, the more significant  
18 ones. And then we will go into the comments at that  
19 point.

20 MR. MCCUNE: Thanks, Becky. We had a  
21 number of objectives, as you all know, with the  
22 Proposed Rule. Chiefly among them was to update the  
23 Proposed Rule with the drug testing requirements from  
24 the Health and Human Services Department, for which  
25 all the technical basis derives for this program, and

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1 many federal programs.

2 And the alcohol provisions that the DOT  
3 provides. We wanted to strengthen the program,  
4 management of worker fatigue, and we think we have  
5 done that.

6 Dave, obviously, will be talking about  
7 that, Dave Desaulniers, this afternoon, so I won't go  
8 into that, in any detail.

9 As Jim said, we wanted to make the program  
10 more effective, and efficient, and I think we have  
11 done that as well. We wanted to achieve consistency  
12 between the FFD and access authorization programs.

13 This is no small matter. As many of you  
14 know the "fitness-for-duty" program in many cases is  
15 a precursor to access authorization. So it is  
16 imperative that the two programs are linked, and we  
17 think we have done that in subpart C.

18 We want to reduce the burden, where  
19 appropriate, and I will talk a little bit more about  
20 that. Improve clarity, as Becky mentioned, and I  
21 think we have done a pretty good job of that.

22 And, lastly, we wanted to protect, or  
23 increase the protections, and due process rights to  
24 individuals subject to the Rule.

25 Well, under the area of strengthening the

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1 program, primarily we have implemented specimen  
2 validity testing. And that verifies that the specimen  
3 is unadulterated human urine. We do that through  
4 specimen tampering, using adulterates.

5 We can detect that, we think, pretty well  
6 with the new requirements, as well as dilution, or  
7 substitution. We changed the drug and alcohol cutoff  
8 testing levels. For example, the cutoff level for  
9 marijuana was cut in half, from 100 nanograms per  
10 milliliter, to 50.

11 And in the area of alcohol we recognized  
12 that if someone came up for a random test, while on  
13 duty, or any other type of test, while they are at  
14 work, and tested positive for alcohol, there was the  
15 chance that they would have imbibed either at work, or  
16 significantly before work.

17 And so we have dropped that level after a  
18 two hour period being on-shift, from .04 to .02. And,  
19 lastly, all workers would be trained on the "fitness-  
20 for-duty" program at the supervisory level.

21 In the area of more stringent sanctions,  
22 because there still are ways to subvert the testing  
23 program, and I won't go into those in any detail, for  
24 obvious reasons, we have implemented, or proposed to  
25 implement a permanent denial for a first attempt to

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1 subvert the testing process, or a refusal to test.

2 A five year denial is also in the Proposed  
3 Rule. If an individual resigns to avoid removal for  
4 a "fitness-for-duty" violation, an unfavorable  
5 termination of authorization for 14 days is required  
6 for a first confirmed positive, and a five year denial  
7 after a second.

8 Also a permanent denial for any "fitness-  
9 for-duty" violation following a five year denial. I  
10 mentioned increased worker protections and rights.  
11 Largely based on the science, and the fact that it is  
12 possible to ingest, for instance, a large quantity of  
13 poppy seeds and come up positive on a test for  
14 opiates, we have raised the opiate cutoff level from  
15 300 nanograms per milliliter, to 2000.

16 We have strengthened the requirement for  
17 independence of the MRO. Jim Davis went into that,  
18 briefly, but we feel very strongly that the MRO can  
19 work, the MRO staff can be under the employ of the  
20 licensee.

21 But the MRO staff must take direction  
22 solely from the MRO. We are requiring licensees to  
23 obtain independent forensic toxicologist certification  
24 in two instances. Where they want to test for drugs  
25 not included in the HHS panel, or if they want to test

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1 for a more stringent cutoff level.

2 I think Jim also alluded to some savings  
3 to the industry. I think we've accomplished that  
4 through some relaxations. We are not going to, any  
5 longer, require blood testing for alcohol. Only one  
6 alcohol breath test is going to be required.

7 We are also allowing saliva devices  
8 instead of breath for the first test. And instead of  
9 doing "fitness-for-duty" performance reporting on a  
10 twice a year basis, we are multiplying that  
11 periodicity to once a year, which should help.

12 Some auditing requirements are also  
13 relaxed. I think we all know that some other  
14 programs, like the DOT's, dwarf the NRC program. They  
15 have, approximately, twelve million people in their  
16 program, we have approximately 104,000.

17 And so for that reason we are not  
18 requiring that the HHS labs be audited on the same  
19 periodicity.

20 I mentioned that we are based on the HHS  
21 requirements as almost all drug testing programs are.  
22 But we do differ from the HHS guidelines in some  
23 cases. Generally we are consistent, but we did not  
24 follow all of the proposed new policies from the HHS  
25 that looks at alternate processes.

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1           Their process is moved a little bit  
2       quicker than the Part 26 process. But the Proposed  
3       Rule would include some aspects of proposed HHS  
4       guidelines to provide additional licensee flexibility  
5       to use non-instrumented testing.

6           And I think that is something that should  
7       save the industry some money down the line, as well.  
8       We have differences from these guidelines, but you  
9       might be wondering why. The difference is centered in  
10      the basic difference of the missions between the HHS  
11      and the NRC.

12           The HHS mission centers on assisting  
13      federal agencies with health issues for federal  
14      employees. At the NRC we have the requirement to  
15      ensure that nuclear facilities, and nuclear reactors,  
16      are operated in a safe manner.

17           And so that is, primarily, why we have  
18      some of the policies in the Proposed Rule that aren't  
19      resident in the HHS policy.

20           And that is about all I have. Becky, I  
21      will turn it back over to you.

22           MS. KARAS: Okay, thanks, Tim. How we are  
23      going to go through this is, initially, we want to try  
24      and go through the questions for public comment that  
25      were, specifically, asked in the Federal Register

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1 notice.

2 They are also attachment 2 to this meeting  
3 notice. And we are going to go through the ones that  
4 are drug and alcohol testing related, or related, in  
5 general, to Part 26 this morning. Then when we get  
6 done receiving any comments on those specific  
7 questions, then we will receive general comments on  
8 any other provisions.

9 But we will leave the specific fatigue  
10 questions for public comment until the afternoon. So  
11 I'm not going to read through, I guess, the entire  
12 thing for each one of these, but I'm going to  
13 paraphrase a little bit.

14 We go to question number 1 for public  
15 comment, off of attachment 2. Basically what the  
16 Proposed Rule would do is it would increase sanctions  
17 in certain areas, as Tim had just explained off of his  
18 slides.

19 And a couple of those, specifically, are  
20 for acts, or attempted acts to subvert the testing  
21 process would result in permanent denial of  
22 authorization. And that is for a first attempt.

23 In addition any individual who previously  
24 had a five year denial, if they have a subsequent  
25 violation, that subsequent violation would result in

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1 permanent denial.

2 So we are specifically requesting comments  
3 regarding these proposed changes, especially when  
4 compared to the five year ban available through the  
5 agency's enforcement policy for other acts of  
6 deliberate misconduct.

7 If there is anybody who would care to  
8 comment on that? Randy?

9 MR. CLEVELAND: Yes, this is Randy  
10 Cleveland with the Nuclear Management Company. Our  
11 comment on this is that many in the industry are  
12 currently implementing policies of permanent denial as  
13 an individual sanction, and a program to deter such  
14 acts.

15 And the industry may submit written  
16 comments, additional written comments on this topic in  
17 December.

18 MS. KARAS: Are there any other comments?

19 (No response.)

20 MS. KARAS: If not we will move on to  
21 question number two. And this is on the "shy-lung"  
22 procedures. Basically what Part 26 would do is it  
23 would establish a process called "shy-bladder" for  
24 determining whether there is a medical reason that a  
25 donor is unable to provide a urine specimen of at

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1 least 30 milliliters.

2 We had adapted that from DOT's procedures.  
3 But DOT also has additional processes for determining  
4 whether there is a medical reason that a donor is  
5 unable to provide a specimen of oral fluids, or a  
6 breath specimen.

7 And we are inviting comments on whether  
8 the NRC should consider incorporating these procedures  
9 for insufficient oral fluids and breath specimens,  
10 into Part 26.

11 Are there any comments on that? Susan?

12 MS. TECHAU: Susan Techau, Exellon  
13 Nuclear. The industry sees no need for a "shy-lung"  
14 provision. We did a quick poll of industry and felt  
15 that there was very, very few if any instances where  
16 that would apply.

17 We believe that 26.85(B)(3) requires an  
18 alcohol collector qualifications, that we have to have  
19 procedures to address that issue, and feel that that  
20 is enough to address the problem.

21 But we do reserve the right to provide  
22 comments in December, and we may provide that, at that  
23 time.

24 MS. KARAS: Are there any other comments?

25 (No response.)

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1 MS. KARAS: We will move on to question  
2 three, then, on the forensic toxicologist.

3 The Proposed Rule would permit licensees  
4 to specify more stringent cutoff levels, or to test  
5 for drugs and drug metabolites in addition to those we  
6 specify, without informing or obtaining the written  
7 approval of the NRC.

8 However, in these instances we would  
9 require them to be evaluated and certified in writing  
10 by a qualified independent forensic toxicologist,  
11 except in three circumstances.

12 The first one is if HHS issues more  
13 stringent cutoff levels, or if HHS guidelines are  
14 revised to include the additional drug or drug  
15 metabolite, or if the licensee would receive written  
16 approval from the NRC for that situation.

17 We are requesting comments regarding those  
18 proposed changes.

19 MR. CLEVELAND: Randy Cleveland with the  
20 Nuclear Management Company. The industry is currently  
21 studying this proposal and has no comment at this  
22 time. We may provide written comment in December.

23 MS. KARAS: Are there any other comments?

24 (No response.)

25 MS. KARAS: We will move on to question 4,

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1 then, on the changes to opiate testing.

2 The Proposed Rule would raise the cutoff  
3 levels for opiates from 300 nanograms per milliliter  
4 to 2,000 nanograms per milliliter. We would also  
5 require testing for 6-AM, a metabolite that only comes  
6 from heroin.

7 The proposed cutoff levels in the new test  
8 would be consistent with those used by HHS and DOT.  
9 We are inviting comments on those proposed changes.

10 MR. DEFILIPPI: Pete Defilippi,  
11 Westinghouse Electric Company. The industry strongly  
12 agrees with the proposed requirement, as it does  
13 increase the efficiency of the "fitness-for-duty"  
14 programs.

15 However, we do reserve the right to,  
16 again, comment in December. Thank you.

17 MS. KARAS: Are there any comments on  
18 that?

19 (No response.)

20 MS. KARAS: We will move on to question 5.  
21 I guess we will go through 5-A, first. We would add,  
22 in the Proposed Rule, new requirements for validity  
23 testing in order to detect specimens that may have  
24 been adulterated, substituted, or diluted.

25 These have been adapted from HHS

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1 guidelines. And we are inviting public comments on a  
2 couple of issues. We will go through A first.

3 We would establish quality assurance and  
4 quality control requirements, and we are seeking any  
5 input regarding any technical and methodological  
6 barriers to implementing those requirements at  
7 licensee testing facilities.

8 Are there any comments on the QA/QC  
9 requirements?

10 MS. TECHAU: Susan Techau, Exellon  
11 Nuclear. The industry is studying the proposal of  
12 this aspect of the Proposed Rule. And we will  
13 commenting on that in December.

14 MS. KARAS: Are there any comments on 5-A?

15 (No response.)

16 MS. KARAS: On 5-B, the Proposed Rule  
17 would establish criteria and procedures for  
18 determining whether a specimen has been substituted.  
19 A specimen will be reported, by the HHS lab, to the  
20 MRO as substituted, if it has a creatinine  
21 concentration of less than 2 milligrams per deciliter,  
22 and a specific gravity of less than, or equal to,  
23 1.001, or equal to or greater than 1.02.

24 For them to report it as substituted,  
25 results in those ranges would be necessary in both the

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1 initial and the confirmatory test, on two separate  
2 aliquots of the specimen.

3 We are inviting comments on those proposed  
4 provisions.

5 MS. TECHAU: Susan Techau, Exellon  
6 Nuclear. Again, the industry is looking at this issue  
7 and we will provide comments in December.

8 MS. KARAS: Thank you. Are there any  
9 comments on 5-B?

10 (No response.)

11 MS. KARAS: We will move on to question 6,  
12 on MRO training. The Proposed Rule would require that  
13 the MRO be knowledgeable of this part, and of the  
14 "fitness-for-duty" policies of the licensees.

15 We are inviting comments on whether Part  
16 26 should establish specific training requirements for  
17 the MRO.

18 MR. CLEVELAND: Randy Cleveland with the  
19 Nuclear Management Company. The industry does not  
20 believe the NRC should regulate training for MROs.  
21 MROs are licensed by individual states and will be  
22 certified as required by the Proposed Rule.

23 Additional regulation is not required to  
24 ensure MROs understand licensee policies and  
25 procedures. We may submit additional comments in

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1 December.

2 MS. KARAS: Are there any other comments  
3 on this question?

4 (No response.)

5 MS. KARAS: We will move on to question 7,  
6 on testing bottle B. The Proposed Rule would prohibit  
7 licensees from initiating testing of the specimen in  
8 bottle B, or from retesting an aliquot from a single  
9 specimen without the donor's written permission.

10 However, we are considering an alternative  
11 approach that would permit a licensee initiating  
12 testing of the specimen in bottle B, or retesting an  
13 aliquot without the donor's written permission, if  
14 three conditions are met.

15 And the first would be that if the first  
16 results, from the specimen, were confirmed as non-  
17 negative, by the MRO. Secondly, that the donor has  
18 also requested a review, or initiated legal  
19 proceedings.

20 And, finally, that the testing is  
21 conducted in accordance with proposed 26.165(C)  
22 through (E), which is basically as a retest. And  
23 under the proposed provisions, or the alternative  
24 approach, the Rule would require the licensee to  
25 administratively withdraw the donor's authorization

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1 until the results from bottle B, or the retest, are  
2 available.

3 We are inviting public comment on both the  
4 Proposed Rule provisions and also the alternative  
5 approach. Are there any comments?

6 MR. WILSON: Glenn Wilson with Dominion.  
7 The industry is studying this and we will be providing  
8 comments, in December, on it. We have no comment at  
9 this point.

10 MS. KARAS: Are there any other comments?

11 (No response.)

12 MS. KARAS: Then we will move on to  
13 question 8 on the rule making issues. For non-  
14 instrumented validity testing the NRC is considering  
15 incorporating future changes to draft HHS guidelines  
16 related to the permission that we provided, in  
17 proposed Part 26, for licensees to use non-  
18 instrumented validity tests.

19 Proposed Part 26 would permit them for  
20 validity screening test in lieu of instrumented  
21 validity testing. If any changes are made to those  
22 draft HHS guidelines between issuing the Proposed Rule  
23 and issuing the Final Rule, those changes would be  
24 considered for incorporation.

25 We want to know if there are any comments

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1 related to the potential incorporating of those  
2 changes.

3 MR. CLEVELAND: Randy Cleveland with the  
4 Nuclear Management Company. The industry disagrees  
5 with the proposal. Changes to HHS guidelines should  
6 not be incorporated into NRC regulations without going  
7 through the complete rule making process.

8 We may submit additional comments in  
9 December.

10 MS. KARAS: Are there any other comments?

11 (No response.)

12 MS. KARAS: We will move on to question 9,  
13 then.

14 The NRC is considering amending other  
15 portions of its regulations in order to exclude  
16 certain future changes to Part 26 from current backfit  
17 requirements.

18 The scope of the exclusions would be  
19 limited to only those changes to Part 26 necessary to  
20 incorporate relevant revisions to the HHS guidelines.

21 And you can see what those are listed in  
22 your handout. The NRC is requesting comment on  
23 excluding such future changes to Part 26 from backfit  
24 analysis requirements.

25 Are there any comments?

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1 MR. DIPIETRO: Yes. It is Nick Dipietro  
2 with First Energy. Industry believes that any future  
3 changes made to Part 26 should have a backfit analysis  
4 and plan to submit comments, on this topic, in  
5 December.

6 MS. KARAS: Are there any other comments?  
7 (No response.)

8 MS. KARAS: Then we will move to question  
9 10 on the reporting burden. We are seeking comments  
10 regarding the administrative reporting burden that the  
11 Proposed Rule provisions would create.

12 MR. CLEVELAND: Randy Cleveland with the  
13 Nuclear Management Company. With respect to the drug  
14 and alcohol provisions, excepting subsection I, the  
15 industry does not have any comment at this time.

16 MS. KARAS: Are there any other comments?  
17 (No response.)

18 MR. DAVIS: This is Jim Davis, NEI. I  
19 think it is important to get on the record that the  
20 reporting requirements associated with the drug and  
21 alcohol part of the Rule, we do not feel that those  
22 reports are needed for the regulator to meet their  
23 requirements to regulate the industry, and protect  
24 public health and safety. That is not the purpose of  
25 those reports.

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1           However, we do support the reporting  
2           associated in the drug and alcohol rule in that  
3           somebody needs to collate the data and see what is  
4           going on in the environment that we all live in, and  
5           work in, that is beyond the control of the NRC, beyond  
6           the control of the industry.

7           And whether a particular drug set is  
8           becoming more popular or less popular. And that an  
9           annual summary of that information is a worthwhile  
10          effort. And that the NRC is probably the best person  
11          to do it.

12          And, therefore, we support that portion,  
13          we support the reporting requirements for that  
14          purpose. I make this comment because I have a little  
15          bit of heartburn with the claim that those reports are  
16          needed to meet oversight requirements.

17          I don't think that is necessary. With  
18          that all said, we support the reporting requirements.

19          MS. KARAS: Are there any other comments?

20          (No response.)

21          MS. KARAS: That is what we had for the  
22          questions for public comment. And now we will enter  
23          the portion of the agenda where we basically open it  
24          up for any other comments, or clarifying questions on  
25          other drug and alcohol provisions, or general rule

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1 making issues.

2 And we will keep going until 10:30, where  
3 we will have a break. So if anybody would like to  
4 comment, and just step into one of the microphones, be  
5 sure to say who you are and your affiliation, if that  
6 is appropriate.

7 And if you feel you are not getting a  
8 chance to get to the microphones just raise your hand  
9 and we will acknowledge you, and we will give you a  
10 turn.

11 MR. DAVIS: I would like to go back to  
12 question one for a minute. If I could just inject  
13 that into my first comment?

14 In evaluating this provision, making a  
15 decision, I think the Staff needs to consider other  
16 requirements that are out there; realize that the  
17 licensee has a requirement to determine that the  
18 individual is not only fit for duty, but they are  
19 trustworthy and reliable.

20 And I think you need to think of this in  
21 the trustworthy and reliable area, as well as whether  
22 there is or is not a "fitness-for-duty" issue for the  
23 individual.

24 Because ultimately the licensee is going  
25 to have to look at that piece of the equation in

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1 making this decision when we have a testing program  
2 like that.

3 MS. KARAS: We will move on to the next  
4 comment.

5 MR. CLEVELAND: Randy Cleveland with the  
6 Nuclear Management Company. This comment is regarding  
7 the call-in reporting requirements, reference is  
8 26.27(C) (3) (I), requiring an individual who has called  
9 in, when scheduled to work, to state whether they  
10 consider themselves fit for duty, or whether they have  
11 had alcohol within the pre-duty abstinence period.

12 We would like to see a change in the  
13 regulation with respect to this section, to move to a  
14 report by exception philosophy. Currently licensees  
15 are training individuals on the expectation with  
16 respect to call-outs, to report whether they consider  
17 themselves unfit, and whether they have had alcohol in  
18 the abstinence period.

19 We would like to see the language, and we  
20 will be submitting a comment in December, providing  
21 suggested language, that moves us to a report by  
22 exception, specifically that individuals called in --  
23 being called in would be required to declare, as  
24 stated in the licensee program, when they consider  
25 themselves unfit for duty, or have consumed alcohol

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1 within the pre-duty abstinence period, as stated in  
2 the policy.

3 And, again, this will be covered by  
4 training. So rather than across the board requiring  
5 every individual to make a statement, we would train  
6 individuals on the requirements, and expect that the  
7 report be made as required by exception in the  
8 licensee policy, to the appropriate licensee entity.

9 Ultimately the industry considers that the  
10 burden of having every individual make this  
11 declaration unnecessary.

12 MS. KARAS: Thank you. Next comment?

13 MS. TECHAU: Susan Techau, Exellon  
14 Nuclear. The industry has a concern about requiring a  
15 suitable enquiry to present employer, when that  
16 present employer was, the individual was hired the day  
17 of, and processing.

18 And the reference for the Proposed Rule is  
19 26.63(C), where it currently states: A licensee or  
20 other entity shall conduct a suitable enquiry on a  
21 best-effort basis that question both present and  
22 former employers.

23 The reasoning for this is that when an  
24 individual is in processing, or coming to one of our  
25 nuclear sites, they are possibly being hired that day.

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1 And the suitable enquiry questions that are being  
2 asked are based on past history, that they have, on  
3 that individual.

4 The employers have no history on the  
5 individual and they may have been on the payroll for  
6 five minutes, and they have no documentation to  
7 support or answer those questions.

8 So the proposed language, or suggested  
9 language, that we would like to see is 26.63(C) to  
10 state, the licensee or other entity shall conduct the  
11 suitable enquiry, on a best-effort basis, by  
12 questioning both present employed prior to the day the  
13 individual completed the self-disclosure, and former  
14 employers.

15 MS. KARAS: Okay, thank you. Next  
16 comment?

17 MR. CLEVELAND: Randy Cleveland with the  
18 Nuclear Management Company. The industry is concerned  
19 with section 26.69, particularly (C)(2). Those are  
20 the provisions regarding granting of authorization  
21 with potentially disqualifying "fitness-for-duty"  
22 information.

23 An example that I will use to demonstrate  
24 our concern here would be an individual that has  
25 disclosed on a personal history questionnaire an open

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1 bottle conviction within the applicable scope of the  
2 background.

3 This would qualify as potentially  
4 disqualifying information, and the licensee would be  
5 forced, under these provisions, to suitable enquiry  
6 every employer that was listed on the personal history  
7 questionnaire, and would not have the ability to go  
8 with the non-PDA provisions allowing four years, two  
9 and three, for example, on an initial, to just  
10 suitable enquiry the employer of greatest length in  
11 each month.

12 The industry believes that an across the  
13 board requirement to cover every employer is  
14 unnecessarily burdensome, overly reactive, here. And  
15 what we would like to see is additional flexibility  
16 built into the Rule.

17 We will be providing language as such to  
18 allow for reviewing official, and professional, for  
19 example MRO interaction, to determine the need to do  
20 additional investigation.

21 Ultimately the industry has had 15-plus  
22 years of experience proving that the information that  
23 we are getting from employers, as a general rule, is  
24 not going to be beneficial in dispositioning the  
25 "fitness-for-duty" issue that the proposed regulation

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1 would require, in terms of making a "fitness-for-duty"  
2 determination.

3 So we would like to see is the flexibility  
4 built in to allow the reviewing official to assess  
5 what it is that has been developed, either through  
6 disclosure, or conduct, of the suitable enquiry, and  
7 do the appropriate level and type of investigation,  
8 rather than having an across the board requirement to  
9 go back and cover every employer.

10 MS. KARAS: Thank you. Next comment?

11 MS. TECHAU: Susan Techau, Exellon  
12 Nuclear. In addition to the 26.69(C) area,  
13 26.69(C)(1), the industry believes that the language  
14 currently states should verify that the individual's  
15 self-disclosure and employment history addresses the  
16 applicable period.

17 And 25.61(B)(3), we believe it should also  
18 state and C. And the reason behind that is because  
19 the action in 26.69(C)(1) is indicating that we have  
20 to verify the individual's self-disclosure, and  
21 employment history, should be covered.

22 And 26.61(B)(3) addresses self-disclosure,  
23 but (C) addresses employment. And we believe that  
24 that needs to be included, in order to be consistent  
25 with the language.

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1 MS. KARAS: Thank you. Next comment?

2 MR. CLEVELAND: Randy Cleveland with the  
3 Nuclear Management Company. The next comment that the  
4 industry would like to submit is concerning the  
5 requirement, in 26.189(C), that a determination of  
6 fitness that is conducted, for-cause, must be  
7 conducted through face-to-face interaction between the  
8 subject individual and the professional making the  
9 determination.

10 The industry acknowledges that in certain  
11 cases, such as odor of alcohol, or a fatigue related  
12 determination, that a face-to-face is not necessarily  
13 required.

14 However, there are other circumstances  
15 wherein a licensee may initiate a for-cause evaluation  
16 which would not warrant a face-to-face interaction  
17 with the appropriate professional.

18 We, again, would like to see the  
19 flexibility built into the Proposed Rule to allow the  
20 licensee, again, to interact. An interaction between  
21 the reviewing official and appropriate professional,  
22 be it MRO, SAE, psychologist, to determine, based on  
23 the circumstances that are before the licensee, the  
24 need to have a face-to-face interaction.

25 MS. KARAS: Thank you. Next comment?

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1 MR. DESAULNIERS: I just want to clarify.  
2 I heard you say, in the case of odor of alcohol, or  
3 fatigue, not face-to-face, did you say not face-to-  
4 face, or face-to-face?

5 MR. CLEVELAND: Not face-to-face.

6 MS. KARAS: Next?

7 MS. TECHAU: Susan Techau, Exellon  
8 Nuclear. In the Proposed Rule 26.39(C), which  
9 addresses the "fitness-for-duty" review process, the  
10 current language states that the procedure must ensure  
11 that the review is conducted by more than one  
12 individual, and that the individuals that conduct the  
13 review are not associated with the administration of  
14 the "fitness-for-duty" program.

15 And the description of the "fitness-for-  
16 duty" personnel in 26.25(A)(4), we believe that  
17 currently, and we have been doing this for  
18 approximately 15 years, where the access authorization  
19 and the "fitness-for-duty" process appeal, or review,  
20 are the same.

21 And we currently have language that in our  
22 current process, that has been endorsed by the NRC  
23 through NEI 0301, that has different language, and we  
24 would like to see if we could become standard, so that  
25 the licensees didn't have to have two different

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1 processes, one for access authorization and one for  
2 "fitness-for-duty" for the review and appeal of the  
3 denial of unescorted access.

4 And the current language, which we would  
5 like to see in 26.39(C), or the proposed language,  
6 would provide the opportunity to have the decision,  
7 together with any additional information, review by  
8 another designated management level employee of the  
9 licensee, who is equivalent or senior to, and  
10 independent, of the individual who made the initial  
11 decision to deny or terminate unfavorably UAA/UA.

12 The determination from this review is  
13 final. We believe by incorporating those proposed  
14 words, that it would be consistent with access  
15 authorization and "fitness-for-duty", and wouldn't be  
16 burdensome to the licensee to have two separate  
17 processes for each rule.

18 MS. KARAS: Thank you. Next comment?

19 MR. DIEC: I just sort of wondered if  
20 there is anybody, I mean, the industry is sort of  
21 hogging the mike here. If somebody wants to make a  
22 comment?

23 MS. KARAS: Does anybody on the  
24 speakerphone wish to make a comment?

25 (No response.)

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1 MS. KARAS: Can you hear us on the  
2 speakerphone?

3 (No response.)

4 MR. DIEC: Can anybody hear us? Are you  
5 on a conference call with us still?

6 (No response.)

7 MS. KARAS: I heard a couple of beeps,  
8 they may have dropped off.

9 Is there anybody else who hasn't made a  
10 comment yet, sitting back? I want to make sure that  
11 we are not monopolizing, just the people on the table.

12 (No response.)

13 MS. KARAS: Randy, Sue, or Nick, any of  
14 you have further comments?

15 MR. DAVIS: It sounds like, let's talk  
16 about 26.3(E) at this point. I'm sort of worried  
17 about the pace of this thing. We've gotten, I think  
18 we got mike fright here, or something, that we are not  
19 -- we are talking, but I'm not sure whether we are  
20 providing good input.

21 So let's see if maybe we can have a little  
22 more discussion on this one, realizing you are taking  
23 comments, but maybe you need to ask us a few more  
24 questions.

25 And I will tee-off the discussion on

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1 26(3) (E), and then turn it over to Tom Houten to talk  
2 about it for a few minutes. He is on our new plant  
3 taskforce and has been involved in working on this.

4 But I think, probably, to highlight the  
5 problem is in 26(3) (E) we are talking about combined  
6 license holders, prior to the point that they get the  
7 permission from the Commission to load fuel, and move  
8 new stuff.

9 So we are talking, basically, about the  
10 construction process, right? And it says: Comply  
11 with 26.23, 41 and 189. And when I go to 26.23, 26.23  
12 is, if I can find it in my little handout here, it  
13 basically provides overarching performance objectives  
14 for the Rule.

15 And you read those performance objectives,  
16 I have some auditors that would probably tell me that  
17 the only way I'm going to meet those performance  
18 objectives is to follow each and every element in the  
19 rest of the Rule.

20 And then I've got some lawyers that tell  
21 me that if you don't need to follow each and every  
22 element in the Rule to meet these performance  
23 objectives, then the rest of that, those pieces of the  
24 Rule ought to go away.

25 So I think we are conflicted in what we

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1 are trying to do. And, obviously, as it is written,  
2 it is probably fortunate we never tried to build a  
3 plant with this in place.

4 We don't provide very good guidance to the  
5 companies that are out there trying to build a new  
6 plant, as to what our expectations are. And I will  
7 let Tom Houten talk about it.

8 I have recommended that the industry  
9 develop some language that makes 26.3(E) stand-alone,  
10 totally by itself. And the reason I did that, without  
11 any references to anything else in the document, and  
12 the reason I recommended that is during the rule  
13 making process there was an attempt to figure out how,  
14 in this Rule, to address shutdown plants and ISFSIS.

15 And at one point, as I remember, and  
16 correct me if I'm wrong, Garmon, actually in the scope  
17 of the Rule we had shutdown plants and ISFSIS, and  
18 then we were going to do 26.25 one, but not two, and  
19 three, but not four, and that kind of stuff.

20 And we actually had several meetings on  
21 it. And at one meeting we finally brought in all the  
22 people from, you know, the responsible people from the  
23 shutdown plants, and from the ISFSIS, and we sat down,  
24 we went through the Rule, and we tried to figure out  
25 how to parse it.

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1           And my experience in that area finds that  
2       this Rule is sort of written all or nothing. It is a  
3       rule that is aimed at power reactor licensees with  
4       protected areas fully established, a security  
5       perimeter, and operating a plant.

6           And you've got to be trustworthy,  
7       reliable, and fit for duty in the highest level. And  
8       if you try to parse it any other way you start, it  
9       starts falling apart.

10          It wasn't written in a manner that you can  
11       piece parse it. It was hard enough to write it in a  
12       manner that made sense, and had a logical flow. And  
13       we had a lot of arguments about what ought to be in C,  
14       and D, and E, and get rid of the appendix, and all  
15       that kind of stuff.

16          So I personally believe that it will be  
17       very hard, in 26.3(E), to refer to any other parts of  
18       the Rule and not generate downstream an implementation  
19       as the new plants are trying to figure out what to do.  
20       Horrendous arguments in that area.

21               Tom?

22           MR. HOUTEN: I'm Tom Houten. We have a  
23       new plant --

24           MS. KARAS: Tom, could we get you to use  
25       a microphone?

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1 MR. HOUTEN: I'm Tom Houten at NEI. We  
2 have a new plant security taskforce, which is working  
3 on issues related to the construction period of new  
4 plants, including plants that would be built adjacent  
5 to currently operating plants.

6 The approach that we are taking is to  
7 develop an appendix to the security template, which is  
8 an NEI document 0312. This appendix would address all  
9 issues related to both security and Part 26, and  
10 access authorization.

11 The template would be a template that the  
12 licensees would use to develop their own security  
13 plan, with this appendix. The aspects of it would be  
14 phased in. That would be explained in the template.

15 And that template would be approved by NRC  
16 and then used in the COL applications. The industry's  
17 intent is to develop a drug and alcohol free  
18 workplace. We believe it ought to be phased in.

19 We believe that the aspects of the Rule,  
20 as written, may not, as Jim was saying, may not be  
21 appropriately written for this new construction and  
22 the phasing in from a site which is, which starts from  
23 excavation on up to the point at which there are  
24 protected areas.

25 That is the approach that we are looking

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1 at. In terms of the current rule, as written, we are  
2 concerned about some confusion in it. For instance,  
3 Part 26.25 states that it applies to individuals who  
4 have unescorted access to the nuclear power plant  
5 protected area.

6 There won't be any protected areas during  
7 construction, until close to fuel load. We think that  
8 needs to be addressed. That basically is the  
9 approach. We think consideration needs to be taken  
10 for that.

11 There are, perhaps, one or two other  
12 places where there appears to be inconsistency in the  
13 Rule, as written, as to application to new  
14 construction sites.

15 Perhaps another one would be whether the,  
16 while the performance objective talks about effects of  
17 fatigue, the section, the subpart I, on managing  
18 fatigue, section 26.195, does not apply to section  
19 26.3(E).

20 I would be happy to provide more  
21 information, or more input to this, at any time you  
22 prefer.

23 MS. KARAS: Yes, you can -- I think we  
24 have a fair amount of time. There doesn't seem to be  
25 anybody lined up at the mikes. So you can feel free

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1 to continue.

2 MR. HOUTEN: Another point, actually my  
3 last point I wanted to make, is that there is a  
4 Proposed Rule language out for part 52, conforming  
5 changes.

6 And apparently when that was prepared the  
7 conforming changes, to Part 26, used the current  
8 regulation as opposed to what is proposed here. So we  
9 would suggest that there might need to be coordination  
10 of those efforts.

11 MS. MCKENNA: Let me just comment on that.  
12 I think we recognize the coordination element. Under  
13 the Federal Register rules, when we put out a Proposed  
14 Rule, we can only reference a rule that is currently  
15 in force.

16 But we do realize that there is language,  
17 in this Proposed Rule, and presumably in the Proposed  
18 Rule in part 52, in conforming changes, that we hope  
19 to have to the Commission in the not too distant  
20 future.

21 And it is an issue we will have to deal  
22 with when they approach the Final Rule stage, to make  
23 sure that we use the right language, and make things  
24 consistent.

25 MR. HOUTEN: And that people are

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1 commenting on the one you want them to comment on.

2 MS. MCKENNA: Exactly, yes. And it is a  
3 challenge for us because, you know, the timing of  
4 these is going to overlap, in some respect. Although,  
5 perhaps, this comment period will close before that  
6 one opens, depending on how quickly the Commission  
7 responds.

8 But we do realize that there is this  
9 overlap.

10 MS. KARAS: But you are encouraged to  
11 comment on both of those proposed rules.

12 MS. MCKENNA: Yes. If you have language,  
13 if you find one preferable to the other, you know,  
14 certainly those are the kinds of comments that we  
15 would be interested in.

16 MS. KARAS: Right. And, again, please  
17 provide it on both rule making efforts, so that those  
18 comments get answered under either one.

19 Because, you know, as Eileen stated, I  
20 mean, it is really going to be a timing issue as to  
21 which one becomes, you know, goes up as a Final Rule  
22 first.

23 So if you have comments, or issues, in  
24 that area we encourage you to submit them, as  
25 comments, on both of those rule making efforts.

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1 MR. HOUTEN: Those were the main points  
2 that we wanted to bring up. Do you have questions?

3 MS. KARAS: I have a clarifying question.  
4 Did you have any comment regarding the level of what  
5 we are asking for, new construction, like the level of  
6 the program?

7 I guess I'm looking under E2 and E3.

8 MS. KARAS: We do have some suggestions in  
9 that area. We have to share something today. Let me  
10 share some preliminary thoughts in that area, we are  
11 still working on.

12 I guess I was going to ask a question  
13 first. Is -- we are not aware of any document,  
14 anything that better establishes expectations in this  
15 area for new construction.

16 Are you aware of anything else that is out  
17 there? And I suspect the answer is no. I mean, we  
18 haven't tried to build a plant since the "fitness-for-  
19 duty" rule went in place.

20 So I presume there is nothing in place.  
21 But if there was something in place it might help us  
22 in understanding what the expectations were.

23 MR. MCCUNE: Not to our knowledge.

24 MR. DAVIS: We feel that the lead-in  
25 portion of E, my colleagues tell me, is just fine.

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1 And I admit that I have a great difficulty getting  
2 between 52103, and 5010E3, and all those other  
3 references.

4 But apparently it covers the rights kinds  
5 of people. We would clearly delete the lead-in  
6 language in subparagraph 1 that says comply with  
7 26.23, 41, and 189.

8 And instead some general words that  
9 require the establishment of a policy, such as  
10 establish drug and alcohol free workplace policy,  
11 including sanctions that may be imposed.

12 We think it would be appropriate to  
13 implement a pre-employment drug and alcohol testing  
14 program and a for-cause testing program. And, of  
15 course, you need to make provisions for an objective  
16 and impartial review of any sanction decisions, and  
17 provide for protection of information and records.

18 And I also believe that at this stage,  
19 probably very difficult, in Part 26 to, in fact,  
20 provide the same level of detail that exists in the  
21 rest of it, for the other plants, based on the reasons  
22 we discussed earlier.

23 So, I mean, the important piece is to look  
24 to, for example, the implementing guidance that would  
25 be developed in the new construction area. I think

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1 there are going to be a whole number of issues that we  
2 find have to be addressed, uniquely, for this  
3 situation in new construction, as we go from ground  
4 breaking to almost the point of getting permission to  
5 load fuel.

6 And I think it is important to realize  
7 that the break point in this is up in, I think,  
8 26.3(A), or somewhere, where once the Commission has  
9 authorized the loading of fuel, that is the right  
10 words, isn't it?

11 Once they have authorized the loading of  
12 fuel you are now fully compliant with all the  
13 provisions of Part 26, at that point, going forward.  
14 And I presume that it is also the point you comply  
15 with a whole lot of other things.

16 That you have a protected area, so it  
17 ought to make sense in that arena. And, obviously,  
18 did somebody say it yet? We will make comments in  
19 December, at the proper protective phase at the end of  
20 it.

21 MS. KARAS: Let me ask a question, then,  
22 on -- you made a comment that you would delete E1,  
23 that has the cross references, and I have a question  
24 in that area.

25 When you list 26.41 and 26.189, 26.41 is

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1 the audit requirements and 26.189 is the determination  
2 of fitness. Are you saying to delete E1 because you  
3 don't believe that audits and determination of fitness  
4 should be requirements for construction?

5 Or is it because you believe that the  
6 cross referencing, that the idea of using that cross  
7 referencing creates confusion?

8 MR. DAVIS: The problem is, if you go to  
9 26.41, and you start looking at the audit  
10 requirements, that is built for a fully functional  
11 power reactor site, with a fairly extensive program.

12 And it tells you to do a lot of things  
13 that I believe are unnecessary in a new construction  
14 area. You need to maintain the quality of the  
15 program, you've got quality requirements in various  
16 other areas.

17 So 26.189 is the same thing. The breadth  
18 and depth of this requirement is too extensive for the  
19 nature of the program that you are trying to manage.

20 MS. KARAS: Okay, I think I understand  
21 that now.

22 MR. DAVIS: We sort of got a -- I'm sorry,  
23 I will keep talking. But it sounds like we got some  
24 time.

25 When I looked at this one of the problems,

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1 one of the reasons we have this problem is 26.3 is  
2 trying to define the scope of the Rule, and who it  
3 applies to.

4 And it does a pretty good job, as you look  
5 at all the sections, it is talking about what kinds of  
6 people are in this thing, and bits of pieces of it  
7 apply to, until we get to 26.3(E) and suddenly we are  
8 trying to describe in there program elements and what  
9 the requirements are for everybody else.

10 Those requirements are specified in the  
11 follow-on sections. So we've got an anomaly in the  
12 Rule with 26(E) trying to specify requirements when it  
13 is talking about scope. And there is probably no way  
14 around that.

15 But I think that is how we backed into the  
16 particular problem in this area.

17 MS. KARAS: Is there anybody who has any  
18 other comments?

19 MR. DAVIS: Have we really covered  
20 everything on the list, or have we just lost track of  
21 who is next?

22 MR. CLEVELAND: Randy Cleveland with the  
23 Nuclear Management Company. I want to go back to  
24 section 26.69(C), and I have a clarifying question.

25 Again, this is dealing with the granting

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1 authorization with potentially disqualifying "fitness-  
2 for-duty" information, and particularly 26.69(C)(2),  
3 where the expectation, as the industry has understood  
4 it, to date, is that where we have PDI developed, we  
5 would have to go back and cover every employer for the  
6 applicable scope in 26.63.

7 The clarifying question is this. Was the  
8 NRC's intent that the industry go back and cover every  
9 employer where through the conduct of the appropriate  
10 suitable enquiry PDI was developed?

11 A scenario I will give you is if we are  
12 doing an initial individual where we are covering  
13 three years, and we are back in year two, and we  
14 developed some PDI through the conduct of the suitable  
15 enquiry.

16 Was it your intent, at that point, that we  
17 then cover every employer, or was it your intent that  
18 if somebody comes in and completes a personal history  
19 questionnaire, i.e., makes a disclosure of an open  
20 bottle, that we then cover every employer?

21 That is the clarifying question. And I  
22 will reference, just for additional clarification here  
23 on the question, in the statements of consideration,  
24 on Federal Register page 505.13, we are discussing  
25 26.69(C)(2), you do say that if potentially

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1 disqualifying FFD information was identified during  
2 the conduct of a suitable enquiry, in accordance with  
3 26.63(F), which identifies the periodicity that we  
4 have to cover, that we would be expected to cover  
5 every employer disclosed.

6 MR. MCCUNE: Yes, I think that is the  
7 correct clarification.

8 MR. CLEVELAND: Thank you.

9 MS. KARAS: And the idea there, just to  
10 clarify, or make sure everybody understands what was  
11 written in the section by section, was that in this  
12 case it is a little different than an individual whose  
13 last period of authorization was terminated favorably.

14 And so the intent was to go back to every  
15 employer for those instances where it wasn't  
16 favorable. Are there any other comments?

17 (No response.)

18 MS. KARAS: Are you guys through your  
19 comment list?

20 MR. DAVIS: This is unusual. I mean, how  
21 do we manage this? Maybe we have formalized the  
22 process so much everybody is afraid to make any  
23 comments at this point.

24 You are probably going to get more than  
25 this on December 27th, right? Although I don't plan

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1 to work on Christmas writing the comments.

2 I mean, it sounds like Todd is the only  
3 one that has anything to say now. Is that where we  
4 are?

5 MS. KARAS: Did you have any comments on  
6 the drug and alcohol testing portion --

7 MR. DAVIS: He wanted to close. I opened,  
8 I will let Todd close. But maybe what you ought to do  
9 is go ahead and take a break at this point to allow 15  
10 minutes, and everybody run around and get their heads  
11 clear to make sure we don't have anything else that  
12 anybody would want to put on the table.

13 I mean, I think people probably would say  
14 things, but they are afraid of the microphones, and  
15 the recorder down there, and management reading the  
16 report.

17 MS. KARAS: We have lots of index cards if  
18 anybody has any fear of reading -- you don't have to  
19 hand them up for us to read them, you can just put  
20 them in the box.

21 But, yes, I think that is a real good  
22 suggestion, Jim. And I wanted to let everybody know,  
23 also, that there are, we know of, at least several  
24 stakeholders that are planning on coming only for the  
25 afternoon, for the fatigue portions.

1 And we have even received specific  
2 requests that we only start fatigue on time after  
3 lunch. So basically we will go through, if we don't  
4 receive more comments after the break, on drug and  
5 alcohol testing, then we will break and we will resume  
6 after lunch and start fatigue on time, for that.

7 But we will, obviously, have everything  
8 set up here where you can enter comments in the  
9 computers, or anything like that, during that time.  
10 But we do believe in this instance it is important to  
11 follow the agenda to make sure everybody is here who  
12 wanted to be here for the fatigue portions.

13 MR. DAVIS: You might also, in the break,  
14 decide whether you want to question us on some of the  
15 things to get more -- I mean, if you need more  
16 clarification on any issue.

17 MS. KARAS: Yes, I think that is a good  
18 idea. We can take the break earlier, and why don't we  
19 go ahead and everybody come back at 10, then. That is  
20 about 17 minutes, and then we will resume.

21 (Whereupon, the above-entitled matter  
22 went off the record at 9:42 a.m. and  
23 went back on the record at 10:00 a.m.)

24 MS. KARAS: We will start up again with  
25 any follow-on comments. I did learn, during the

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1 break, that Todd Newkirk, from IBEW, does have some  
2 comments.

3 Todd, did you want to go ahead and present  
4 those at a microphone?

5 MR. NEWKIRK: On behalf of IBEW we also  
6 appreciate the opportunity to continue further  
7 stakeholder comment at this time.

8 As industry has conveyed, this is a great  
9 opportunity, and we would like to take full advantage  
10 to put some more input into potential further molding  
11 of legislation.

12 We had 31 comments submitted on subsection  
13 B, D, E, F, G, and H. And I want to briefly, I want  
14 to submit it into the record when we are done. But,  
15 basically, just hit some of the highlights that some  
16 of the labor folks put back our way, reviewing the  
17 regulation, and we have been working on this, as much  
18 as we could, since about last December, when we  
19 started going to the meetings.

20 So they have had some time to take some  
21 decent input on this. On 26.23(B), there is a concern  
22 on the reasonable assurance of an individual for  
23 making sure that the level of integrity, and to ensure  
24 the privacy of the individual, subject to testing.  
25 That it is also covered on the individual side of it,

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1 on 26.23.

2 On 26.27 we are a little concerned of, you  
3 know, if there is going to be screening for drugs, in  
4 addition listed in that part, you know, we probably  
5 need to know what they are up front.

6 And it doesn't seem like those, there is  
7 a missing item there in 26.27, of how it is worded, of  
8 how it is being aligned. And also pertaining to 26.29  
9 in that same mode of making sure to identify the  
10 proper type of drugs, upfront.

11 On 26.31, drug and alcohol testing,  
12 medical conditions, we think maybe in 5(II), should  
13 say treatment must not be delayed to conduct drug and  
14 alcohol testing.

15 On 26.37, protection of information,  
16 subpart D, I think the representative should be  
17 allowed access to the donor's FFD records, at any  
18 time, with permission of the donor, not just in a case  
19 of a positive, or a non-negative, but to ensure that  
20 no records exist that should not be there, so we have  
21 an opportunity to review our records.

22 So that was a concern brought forward for  
23 that situation. On 26.75, sanctions --

24 MR. DAVIS: What was the reference?

25 MR. NEWKIRK: It was 26.31(5)(ii).

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1 MR. DAVIS: That was a treatment delayed  
2 one, the donor should be able to see his records --  
3 what was that one, I'm sorry?

4 MR. NEWKIRK: It was 26.37(D).

5 MR. DAVIS: Okay.

6 MR. NEWKIRK: On 26.75(D), I will just go  
7 ahead and say it, but there is some folks that would  
8 like to start this program with a clean slate. You  
9 know, there is a question whether past violations will  
10 be brought forward in this new program.

11 And there is some clarity there that needs  
12 to be addressed, for sure, in 26.75, whether they are  
13 starting with a clean slate with this program, or if  
14 they are bringing everything forward. So I think they  
15 just wanted to make sure that was conveyed forward.

16 On 26.89(E), preparing to collect the  
17 specimens for testing, this is basically a supervisor  
18 contact methodology. They want to make sure that you  
19 have a face-to-face positive ID when you are summoned  
20 to go because tardiness could result in removal of  
21 access to the drug screening.

22 So in 26.89(A), I will go ahead and read  
23 it, since tardiness in reporting for the test can  
24 result in loss of clearance and, further, since  
25 management can determine tardiness was a subversion of

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1 testing, there should be language requiring positive  
2 contact with the individual being called for a test,  
3 including the individual's FFD supervisor.

4 You have to provide the ID when you get  
5 tested, the same requirement should apply when you are  
6 called, since a phone ID is impossible, face-to-face  
7 communication should be the preferred method in that.

8 MS. KARAS: And are you asking for that  
9 face-to-face from the FFD supervisor, or the  
10 individual supervisor?

11 MR. NEWKIRK: The contacting supervisor.

12 MS. KARAS: The contacting supervisor?

13 MR. NEWKIRK: Yes. On 26.89(B)(1),  
14 preparing to collect specimens for testing, the  
15 potential to have a claim, but not having a photo ID  
16 can be construed as an attempt to subvert testing  
17 can't be avoided.

18 Direct identification by those  
19 individuals, or the FFD supervisor, should be an  
20 acceptable form of identification for testing. It is  
21 not pre-access testing.

22 If the FFD supervisor can be trusted to  
23 observe the individual, then he or she should  
24 certainly be trusted to verify the identity of the  
25 individual. So, again, it puts more leeway back to

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1 the FFD supervisor who is making that contact.

2 On 26.91, acceptable devices for  
3 conducting initial determinatory test for alcohol and  
4 methods of use, we are getting into the question of  
5 quality assurance, quality control.

6 And paragraph 3 it talks about calibration  
7 checks. We just think copies of external calibration  
8 checks should be provided to the donor or  
9 representative upon request. That should be an  
10 opportunity there.

11 On 26.99, determining the need for  
12 confirmatory test for alcohol, we do believe it should  
13 be strongly worded to ensure for test below .02, no  
14 further actions or sanctions against the donor may be  
15 taken.

16 Apparently a lot of places counsel. You  
17 discuss it with your supervisor and check for work, go  
18 back and check for the work, and fall above .01, below  
19 .04 to have that.

20 Conducting a confirmatory test for  
21 alcohol, we think 26.91, 26.101 have that same  
22 comments that should be looked at. On 26.103,  
23 determine a confirmed positive test for alcohol, and  
24 what we are looking for here is we need to indicate  
25 the positives for call-outs must be handled and

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1 declared differently.

2 And I think we heard some talk this  
3 morning about call-out situations, you know, looking  
4 at the regulation before you have a confirmed test for  
5 alcohol, in a call-out situation, that is a concern  
6 that we will be addressing some questions in, on that  
7 piece of the article.

8 We did have 26.105, and 107(B), and also  
9 in 107(A) (3), about preparing for the collections and  
10 specimens of urine that we will be addressed in -- I  
11 would just read these, but it would be taking forever  
12 if I went through all their comments now. I just want  
13 to let you know we are going to put those in.

14 On 26.111, checking the validity of the  
15 urine specimen, so basically that one is hand in hand  
16 with the other two provisions up front. And 26.115,  
17 collecting urine specimen under direct observation,  
18 subsection A1, talks about invalid sample questions.

19 Preparing urine for specimens, for storage  
20 and shipping, there is a question in 26.111(7),  
21 determining "shy bladder". And 26.109, something we  
22 don't always get to hear about, obviously, in the drug  
23 testing business.

24 But to question somebody that has an issue  
25 with a medical situation that can't make the cutoff,

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1 and he has specialists validating that, why can't that  
2 be examined? Someone with diabetes, for example.

3 On 26.125, testing facility personnel,  
4 there is no requirement on subsection F to ensure that  
5 testing personnel are not color blind, since color  
6 metric testing strips are used, one would expect the  
7 tester would be able to distinguish the colors. So I  
8 thought that was a pretty humorous one there, you  
9 know, that somebody could be color blind looking at  
10 that test strip.

11 Procedures, 26.127(B), the written chain  
12 of custody procedures should include guidance on what  
13 happens if the chain of custody is broken.

14 On 26.129, assuring specimen security,  
15 chain of custody and preservation, in subsection A and  
16 B, there is some concerns on integrity and  
17 identification of specimens in question.

18 On 26.131, cutoff levels for validity of  
19 the screening, and initial validity of test, I have a  
20 concern with examples provided there. And 26.135  
21 split specimens in subsection B, talking about the  
22 time of business days versus ten days, you know,  
23 definition of the days needs to be examined.

24 On 26.137 quality assurance/quality  
25 control, subsection D2, talking about the pool program

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1 with internal QC program. So I see some definition  
2 clarification there as a request.

3 Subsection G, 26.153, using certified  
4 laboratories for testing urine specimens, concerns in  
5 subsec D and F2, and F4. And, basically, one of the  
6 things I read here, that was pretty important, was the  
7 ability of an employer/authorized representative to be  
8 part of the process for using these records, if needs  
9 be.

10 On 26.159, assuring specimen security,  
11 chain of custody, and preservation, subsection J,  
12 again talking about the pooling issue, the internal QC  
13 program, and specimens. You need to be looking at  
14 what we do with the ones that are negative and valid,  
15 since they have been certified, already, to HHS  
16 standards.

17 On 26.161, the cutoff levels for validity  
18 testing, specimen C and 8, and G, again, talking about  
19 some of the questions of calibrations, and things of  
20 that nature with the QC program.

21 And I'm really about done, two more. On  
22 26.165, testing split specimens and retesting single  
23 specimens, A4 references three business days, you  
24 know, the question about what kind of days we are  
25 talking about.

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1 And F1 should not be allowed for loss of  
2 failure of clearance, as administratively was done the  
3 way the test of the sample B. So a lot of concern out  
4 there if you are in the B sample, you know, what  
5 happens to your pay, which is more of an internal  
6 issue, not a regulatory issue, in my opinion. But I  
7 read the comment.

8 On 26.167, quality assurance and quality  
9 control, talking about the QC test being done, start  
10 at the testing period, and go through and talking  
11 specifically about how the sampling is done for QC  
12 checking, and giving reports to the MRO showing that  
13 the machine did pass those QC tests, prior to making  
14 a decision, in 26.167, providing the QC records for  
15 those machines.

16 That is all I have in those subparts at  
17 this time. IBEW would like to reserve the right to  
18 provide written comments by December 27th, when we  
19 will be with the full house of folks in early  
20 December. Thank you.

21 MS. KARAS: And, Todd, are you planning on  
22 leaving a copy of that here, and submitting that?

23 MR. NEWKIRK: I will introduce these in,  
24 on the way out. I will have to copy.

25 MS. KARAS: All right, thank you. Did

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1 anybody else come up with any additional comments  
2 during the break?

3 MS. TECHAU: Susan Techau, Exellon  
4 Nuclear. I wanted some clarification on validity  
5 screening and validity testing, and the difference  
6 between the initial test validity, and validity  
7 screening.

8 And there are two different definitions,  
9 and you can do one prior to the other, and initially  
10 we had a concern with the definition for validity  
11 screening, because it only referenced non-instrumented  
12 devices that could be used.

13 And we thought that may be too  
14 restrictive. But then after reading into it, it  
15 allows you to use that, instead of it going to initial  
16 validity testing.

17 I just wanted some clarification of, if  
18 you do the validity screening do you not have to do  
19 the initial validity testing? And if someone could  
20 just talk to that a little bit, for some  
21 clarification?

22 MS. KARAS: And I know I'm not the best  
23 person. I don't know if you want to -- do you want to  
24 address that, or do we want to suggest that she get --  
25 that we get her the information later?

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1 MR. MCCUNE: Can we do that?

2 MS. TECHAU: Absolutely.

3 MS. KARAS: Are you just going to be here  
4 for the morning?

5 MS. TECHAU: I will be a little bit into  
6 the afternoon.

7 MS. KARAS: If we can come up with it over  
8 lunch we will introduce that.

9 MR. MCCUNE: Yes, it is something we  
10 probably ought to think a little bit about, and  
11 coordinate. We don't want to give you an off the cuff  
12 answer.

13 MS. KARAS: Yes, I don't want to give you  
14 the simple answer and then that not be -- are you  
15 specifically asking about for using a non-  
16 instrumented, if you use those for screening, whether  
17 or not you need to send that off to the lab, is that,  
18 that is not where you were going, or --

19 MS. TECHAU: Just the process for the  
20 validity, and just so we understand and are clear on  
21 what is the key expectation.

22 MS. KARAS: Okay. We will try and look  
23 into that and get with you quickly. Did anyone else  
24 have any comments on the drug and alcohol testing  
25 portions?

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1 MR. DAVIS: Maybe.

2 MS. KARAS: Did you say maybe?

3 MR. DAVIS: I'm worried that we are  
4 confused on 26.69. I mean, we had some discussion on  
5 the side, and I'm not sure I want the record to show  
6 that we are confused on 26.69, but that is okay, I  
7 will continue.

8 Do we need to walk through this and make  
9 sure we understand what it says? Sue, do you think we  
10 need to walk through it? Can I do that, can I walk  
11 through 26.69 for a minute and make sure we understand  
12 what it says?

13 We think we have a problem, then we don't  
14 think we have a problem, then we think we have a  
15 problem, and that worries me. Because the people that  
16 are involved in this agreement, the people that have  
17 been working on this for at least ten years with us,  
18 and if we are confused on what the requirement on it  
19 is, we have a problem.

20 Now, at one point we had recommended that  
21 some of the stuff in 26.69 go back to the area of  
22 initial, and that kind of stuff. I mean, it has taken  
23 a slightly different approach than we take now, in  
24 that you decide what type of investigation you do, and  
25 then you follow through that investigation, and within

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1 that investigation, if potentially disqualifying  
2 information is developed, you know what to do, and  
3 where to go.

4 The confusion is that you might start an  
5 investigation, it is an initial under the preceding  
6 section, or an update, you get partway through the  
7 investigation and suddenly you find that there is PDI  
8 and all of a sudden you are leaping from there into  
9 26.69.

10 So it generates a little bit of a  
11 disconnect. And I think in subpart C, that is  
12 probably the only place where we really have had some  
13 problems jumping back and forth.

14 And a lot of time and attention has gone  
15 into subpart C, you know it is my favorite section.  
16 But this is the one area where I think that in  
17 discussing it with the industry, and then implementing  
18 it, it is probably where we are going to have a little  
19 bit of discussion.

20 So I'm not sure we have an issue. Let me  
21 make sure, and I wouldn't do this if we didn't have  
22 the time. But it was one of our top two issues coming  
23 into this thing.

24 And I'm looking at the text. The section  
25 defines the manager's actions, the licensee, and other

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1 entity who are subject to this part shall take an  
2 audit grant, or maintain at the licensee, and other  
3 entities discretion, the authorization of an  
4 individual who is in the following circumstances.

5 The first issue, of course, is  
6 authorization. In the context, when we use  
7 authorization in this rule, I think what we mean is  
8 authorization to perform activities under this part.

9 Unfortunately the industry uses the term  
10 unescorted access authorization, unescorted access,  
11 and this term authorization has another meaning in the  
12 grand scheme. But in the context of the Rule  
13 authorization means only to perform activities under  
14 this part.

15 I think that -- I don't think there is any  
16 disagreement on that. Maybe confusion but no  
17 disagreement.

18 Potentially disqualifying FFD information,  
19 within the past five years, has been disclosed, or  
20 discovered about the individual, by any means,  
21 including -- but I presume that the descriptive phrase  
22 is any means.

23 You are aware a PDI makes no difference  
24 where it comes from. This is not an exclusive list,  
25 it is inclusive. This and any other way you became

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1 aware of the PDI.

2 And I think we want to go to C next? I  
3 mean, I don't think we have the problem with  
4 authorization after a first confirmed positive drug or  
5 alcohol test result or a five year denial of  
6 authorization.

7 So in C, granting authorization with other  
8 potentially disqualifying FFD information. And by  
9 other I think we mean other than that discussed in B,  
10 right?

11 I need to bring my little map with me to  
12 get through this. Requirements of this paragraph  
13 apply to an individual who has applied for  
14 authorization, and about who potentially disqualifying  
15 FFD has been discovered, or disclosed, that has not  
16 been confirmed, before granting authorization to the  
17 individual, the licensee or other entity shall.

18 Verify that the individual's self-  
19 disclosure and self-employment history, address the  
20 applicable period in 26.61(B)(3). And that is three  
21 years for initial, since last favorable termination,  
22 is it favorable termination, or termination?  
23 Favorable termination for an update, and within the  
24 last year for a reinstatement.

25 Is it favorable termination? Okay,

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1 because that was an issue at one point. Complete a  
2 suitable enquiry with every employer by whom the  
3 individual claims to have been employed during the  
4 period addressed in the self-disclosure, in accordance  
5 with the requirements of 26.63, and obtain and review  
6 any records that other licensees who are subject to  
7 this part, may have developed with regard to  
8 potentially disqualifying FFD information of the  
9 individual within the last five years.

10 I don't know what you are talking about a  
11 clean slate. And I think here is where the problem  
12 is, 26.63, what does 26.63 tell us we have to do?

13 MR. MCCUNE: 26.63 aligns with the  
14 existing provisions we have in both 0301 on the access  
15 side, with respect to scoping the period of employment  
16 that you ave to cover.

17 And, as an example, for an initial we are  
18 doing all employers in the last year, the second and  
19 third years we are doing the longest employer in each  
20 calendar month.

21 MR. DAVIS: I think that is where we are  
22 getting the confusion. What is that? Is the intent  
23 to follow the guidance in 26.63 on who you conduct the  
24 suitable enquiry with?

25 I mean, the problem is that you go to

1 26.63 and you end up, towards the end of it, licensee  
2 or other entity shall conduct a suitable enquiry as  
3 follows, for the first year immediately preceding the  
4 date upon which the individual applies for  
5 authorization, a licensee or other entity shall  
6 conduct a suitable enquiry of every employer.

7 For the remaining two year period the  
8 licensee, or other entity, shall conduct a suitable  
9 enquiry with the employer by whom the individual  
10 claims the longest within any calendar month.

11 I think that is sort of the crux of the  
12 problem, what is the -- we bounced around a couple of  
13 times, and I think there are some that are reading  
14 that, that says, conduct a suitable enquiry in  
15 accordance with 26.63, which tells you to do everybody  
16 in the first year.

17 That is, obviously, not an issue. And  
18 then the longest during the second and third year.  
19 And others are saying no, 26.69 says every employer  
20 for that entire period.

21 MS. KARAS: I think I understand what you  
22 are saying. Do you have a suggestion, a comment, or  
23 a suggestion, as to what would remove that confusion,  
24 or --

25 MR. DAVIS: I guess the first, the

1 question is, what was the NRC's intent in 26.69, was  
2 the intent to tell you to do the suitable enquiry in  
3 accordance with 26.63, and the time periods there?

4 Or was the intent every employer for the  
5 last, you know, for the period?

6 MS. KARAS: I believe the intent, when I  
7 look at it, is that -- Tim, you can reserve the right  
8 to correct. That the intent was the past five years.  
9 And I believe the intent was with the method described  
10 in 26.63.

11 But I understand what you are --

12 MR. DAVIS: I'm not sure that --

13 MS. KARAS: -- saying, that the time  
14 periods, is what you are saying that the time periods  
15 are shorter here under F, in 26.63(F)?

16 MR. DAVIS: In 26.63(F) you are allowed to  
17 do the longest employment in a month, during the  
18 second and third year. If you have PDI on the  
19 individual you are allowed to do the longest, not  
20 every.

21 And I think that is the fundamental  
22 question, is it every, or is it the longest?

23 MR. CLEVELAND: Randy Cleveland with the  
24 Nuclear Management Company. Again, echoing the  
25 clarifying question I submitted prior to the break,

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1 this may help all of us in the discussion here.

2 If you go to the Federal Register page  
3 505.13, the statements of consideration on this, I'm  
4 going to read from the statements of consideration.

5 Proposed 26.29(C)(2) would require the  
6 licensee, or other entity, to conduct a suitable  
7 enquiry with every employer for the period that would  
8 be addressed in the self-disclosure and employment  
9 history.

10 If the potentially disqualifying  
11 information was identified during the course of  
12 conducting a suitable enquiry, in accordance with  
13 proposed 26.63(F), which again, as we have discussed,  
14 is getting back to that scoping, so if you have an  
15 initial here, you are doing every employer in the last  
16 year, longest in each calendar month years two and  
17 three.

18 If you develop anything, while doing that,  
19 the expectation was that you would then cover every  
20 employer listed during that period on the self-  
21 disclosure.

22 So, again, the issue is where you've got  
23 PDI, you are in section 26.69(C)(2), and I will use  
24 the example, somebody has completed the PHQ, they give  
25 us an open bottle conviction.

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1 We are now in 26.69, we know we have to do  
2 a "fitness-for-duty" determination, as deemed by our  
3 program. The question is, what is the scope of the  
4 background need to be? And is it that you go back to  
5 26.63(F), and you follow that, and if you develop  
6 anything, while conducting that suitable enquiry you  
7 then do every employer?

8 Or right out of the gate, because you have  
9 PDI on a self-disclosure are you doing every employer?

10 MR. MCCUNE: I think the answer is the  
11 former there. If you discover anything in the conduct  
12 of it, then you would go back to the five year period.  
13 I think that is the intent as specified in the  
14 statements of consideration.

15 MR. DAVIS: So I think, to bring this one  
16 to closure, I think we will work on providing you a  
17 comment on this section that probably has two elements  
18 to it.

19 One to see if we can clarify the linkage  
20 so that it doesn't lead to confusion. I hope we  
21 understand what the confusion is. And, two, we feel  
22 that that is overly restrictive for some of the PDI  
23 that is identified in there, for example, a single  
24 DUI.

25 And I realize we won't discuss that. But

1 I think we feel that the reviewing official ought to  
2 have an opportunity, on some PDI, to make a  
3 determination that they don't need to do all the  
4 background, you know, all the elements, because of the  
5 circumstances around that particular case.

6 So that will be the second piece of what  
7 you will be seeing before this is all over. So you at  
8 least have some -- I knew we were confused. And I  
9 think unless somebody else challenges me on it, I  
10 think we were confused because we were mixing two  
11 elements together.

12 And one is the clarity of the reference  
13 back, and the second one, which is an easy one to fix,  
14 and the second one is that we feel that there ought to  
15 be a relaxation there. So hopefully we will  
16 understand that one there.

17 MR. MCCUNE: Okay, great, thanks for your  
18 comment.

19 MS. TECHAU: Susan Techau, Exellon  
20 Nuclear. I do have a follow-up question. So when you  
21 have an individual, let's say the individual's last  
22 unescorted access was terminated favorably, and they  
23 are coming back in an update type situation.

24 And, well, let's address update first.  
25 And the last unescorted access was two and a half

1 years ago. So in here it says that you have to verify  
2 the individual's self-disclosure and employment  
3 history, and the written self-disclosure must address  
4 the shortest of the following periods.

5 And so it is going to only address the  
6 past two and a half years. And then if potentially  
7 disqualifying information is discovered, what I  
8 thought I heard you say is that you have to go back  
9 five years and get additional information and conduct,  
10 with every employer, this, where we only have two and  
11 a half years of employment at this point.

12 So we are going to have to go back to the  
13 individual, get an additional two and a half years of  
14 employment, and then go back and -- is that the intent  
15 also?

16 MR. MCCUNE: Yes. I think it is. And I  
17 think the reasoning behind that is alluded to in the  
18 statements of consideration. And, again the point is,  
19 if while you are doing the two and a half year review  
20 you discover the PDI, we think there is justification  
21 for going back and doing the every four or five year  
22 period.

23 MR. BOUTHON: David Bouthron, Florida  
24 Power & Light. So what we are asking is, if we  
25 develop this information, we are going to ask the

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1 individual now to provide years two, three, four and  
2 five, of every employer? As I understand it.

3 Is that what I'm understanding?

4 MR. MCCUNE: Yes.

5 MR. DAVIS: Would someone take me in the  
6 Rule and show me the paragraph?

7 MS. KARAS: If you go to 26.57 for the  
8 update, and you go to 26.57(B), if PDFFDI is disclosed  
9 or discovered, the licensee or other entity may not  
10 grant authorization to the individual, except in  
11 accordance with 26.69.

12 So then I go over to 26.69.

13 MR. DAVIS: Okay, that takes me to 26.69  
14 Charlie, right?

15 MS. KARAS: Yes.

16 MR. DAVIS: -- the individual self-  
17 disclosure and employment history addresses the  
18 applicable period in 26.61(B)(3). That is the three  
19 year period for an initial since his last termination,  
20 favorable, for an update, and last favorable  
21 termination for reinstatement. Is that correct?

22 MS. KARAS: Yes, right, it throws you back  
23 in there for that period. I guess I'm looking at 2,  
24 at the end of 2.

25 MR. DAVIS: Complete a suitable enquiry

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1 with each employer by whom the individual claims to  
2 have been employed during the period addressed in the  
3 self-disclosure, addressed in the self-disclosure, in  
4 accordance with requirement 26.63, and obtain and  
5 review any records that any other licensee, or  
6 entities, who are subject to this part, may have  
7 developed with regard to potentially disqualifying FFD  
8 for the past five years.

9 I think the five years is referring to  
10 obtain the records, and not to the suitable enquiry.  
11 The suitable enquiry is for the period required for an  
12 initial update or reinstatement.

13 MS. KARAS: I agree. That is the way --  
14 I apologize for any confusion. That is the way that  
15 I read that.

16 MR. CLEVELAND: Randy Cleveland with the  
17 Nuclear Management Company. That also aligns with  
18 26.61, which is speaking to a five year disclosure of  
19 suitable enquiry, and then a three year disclosure of  
20 employment history.

21 So an interpretation of how to implement  
22 this is that if you developed PDI in the conduct of  
23 the 26.63(F) scoping, you would go back and cover all  
24 employers listed, as listed under 26.61, and then take  
25 a look at any other record that may be out there.

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1 And I will give you an example here. If  
2 we are talking about an update situation, where  
3 somebody has been in the industry for a number of  
4 years, been out of it for two years, you would have  
5 the benefit of going back and looking at a data point  
6 such as the shared industry data base, to ascertain  
7 the five.

8 MS. KARAS: I think that is right.

9 MR. MCCUNE: You are right, this is  
10 confusing. And we would appreciate comments  
11 attempting to clarify this.

12 MR. DAVIS: I'm sorry?

13 MR. MCCUNE: No, I just mentioned that you  
14 were right, it is confusing, and we would appreciate  
15 the recommendations of the industry in a comment form,  
16 to clarify it.

17 MR. DAVIS: I have another question. Sue,  
18 how long have you been working on this, since when?

19 MS. TECHAU: Since '98, maybe.

20 MR. DAVIS: Since '98. When did you start,  
21 Randy?

22 MR. CLEVELAND: I would have to pull my  
23 birth certificate on this one. BACK in 1990.

24 MR. DAVIS: The three of us are confused.  
25 How long are we going to have to implement? We've got

1 other people out there we have to train on this. How  
2 long are we going to have to implement this rule?

3 Is that in the package somewhere? I  
4 haven't seen it. I can't remember finding it.

5 MS. KARAS: No, we accept public comments  
6 on the implementation period, that is one of the  
7 things that we do. But that is determined at the  
8 Final Rule stage.

9 MR. DAVIS: I just -- we will make a  
10 recommendation. I didn't think it was in there, we  
11 will make a recommendation. But, for the record, note  
12 that it is going to require some significant effort to  
13 train people on the provisions of this rule, as we  
14 move forward, and get it right the first time.

15 Having made several transitions in the  
16 program, due to orders, and everything else, it is  
17 amazingly, it is amazing how hard it is to move from  
18 what people have been doing, to what people are  
19 supposed to be doing in the next step.

20 The amount of training and time required  
21 to do that, to rewrite procedures, to train people,  
22 and get everybody to do the right thing the first time  
23 around, is much more time consuming and intensive than  
24 I think most of us recognize.

25 So I just ask you to consider that, as you

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1 think about that piece of it. And we will make a  
2 recommendation at the other end of the process.

3 MS. KARAS: Thank you.

4 MR. DAVIS: That was a good lead-in to a  
5 question, wasn't it?

6 MS. KARAS: No, I just wanted to say that  
7 if anybody does have comments on the implementation  
8 period we would appreciate those comments. And we  
9 would also, what is helpful to us, is if you can also  
10 provide information on why the specific challenges to  
11 implementing, and why you believe that that  
12 implementation period is justified, that will help us  
13 in evaluating those comments.

14 Did anybody else have any other comments  
15 on drug and alcohol testing portions?

16 MR. DIPIETRO: Nick DiPietro with First  
17 Energy. I would like to get some additional  
18 clarification on the MRO staff referencing part  
19 26.183. And we talked a little bit about it in the  
20 beginning, but I just need a clearer understanding of  
21 what the expectation is, is on the independence of the  
22 MRO staff.

23 MS. KARAS: Is there a specific, I mean,  
24 a specific portion of 183 that is causing the  
25 confusion as to what would meet or would not meet the

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1 Rule?

2 MR. DIPIETRO: Well, yes, the physical  
3 location of the MRO, and the section talking about  
4 meaningful direction of the MRO staff activities, and  
5 how that relationship is with consideration to the  
6 licensee staff that conduct "fitness-for-duty"  
7 collections and notifications, and processing of  
8 results.

9 MS. KARAS: Are you looking under D1, is  
10 that --

11 MR. DIPIETRO: Yes.

12 MR. MCCUNE: I think the intent there,  
13 under D1, was to make sure that there wasn't any  
14 actual or perceived conflict of interest with respect  
15 to the licensee and the MRO.

16 Not that there have been, but again, what  
17 we intended to do there is to make sure that the MRO  
18 staff, as currently briefed, may certainly work for  
19 the licensee.

20  
21 But we want to make sure that we are  
22 stating up front that that staff does not take  
23 direction that could conflict with direction that is  
24 given by the MRO. And that is the intent there.

25 MS. KARAS: Were you finding -- you are

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1 questioning a lot on the location, I think, for the  
2 MRO versus the MRO staff, is that what I heard  
3 earlier?

4 MR. DIPIETRO: There is a lot of language  
5 in here that makes it sound like the MRO is completely  
6 independent, they have their own staff that is  
7 completely independent, and the MRO has a lot more  
8 authority over what may or may not be the licensee  
9 staff.

10 And I'm not sure how that is supposed to  
11 be implemented in relationship to the things that we  
12 are doing now, and going forward.

13 MS. KARAS: You are from one of the plants  
14 that has the MRO staff on site?

15 MR. DIPIETRO: I have both. I have plants  
16 that have MRO on-site, and MRO at an alternate  
17 location.

18 MR. MCCUNE: So you would be looking at II  
19 and the responsibilities there, of the MRO in  
20 directing the MRO staff?

21 MR. DIPIETRO: Yes.

22 MR. MCCUNE: And all --

23 MS. KARAS: And I guess is there a  
24 question that there is one of those that you think --  
25 are you questioning whether or not you could meet some

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1 of those with one MRO and staff that weren't co-  
2 located, is that --

3 MR. DIPIETRO: Yes.

4 MS. KARAS: I'm not -- okay. Which was  
5 the specific --

6 MR. DIPIETRO: Well, I mean, if you have  
7 an MRO at a location I think it is pretty explanatory,  
8 it explains it in enough detail, other than the MRO  
9 having meaningful direction, personal oversight of  
10 staff members work, personal involvement in their  
11 performance evaluation, hiring and firing, and line  
12 authority over staff direction, decisions, directions,  
13 and control, and regular contact and oversight  
14 concerning drug testing program matters.

15 Regular contact and oversight, if you have  
16 an MRO at a remote location, you know, what is the  
17 intent of that language there?

18 MS. KARAS: I'm sorry, are you under II?  
19 Where are you reading from?

20 MR. DIPIETRO: Well, I'm reading under  
21 26.183(D)(1), and then --

22 MS. TECHAU: Susan Techau, Exellon  
23 Nuclear. He is looking at the statements of  
24 consideration.

25 MR. MCCUNE: Not at the Rule language?

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1 MS. TECHAU: Yes, and within that area it  
2 talks about that the MRO will be involved with the  
3 hiring, firing, performance reviews, and I think the  
4 issue is the MRO may be a contractor, the MRO staff is  
5 a licensee employee, and you are going to have co-  
6 employership issues. Page 50.567. The bottom of the  
7 middle page, up to the -- the middle column to the top  
8 of --

9 (Pause.)

10 MS. KARAS: The intent was, clearly, not  
11 that they need to share the same physical space.

12 MR. MCCUNE: Again, I think that the  
13 intent there, through the management of the MRO staff,  
14 is to address the perceived, potential for perceived  
15 conflict of interest.

16 And so if the intent is to have the MRO  
17 staff working solely for the MRO, with no appearance  
18 that they are under the control of the licensee, then  
19 these examples, with respect to the management of that  
20 staff, promotion, hiring, I think are essential into  
21 achieving that segregation, so that we don't have an  
22 appearance of a conflict of interest.

23 In other words, if you are hired by the  
24 licensee, and you know they do your performance  
25 appraisals, they are in charge of hiring and firing,

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1 and they control your daily life, I think it is going  
2 to be difficult to convince someone that you've  
3 adequately addressed a perceived conflict of interest  
4 situation.

5 Because, realistically, they are not --  
6 you can't show that the MRO has the control over that  
7 staff that, I think, is essential.

8 MS. KARAS: I think the intent, though,  
9 when it says performance evaluation, hiring, and  
10 firing, was really that the MRO would not be forced to  
11 work with somebody on their staff that they weren't  
12 comfortable with, not necessarily that the licensee  
13 would be required to fire them, just move them off of  
14 the MRO staff.

15 MR. DIEC: I guess the question that Susan  
16 asked and correct me if I'm misinterpreting it, is the  
17 question whether or not there is a possibility for co-  
18 employment opportunity for the MRO because he or she  
19 has a direct oversight responsibility?

20 And if there is a possibility for co-  
21 employment opportunity how are we going to deal with  
22 that?

23 MS. KARAS: Yes. I guess what I thought  
24 your question was for those sites that have MRO staff  
25 that are licensee employees, and then you contract out

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1 to an MRO that is out of a different office? Is that  
2 your question?

3 Because the licensee right now does their  
4 performance appraisals, and makes the decisions about  
5 firing, and everything else, and how that would fit  
6 under the new rule?

7 MS. TECHAU: Well, if you've got a  
8 contractor who is dictating to the licensee isn't that  
9 type of -- as far as performance, and pay, appraisals,  
10 and hiring and firing, co-employment type issues,  
11 legally?

12 I think we would be in space that that  
13 would not allow us to have that situation. It would  
14 force the licensee to either have an employee that is  
15 an MRO, the MRO staff as employees, or have them all  
16 contractors.

17 MS. KARAS: I think we understand that,  
18 and I think we will certainly take that comment back  
19 and look at that.

20 MS. TECHAU: And if that is the intent  
21 there is going to be a cost burden.

22 MS. KARAS: Yes, I think we understand  
23 that, thank you.

24 Did anybody else have any other comments?

25 (No response.)

1 MS. KARAS: All right, if we don't have  
2 any further drug and alcohol testing comments, then  
3 what we will do is we will break for a really long  
4 lunch.

5 And, certainly, during this time period  
6 feel free to write up any other comments, if you think  
7 of them, or you can go over and use the laptop  
8 computers and type them in.

9 It asks you for a lot of information on  
10 the laptop computers, but you don't have to enter all  
11 your contact information if you don't want to. You  
12 can submit anonymous ones through there, too, or only  
13 give some contact information.

14 We ask that you return, then, at one  
15 o'clock, and at that time Dave Desaulniers will give  
16 an overview of fatigue management and then we will go  
17 through, again, like we did this morning, the  
18 questions for public comment, first on fatigue, and  
19 then open it up after that.

20 I guess that is it, I will see you back at  
21 one, I guess.

22 (Whereupon, at 10:52 a.m., the above-  
23 entitled matter was recessed for lunch.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:00 p.m.

MS. KARAS: For those of you who weren't here for the morning portion I'm just going to, real briefly, go over a few of the opening things that we discussed in the morning, or that I went over in the morning, for those of you who are here for the first time this afternoon.

I'm Becky Karas, I'm the project manager for this rule making, or one of the project managers. Dave Diec is the other project manager for this. If you picked up the handout of the slides, it has all my contact information, and everybody else on the team.

Tim McCune is from the Office of NSIR, and he is the expert for the drug and alcohol testing portions, and also involved in the fatigue portions for security guards.

MR. DESAULNIERS: For those of you that don't know, NSIR is the Office of Nuclear Security and Incident Response.

MS. KARAS: And Dave Desaulniers is from NRR, also, and he is the technical lead for the worker fatigue portions of the rule making. We also have Jay Persensky, and Molly Keefe, who are from the Office of Research.

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1 And they are both involved, also, in the  
2 fatigue aspects of the rule making. Since we do have  
3 a transcriptionist for this, again, like we did in the  
4 morning, if you plan to speak or provide a comment, if  
5 you can move to one of the microphones, and if you can  
6 also make sure, whenever you are providing a comment,  
7 to state your name and your affiliation.

8 We also have multiple ways that you can  
9 comment during this meeting. You can, obviously,  
10 provide comments verbally. There are also index cards  
11 that are, I think, at most of the seating locations.  
12 And we have extra index cards in the back.

13 You can either bring them up to one of us  
14 to read as a comment, or you can drop them in the  
15 comment box, and we will be sure they are docketed as  
16 a comment on the rule making.

17 We also have computer workstations set up  
18 in the corner. If you would like you can provide a  
19 comment through that computer workstation, either  
20 during the meeting, or during a break, or anything  
21 like that. And we will make sure that those get  
22 docketed as comments, as well.

23 And after the meeting you can also email,  
24 mail, fax, or hand deliver comments to us that we will  
25 consider on the rule making. The comment period

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1 closes December 27th, on the Rule, and it closes on  
2 September 26th for the information collection aspects.

3 More information on what I went over at  
4 the beginning of the meeting, for those of you who are  
5 just coming in, in the afternoon, is also available in  
6 the handouts, the slide handouts.

7  
8 At this time I know Jim Davis and another  
9 gentleman, I can't read your name tag from here,  
10 wanted to provide opening remarks. So I guess, Jim,  
11 since you went first in the morning, I will let Pete  
12 go.

13 If you want to go ahead and make your  
14 opening remarks? And if we can try and keep them  
15 fairly brief, like five minutes or so, then we will  
16 move over to Jim.

17 MR. STOCKTON: We've spent a good deal of  
18 time interviewing guards at various nuclear power  
19 plants. And we are up to, I don't know, we are well  
20 over 200 guards at this point.

21 And we would like to see it go away. We  
22 thought we had solved the problem with fatigue with  
23 the Order, which is not true at all. POGO has real  
24 problems with the current fatigue order for security  
25 officers, particularly group hours and self-

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1 declaration.

2 POGO had a case study where we had a high  
3 percentage of guards working between 60 and 72 hours,  
4 some well over 72 hours. First Energy initially  
5 admitted that they were in violation of group hours,  
6 then claimed they were not in violation.

7 The NRC found them in violation on  
8 individual hours, but not group hours. Who is in the  
9 group? And the NRC won't tell us who is in the group.  
10 Are they all armed responders according to the  
11 security plan? We don't know that.

12 And the guards at Beaver Valley couldn't  
13 believe there were enough armed responders, well under  
14 48 hours, to average out the ones working 72 hours.  
15 Under scrutiny from POGO and the NRC, First Energy has  
16 resolved most of these problems by hiring more  
17 security officers, and changing their attitude toward  
18 the security officers. They also removed a  
19 substantial number of security supervisors right in  
20 the middle of this whole investigation.

21 So it really is kind of a good news story.  
22 And Steve Whitely, who was going to be here today,  
23 from Beaver Valley could have expanded on this  
24 situation.

25 When individuals are fatigued their

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1 ability to respond is degraded. As one guard pointed  
2 out, if I'm working 72 hours and fatigued, someone  
3 working 30 hours can't sleep for me.

4 And as the great poet over here,  
5 Blochbaum, says if I'm tooling along a road at 80  
6 miles an hour in a 60 mile an hour speed limit, and I  
7 get stopped by a cop, I can't point to some old man  
8 coming along at 40 miles an hour and say you can't  
9 give me a ticket, because the group, the two of us are  
10 within the 60 miles an hour.

11 POGO believes that the group hours are  
12 irresponsible and should be deleted from the Rule.  
13 POGO has interviewed security officers who work  
14 between 60 and 72 hours, they were in no condition to  
15 respond to the withering fire from RPGs, 50 caliber  
16 sniper rifles, API rounds, powder charges, torpedoes,  
17 that the intelligence community believes that they  
18 would face during a terrorist attack.

19 Of course these weapons are not included  
20 in the NRC DBT. And the great strides that NRC has  
21 made in force-on-force, and all of that, almost become  
22 irrelevant because the DBT is so dumbed-down, that it  
23 is really shocking.

24 NRC claims that security officers' unions  
25 push for overtime to increase the income of these

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1 underpaid guards. We have dealt with a lot of these  
2 unions, and we are not even sure whose side they are  
3 on, whether they are on the side of the guards, or on  
4 the side of the security contractors.

5 There is an overriding national interest  
6 here. The guards want to work -- if the guards want  
7 to work 60 to 72 hours per week, they can get another  
8 job. POGO believes that the NRC should closely  
9 oversee the self-declaration process.

10 We found examples of self-declaring guards  
11 being fired, sent to psychiatrists, and given  
12 undesirable schedules. Ergo they are simply afraid to  
13 self-declare.

14 If, indeed, there is evidence of  
15 retaliation for self-declaration, the NRC should take  
16 enforcement action and levy significant fines against  
17 the utilities.

18 POGO believes that the draft rule on  
19 fatigue should be changed. No group hours, a limit of  
20 48 hours. Only under the following conditions can  
21 hours increase to 60 hours per week. And that is for  
22 refueling and heightened security alerts.

23 So that is my two and a half minutes.

24 Thank you.

25 MS. KARAS: Thank you. Jim, you had some

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1 opening remarks?

2 MR. DAVIS: Good afternoon. Jim Davis  
3 with NEI. I want to thank you for the opportunity to  
4 comment on this rule making, participate in this  
5 particular meeting.

6 I want to make sure that it is clear, from  
7 the offset, because it seems like sometimes there has  
8 been some confusion. The industry does support the  
9 concept of work hour rule.

10 It has been a long-standing support. In  
11 August 17th, 2001, a letter to the NRC chairman the  
12 industry supported the rule making to provide the  
13 clarity and consistency that is needed in this  
14 particular rule.

15 There may have been other ways to solve  
16 the issues, but we have supported the Rule since 2001.  
17 The industry supports a rule making effort to codify  
18 the requirements of generic letter 82.12, and in the  
19 process provide clear, concise language.

20 It needs to provide clarity of the  
21 requirements, it needs to ensure consistency across  
22 the industry. We support the individual limits that  
23 have been proven by time.

24 The 16 hours and 24, the revised 26 hours  
25 in a 48 hour period, and the 72 hours in any seven day

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1 period. They are reasonable points which management  
2 needs to review and evaluate, and conduct an  
3 evaluation.

4 Based on 20 years experience, and these  
5 limits have been workable in the past. There have not  
6 been significant events that are fatigue related, a  
7 point that we have made a number of times throughout  
8 this rule making process.

9 We also support the increased break time  
10 from 8 hours to 10 hours. We believe it is probably  
11 the most significant change that is being made in the  
12 process.

13 I think our contention is somewhat  
14 supported by reviewing the rule package just issued by  
15 the Department of Transportation. I find it  
16 interesting that they have also gone from an 8 hour  
17 minimum break to a 10 hour break. Their package is  
18 much more supportive in that area.

19 Other elements of the FFD program, such as  
20 training, behavioral observation, are key factors that  
21 we sometimes lose sight of when we are reviewing only  
22 subpart I.

23 We recognize the need for procedures to be  
24 in place for individuals who feel that they are not  
25 fit for duty, to make declarations and have their

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1 concerns taken care of.

2 Fatigue assessments fit with the concepts  
3 that have been introduced in the rest of the Rule.  
4 The industry does have, or had some problems, with the  
5 issues that are created by the layering requirements  
6 that has occurred in this rule.

7 The collective impact of all the proposed  
8 requirements removes operational flexibility needed by  
9 the industry. The impact is disproportionate to the  
10 safety, or even the operational benefits.

11 We see significant unintended  
12 consequences, which will have a negative impact on  
13 safety. For example, under the current rule  
14 requirements, the 8 hour shift schedule is at risk.

15 We don't see how anybody can continue to  
16 man eight hour shifts in a cycling schedule. The  
17 extensive layering is not supported by industry  
18 experience and extensive review of human performance  
19 data that has been conducted by the industry in the  
20 last few months.

21 The proposed requirements have not been  
22 based on an objective approach to the science  
23 available, resulting in a significant burden from  
24 overstatement of the cumulative fatigue issue.

25 Many of the conclusions are contrary to

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1 solid and objective evidence in the industry. We have  
2 collected significant human performance data in the  
3 last few months. It does not trend as the rule  
4 package analysis would predict.

5 But then to move on to attachment 4, it is  
6 particularly disturbing in its unrealistic  
7 conclusions. I would like to add, also, that the  
8 reporting requirements, in the Rule, in this  
9 particular section of the Rule, are not necessary.

10 Significantly different than our opinion  
11 on the reporting requirements in the "fitness-for-  
12 duty" part of the Rule. We will make some  
13 observations, today, as we go through the questions  
14 and discussion, regarding issues we see with the Rule.

15 But we will ultimately be submitting  
16 constructive alternatives to improve subpart I. And  
17 in the discussion we may not comment on every question  
18 that is in the Rule, so we don't have to repeat  
19 ourselves every time.

20 We, obviously, reserve the right to  
21 comment, again, at the end of the rule making process,  
22 even if we comment on one of the questions. Thank  
23 you.

24 MS. KARAS: All right. Those are the only  
25 people that I had signed up for opening remarks. Was

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1 there anyone else that had planned opening remarks?

2 (No response.)

3 MS. KARAS: Then we will move into -- Dave  
4 Desaulniers is going to go over the proposed fatigue  
5 management provisions in kind of a synopsis, the same  
6 as we did for the drug and alcohol provisions in the  
7 morning.

8 Dave, I will turn it over to you.

9 MR. DESAULNIERS: Thank you, Becky. Is  
10 everybody able to hear me okay? We have many familiar  
11 faces, some new faces, so a quick overview, I think,  
12 is in order.

13 We will try to make this quick because the  
14 objective of this meeting is to get your input, so we  
15 want to reserve most of the time for that.

16 What we have listed, here on the screen,  
17 are the major provisions of the Rule. And each of my  
18 subsequent slides will touch upon one of these areas.  
19 I will note that we refer to this as the fatigue  
20 management provisions because this does go beyond just  
21 work hour controls.

22 Work hour controls probably has gotten the  
23 most significant discussion, in past meetings, but the  
24 fatigue management approach goes beyond that, as you  
25 will see here.

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1 In particular we have a training provision  
2 in the proposed rule making, consistent with other  
3 "fitness-for-duty" training. This will be training  
4 provided at the supervisory level to all workers and  
5 supervisors.

6 The main objectives of this training is to  
7 touch upon these three areas that we have listed here,  
8 prevention, detection, and mitigation of fatigue. It  
9 is, essentially, to provide the staff the tools, the  
10 knowledge and abilities that they need to be able to  
11 effectively participate in fatigue management,  
12 recognize what workers can do to come to work fit for  
13 duty, refreshed and alert, and how supervisors can  
14 recognize if someone may be suffering from fatigue,  
15 and what can be done, effectively, to address those  
16 circumstances.

17 We have also included a provision for  
18 self-disclosure. Essentially provisions for what the  
19 worker and supervisors responsibilities are. If  
20 someone believes they are too tired to work  
21 effectively.

22 The objective here is to really focus on,  
23 particularly, if there is a difference of opinion  
24 between the worker and the supervisor making the  
25 assessment. What are the responsibilities, how do you

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1 move forward under those situations.

2 There are, of course, the work hour  
3 controls, personnel that in contrast to the other  
4 provisions, which broadly apply to all personnel  
5 subject to the "fitness-for-duty" program, the work  
6 hour controls apply to a subset of the personnel at  
7 the site.

8 Here are listed the general groups, here,  
9 also noting that within these group the work hour  
10 controls apply to a subset of the personnel within  
11 each of these groups principally focused on personnel  
12 performing safety or risk significant functions,  
13 emergency response functions.

14 This is an area that we are specifically  
15 soliciting comments, so we will be discussing this  
16 scoping. The individual work hour controls, the work  
17 hour limits are very similar to those that are in NRC,  
18 current NRC policy and plant technical specifications.

19 There are minor changes, there, to the  
20 work hour limits. The most significant change here is  
21 the addition of the break requirements. The change,  
22 as Jim Davis noticed, of the change from the 8 hour  
23 break requirement to the 10 hour break requirement,  
24 plus the 24 hour and 48 hour break requirement.

25 Consistent with the past NRC policy on the

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1 work hour limits, shift turnover time is not included  
2 when calculating work hours for a determination of  
3 compliance with these requirements.

4 With the policy, and the technical  
5 specifications, there was provision there for a plant  
6 manager, or designee, to authorize what we refer to as  
7 a deviation from those requirements.

8 The language has changed here to being  
9 referred to as a waiver. The concept is, therefore,  
10 very similar. Though what has changed, principally,  
11 here is that there are limitations placed on the  
12 conditions upon which a waiver can be authorized.

13 We have established certain criteria for  
14 when those waivers can be used. And, also, the  
15 process that needs to be gone through in order to  
16 issue that waiver would require a face-to-face  
17 supervisory assessment of the individual.

18 Moving on to the next slide, in addition  
19 to the individual work hour controls, a new concept  
20 was introduced to address an old issue. And that is  
21 the group work hour controls are there to  
22 operationalize, as I refer to it, the concept that was  
23 in the original policy statement of the objective of  
24 a 40 hour workweek.

25 The intent here is to address the

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1 potential for fatigue that results from long term use  
2 of heavy work hours. The idea here is that there is an  
3 average for the specified groups of individuals,  
4 those listed on the prior slide, during operational  
5 conditions, non-outage conditions, the group average  
6 would be 48 hours over a period not to exceed a period  
7 of 13 weeks.

8           There are, also, provisions here to  
9 address how that requirement would work under outage  
10 conditions. That is there would be an exception for  
11 the first eight weeks of an outage, and then the  
12 averaging period would restart following eight weeks  
13 of an outage.

14           There are similar requirements for group  
15 work hours. I should have noted that upfront. On the  
16 last slide it said except for security. The group  
17 work hour controls also apply to security personnel as  
18 noted on this slide.

19           They are slightly different, somewhat more  
20 stringent for security personnel. A key difference  
21 here is that during an outage, rather than an eight  
22 week exclusion period, where there is no group work  
23 hour limit, there would be a 60 hour per week average  
24 requirement.

25           There are also provisions to address

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1 unplanned security system outages and increased threat  
2 conditions.

3 In addition we have included provisions to  
4 address the group work hour controls to address  
5 unusual circumstances, such as an extended outage, or  
6 a problem during operation, that would make compliance  
7 with the eight week waiver period, I shouldn't say  
8 waiver here, the eight week exception period.  
9 impractical.

10 There is an alternative to use a 54 hour  
11 week average, under certain circumstances, as  
12 described here. Or an alternative is allowed to submit  
13 to the NRC a plan to address such circumstances that  
14 could be approved.

15 Fatigue assessment are assessments of  
16 individuals. These would be performed under the  
17 circumstances listed here, for a cause, self-  
18 disclosure, and post event.

19 And they would provide a documented basis  
20 for subsequent fatigue management actions under those  
21 circumstances. Provisions would require that these  
22 assessment be conducted face-to-face.

23 And they also address who may perform  
24 those assessment, essentially, to minimize the  
25 potential for bias in those assessments.

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1           The proposed requirements would also  
2 address licensee reviews. Those reviews would be done  
3 for each averaging period. The reviews focus on the  
4 work hour and performance of individuals who are most  
5 likely to be affected by fatigue, essentially the  
6 outliers in certain groups, those with the highest  
7 work hours, those with more waivers, those that have  
8 been assessed for fatigue, for any of the reasons  
9 previously listed.

10           This review would also be intended to  
11 address the staffing adequacy within the groups,  
12 recognizing that there will be, as others have already  
13 noted, variations within a group. Some individuals  
14 will be working more hours, some less.

15           The review would be focusing on that  
16 aspect, as well, to ensure that there is not some  
17 subgroup, within the overall group, that is working  
18 excessive hours, and that is reflected in their  
19 performance.

20           The last area is annual reporting. The  
21 objective of the reporting requirements is to support  
22 the effective and efficient oversight of the  
23 implementation of the Rule.

24           Briefly, these reporting requirements  
25 would cover information concerning waivers that were

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1 actually worked, the collective work hours of any  
2 group that exceeded the group work hour limits, and  
3 fatigue assessments, and subsequent actions resulting  
4 from those assessments.

5 And that concludes my overview.

6 MS. KARAS: Thanks, Dave. We are going to  
7 have the same format that we used in the morning. And  
8 that is that there are, I guess, seven questions for  
9 public comment that were published in the Federal  
10 Register notice.

11 We will go through each one of those and  
12 collect comments on them first. And then we will open  
13 it up, after that, for additional comments on other  
14 aspects of the fatigue requirements.

15 So if you go to attachment 2 of the  
16 handout, that was the meeting notice, and we will  
17 start at question 11 on the proposed fatigue  
18 management provisions.

19 And this question was with relation to the  
20 rest break provisions. The Proposed Rule would  
21 require licensees to provide individuals with certain  
22 breaks. Those include one 24 hour rest break in any  
23 seven day period, and at least one 48 hour rest break  
24 in any 14 day period.

25 And the 48 hour rest break in a 14 day

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1 period doesn't apply during the first 14 days of any  
2 outage. And then there are certain other  
3 circumstances for security force personnel.

4 The NRC invites comment on those rest  
5 break provisions, and we will accept comments at this  
6 time on that.

7 MR. FEE: I'm John Fee from Southern  
8 California Edison.

9 The industry has significant concerns with  
10 these two provisions. It will have an impact on  
11 operations, during normal operations. As Mr. Davis  
12 said, it will have an impact on eight hour shifts.

13 It will probably impact at least half of  
14 the operating plants, right now, in the United States.  
15 We will prepare an alternative that addresses needed  
16 operational and scheduling flexibility, and submit  
17 that during the comment period.

18 MS. KARAS: Does anyone else have any  
19 comments on this question?

20 MR. RIZZO: I'm Anthony Rizzo, Jr. I'm  
21 from Salem Hope Creek Nuclear power plant. And, like  
22 he said, to give somebody a 40 hour break would  
23 probably just destroy the schedules, the way we work.

24 The object is to stay away from  
25 consecutive days, that is what you have to hit on.

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1 Because when you get the Rule, it is consecutive. I  
2 was here for the first rule making.

3 Now, where there are a lot of mistakes at  
4 is that your declaration, as you said the waivers, now  
5 you call them, they do nothing. Because when we work  
6 72 hours, they bring us the waiver a week later.  
7 There is no sense to give me this now, you didn't give  
8 it to me before I worked the 72.

9 That is a mistake right there that has to  
10 be fixed. You have to hit them before they go to 72,  
11 on that 60th hour. In other words, if you are on a 12  
12 hour shift, your fifth consecutive day, you have to  
13 stop them from working that sixth day. That puts them  
14 at 72.

15 After I work the 72 hours, then the  
16 following week they give the forms to everybody, we  
17 did the payroll, we found out you went over. And you  
18 sign a waiver. It is after the fact, and it is too  
19 late. That is a problem there.

20 But to give somebody, during an outage  
21 especially, a 48 hour consecutive break, that is going  
22 to be hard to do, because I'm on 12 hour shifts.

23 I mean, the bottom line is you have to  
24 have enough people, and you won't have none of this  
25 problem. That is where the problem is at. The 40

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1 hour break, like he said, he is on an eight hour  
2 schedule, I'm on a 12 hour schedule, we have a set  
3 schedule, three on, two off, two on, two off, three  
4 on, and it pretty much messes everything up.

5 You have to work on the consecutive days  
6 in a row, that has to be stopped.

7 MS. KARAS: Why don't you pass the mike?

8 MR. TESFAYE: Getachew Tesfaye,  
9 Constellation Energy. I have a question for you,  
10 Becky. Did I hear you say that the 24 hour rest break  
11 and 7 days doesn't apply for the first 14 days of the  
12 outage?

13 MS. KARAS: No, that is not correct. The  
14 24 hour rest break, in any seven day period, does  
15 apply. It is the 48 hour break in any 14 day period,  
16 that would not apply, during the first 14 days of any  
17 outage.

18 The 24 hour break would still apply. That  
19 applies under all conditions.

20 MR. TESFAYE: All right, thank you.

21 MS. KARAS: Jim?

22 MR. DAVIS: I'd like to clarify a couple  
23 of points. As I remember the Rule package implied  
24 that the major impact would be during the outage, and  
25 it wouldn't have a significant impact during normal

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1 operations of the 48 hour and 14 day requirement.

2 In fact it appears in the Rule package,  
3 the Rule package overstates the potential cumulative  
4 fatigue issue, and the justification for half a  
5 million dollars per facility, per year.

6 And it would not meet a rational backfit  
7 analysis. During the -- in one of the letters we  
8 submitted we asked did this provision have a separate  
9 backfit? We are very disappointed that it did not get  
10 a separate backfit, and that it is not properly  
11 accounted in the analysis.

12 I mean, that is a problem. The second  
13 issue that I want to emphasize, that this provision  
14 does have significant consequences during normal  
15 operations.

16 For example, many of the maintenance crews  
17 that work Monday through Friday, eight hour schedules,  
18 normally 40 hour weeks, if there is an unplanned  
19 contingency, and the best one is you may need to do  
20 some diesel maintenance starting on Friday, it puts  
21 you in a position that you can't get that maintenance  
22 done, in the optimum manner, for safety reasons, when  
23 a piece of equipment goes out of service.

24 The industry has worked 24-7 to get that  
25 piece of equipment back on line. I think it is a

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1 philosophy that we have followed for many years, and  
2 there are direct implications of getting that  
3 equipment back on line as quickly as you can.

4 Now you are in a position, you try to work  
5 these maintenance people over the weekend, you come in  
6 conflict with the 24, 48, and the -- I'm sorry, I'm  
7 getting my words mixed here, the 24 and 7, and 48 and  
8 14 requirements that has the potential for limiting  
9 the personnel available to perform that particular  
10 maintenance.

11 So I think we need to recognize that  
12 normal operations are significantly impacted by this  
13 particular rule.

14 Let me expand on that. I don't know  
15 whether to expand on it here, or expand on it later.  
16 You need to recognize that if the Rule goes forward,  
17 as it is written, the 8 hour shift for operating crews  
18 is a thing of the past.

19 With these requirements you do not have  
20 the flexibility needed, with an individual, on an 8  
21 hour cycle. And let me, and I may as well go ahead  
22 and give my example now.

23 You take, and you can put a lot of  
24 examples on the table. It is probably more  
25 appropriate to one of your questions later on, but I'm

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1 running.

2 You take a crew, five section rotation,  
3 operations personnel. They are on an 8 hour shift,  
4 they are going to stand 21 days of watch, it is  
5 mathematics, in a 35 day period.

6 If you put them on 12 hour rotations they  
7 will stand 14 days of watch. You do five days of  
8 training, the people on the 8 hour shift will have  
9 nine days off.

10 I don't care how you parse it, in a 35 day  
11 period they will get nine days off. If you put them  
12 on 12 hour shifts you get them up to 15 days off. And  
13 you are more capable of handling this requirement.

14 So you ought to recognize this. During  
15 normal operations it is going to put significant  
16 stress on people who are still operating in an 8 hour  
17 shift routine, and force them to go to the 12 hour  
18 shift rotation. That is our analysis.

19 I think that is enough on this particular  
20 item. Thank you.

21 MS. KARAS: Are there any other comments  
22 on this question?

23 MR. NEWKIRK: Todd Newkirk, International  
24 Brotherhood of Electrical Workers. I will just convey  
25 that we do have six plants that will be removed from

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1 8 hour shifts, based on not being able to build a  
2 proper 8 hour rotation, operations, fire brigade,  
3 without violating the current regulation as written.

4 And a lot of effort has gone into trying  
5 to design an hour shift schedule to comply.  
6 Impossible.

7 MS. KARAS: Other comments?

8 MR. DESAULNIERS: I would just like to ask  
9 that those that have already commented, and I  
10 anticipate they will be providing written comment, if  
11 you are providing written comment on this, to expand  
12 upon your comment, as Jim Davis has, in terms of an  
13 analysis and example, specific as to why it is  
14 impossible to meet this requirement. That will be  
15 helpful to our analysis.

16 MS. KARAS: All right, question 12 is on  
17 the waivers of the work hour controls. The Proposed  
18 Rule would permit licensees to waive individual work  
19 hour limits, and rest break requirements only in  
20 certain circumstances including those that Dave  
21 elaborated on earlier.

22 When it is necessary to mitigate or  
23 prevent a condition adverse to safety, or to maintain  
24 the security of the facility. It would also require  
25 licensees to report the number of waivers granted in

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1 a year.

2 We are inviting comment on the provisions  
3 for granting waivers of the work hour controls. Are  
4 there any comments?

5 MR. RIZZO: The problem I have is to  
6 maintain the security of the facility. I have been  
7 working at Salem Creek for 19 years. What I have  
8 gathered, we have to meet NRC requirements, we can  
9 keep you working for as long as we need to keep you  
10 working.

11 You need to clarify exactly what you are  
12 talking about there, because that is just way too  
13 general. That gives the utilities a chance not to  
14 hire people. They have to hire enough people to  
15 maintain their security plan.

16 When they start losing people they are  
17 going to say, we have to force you here, we have to  
18 force you here, because they have to meet the  
19 requirements of the security plan. So that is just  
20 way too vague, it has to be exact.

21 MS. KARAS: Other comments?

22 MR. GORMAN: Jim Gorman, TXU. We also, we  
23 have been looking at these, closely, trying to make  
24 certain we understand them, because we believe that  
25 the Rule, as written, is actually going to increase

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1 the number of waivers that we need to consider.

2 Since the Rule has added extra  
3 requirements to when you can and cannot work, we  
4 figure the workers are going to be running into more  
5 and more opportunities to trip over one of those  
6 requirements, we will have to stop and reconsider.

7 So the waiver process we are looking  
8 closely at.

9 MS. KARAS: Are there any additional  
10 comments?

11 MR. DAVIS: I've got one. I'm worried  
12 about the impact on non-safety related tasks for  
13 workers that somewhere on the process have worked on  
14 a safety-related function, and then get to one of the  
15 various limits, but they are working on non-safety  
16 related issues.

17 Again, the layering of the requirements in  
18 the Rule makes the breadth of when you have to worry  
19 about a waiver, or when you are reaching a limit on a  
20 condition, much broader. And it goes well beyond  
21 whether the worker is working on safety, or non-safety  
22 related equipment, when you run into this particular  
23 issue.

24 I'm not sure I have an answer to the issue  
25 but you realize that the layering has complicated this

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1 significantly. I thought it was interesting to expand  
2 on Jim Gorman's comment.

3 One of the stated objectives, very early  
4 in the process, is to remove the need for waivers.  
5 And yet, as I look at the layering, I think what the  
6 net outcome, the unintended consequence, is a  
7 significant increase in the use of waivers, in this  
8 particular, as a result of this particular rule.

9 I mean, that is going to be one of the  
10 things that happens with the Rule as it is written  
11 right now, today. Thank you.

12 MS. KARAS: Are there any other comments  
13 on this question?

14 (No response.)

15 MS. KARAS: All right, we will move on to  
16 question 13, then. This is on a 48 hour per week  
17 collective work hour limits.

18 The Proposed Rule would prohibit job duty  
19 group, subject to the work hour controls, from working  
20 more than a maximum collective average of 48 hours per  
21 person, per week, except during the first eight weeks  
22 of any outage, as well as other circumstances for  
23 security force personnel.

24 We are inviting comment on those  
25 collective work hour provisions. Are there any

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1        comments?    Jim?

2                    MR. DAVIS:    This provision has generated  
3        a lot of comments from other people along the way.  
4        And I think I understand what the problem is.    With  
5        the layering of the Rule requirements we seriously  
6        question whether the cumulative fatigue issue, by the  
7        time you get to this particular point.

8                    When I look at the Department of  
9        Transportation rule making that was just conducted,  
10       they make a very strong case for their 10 hour break,  
11       and the restorative rest that an individual can get  
12       with a 10 hour break.

13                   Significant discussion in that rule  
14       package. I also find significant discussion in that  
15       rule package about the scientific process they went  
16       through to eliminate thousands and thousands of  
17       studies and reports that were irrelevant to the  
18       situation at hand.

19                   And that conclusion is the ten hour break  
20       was a significant change that they made in their  
21       process. I also find it interesting that they give  
22       significant credit to the 34 hour break, and its  
23       ability to address all issues related to cumulative  
24       fatigue.

25                   It provides two sleep opportunities plus

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1 a day off. Thirty-four hours is picked to fit  
2 precisely with the 14 hours a day that an individual  
3 can work, normally, in that process.

4 And in that rule making they feel that  
5 they have addressed the cumulative fatigue at that  
6 particular point. In fact they have so much  
7 confidence in 34 hour break, unless I have misread  
8 something, that you can reset the clock, at any time,  
9 by giving the individual a 34 hour break.

10 I'm not sure whether my math is right or  
11 not, but I calculated that a long-haul trucker,  
12 working for a company that works 7 days a week, under  
13 the provisions of that rule could average, day in,  
14 week in week out, year in, year out, 81.6 hours per  
15 week, if he really wanted to operate at the limits of  
16 the rule.

17 He works 6 days, gets 70 hours of rest, he  
18 takes, gets 70 hours of work, he resets his clock by  
19 taking a day off, and he can work six more days.

20 With the other provisions, in the Proposed  
21 Rule, there is no need for an additional layer to  
22 address cumulative fatigue. Therefore we seriously  
23 question the need for the group work hour limit in  
24 this rule.

25 And I think we would recommend, also,

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1 taking out the group work hour limit, totally.  
2 Cumulative fatigue is adequately addressed without  
3 that.

4 I want to make sure I'm clear. We do not  
5 believe that providing quarterly and annual limits, on  
6 individuals, is a fix to that particular issue. That  
7 is equally unnecessary.

8 The discussion of whether it is group work  
9 hour limits, or individual annual limits, is  
10 irrelevant, because we don't have a cumulative fatigue  
11 issue at that point. The other layers in this rule  
12 have addressed that piece of the issue.

13 We also point out, again, as we pointed  
14 out a number of times last year, that the  
15 implementation of a long term individual limit is  
16 virtually impossible, particularly for any individual  
17 who works within the industry, and outside of the  
18 industry at the same time.

19 Which, of course, many of our outage  
20 support people, supplemental people, and a variety of  
21 the other people do. So I think that, you know, to  
22 summarize, I think that is the heart of all the  
23 concern that we have.

24 We have put a limit in here to address  
25 cumulative fatigue that doesn't exist, and it isn't

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1 making any sense to anybody. So we would recommend,  
2 also, taking out the cumulative fatigue limit for  
3 group work hours, or annual or quarterly limits, that  
4 is adequately addressed by the other provisions in the  
5 Rule. Thank you.

6 MS. KARAS: Are there other comments on  
7 this question?

8 MR. RIZZO: This is from a security  
9 standpoint when I talk about it. So you are saying  
10 that you can work 6-12s, take a day off, and reset  
11 yourself and come back and work six more 12s, take a  
12 day off, reset yourself, come back and work six more  
13 12s, and reset yourself? That is not going to happen.

14 MR. DAVIS: My comment pointed out what  
15 the Department of Transportation rule, Final Rule,  
16 after lawsuits, after being withdrawn, after being  
17 reworked, issued on August 25th of this year, would  
18 allow a long term trucker to do. That is what I  
19 pointed out.

20 MR. RIZZO: But that wouldn't work in  
21 security, because if you work six 12s, you get a day  
22 off, you work six 12s, you get a day off, you are  
23 going to be burned out in no time at all.

24 So that day off, that is when you have to  
25 catch up on your sleep, and get everything else you

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1 have to get done in your life. And you are working a  
2 12 hour shift, you don't have time to do anything. So  
3 that is not going to work.

4 MS. KARAS: Are there any other comments?

5 MR. STOCKTON: I think I understand the  
6 fatigue of truck drivers, and all that business. But  
7 I think that security guards if, indeed, something  
8 happened, in the military they call it "shock and  
9 awe".

10 When all of a sudden all hell breaks lose  
11 and you are on your 72 hours, and your ability to  
12 respond to something like that is seriously impaired.  
13 And the military has done a number of studies on  
14 this, as you probably know.

15 And it just is simply, you know, in the  
16 face -- we usually call it, you know, violence of  
17 action, where all of a sudden all hell breaks loose  
18 and guys are screaming that they have blown off a leg  
19 and all this business.

20 And to try to respond under the  
21 circumstances, we have just learned that in a number  
22 of these facilities now, that they allow guards to  
23 actually watch movies in the BREs. And they turn  
24 their radios down so that that doesn't bother the  
25 movie.

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1 Now, you can imagine an RPG hitting one of  
2 these PREs in the middle of a movie, and all of a  
3 sudden the guy is going to leap up and respond to  
4 this. And we are not criticizing, or even raising  
5 questions about the courage of the guards, it is just  
6 a fact of life.

7 MS. KARAS: Are there any further  
8 comments?

9 MR. DESAULNIERS: I have a request for  
10 clarification for Jim Davis. Jim, you were indicating  
11 that you saw no need for the group work hour averaging  
12 requirements, given the layering of the other  
13 requirements, yet you have already referred to some  
14 other requirements which you believe are unnecessary.

15 And so when you are taking credit, I'm not  
16 sure what other requirements you are taking credit  
17 for, when you say this one is not necessary.

18 MR. DAVIS: I lose track of where we are  
19 in the discussion. Hang on a second.

20 MR. DESAULNIERS: In this case we are  
21 talking about --

22 MR. DAVIS: I understand about that part  
23 of it.

24 MS. KARAS: I think he is just asking,  
25 Jim, that when you say the group work hour limits are

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1 not necessary because of the layering of the other  
2 requirements, which specific other requirements were  
3 the ones that you thought provided the necessary  
4 protection for cumulative fatigue?

5 I think that is what you were saying in  
6 your comments.

7 MR. DAVIS: I think the other provisions  
8 that we see is, one, we have the long -- the  
9 individual limits that have been there for a long  
10 period of time, the 16 hour, the 26 and 48, and the 72  
11 hour limit.

12 We also see the ten hour break as being a  
13 major feature. The other limits are a significant  
14 feature because, in fact, it is probably not  
15 adequately acknowledged in the Rule package, with the  
16 other limits, in fact, the 12 hour break is the normal  
17 break.

18 You can't use the 10 hour break in a  
19 repetitive manner, because you run into one of the  
20 other limits in the Rule. The normal limit that the  
21 industry works with is a minimum 12 hour break.

22 And, occasionally, you may be able to use  
23 a ten hour break. But 26 hours adds up pretty quick  
24 in a 48 hour period, for example, in that arena.

25 The other provision is the concept of a

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1 periodic time off that we discussed earlier. We have  
2 some concern with the 48-14, and the way it is  
3 structured.

4 And I'm trying to remember if at that  
5 point -- we are looking to provide an alternate  
6 proposal that provides time off and yet protects the  
7 flexibility that is needed for the schedule, for  
8 example, to do diesel maintenance, and various other  
9 things in that area.

10 And, frankly, I had sort of hoped to have  
11 that proposal fleshed out and ready to put on the  
12 table today. But I'm having trouble getting my arms  
13 around the science, and what really is fatigue, and  
14 what is sports fatigue, and when is there fatigue, and  
15 how much time does anybody need off when.

16 And we hear a lot of anecdotal evidence,  
17 and we have a lot of discussion. But I'm trying to  
18 figure, I mean, it seems like we haven't gotten our  
19 arms around that.

20 And we will, ultimately, provide a  
21 proposal as an alternative to the 48 and 14; that  
22 tries to achieve that equivalent effect. So in my  
23 mind, I'm sorry, in my mind I'm taking credit for that  
24 piece of it, also.

25 MS. KARAS: That clarified it, I think.

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1 MR. DESAULNIERS: Yes, that helps, thank  
2 you.

3 MR. BAUER: Joe Bauer from Exellon. Just  
4 to continue on with the theme that Jim was making.  
5 The way I look at the rest periods, and the time off,  
6 there are like four layers.

7 If you look at the first layer inherent in  
8 the "fitness-for-duty" rule, there is some inherent  
9 alertness abilities that an individual has to exhibit.  
10 And there are supervisory overviews, etcetera, that  
11 are inherent in the "fitness-for-duty" Rule.

12 The second layer is the individual work  
13 hour limitations, the 16&24, 26&48, etcetera. So  
14 there is another barrier. The third barrier is the  
15 time off requirements, which are the 10 hours between  
16 breaks, or between shift periods.

17 The one day and seven, the two days off  
18 every 14, or some alternative that would accomplish  
19 the same goals, but yet preserve the eight hour shift  
20 routine.

21 And then, finally, the fourth limit, or  
22 tier, layer would be the group average rules. So I  
23 think the point is that once you get to the fourth  
24 layer, the group average rules, hopefully at that  
25 point fatigue is already going to be prevented by the

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1 other limitations that are already in place. Thanks.

2 MS. KARAS: Are there other comments on  
3 this question?

4 MR. RIZZO: From a security standpoint the  
5 group average is, not that I'm trying to agree with  
6 NEI, I never have. But they really don't help as far  
7 as from a security standpoint. You have to stick with  
8 the individual.

9 Because if I'm working 72 hours,  
10 constantly, and you are averaging me in with somebody  
11 who is on vacation, they are not there to work. The  
12 only ones who should count, because the way you do it  
13 now, you count supervisors, armed and unarmed. They  
14 are three different groups.

15 You should break it down to how much  
16 supervision work, because they are the ones that are  
17 supposed to be leading, how much do armed officers  
18 work, how much do monitors work.

19 To take everybody as a group, and I really  
20 don't understand why, I agree with him there too, if  
21 you stay with the individual, and you stay on top of  
22 it, as it is gone.

23 Because to give you an annual breakdown of  
24 how many hours they work really doesn't stop the  
25 fatigue, the fatigue is already done with. If they

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1 stay on top of it, you hit it before it happens.

2 To do the whole security force, and let  
3 them average it out, it doesn't work, because the only  
4 ones they should be averaging are the ones who are  
5 actually working. People who are away on vacation,  
6 people out on medical leave, things like that, they  
7 shouldn't be counted in with the hours, they are not  
8 there working. They can't be fatigued because they  
9 ain't there.

10 You have to count the ones that are  
11 actually working at the time.

12 MR. DESAULNIERS: Just for clarification,  
13 so that -- you referred to an annual average. The  
14 averaging is done over no more than a 13 week period,  
15 essentially quarterly.

16 In terms of averaging individuals, in the  
17 averaging pool, they have to be there at least 75  
18 percent of the scheduled hours, such that the intent  
19 there is that individuals on extended absence, either  
20 for substantial periods of vacation, or out due to  
21 medical disability, would not be included in the  
22 average.

23 MR. RIZZO: You know, you have a group of  
24 supervision, which is where they are supposed to be.  
25 It is where you get to the armed officers, their man

1 is not where he is supposed to be.

2 When you count the group in, when they  
3 have plenty of people, they very rarely ever have  
4 overtime. But you are throwing them in with the armed  
5 officers, and you are bringing the whole armed  
6 officers group down. So you are not getting a good  
7 reading of it.

8 And it matters if you have any unarmed, or  
9 people out of your plant, they usually have plenty of  
10 them. It is the armed officers that are taking the  
11 beat. The supervisors should be taken out of the  
12 group, the unarmed people should be taken out of the  
13 group, they should have their own group.

14 That is how you break it down who is  
15 working the hours.

16 MS. KARAS: Do we have any other comments  
17 on this issue?

18 (No response.)

19 MS. KARAS: Then we will go on to question  
20 number 14, which is on alternate work scheduling  
21 examples. The NRC is seeking public comment on work  
22 scheduling examples that meet the requirements of the  
23 Proposed Rule, and whether such schedules are for it,  
24 or reasonable degree of flexibility to licensee  
25 management.

1 I think we have heard some comment in this  
2 area in response to other questions. Are there any  
3 further comments?

4 MR. MCCABE: Good afternoon. My name is  
5 Brian McCabe, and I'm with Progress Energy.

6 The industry has an excellent safety  
7 record with both 8 and 12 hour work shifts. Many of  
8 the 8 hour rotations involve schedules that include  
9 more than six consecutive days.

10 Such schedules would not be permitted  
11 under the Proposed Rule. Thus the 24-7, and 48-14  
12 break provisions, as written, have the greatest impact  
13 on licensees with 8 hour shift rotations, and will  
14 undermine the viability of these rotations in the  
15 future.

16 Ultimately the Proposed Rule would drive  
17 licensees to 12 hour work schedules, and make 8 hour  
18 shifts a thing of the past. As Jim Davis stated,  
19 earlier, the industry supports many of the provisions  
20 of the Proposed Rule.

21 It believes these provisions are prudent.  
22 Regulatory framework centered around these provisions  
23 would protect public health and safety, would allow  
24 the industry to continue both 12 And 8 hour shift  
25 rotations.

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1 I encourage the NRC to reconsider the  
2 unnecessary layering requirements that address  
3 cumulative fatigue in the Proposed Rule. Such an  
4 extensive layering scheme does not appear to be  
5 soundly based, will have unintended consequences, will  
6 result in unnecessary regulatory burden, will  
7 undermine the 8 hour shift rotation that was supported  
8 by the Commission in generic letter 82.12.

9 And it could, ultimately, threaten to  
10 undermine the future of this rule making effort. The  
11 industry intends to address these, and other issues,  
12 in a more detailed response in our December comment  
13 package on the Proposed Rule.

14 I appreciate the opportunity to comment  
15 today.

16 MS. KARAS: Are there further comments?

17 MR. NEWKIRK: We did challenge alternative  
18 work schedule examples, specifically through our 8  
19 hour groups in the field. The closest we have that  
20 almost makes the regulation, on an 8 hour rotation,  
21 for operators, would come from some testimony from  
22 Point Beach, from a reactor up there.

23 So it will be on the record. But for  
24 alternative work scheduling examples to comply, for  
25 some of the 8 hour shifts rotations, we tried hard to

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1 provide some examples, and got one as close as we  
2 could.

3 I think Crystal River tried hard and  
4 couldn't get close. But Point Beach got very close  
5 with a shift that almost would work.

6 So my point is, I think the NRC should  
7 provide a prototype 8 hour rotation that they would  
8 support for the workers. Because when you look at the  
9 research of shift workers, they are the sacred vehicle  
10 of a shift worker as a schedule.

11 And usually they have a long history of a  
12 mutual agreement, and sitting down and trying to  
13 figure out what works best for the company and the  
14 workers. And research provides, if you look at the  
15 Cicadian Institute's publications, if you go into the  
16 Stockholm University's publications of shift work, any  
17 time a shift is designed by the employees, in that  
18 particular company, no matter how many days they work,  
19 as long as they get quantitative sleep, 10 hours for  
20 example, it is a good thing when they agree to those  
21 conditions.

22 So, again, I would agree that 14 will, at  
23 this point, and we tried to resolve with an alternate  
24 shift to fit everything, we can't get there. And we  
25 will provide those examples of trying to get there.

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1 MS. KARAS: All right. Are there further  
2 comments on that issue?

3 (No response.)

4 MS. KARAS: Then we will move on to  
5 question 15 on outage work scheduling. The NRC is  
6 seeking comments on the exclusions from certain work  
7 hour controls that would be allowed during maintenance  
8 and refueling outages, and how those exclusions could  
9 affect human error.

10 The NRC is specifically interested in  
11 whether a more precisely defined rule scope with more  
12 limited outage exclusions, would better meet the  
13 stated objectives of the Rule.

14 Are there comments on that?

15 MR. ZIEBELL: Good afternoon. I'm David  
16 Ziebell with Electric Power Research Institute.  
17 Industry would first point out that the nature of  
18 nuclear power is such that intensely focused outage  
19 periods are a very effective means of assuring and  
20 improving overall safety. That is how we work.

21 Available scientific evidence, and plant  
22 experience, indicate that, for example, two super  
23 crews working six 12 hour shifts have been effective  
24 during outage periods, for a reasonable period, up to  
25 ten weeks.

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1           No increase in human performance errors,  
2           and safety of the plant has improved. The industry  
3           also points out that the Proposed Rule would have  
4           impact on about 15 percent of the plant outages in  
5           2004, and in the future directly impacts outages that  
6           support major plant improvements, which take some time  
7           to do.

8           Therefore in answer to the question which  
9           is, in effect, does the Rule need to be more  
10          restrictive than the current rule? The answer is no.

11          MS. KARAS: Are there additional comments  
12          on this issue?

13          MR. NEWKIRK: Todd Newkirk, IBEW. There  
14          has been some comments placed with IBEW that the  
15          success of the industry, and reliability and capacity  
16          factor, also needs to be looked at, pre-outage.

17          There is a lot of package walk-downs, and  
18          package preps, where you get into a pre-outage mode,  
19          four weeks prior to the outage, to make sure you have  
20          your game ready to go.

21          It is not an outage situation for, like,  
22          a storm, where we turn the breakers off and go do  
23          work. We plan our work a long term in advance, and  
24          get it in those hours.

25          Four to six weeks prior to an outage,

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1 workers and management are moved into the transition  
2 successfully, and pre-plan that outage to the T, and  
3 walking everything down.

4 And that window also needs to be looked at  
5 in definition for the outage, what is the outage.

6 MR. RIZZO: Again, this is from the  
7 security standpoint, because those guys work a bunch  
8 of different hours than we do.

9 My argument has been with the company,  
10 forever, is that outages are planned years in advance,  
11 you know when that outage is coming. You have a  
12 chance to beef up for it, get ready for it from a  
13 security standpoint.

14 So there is no reason we should be working  
15 a whole lot more hours than you do normally, really.  
16 You should be ready for it the whole time. That is  
17 the heartache I have.

18 The outages are planned. You are talking  
19 about refueling outages. They know, well in advance,  
20 when these outages are going to happen. They should  
21 be ready for them.

22 MS. KARAS: Are there additional comments  
23 on that issue?

24 (No response.)

25 MS. KARAS: We will move on to question 16

1 on alternatives for addressing cumulative fatigue.  
2 The NRC is seeking public comment on alternatives to  
3 the group work hour controls that could also address  
4 cumulative fatigue, such as individual work hour  
5 limits, based on a longer term, such as monthly or  
6 quarterly.

7 I know we have heard a little bit of  
8 comment on this, already. Are there any additional  
9 comments on that question?

10 (No response.)

11 MS. KARAS: If not, we will move on to  
12 question 17 on defining job duty groups. The Proposed  
13 Rule would require any individual who performs duties  
14 within specified job duty groups, to be subject to  
15 work hour control provisions.

16 Other individuals might substantially  
17 impact the outcome of risk significant work, such as  
18 certain engineers, like shift technical adviser.

19 The NRC is requesting comment on the  
20 inclusion of other individuals within the scope. We  
21 are also seeking comments on an alternative approach  
22 for identifying the specific job functions that would  
23 be subject to these requirements.

24 Specifically the NRC is interested in  
25 whether, as an alternative, the scope should instead

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1 be structured to define attributes of the job  
2 functions, that would fall within the scope of the  
3 proposed work control provisions.

4 Under such an alternative the licensee  
5 would then be required to identify the specific job  
6 functions that define the attributes. Are there any  
7 comments on that issue?

8 MS. MILLAR: Dana Millar with Entergy.  
9 First of all, from the industry's perspective, as far  
10 as the having impact on other individuals, such as  
11 engineers, we don't feel that that would appropriate,  
12 because the "fitness-for-duty" rule actually has built  
13 into it the layering effect that we have already  
14 talked about.

15 We will have behavioral observations that  
16 will take place, and we will have the ability to have  
17 self assessment, self-disclosures, and assessments at  
18 any time that a supervisor, or another individual  
19 would see someone fatigued.

20 So we don't feel that there is,  
21 necessarily, a need to broaden the scope. We also  
22 feel that the groups that are already defined are the  
23 critical groups.

24 They are the ones that have the hands-on,  
25 and the ones that actually would potentially have the

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1 impact of any safety issues that would occur  
2 inappropriately.

3 So that group is the most appropriate  
4 group. We do have a bit of a problem with the  
5 definition of directing, in that it could lead to a  
6 belief that someone like an engineer would be  
7 involved, or included in this Rule. And we don't feel  
8 that that individual should be.

9 And as far as defining alternate groups,  
10 or functions in a different way, again, we considered  
11 a maintenance group, we tried to consider different  
12 ways that that could have been broken.

13 And we really, at this point, are unable  
14 to define that in a good grouping. Thank you.

15 MS. KARAS: Thank you. Are there any  
16 comments on that issue?

17 MR. DESAULNIERS: Before we move on I  
18 would just like to go back to the concern with the  
19 definition of directing. Could you please elaborate  
20 on that?

21 MR. DAVIS: Yes, I would be happy to. In  
22 the preparation of this rule there was a lot of  
23 discussion of who, in operations and in maintenance,  
24 should be subject to the group work hour limits.

25 In the operations area I think the word

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1 directing was put in there, and the discussion around  
2 that, as I remember it, is you have an SRO who is  
3 directing an RO. And I think we all agree that it  
4 should be clear that that SRO, even though he is not  
5 physically performing the function he is, in fact, in  
6 charge, is responsible for the outcome, and is  
7 directing the RO in the performance of the duties.

8 And between the SRO and the RO there is  
9 clearly direction being provided to the NLOs that are  
10 performing the other functions in the field.

11 In maintenance the discussion was much  
12 more difficult in that we were trying to figure out  
13 who is, in fact, directing. And I think the  
14 discussion, as I remember it, we were talking about  
15 the team leader, in the field, at the job site, who is  
16 responsible for the proper execution of the job, to  
17 ensure that the bearing is put in right side up, not  
18 upside down, and is in a position to see that that  
19 happens.

20 When combined with quality assurance,  
21 procedures that have been prepared, and all those  
22 other things, we felt that was adequate. I went back  
23 and looked at the definition, directing, that is in  
24 the front -- we forget that there is a definition of  
25 directing, it is not in subpart I, it is up there in

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1 front.

2 And I think we have become concerned that,  
3 one, the question in the package that says, asks you  
4 to parse this. And, two, the discussion in the  
5 Federal Register notice that starts talking about  
6 certain engineers being part of this maintenance  
7 directing group, called the operations directing  
8 group.

9 That clearly indicates that the  
10 understanding that was developed in the Rule package  
11 is already coming apart, and we need to go back and  
12 more clearly define, explicitly define, what we really  
13 mean by directing.

14 We thought it was clear, we are now  
15 confused. And we don't want to see this expanding  
16 pool of people who are considered in that area. And  
17 I think the reason the pool, or there is a press to  
18 expand it, is that people are forgetting that the  
19 expectation that each and every individual who is  
20 inside the protected area, and has unescorted access,  
21 shall be fit to perform the functions which he is  
22 performing.

23 It is a requirement. We have behavioral  
24 observation, we have training, we have a whole bunch  
25 of things that establish that expectation, and

1 establish reasonable measures to ensure that those  
2 expectations are met. Totally independent of how many  
3 hour somebody has worked, and how long they have been  
4 on shift, we expect everybody to be fit when they are  
5 performing the function.

6 We expect them to be fit when they walk in  
7 the door, we expect them to be fit when they walk out  
8 of the door. So there is, clearly, a problem between  
9 what was discussed in various public meetings leading  
10 up to this, and what we see in some of the language in  
11 the Rule package.

12 And that, obviously, generates a concern  
13 for the industry in that particular area. And we've  
14 had the discussion a number of times about the  
15 critical group of individuals in various areas.

16 We had this discussion, extensively, in  
17 the security arena, when the security order was being  
18 prepared. We've had the same discussion, again, when  
19 we were trying to figure out who was critical to the  
20 safe operation of the plant, who is the one that  
21 actually responds when there is an upset, who is the  
22 one that keeps it inside the box.

23 And I think of all the groups the licensed  
24 operators, and their associated NLOs, there are a  
25 variety of other places in the Rule that you see

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1 unique requirements surrounding those particular  
2 individuals that seems to say that everybody is  
3 excepted, that operations, a licensed operator, are  
4 somehow different from everybody else in the plant.

5 They are the only ones with a license, the  
6 only ones with an explicit rule, training  
7 requirements, and the ones that are required to be  
8 examined by the NRC, they are required to have  
9 physical examinations on a certain periodicity,  
10 etcetera.

11 Operations. We have had some discussions  
12 in the security arena which I can't go into all the  
13 details of, but there was agreement that for other  
14 reasons armed security officers, anyone who carries a  
15 weapon, armed responders, which is actually a subset  
16 of armed security officers, watch persons, CAS and SAS  
17 operators, would be parsed in this critical group of  
18 people who have to be under some sort of special  
19 consideration.

20 That decision was made with the Order, and  
21 was reinforced in another area of discussion. Those  
22 two boxes seem to be fairly tight and contiguous. It  
23 is when you start talking about maintenance that it  
24 really gets fuzzy, and we are really struggling in  
25 that particular area to look at trying to answer all

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1 the questions that people are asking.

2 And I know that the Commission has some  
3 questions, and we have asked people to look at their  
4 maintenance organization, how do you parse the work  
5 out by functionality, or something? And the multi-  
6 tasking, and the cross-tasking, the answers I have  
7 gotten so far, preliminary answer, is the maintenance  
8 organization that does the safety related maintenance,  
9 and the non-safety related maintenance, on the plant,  
10 is a single organization multi-tasked, and cross-  
11 functional.

12 And it is hard to find one individual that  
13 you task as a safety guy, and another individual who  
14 isn't. The closest we have come is a few facilities  
15 that may have a plant maintenance group, and a  
16 facility maintenance group, where the facility  
17 maintenance group is, in fact, a buildings and grounds  
18 kind of group.

19 But not everybody does that. But that is  
20 the closest you can come to parsing it in that area.  
21 So we have some more work to do in this area. But I  
22 think -- I told my team I would get out of the box one  
23 before this was all over.

24 So we are having trouble struggling with  
25 some of the questions that have been asked, and the

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1 suggestion that maybe we can cut things a little bit  
2 differently.

3 And I'm sure you would understand that we  
4 are struggling with this attempt to make the box  
5 bigger, and bigger, and bigger. Ultimately you can  
6 make an argument that everybody who is in the  
7 protected area has some impact on public health and  
8 safety, including the administrative assistants who  
9 are working in the admin building inside the protected  
10 area.

11 We absolutely agree with that, that  
12 everybody in the protected area is expected to be fit  
13 to perform their functions. We do not argue that  
14 issue. And we have spent a lot of time trying to make  
15 sure that happens.

16 Did that clarify your question?

17 MR. DESAULNIERS: A couple of months ago.  
18 Thank you, Jim.

19 MR. DAVIS: I don't want to disappoint  
20 you, Dave.

21 MS. KARAS: Do we have other comments on  
22 that question?

23 (No response.)

24 MS. KARAS: If not then we will move into  
25 the general comments portion of the meeting. We have

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1 a few minutes, yet, before our break at 2:30. So I  
2 can just take a few quick comments, and then we will  
3 move into the break.

4 MR. LOCHBAUM: Dave Lochbaum with the  
5 Union of Concerned Scientists. I just had a couple of  
6 process questions, more than anything.

7 One is that the industry stated, a couple  
8 of times during this session, of its intention of  
9 providing alternative means of meeting the Rule, or  
10 changes to the proposed rule making.

11 If the NRC staff concurs with these  
12 alternatives, is it the Staff's plan to republish the  
13 revised rule for public comment, or just issue it as  
14 a final in some kind of bait and switch move?

15 MS. MCKENNA: Let me just comment on that.  
16 Obviously when we publish the proposal we try to give  
17 you an idea of the bounds and scope of what our  
18 requirements are, and where alternatives, whoever they  
19 are offered by, we feel fall within that, the agency  
20 could determine to go forward with the Final Rule.

21 If we find that there are proposals that  
22 we think fall outside the bounds of what was  
23 available, and on the table for comment, generally our  
24 process has been to repropose. So I just can't speak  
25 not knowing what their specific proposals are.

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1 MR. LOCHBAUM: Fair enough, I appreciate  
2 that. The second process question is related to the  
3 meeting tomorrow, that is somewhat related to this  
4 activity, with the industry to talk about development  
5 of proposed guidance.

6 You could look at the timing of this  
7 meeting, and that meeting, and draw a conclusion that  
8 the Rule is final, and this public comment period was  
9 just for show. Because, otherwise, why would the  
10 industry start developing guidance for something that  
11 was a work in progress?

12 So we have a concern in that area. The  
13 question I have is, does that concern have any  
14 validity?

15 MS. KARAS: I can answer on the meeting  
16 for tomorrow morning. The intent is, really, not to  
17 go over specifics of guidance. It is to go over  
18 schedule and level of detail, to understand better  
19 industry's plans for submitting something, so that we  
20 can work that into our resource manning, and  
21 everything.

22 It is not in any way meant to construe  
23 that, you know, we are going forward, it is final.  
24 That is not what we were intending to convey.

25 MR. LOCHBAUM: I appreciate it, thank you.

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1 MR. DAVIS: Could I comment on that?

2 MS. KARAS: Sure.

3 MR. DAVIS: At least once in the meeting  
4 I have to agree with the comments made by David  
5 Lochbaum. But I think, so everybody understands, there  
6 are some elements of Part 26 where the industry  
7 already has guidance.

8 For example in the area of training, in  
9 the area of the drug and alcohol portion of the Rule,  
10 subpart C and D, we have guidance in that area.  
11 Obviously as this rule goes forward we have to address  
12 and figure out how to change it.

13 And that is probably the easy part. And  
14 one of the questions we also, the industry has, is  
15 what is the timing, and how can we do anything until  
16 the Rule is final, and that kind of stuff? And that  
17 is one of the questions that we will be addressing at  
18 the discussion tomorrow.

19 Because I personally hope that the subpart  
20 I is not a done deal, and final, since we obviously  
21 have some changes that we would like to make to it.  
22 Thank you.

23 MR. MCCABE: Actually one follow-on  
24 question to Dave's question with regard to process.  
25 Now, he put it in the context of the alternate means,

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1 and adopting alternate means, and republishing.

2 Help me with the process with respect to  
3 if you did adopt an alternate means proposed by one of  
4 the stakeholders but, instead, changed a significant  
5 provision in the Rule, is it the intent to republish  
6 a Proposed Rule?

7 MS. MCKENNA: I think I would give you a  
8 similar answer. I think we have to look at what the  
9 Proposed Rule was, what we are thinking about doing as  
10 a result of the comment process, and see whether we  
11 feel that, you know, either we drop something that  
12 could be viewed as a significant provision, or  
13 substantially altered a provision that was part of the  
14 Proposed Rule, and came with an entirely new  
15 provision.

16 And all of those, I think, would lead us  
17 to say that we would need to republish. Now, to say  
18 that we are going to change the reporting requirement  
19 from annual to some other frequency, you know, we  
20 might conclude that that is not substantial enough to  
21 require a reproposal since the annual, for example,  
22 was part of the Rule for comment, and people said it  
23 was too high, or too low.

24 We would feel that was within the scope of  
25 what had been on the table, under consideration. But,

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1 you know, if we came up with some totally new way of  
2 trying to address cumulative fatigue, you know, that  
3 nobody has even heard of yet, you know, I think that  
4 one would seem to fall outside the bounds of what we  
5 included in our Rule, we would have to give very  
6 serious consideration to reproposal.

7 MR. MCCABE: Yes, because I think as this  
8 rule making process has evolved, and new things were  
9 put on the table, as you get input from stakeholders,  
10 you are finding unintended consequences that were not  
11 envisioned when it was put on the table.

12 And so that is the context of the  
13 question.

14 MS. MCKENNA: Yes, certainly. And, you  
15 know, if it really is that different I think it  
16 warrants, you know, make sure that in our attempt to  
17 solve the first set of problems we haven't created new  
18 problems.

19 MR. MCCABE: Thanks.

20 MR. DAVIS: That sounds like a  
21 recommendation to remove some part and publish the  
22 rest of the Rule, and come back to subpart I. Oh, we  
23 made that already, didn't we?

24 MS. KARAS: I guess that is one good segue  
25 into also just mentioning that this brings up a good

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1 point as to why it is important not only to comment on  
2 the parts of the Proposed Rule that you don't like,  
3 but it is also important to comment on the parts of  
4 the Proposed Rule that you do support.

5 Because we look at those, as well. If we  
6 receive one stakeholder saying they don't support part  
7 of the Rule and giving us an alternative, but then we  
8 have other stakeholders saying they do support it,  
9 that paints a different picture than if you only have  
10 a stakeholder that complains about that provision of  
11 the Rule.

12 So please do include, in your comments,  
13 any support for any portions that you do wish to  
14 remain in the Final Rule. We can take a couple more  
15 comments before we break.

16 MS. MILLAR: You talked about  
17 implementation and that we should put our  
18 implementation requests to date, and our comments.

19 The "fitness-for-duty" rule portion,  
20 versus the fatigue portion could potentially have a  
21 need to have different implementation dates. Would  
22 you all consider that?

23 MS. MCKENNA: We would certainly consider  
24 it. I think it goes back to what Becky said, earlier,  
25 to understand the reasons why, you know, saying this

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1 is new proposals, or more modified, or whatever.

2 And there has been precedent, in the past,  
3 where we have said these sections become effective on  
4 one date, and these other sections become effective on  
5 a different date. So it is something we can do for  
6 good reason.

7 MS. KARAS: Are there any other shorter  
8 comments that we can take?

9 MR. BAUER: Joe Bauer from Exelon. I  
10 would just like to make one somewhat rhetorical  
11 comment. And that might be due to the fact that I'm  
12 sitting this close to Jim Davis.

13 I really think that everyone in this room,  
14 the NRC, the licensees, and all the stakeholders,  
15 really have a common goal in mind. And that is to  
16 have nuclear workers come to work alert and fully  
17 capable of performing their function in an error free  
18 manner.

19 That is, really, what this is all about.  
20 And the only thing that we are debating here are the  
21 details as to how to implement and achieve that goal.  
22 So I really believe that we are looking and striving  
23 toward the same end.

24 And the only thing that we would like to  
25 do is ensure that the Rule, as published in its final

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1 format, allows us some of the flexibility that we will  
2 be needing in operational space.

3 So, you know, given that, that is the  
4 genesis of a lot of our comments. I just wanted to  
5 note. Thank you.

6 MS. KARAS: We've got about five minutes  
7 before break. Are there any other comments anyone  
8 wants to introduce?

9 (No response.)

10 MS. KARAS: We can go ahead and take a  
11 break until 2:45, and be back in here at 2:45, and  
12 then we will continue with comments on the fatigue  
13 management portions.

14 (Whereupon, the above-entitled matter  
15 went off the record at 2:24 p.m. and  
16 went back on the record at 2:45 p.m.)

17 MS. KARAS: We are going to go ahead and  
18 continue on, then, with comments on the fatigue  
19 management portions of the Rule.

20 Would anybody like to continue on with any  
21 comments?

22 MR. DAVIS: Jim Davis, NEI. A question,  
23 can you tell me what the purpose of addendum 1 to  
24 attachment 4 is?

25 MS. KARAS: And I think you are referring

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1 to, for everybody else here, addendum 1 to attachment  
2 4 is an addendum to the regulatory analysis, which  
3 provides the methodology for quantifying the financial  
4 impact, and the financial savings of the work hour  
5 provisions.

6 And the purpose of that really, as you  
7 know, for those of you who have read the regulatory  
8 analysis, the main body, what that did is that  
9 established the cost and savings resulting from the  
10 Proposed Rule.

11 And it also discussed the benefits of the  
12 Proposed Rule. In some cases ones that were not  
13 quantifiable. And what we -- or that were not  
14 quantified.

15 And what we came to the conclusion in that  
16 was that, in terms of, for instance the fatigue  
17 management provisions, that the Rule was justified on  
18 the basis of the qualitative benefits, even keeping in  
19 mind the costs that were associated with it.

20 However, what we did provide, to the  
21 Commission, because the Staff had developed it, was  
22 addendum 1 which presented a methodology for  
23 quantifying some of those benefits. Not all of the  
24 benefits, but some of the benefits of the work hours  
25 provision.

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1           And what that was it was basically to try  
2           and present, in that quantitative fashion, what those  
3           benefits could be to industry. Not that they were  
4           necessary, or required, for the regulatory analysis.

5           It was, merely, to provide additional  
6           support. And so that is why we had placed it in  
7           there, was to provide additional support, and  
8           additional reasons for going forward with the Proposed  
9           Rule.

10           MR. DAVIS: Is that considered, in any  
11           way, in the backfit justification of the Rule?

12           MS. KARAS: No. Basically all of the --  
13           everything that was done for justifying it in terms of  
14           backfit, in terms of the regulatory analysis, that all  
15           took into account the qualitative benefits alone.

16           Again, it was only provided in terms of  
17           additional support for the rule making.

18           MR. DAVIS: I guess the reason for -- I'm  
19           trying to decide whether to comment on that particular  
20           section. And if I do comment what impact it has on  
21           anything.

22           I think you probably would not be  
23           surprised that some of us have great difficulty  
24           believing that the conclusions that that section comes  
25           to comports with reality.

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1 And the fact that it doesn't comport with  
2 reality, you wonder why it is there, and whether there  
3 is any advantage to pointing out, ultimately, that it  
4 doesn't comport with reality.

5 You know that statement that it isn't  
6 taken into consideration with the backfit analysis,  
7 and yet it is added in, put another 200 or 300 pages  
8 in a 1,635 page package, makes me wonder why it is  
9 there, and what its purpose is.

10 And so I guess I still don't have an  
11 answer to it. I spend the time to comment on it, what  
12 does it do? It sounds like it doesn't do much of  
13 anything.

14 MS. KARAS: I guess what I would say is  
15 that any comments that you can provide on any portion  
16 of the package are valuable to us. Just because it  
17 didn't factor into the base regulatory or backfit  
18 analysis at the Proposed Rule stage, I think wouldn't  
19 necessarily prohibit a commissioner, or the  
20 Commission, making the determination at the Final Rule  
21 stage, that they did want to credit it.

22 You know, it is possible that that could  
23 occur. So I think any comments that you would make in  
24 that area would be valuable. I don't know if you have  
25 any other thoughts on it?

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1 MR. DESAULNIERS: Becky correct me if I  
2 misspeak here. But just to add that I think that what  
3 needs to be recognized is that we have guidance from  
4 the Commission, when doing these analyses to quantify,  
5 where possible.

6 And that was an attempt to do a  
7 quantification in an area that is very difficult to  
8 quantify. And we made our best effort at trying to  
9 address that, and significant work. Whether you agree  
10 with the results or not, obviously, a significant  
11 effort was put into that to try to quantify this area.

12 And staff saw no reason to not share that  
13 part of the work that it had done on this rulemaking,  
14 with the Commission.

15 MR. DAVIS: Well, it won't surprise you  
16 that we don't agree with the conclusions of that  
17 particular enclosure. I suspect if we spent the time  
18 and energy we could come up with a pretty sound basis  
19 for not agreeing with that.

20 That is what I'm trying to figure out, is  
21 how much resources to put on showing that that is not  
22 a reasonable conclusion of what impact it has in the  
23 grand scheme of things.

24 The proposed increase in productivity just  
25 doesn't make any sense, it doesn't. You take the

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1 facts, start looking at the facts, and try to figure  
2 out how this fits in is very difficult.

3 I think you, I guess you have answered my  
4 question. I mean, the most important thing is, from  
5 a legal standpoint, is whether it is or is not part of  
6 the backfit justification.

7 You are saying it is not considered as  
8 part of the backfit justification?

9 MS. KARAS: That is correct, in the  
10 Proposed Rule package it is not considered --

11 MR. DAVIS: In the legal review of the  
12 backfit, whether backfit has or has not been met, that  
13 shouldn't be considered as part of your backfit  
14 analysis, is that a correct statement?

15 MS. KARAS: Right. What I'm saying is  
16 that the package has been put forward it is not  
17 considered as part of the backfit determination. That  
18 is another reason it is moved into an addendum to the  
19 regulatory analysis, and backfit analysis document.

20 It is not, it does not factor into that  
21 decision, whether or not it passes backfit.

22 MR. MCCABE: However, I mean, getting to  
23 your question, though, while it is not part of the  
24 benefit, I would say that that information is used by  
25 the Commission, could be used by the Commission in

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1 reaching a decision on whether to move forward or not  
2 to move forward with the rule making.

3 MR. MCCUNE: I would only add that I  
4 believe that is correct. And that while it is not  
5 tied to the decision criteria, or the backfit as we  
6 have described, as Becky mentioned, it would not  
7 prevent a commissioner from saying, this is something  
8 that I either think has merit, and in support of it in  
9 some way, although unweighted, if you will.

10 So I would suggest that you comment on  
11 that section, because it would help us in the  
12 furtherance of fatigue management to know what your  
13 feelings in the industries are in that regard.

14 MR. DAVIS: Okay, I get it.

15 MR. COWAN: I want to make overall  
16 comments. My name is John Paul Cowan, and in this  
17 capacity I'm the Chairman of the Executive Oversight  
18 Committee for the work hour taskforce with NEI.

19 And I want to summarize, give a  
20 perspective of the Rule from an executive level, which  
21 represents the chief nuclear officers view of the  
22 overall rule.

23 First we recognize the need for many of  
24 the provisions that are in the Rule. And I don't  
25 think we should lose sight of that, and I'm speaking

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1 specifically on the work hour portion.

2 For example, we agree with the need for a  
3 ten hour break. We also support the need for some  
4 kind of break in consecutive work days. But we don't  
5 believe that the 14-48, or the 7-24, really address  
6 the practical issues with implementation.

7 It is as if there is an appearance that  
8 something magical happens after the sixth day, or  
9 after the 14th day, without regard to what is done in  
10 those six days.

11 For example, some schedules, as we said,  
12 half the schedules that I think Jim referred to, will  
13 work something like five days of training, eight hours  
14 a day, and then work into 3 days of 12 hour days in  
15 the normal shift rotation.

16 Most operators would certainly tell you  
17 that six days, or seven days, or eight days of eight  
18 hours, is significantly different than six days, seven  
19 days, eight days of 12 hours, or you have six days of  
20 different work, or eight days of different types of  
21 work, significantly less of an impact than seven or  
22 eight days of the same type of work.

23 So we think there is an alternative, or  
24 alternatives, that better meet the intent, that offer  
25 better control by those of us who are responsible for

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1 implementation, and we will provide those in writing.

2 We are also supportive of the recognition  
3 that exceptions or alternatives are needed for  
4 outages. We don't believe the rule fully recognizes,  
5 though, the impact on major equipment outages that  
6 this will have.

7 As was pointed out, 15 percent of the  
8 outages last year would have been impacted. And as  
9 pointed out by somebody earlier that, in fact, some of  
10 the outage preparations begin four to six weeks  
11 earlier.

12 And we are already into a work schedule.  
13 But that type of work is significantly different than  
14 the work that is being done in the execution of the  
15 outage.

16 But, on the other hand, we want to  
17 address, specifically, again you have heard us talking  
18 about the layering of requirements that we believe  
19 makes the cumulative group hours unnecessary.

20 The purpose of Jim referencing the DOT  
21 rule making isn't that the industry necessarily  
22 supports the specifics of that with 34 hours, or  
23 whatever is necessary.

24 But what we do point out is that rule  
25 making found cumulative type of requirements to be

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1 unnecessary, by putting in individual requirements,  
2 such as the 16-24, 26-48, 72-7 days, similar to what  
3 the Rule 82.12 has, although they have their own  
4 version.

5 But we want to make it equally clear,  
6 though, that it is impractical to implement quarterly  
7 or annual limits in an industry where workers come in  
8 and out of the industry.

9 For example, many technicians, many  
10 welders, will work in the nuclear side of the  
11 business, they will work on fossil sides of the  
12 business, they will work in chemical industry.

13 And it is just not practical for us to be  
14 controlling, or evaluating, what implementation, or  
15 what the impacts are of their hours that they work  
16 external to our facilities.

17 Finally we think the reporting is  
18 burdensome and it creates more paper than action.  
19 When the data can be kept for inspection, if needed.  
20 We really can't see the basis for reporting  
21 information that has no real context behind it, and  
22 how that would be used for inspection purposes.

23 For example, Jim gives the example of  
24 working the diesel on the weekend. If I work two  
25 crews for 12 hours to finish that diesel, or feed

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1 pump, which by the way the Rule wouldn't apply to.  
2 But we get back to the fact that those workers work  
3 Friday, potentially on a safety related item, and may  
4 work Monday on a safety related item. That is what  
5 Jim referred to.

6 But if work two crews of five people on  
7 the diesel, on day seven I have ten waivers, on  
8 Saturday or Sunday, depending on what happened the  
9 previous week. When it gets to the end of that week,  
10 they are back off the diesel working regular work.

11 But if I haven't given them additional  
12 time off I'm writing another additional ten waivers,  
13 because I'm running into the 14 day rule, potentially,  
14 the 14 day limit. Depending on, again, what happened  
15 the week before.

16 So one task results in maybe 20 or more  
17 waivers. And that is the type of information that  
18 would be reported, and we really don't see the basis  
19 for how that information would be used for inspection,  
20 or auditing, or reporting purposes, when that data can  
21 be kept on site where a person that looks at the data  
22 could say, yes, I understand that diesel maintenance  
23 caused this number of waivers to occur, and why you  
24 did it.

25 But overall, again, the industry is very

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1 supportive of many of the provisions in the Rule. We  
2 do believe, though, there are alternatives that make  
3 the Rule more practical in implementation.

4 MS. KARAS: Move on to any other comments?

5 (No response.)

6 MS. KARAS: Is there anybody in the  
7 teleconference bridge who hasn't received an  
8 opportunity to comment, that would like to make any  
9 comments?

10 (No response.)

11 MS. KARAS: It is going to be a short  
12 meeting. Pass down the mike, please.

13 MR. STOCKTON: The work that we have done  
14 in the security area, with the security officers, is  
15 very clear what the problem is with fatigue, there.  
16 First of all, it is the fact that the utilities refuse  
17 to spend the money to hire enough guards. It is as  
18 simple as that.

19 And the situation that I was talking  
20 about, at Beaver Valley, that was remedied, you know,  
21 in large part by hiring more guards, and treating the  
22 guards better. I mean, that is another issue, but we  
23 won't get into that at this point.

24 The whole issue of self-declaration has  
25 been such a joke, I mean, it is unbelievable that now

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1 they are saying they are going to be very sensitive to  
2 the guards, and they will counsel them, and talk to  
3 them face-to-face about their problems with fatigue.

4 What the hell have they been doing all  
5 this time? I mean, when guys come in and say, hey  
6 boss, I think I'm too fatigued, and either he gets  
7 fired, and there have been examples of that, as you  
8 know, and sent off to psychiatrists.

9 And then all of a sudden they get lousy  
10 schedules. So it is fairly simple to us. All this  
11 complication baffles me, I have to tell you.

12 MR. RIZZO: Have you ever thought about  
13 letting each plant -- I know you are trying to get a  
14 general idea, like at Salem Creek we have a set  
15 schedule. Do you follow what I'm saying?

16 All 12s, we have a set schedule. Have you  
17 ever thought about maybe letting each utility try to  
18 come up with something for their plant? Because I  
19 work a 36 to 48 hour week. To avoid all this, you  
20 know, we would let somebody work one day off on a 48  
21 hour week, two days off on a 36 hour week.

22 The way our schedule runs the most you  
23 would ever work was four 12s in a row, have a day or  
24 two off, maybe work three more 12s, have a couple days  
25 off. We are still meeting the many requirements.

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1 But sometimes on the back end we will run  
2 into problems because everything is consecutive,  
3 because you have the back when you do your work hours,  
4 you have to go forward, and you have to plan, you  
5 know, what does this person work this week, and how it  
6 is going to run out on the floor.

7 But a lot of times people on set schedule,  
8 at least with 12s, like with the 8s I can't help you  
9 guys with that, because we are on 12s. But if we  
10 could do it by plant, and just come up with something  
11 to show you, you know, that -- let us come up with not  
12 our own fatigue rule, but you can work one day off on  
13 a 48 hour week, two days off on a 36 hour week, and  
14 that was it, we won't let anybody else work.

15 And you just go on down the line, and you  
16 spread the overtime out to where nobody could do it.  
17 But it is hard to do because we have to go into a  
18 fatigue rule. And have you ever thought about  
19 looking, okay, your plant does this, what can yours  
20 work out, to you, to the NRC, to try to keep  
21 everything happy. It might work better like that.

22 I don't know if it would be too much of a  
23 pain, but it could help.

24 MR. DESAULNIERS: I guess I just want to  
25 make sure I understand your comment. Are you

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1 proposing that we would consider approving schedules  
2 on a site-specific basis?

3 MR. RIZZO: I think it would work a lot  
4 better. We have been doing this schedule since 1998,  
5 and it works pretty good. If the fatigue rule works  
6 good for us, but in some ways it kind of hurts a  
7 little bit, too.

8 If we could come up with a set thing and  
9 maybe just submit to you, this is the way that people  
10 want to work. Do you know what I mean? Unless you  
11 have, like you said, outages are planned, refuel  
12 outages.

13 But there is also, in our industry, from  
14 a security standpoint, we have unplanned security  
15 outages. Things could go wrong, and bam, things are  
16 crazy. Then the fatigue rule helps because you can  
17 only go on so long and they have to correct it.

18 But, like I said, the way we used to do  
19 it, like you say, you are allowed to work one day in  
20 a 48 hour week, two days in a 36 hour week. And the  
21 most you would ever work was four 12s in a row, and  
22 you would have that break.

23 Because once you get to that fifth 12, and  
24 that sixth 12, that is when you start getting yourself  
25 hurt, as far as staying awake. I can't speak for

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1 anything else, but just that part of it.

2 MR. DESAULNIERS: Since you presented it  
3 as a question I will just say that we had not  
4 considered approving schedules on a site-specific  
5 basis.

6 Our intent, in developing this rule  
7 making, was to establish requirements at a high enough  
8 level that it would allow for a variety of approaches  
9 at a site-specific level, and still meet the overall  
10 requirements.

11 Certainly we have heard several commenters  
12 note that they do not see the flexibility there. And,  
13 you know, we have taken note of that and we will be  
14 looking forward to future comment on that area.

15 But, really, the objective was for them to  
16 still be able to set their own schedules within  
17 certain higher level constraints. Does that answer  
18 your question?

19 MR. RIZZO: Yes.

20 MR. DIEC: I just would like to note that  
21 as part of the rule making process, the example that  
22 you provided certainly gives us some insights as to  
23 how the Rule will be implemented, from a different  
24 perspective, altogether.

25 So as part of the consideration for the

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1 Final Rule going forward, certainly the information  
2 provides us some insight.

3 MS. MCKENNA: Also, just to comment on  
4 your point, and what Dave Desaulniers was saying, I  
5 think the intent is to try to write the Rule at a  
6 certain level, you know, the kind of, what schedules  
7 would work to meet those requirements, I think is  
8 something that in the Rule and the guidance, to say  
9 here are several examples of ways that a schedule  
10 could be laid out that would satisfy the various rule  
11 provisions.

12 And then the various utilities which  
13 could, you know, if they found one that was suitable  
14 to them, they could use that model to work from. But  
15 we hadn't really envisioned, I think, putting the  
16 schedules themselves in the Rule, or reviewing them,  
17 as was suggested, on an individual basis.

18 MS. KARAS: Todd?

19 MR. NEWKIRK: I will go ahead and finish  
20 up some general comments that we brought as  
21 observations. Todd Newkirk, IBEW.

22 We generally think that codifying 82.12  
23 long day, a long time ago, probably we wouldn't be  
24 having a subpart I discussion today, if we had done  
25 that a long time ago on 82.12, because that is still

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1 being seen in the workforces, truly the commandments  
2 that drive how work is done, and should be done.

3 And we understand that there has been a  
4 history that that wasn't always the case in certain  
5 plants. The 2 day 48 hours in every 14 days with an  
6 aging workforce, if industry is not successful, and  
7 the stakeholder is not successful, I'm questioning  
8 whether that is a requirement during the outage, you  
9 get into a permissive question with some aging worker.  
10 You know, is that my choice or not, is that going to  
11 be part of an alternative if it is going to be that  
12 way.

13 You know, is there going to be a choice  
14 where I can't have that second day off, if there is  
15 any latency delivered in that area. The ten hour  
16 break was very welcomed.

17 I think we are saying it is a good thing  
18 throughout, as a positive step. However, the 8 hour,  
19 it throws a monkey wrench for 8 hour shift workers,  
20 you know, the unforeseen consequences to 8 hour  
21 shifters.

22 The self-reporting, 26.197, has been  
23 pretty much thought of as a good thing to be able to  
24 do, with fatigue training going hand in hand with it.  
25 They appreciate the work industry has done, and NRC,

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1 and all the stakeholders, in those two areas, on how  
2 to report the fatigue side of it.

3 Still there is a lot of -- and we sit  
4 50/50 on this, that is labor from IBEW. So we are not  
5 even, I will go ahead and say it now, we reserve the  
6 right to give you written comment on December 27th,  
7 since we are going to caucus convene the first week of  
8 December, and get to the final answer on where we  
9 stand.

10 But it is a majority of us saying that  
11 eight weeks, industry deserves more than eight weeks,  
12 without going through exotic permission status of an  
13 outage, especially for major equipment. The aging  
14 plants, we have a lot more steam generators, a lot  
15 more big components looking at us in the future.

16 And the eight weeks seems too low, the  
17 outage exclusion for the work hour. And, again, we do  
18 have six plants today that are in 8 hour shifts, with  
19 one of those providing written comment through some  
20 operators, at least one operator, to the NRC.

21 Point Beach is trying to solve the riddle  
22 of 8 hour shift rotation. And very concerned, because  
23 they have very successful history of working 8 hour  
24 rotations, and they are trying to find resolution for  
25 working together.

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1           If anybody can get some Einstein math  
2 together, and make it work, we just come up short on  
3 how an 8 hour rotation works. So we have effective  
4 dialogue ongoing, currently, in the field.

5           We have been teleconferencing over the  
6 last two months, getting input from various local  
7 unions, and we will be reporting back by December 27th  
8 with written comments.

9           MR. MCCABE: Brian McCabe from Progress  
10 Energy. One process question that NEI is submitting  
11 for comments, on behalf of the industry, and it  
12 believes that the new reporting requirements aren't  
13 consistent with the provisions of the Paperwork  
14 Reduction Act.

15           Where does the OMB process, and the NRC  
16 rule making process, come together with respect to the  
17 reporting provisions?

18           MS. MCKENNA: Before we publish a Proposed  
19 Rule we have to provide a package to OMB that we call  
20 supporting statement, where we go through an analysis  
21 of what are the changes in recordkeeping, and  
22 reporting requirements resulting from the activity we  
23 are undertaking.

24           And, you know, who is affected, how many  
25 licensees, how many hours we estimate, and that

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1 information is available for review. And then,  
2 generally, OMB will give us -- essentially we have to  
3 get their approval before we publish the Proposed  
4 Rule. Excuse me, at the Proposed Rule stage we have to  
5 send it to OMB before we publish it. When they  
6 receive comments from stakeholders on rules. And they  
7 either give us an approval, or they may say, depending  
8 on whether they get comments, the nature of the  
9 comments, they may say, no you bring us a revised  
10 package once you -- when you are at the Final Rule  
11 stage, where we have addressed the comments and,  
12 perhaps, requirements have changed as a result of the  
13 comments.

14 And we resubmit an OMB package, and we  
15 have to get an approval before we can publish the  
16 Final Rule. Sometimes, you know, that can be the  
17 pacing item on issuance of the Rule because they are  
18 not going to look at it until it is, indeed, final  
19 from the agency's point of view.

20 And then they have their 30 day review  
21 process, and things like that. So that is kind of  
22 where they weigh in at the Final Rule stage.

23 MR. MCCABE: Great, thanks a lot, that  
24 helps me.

25 MR. DAVIS: As I'm thinking through the

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1        comments we made earlier, I think -- and I talked  
2        about unintended consequences at one point. I think  
3        there is one that is probably worth making you aware  
4        of, at this particular point, that for some reason we  
5        haven't brought out yet.

6                One of the challenges that we feel is  
7        coming out of this Rule, particularly during the  
8        outage period, is the ability to attract qualified  
9        supplemental worker.

10               I think one of the unintended consequences  
11        is we are already having a challenge getting qualified  
12        supplemental workers to come in. We are having a  
13        challenge getting the repeat rate that we would like.

14               And that, obviously, is a significant cost  
15        and issue, you need a certain number of people coming  
16        back in that have experience in this area. Attracting  
17        the best qualified welders, and other people.

18               And virtually every one of our plants is  
19        in competition, usually during the fall and spring,  
20        with other industries for the supplemental workers.  
21        And in most cases they have reported, to us, that they  
22        measure -- one of the measures that they use is how  
23        much work are they going to get, and what kind of  
24        hours are going to be available to them.

25               For example, right now, I have just gotten

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1 a couple of reports that we may be having some  
2 difficulty in the fall outage period. We haven't run  
3 across it, I mean, we haven't confirmed it yet, but it  
4 appears a significant number of our supplemental  
5 workers are moving south to help in the reconstruction  
6 in the New Orleans area, because they are being  
7 offered 12 hour days, seven days a week, and as much  
8 work as they want.

9 And they are going where the money is.  
10 There are two factors in the Rule that impact. One,  
11 the provision, the 48 hour provision that would  
12 restrict an individual from 72 down to 66 hours, on  
13 average, during the outage.

14 And the second one is the eight week  
15 provision. I mean, I ask you to go and think about a  
16 major equipment replacement, like a steam generator,  
17 that is going to take 90 days.

18 And what is going to happen when you take  
19 the thousand supplemental workers that you need to  
20 support that particular evolution, and tell them, at  
21 the eight week point, that they are now only going to  
22 get 48 hours a week going forward from that point.

23 We think that there is a major challenge  
24 there. Even if the replacement individuals were  
25 available, which I don't think they are, we know that

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1 we are going to lose a significant number of those  
2 people when we get to that point, they are going to go  
3 somewhere else, where the work is available, unless  
4 there is a major change in the economy, that we don't  
5 foresee.

6 And you will see some of this coming. But  
7 the multiplicity of impacts that come out of changing  
8 the way that we work outages, is very significant.  
9 Even we are having trouble getting our arms around  
10 some of the impacts that are coming out of this Rule.

11 And, unfortunately, I personally feel that  
12 we are not going to identify all the impacts, for you,  
13 before the Rule is issued. If the Rule was issued as  
14 it is I'm sure we are also going to be surprised by  
15 some of the impacts and the consequences that are  
16 going to come out of this process.

17 So I just give you that as one example,  
18 the supplemental worker issue is very important. It  
19 is very important to us, this Rule notwithstanding,  
20 that we have had a major effort, ongoing, to try to  
21 identify and get more people available to support the  
22 supplemental work force, major issues in training, and  
23 attracting people, and advertising, and working with  
24 community colleges, and other areas, because of the  
25 shortfall that is occurring in supplemental workers,

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1 like HPs and others, that are needed throughout the  
2 industry.

3 And so there is great concern, within the  
4 taskforce that is working this particular area, with  
5 others in the industry, that we have the potential of  
6 making that situation worse, not better, with some of  
7 the provisions that are in this rule.

8 So you will hear more from us on that, I  
9 guarantee you. But you need to think about that. I  
10 mean, that is also part, that is part of the reason  
11 for some of the excitement that you hear from us  
12 today.

13 And, perhaps, it is part of the reason  
14 behind, what do I want to say, the apparent confusion,  
15 or the fact that we are not quite ready to give you  
16 alternatives at this point, is we are finding that  
17 there is complexities with any alternative that you  
18 put on the table.

19 And we would like to be able to put the  
20 alternatives on the table that provides the greatest  
21 assurance that the workers are fit for duty, and has  
22 the least unexpected, unintended consequences in the  
23 process.

24 So perhaps I should have brought that one  
25 up a little earlier in the discussion, but I sort of

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1 missed that one. Thank you.

2 MS. KARAS: Did you have a comment?

3 MR. RIZZO: What Jim was saying, he is  
4 right. Like I said, I have been with Salem Hope Creek  
5 for 19 years. When outages come along we used to have  
6 the same people come back every year, you knew when  
7 they would be back, because they would come there, and  
8 they would make the money.

9 But through the years, here, and I will  
10 tell you these guys, and girls, HPs, welders, or  
11 whatever they do, they live in two different states.  
12 They don't pay here, and they also send money home.

13 And they will tell you, if I'm not making  
14 no money here, I'm not coming back. They have to go  
15 where the money is. And you are starting to see,  
16 where you see strange faces, instead of seeing the  
17 same people you used to see come back all the time.

18 And as far as they are concerned, doing  
19 that, you will have a hard time. Because the  
20 security, and more and more we don't see many of the  
21 same people come back. They are going to go where the  
22 money is at. So you don't know who you are going to  
23 get down the road.

24 MS. KARAS: Other comments?

25 MR. DAVIS: Fifteen seconds.

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1 MS. KARAS: Well, I knew you couldn't be  
2 done.

3 MR. DAVIS: No, I mean, you wait 15  
4 seconds and somebody will say something.

5 (Pause.)

6 MR. DAVIS: I'm done.

7 (Laughter.)

8 MS. KARAS: We can move on to --

9 MR. BAUER: Joe Bauer, from Exelon.  
10 Implementing the Rule as currently written would at  
11 least cause us, and I think a lot of the licensees, to  
12 have to renegotiate a lot of our bargaining unit  
13 contracts.

14 Could you give me a rough idea, a best  
15 case scenario, when the Rule might possibly be  
16 published? So given the December 27th comment, end of  
17 comment date, AND then the review by the Commission,  
18 going to OMB, etcetera, neglecting any implementation  
19 period, when best case scenario would the Rule  
20 potentially be published in its final format?

21 MS. KARAS: Are you talking about best  
22 case from the standpoint soonest, or latest? I wasn't  
23 sure what best would be from your point of view.

24 MR. BAUER: Soonest.

25 MS. KARAS: The soonest. Obviously the

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1 Commission will provide us with a schedule for when to  
2 provide them with the Final Rule. And at this point  
3 we don't have the answer for that.

4 I mean, I could take a guess for you, at  
5 when, you know, it might be likely that we might be  
6 told that we need to provide a Final Rule. I think  
7 the Commission did provide us with a final rule making  
8 schedule for a couple of other rules, recently.

9 For the final I think there were some that  
10 we got recently, in early June. Oh, they are all  
11 proposed, okay. I mean, one can postulate that the  
12 Commission, a lot of times, will ask for things in  
13 early June, given the expiration of certain  
14 commissioner's terms.

15 It is -- I mean, it is possible --

16 MS. MCKENNA: I think, clearly in this  
17 case, early June for something that ends in December  
18 is not in the realm of possibility. This is not a  
19 simple rule, there is a lot of issues.

20 Just going through and analyzing the  
21 comments, and deciding what action the Staff is going  
22 to recommend, and then providing the package that gets  
23 reviewed by everybody, and goes back to the  
24 Commission, it wouldn't happen, I don't see that,  
25 realistically, before June.

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1 And then, obviously, the Commission has to  
2 deliberate. And then whatever changes they have, it  
3 has to get published, depending on whether or not OMB  
4 has given us an approval, or not, and we have to get  
5 a final review.

6 I mean, I personally, I would say end of  
7 next year is probably about the soonest I personally  
8 would see. And that is just kind of based on the  
9 factors I just went through. There is a lot of  
10 perturbations, uncertainties in there.

11 If we decide that we want to make  
12 substantial enough changes, as was mentioned, and we  
13 go back out for comment, obviously the schedule is  
14 changed even more.

15 If the Commission acts quickly, it can  
16 move up a little the other way. But I think current  
17 practice is they take their time to review, make sure  
18 they understand things. This one was, probably,  
19 actually between the proposed, the paper going up and  
20 the SRM was probably fairly quick timing in the scheme  
21 of things.

22 But, you know, that is probably on the  
23 shorter end. But given what we have done, already, in  
24 terms of the number of comments, I think there is  
25 going to be a lot of material for the Commission to

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1 consider.

2 MS. KARAS: Yes. As Eileen mentioned,  
3 really, it depends on many, many different factors.  
4 And it is really difficult for us to try and estimate  
5 that at this time. It just depends on when the  
6 Commission wants the Rule to be sent up to them.

7 It is dependent on how many comments we  
8 receive during the public comment period, and how  
9 substantial those comments are, and the changes that  
10 we would see made based on those comments.

11 What I can tell you is that if you keep a  
12 close watch on when the final SECI paper would go up,  
13 which the Commission typically makes public shortly  
14 after they receive it, then you know that there is, at  
15 least, a couple of months between that and when we get  
16 the SRM.

17 We actually go to send the publication  
18 off, and then there is, potentially some time for OMB  
19 to get -- and in addition to that, after that, there  
20 is the whole implementation period, which you would  
21 know at least what we were proposing based on the SECI  
22 paper.

23 So you should know that fairly early on,  
24 once the SECI paper comes up, as to about how long the  
25 delay after that would be expected to be. But

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1 deepening on the ESRM that we would receive from the  
2 Commission, I mean, if they would want substantial  
3 changes to it, it will take longer for us to turn  
4 around.

5           You know about how long it took to get  
6 this Proposed Rule turned around, and there were very  
7 few changes that the Commission made in its SRM. If  
8 they make more substantial changes it takes much  
9 longer to get to the point where you would actually go  
10 out and publish that Final Rule.

11           So that is why it is all very difficult  
12 for us to really give you an estimate as to when that  
13 time would be. But, again, like I mentioned earlier,  
14 I would encourage you to comment on things like the  
15 implementation period, and how long you believe, and  
16 why you believe you need the implementation period you  
17 do.

18           MR. BAUER: Thank you.

19           MR. DIPIETRO: Nick DiPietro, First  
20 Energy. And I'm thinking about this, as far as how it  
21 relates to me as a "fitness-for-duty" program manager.

22           And I'm trying to understand the  
23 philosophy behind the waivers. I know it is supposed  
24 to get management's attention if somebody went over a  
25 certain amount of hours for their work schedule.

1 But looking at it from a perspective of,  
2 you know, what is the NRC going to do with that  
3 information, is 50 waivers going to be considered too  
4 many, or 100 waivers, or 700 waivers?

5 You know, we are going to be submitting  
6 this information to the Commission on an annual basis.  
7 And I was just wondering what the philosophy was  
8 behind it. Because just thinking about, if we are in  
9 an outage in the fall, and we are going to switch from  
10 daylight savings time, back to standard time, you are  
11 going to have 700 people on site, you may have to  
12 have, if they are on a 12 hour schedule, to work that  
13 extra hour.

14 So now I'm going to have to submit 700  
15 deviations as part of my annual report. And I just --  
16 I didn't know if that was taken into consideration  
17 when you were setting up some of the requirements of  
18 this Rule.

19 So that is just a comment that I had, that  
20 I wanted captured for the record, I guess.

21 MR. DESAULNIERS: With regard -- I guess  
22 the comment and the question, the question, as I  
23 understood it was what is the philosophy for having  
24 the waivers reported?

25 The reporting requirements, let me back up

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1 and say, overall -- although we heard the comment with  
2 regard to the constraints that this rule would put on  
3 licensee flexibility, the Staff believes that actually  
4 substantial flexibilities were built into this rule.

5 And the idea of the averaging, which  
6 allows licensee discretion with respect to who works  
7 more hours, who works less hours, who is more capable  
8 of doing it or not.

9 The approach here of continuing to  
10 authorize waivers, and that is these are conditions  
11 where you are, it is necessary to prevent or mitigate  
12 a condition adverse to safety. So this is not  
13 inconsequential situation that you are allowing an  
14 individual to work many more hours on.

15 This is something that you believe is  
16 important from a safety perspective, yet you are  
17 allowing an individual who, given the number of hours  
18 they may have worked, more than 72 hours in 7 days  
19 now, is that a high potential for fatigue?

20 We believe that these are instances here  
21 now where you are providing the flexibility, but we  
22 also want to ensure that that flexibility is being  
23 exercised with appropriate discretion, and that safety  
24 is not being compromised.

25 So overall the reporting requirements are

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1 generally focused on those areas where that discretion  
2 is being used. And to answer your specific question  
3 about how many waivers would, you know, categorize,  
4 put a plant into a problem versus not a problem, with  
5 respect to waiver use, it is not the intent for the  
6 NRC to establish some quantitative number.

7 We would be looking at this information,  
8 trending this information, looking at the specifics of  
9 how those waivers might be used in conjunction with  
10 how many self-declarations are we seeing, how many  
11 for-cause assessments are being performed.

12 So it would have to be, obviously, a  
13 composite look and I don't think there is going to be  
14 any black or white answer, which would trip some clear  
15 flag here.

16 I understand the comment with respect to  
17 one work case could generate many waivers. We realize  
18 that, that is not something that is there today, in  
19 the current system.

20 And for some reason it is appropriate that  
21 one case generate several waivers, because if the  
22 individual still hasn't had a chance to get a rest  
23 break then, yes, they are going to continue to  
24 generate waivers, because they haven't had time off.

25 But they also happen to have had a rest

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1 break, so that is another day they are working at  
2 potential risk. So there is actually some information  
3 that is appropriate there.

4 So, hopefully, that answers your question  
5 with respect to the philosophy overall, and what we  
6 are asking to report, and how we will be responding to  
7 it.

8 MS. KARAS: And I just wanted to clarify,  
9 too, to chime in with Dave, I guess the question that  
10 was posed about a certain instance generating multiple  
11 waivers.

12 And although we only require the reporting  
13 of certain things, or we would only require the  
14 reporting of certain things with regards to waivers,  
15 there is obviously nothing prohibiting a licensee for  
16 adding any additional information into that report, if  
17 they feel that additional explanations, or anything,  
18 are of value, to put any of the data that is being  
19 reported in context.

20 So you can always report or supply us with  
21 additional information that you feel would be useful.  
22 So that would be one opportunity you could have to do  
23 that.

24 MR. DESAULNIERS: I also want to add, too,  
25 just a point that I didn't make earlier. I think I

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1 mentioned it in the slides, when I referenced  
2 efficiency of NRC oversight.

3 Clearly, you know, the comments, these  
4 records will be available on-site. NRC can come out  
5 and inspect them. And we could do that, and we could  
6 go from site, to site, to site and expand substantial  
7 resources and, perhaps, gain little information.

8 What we are trying to do here is to look  
9 at an approach that provides us some way of, perhaps,  
10 focusing our resources. It wouldn't be until we  
11 looked more deeply into any one of these particular  
12 situations, so we could come away with any  
13 conclusions.

14 MS. MILLAR: Does that mean you would not  
15 run an inspection, possibly?

16 MS. KARAS: Would you hand her a  
17 microphone?

18 MS. MILLAR: This is Dana Millar with  
19 Entergy. Does that mean that you might not consider  
20 the possibility of writing an inspection manual for  
21 the resident inspectors to use?

22 MR. DESAULNIERS: Correct me if I'm wrong,  
23 but we do have an inspection procedure for the  
24 "fitness-for-duty" programs. I anticipate that if  
25 this Rule goes final we would amend that inspection

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1 procedure in order to address the work hour  
2 provisions?

3 MR. MCCUNE: That is correct.

4 MS. KARAS: While we are waiting to see if  
5 anybody has another comment, for tomorrow morning's  
6 meeting, can I just get a show of hands on about how  
7 many people plan on attending? I'm just trying to  
8 make sure the room is going to accommodate everybody.

9 So how we will do that is if you will all  
10 kind of pool in the lobby area, we will be sending  
11 people down periodically as the meeting draws near, to  
12 escort groups of people up.

13 So if you call up from security stand up  
14 to my phone you will get a vacation message, because  
15 I'm soon to leave on vacation. So stay down there and  
16 we will come and get you, we will be sending people  
17 down.

18 I guess if anybody is running really late,  
19 and you are only there for part of the meeting, we  
20 have someone --

21 MS. MCKENNA: As Becky said, for the  
22 meeting tomorrow the intent would be, obviously,  
23 people are expected to be there on time, that we can  
24 collect them. It is only if somebody is delayed, or  
25 whatever, for those reasons.

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1                   And you still want to come to the meeting  
2                   -- I mean, I've had occasions where the guards have  
3                   called up but sometimes the phone numbers in the room  
4                   don't match the phone numbers on the list. So I will  
5                   give you another number to call just in case.

6                   My number, which is 301-415-2189. And you  
7                   can either -- I'm sorry, 2189 is the last four digits.  
8                   Hopefully you will get me. If not I think there is a  
9                   message to roll over to our secretary.

10                  I will try to keep myself around at least  
11                  for the hour or so after the meeting is supposed to  
12                  start, you know, to be available. I don't have  
13                  anything scheduled that would take me out of the  
14                  office that time.

15                  MS. KARAS: We are going to have the  
16                  speakerphone tied up. So if you can't get Eileen,  
17                  dial through zero and just ask for any of the rule  
18                  making team, and explain to them you are here for a  
19                  public meeting, and it has already started.

20                  And I'm sure one of them will be more than  
21                  happy to take care of you.

22                  Has anybody thought of any remaining  
23                  comments?

24                  (No response.)

25                  MS. KARAS: If not I think we -- Todd, did

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1 you want to make closing remarks? You closed on your  
2 previous -- okay.

3 Does anybody have any additional closing  
4 remarks that they would like to make?

5 (No response.)

6 MS. KARAS: If not then I thank you all  
7 for attending. If anybody has any additional comments  
8 please, again, put them on the index cards, and drop  
9 them in the box, or enter them into one of the laptops  
10 that we have set up.

11 We will be here for a little while yet.  
12 Or you can send them in through any of the normal  
13 means, through the Federal Register notice following  
14 this meeting. Thank you.

15 (WHEREUPON, at 3:40 p.m., the above-  
16 entitled meeting was concluded.)  
17  
18  
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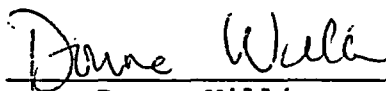
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