Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN–3150–AF12

Fitness for Duty Programs; Notice of Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC's purpose in holding a meeting is to obtain stakeholder feedback on the staff's alternative concepts for work-hour controls and the applicability of drug, alcohol and, access authorization program requirements to combined license (COL) holders during construction. The NRC is seeking to have an exchange of views during the scheduled public meeting, as part of the development of alternatives. The meeting agenda and the staff's concepts for alternative requirements are included in the Supplemental Information section of this meeting notice. The staff will also discuss the development of implementation guidance for the fatigue management provisions of this rulemaking.

DATES: *Wednesday, March 29, 2006.* 9 a.m.–12 p.m. Session 1 (FFD for COL applicants). 1 p.m.–5 p.m. Session 2 (Alternative work hour controls).

Thursday, March 30, 2006. 9 a.m.–12 p.m. Session 1 (Implementation guidance for fatigue management provisions).

A limited number of telephone lines are available for interested members of the public to participate in this meeting via a toll-free teleconference: 1–800–638–8081. Pass Code: 9516# (for March 29, 2006) and 1–800–475–0212. Pass Code 48994 (for March 30, 2006).

ADDRESSES: Nuclear Regulatory Commission, Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On August 26, 2005, the NRC published proposed amendment for Fitness for Duty (FFD) programs to Title 10, part 26 of the Code of Federal Regulations (10 CFR part 26) in the **Federal Register** (70 FR 50442). The 120-day public comment period ended on December 27, 2005. The NRC received a number of substantive public comments both in support of and against the fatigue management provisions of the proposed rule that would require a 24-hour break in any 7-day period, a 48-hour break in any 14-day period, and collective work hour limits. The NRC also received comments on the applicability of drug and alcohol and access authorization programs associated with facilities under construction. In developing the final rule, the staff determined that additional stakeholder input would help resolve these issues.

Agenda: Meetings With Stakeholders To Obtain Feedback on Staff's Concepts for FFD Requirements for Combined License Holders During Construction and Alternative Work Hour Controls

Wednesday March 29, 2006

Session 1 (9 a.m.–12 p.m.) (FFD for COL applicants)

9 a.m.–9:05 a.m.—Introduction and Opening Remarks (D. Diec/NRC).

9:05 a.m.–9:10 a.m.—Remarks on Stakeholder Comments on Construction Applicant (T. McCune/NRC).

9:10 a.m.–9:20 a.m.—Summary of Stakeholder Comments on Construction Applicant (V. Barnes/NRC).

9:20 a.m.–9:40 a.m.—Overview of Resolution Concept—Modified FFD Program for Individuals with Unescorted Access (T. McCune/V. Barnes/NRC).

9:40 a.m.–10:30 a.m.—Questions and Comments.

10:30 a.m.–10:50 a.m.—Break.

10:50 a.m.–11:10 a.m.—Overview of Resolution Concept—Full FFD Requirements for Certain Individuals With Unescorted Access to a Construction Site (T. McCune/V. Barnes/NRC).

11:10 a.m.–11:55 a.m.—Questions and Comments.

11:55 a.m.–12 p.m.—Closing Remarks (David Diec/NRC).

Session 2 (1 p.m.–5 p.m.) (Alternative Work Hour Controls)

1 p.m.–1:10 p.m.—Introduction and Opening Remarks (D. Diec/NRC).

1:10 p.m.–1:45 p.m.—Summary of Stakeholder Comments on Work Hour Controls Overview of Resolution Concept—Non-Outage Periods (D. Desaulniers/NRC).

1:45 p.m.–2:15 p.m.—Questions and Comments.

2:15 p.m.–2:30 p.m.—Break.

2:30 p.m.–2:45 p.m.—Overview of Resolution Concept—Outage Periods Operations, Maintenance, HP/Chemistry and Fire Brigade Personnel (J. Persensky/NRC).

2:45 p.m.–3:15 p.m.—Questions and Comments.

3:15 p.m.–3:30 p.m.—Overview of Resolution Concept: Outage Periods and Security Personnel (E. Skarpac/NRC).

3:30 p.m.–4 p.m.—Questions and Comments.

4 p.m.–5 p.m.—Additional Questions and Comments if needed.

Thursday March 30, 2006

Session 1 (9 a.m.–12 p.m.) (Implementation guidance for fatigue management provisions)

9 a.m.–9:10 am—Introduction and Opening Remarks (D. Diec/NRC).

9:10 a.m.–9:30 a.m.—Process for development of guidance to support Final Rule (NRC Staff).

9:30 a.m.–10 a.m.—Outline of NEI proposed guidance (NEI).

10 a.m.–10:30 a.m.—Guidance on 26.199(c)) as a performance-based rule (NEI/NRC).

10:30 a.m.–10:45 a.m.—Break.

10:45 a.m.–11:15 a.m.—Work hour scheduling (NEI).

11:15 a.m.–11:30 a.m.—Managing hours worked (calculating hours/turnover)(NEI).

11:30 a.m.–11:50 a.m.—Questions and Comments.

11:50 a.m.–12 p.m.—Summary, Path forward and Closing Remarks (D. Diec/NRC).

Issues Discussion–Alternative Concepts for Fitness-for-Duty Requirements for Construction Sites

Background

The current 10 CFR part 26 requires FFD programs for licensees holding permits to construct a nuclear power plant. The provisions of the FFD programs are stipulated in § 26.2(c). The proposed 10 CFR part 26 updates the rule and increases consistency with changes in other relevant Federal rules and guidelines. In particular, the proposed § 26.3(e) expands the scope of FFD programs to include combined license holders and holders of manufacturing licenses (under 10 CFR part 52). In addition, the NRC recently asked the Office of the Federal Register to publish the agency's proposed Amendment for Licenses, Certifications, and Approvals for Nuclear Power Plants to Title 10 of the Code of Federal Regulations, parts 1, 2, 10, 19, 20, 21, 25, 26, 50, 51, 52, 54, 55, 72, 73, 75, 95, 140, 170, and 171 to clarify the applicability of various requirements to each of the licensing processes (i.e., for early site permit, standard design approval, standard design certification, combined licensing, and manufacturing license). The NRC expects this proposed amendment to be available for public comment around March 13, 2006.

As a result of public comments on proposed § 26.3(e) and industry efforts to develop guidance for implementing FFD programs at construction sites for new reactors, the NRC is reconsidering its proposed requirements for FFD programs at construction sites (the point at which construction begins will be defined in proposed § 52.103(c) and § 50.10(e)(3) of Title 10 of the Code of Federal Regulations). In comments on proposed § 26.3(e), NEI and other industry stakeholders suggested that nuclear power plant construction sites should be regulated on the basis of industrial safety considerations, rather than public health and safety or the common defense and security, and that full FFD programs were unnecessary.

The NRC agrees with these commenters that activities at a construction site before the arrival of nuclear fuel will not pose immediate radiological risks to public health and safety. However, poor workmanship by construction workers who are impaired could introduce flaws into systems and components and challenge safe plant operations after a new plant goes on-line, if the flaws are not detected through the extensive testing of systems and components that is planned for new construction. A more immediate concern is individuals working at new plant construction sites will have access to information about the design, layout, and intended operations of the systems and components they construct, information that could be of benefit to an adversary if disclosed. Furthermore, some construction workers may have opportunities to engage in sabotage. Undetected involvement with illegal drugs or an untreated alcohol problem could make these individuals vulnerable to influence. Therefore, the NRC believes that regulating construction activities for new reactors solely in terms of industrial safety would not provide the necessary level of assurance of public health and safety and the common defense and security.

The NRC also recognizes the many logistical and cost challenges of implementing several of the requirements in proposed § 26.3(e) for FFD programs at construction sites. The NRC agrees that much of the workforce at a construction site will likely be transient and rapidly changing and that applying some of the proposed requirements to such workers may be overly burdensome. For example, the proposed requirements that these workers have access to an employee assistance program (EAP) and that determinations of fitness be done by a substance abuse expert in accordance with proposed § 26.189 may impose costs on licensees that are not commensurate with the potential benefits to public health and safety and the common defense and security. Furthermore, although some new construction sites will be near existing nuclear power plants, other construction sites will likely be distant from a current licensee's specimen collection facilities for drug and alcohol testing. Imposing requirements for random testing of all individuals who will work at such ''greenfield'' construction sites could have the unintended consequence of requiring licensees to build specimen collection and alcohol testing facilities at these sites before construction can begin.

Therefore, the NRC is considering alternative approaches to the requirements in proposed part 26 that would apply to construction sites. One alternative under consideration is a two-tiered approach to FFD programs for construction sites after construction has begun: Licensees and other entities could implement modified FFD programs for certain individuals who would have unescorted access to the construction site while requiring other individuals with specific job duties at the construction site to be subject to a full FFD program.

Modified FFD Program for Individuals With Unescorted Access to the Construction Site

The modified FFD program that the NRC is considering would be intended to provide reasonable assurance that individuals who have unescorted access to a construction site are fit for duty and trustworthy and reliable, commensurate with the risk to public health and safety and the common defense and security that their activities and their access to certain information would impose. The modified FFD program would apply only to individuals who have unescorted access to the construction site and work at the construction site for more than 5 days in any 1-year period. Individuals who work at the construction site for 5 days or fewer in a year, or who visit the site for other reasons, would not be subject to an FFD program, instead would be escorted while on site.

Under the modified FFD program, construction workers who have unescorted access to the construction site would be subject to some of the elements of a full Part 26 FFD program, but not to others. In addition, the licensees and other entities who are responsible for construction activities (i.e., combined license holders under part 52 before the Commission has made the finding under § 52.103(g), combined license applicants who have received authorization to construct under § 50.10(e)(3), construction permit holders under part 50, and construction permit applicants who have received authorization to construct under § 50.10(e)(3)) would be permitted to establish procedures for implementing certain FFD program elements that are best-suited to the circumstances at their site, but may not fully comply with the requirements for each program element in proposed part 26.

The following FFD program elements would not apply to individuals who have unescorted access to a construction site under the modified program: (1) The fatigue management requirements in proposed subpart I; (2) the FFD training requirements in proposed § 26.29; (3) random drug and alcohol testing requirements in proposed § 26.31(c)(5); (4) the requirement for access to an EAP under proposed § 26.35, and (5) the determination-of-fitness process described in proposed §§ 26.187 and 26.189. Individuals who have unescorted access to a construction site would be subject to behavioral observation, as described in proposed § 26.33, but would not be required to perform behavioral observation of others

because they would not be trained to do so.

The modified FFD program would be required to implement the following specific requirements in proposed part 26: (1) FFD policies and procedures for a more limited set of topics than specified in proposed § 26.27; (2) pre-access drug and alcohol testing in § 26.31(c)(1), for-cause drug and alcohol testing in § 26.31(c)(2), and post-event testing for industrial accidents, as specified in proposed § 26.31(c)(3)(I); (3) the protection of information requirements in proposed § 26.37; (4) collecting specimens and conducting alcohol tests in accordance with the requirements in proposed subpart E, although licensees and other entities would be permitted to rely on collection sites that meet the requirements of 49 CFR part 40.43; (5) at the licensee's discretion, testing of specimens at a licensee testing facility in accordance with the requirements in proposed subpart F; (6) initial and confirmatory testing of urine specimens for drugs and validity at an HHS-certified laboratory in proposed subpart G; (7) NRC review of drug test results in accordance with §§ 26.183 and 26.185; and (8) annual reports of FFD program performance data under proposed § 26.217 and the applicable reports required under § 26.219(b) of significant FFD policy violations or programmatic failures. Imposing the specific requirements in proposed part 26 for these FFD program elements under the modified programs would: (1) Ensure that individuals who are subject to the program understand their responsibilities; (2) provide for the detection and deterrence of drug and alcohol abuse; (3) protect the privacy of personal information that may be collected under part 26; (4) ensure the integrity of the drug and alcohol testing performed under the modified program; and (5) meet the NRC's need for certain information to monitor the ongoing effectiveness of the modified programs.

Specific requirements would also be added for granting unescorted access to construction sites under a modified FFD program. The added requirements would be similar to the requirements in proposed subpart C for granting and maintaining authorization under the full FFD program that are contained, including requirements for obtaining a self-disclosure and employment history in proposed § 26.61, conducting a suitable inquiry in proposed § 26.63, and performing pre-access drug and alcohol testing in proposed § 26.65. The NRC believes that the same stringent requirements as proposed for granting authorization to a nuclear power plant protected area should be applied in granting unescorted access to a construction site to ensure that individuals are trustworthy and reliable, as demonstrated by the avoidance of substance abuse.

Individuals who are applying for unescorted access to a construction site under the modified FFD program would be subject to pre-access testing before they could be granted unescorted access to a construction site in more circumstances than under the full FFD program, particularly with respect to reinstating individuals' unescorted access to a construction site after a short absence from the site during which they were not subject to behavioral observation. Pre-access testing would be required in more circumstances under the modified FFD program because the modified program would not require random testing. Licensees and other entities that implement a modified program would be permitted to grant unescorted access to a construction site without pre-access testing only if (1) the individual previously held authorization and had been subject to both a drug and alcohol testing program that included random testing and to a behavioral observation and arrest-reporting program that met part 26 requirements from the date on which the individual's last authorization was terminated through the date upon which the individual would be granted unescorted access to the construction site, or (2) the licensee or other entity relies on negative results from drug and alcohol tests conducted before the individual applied for unescorted access to the construction site, as permitted under proposed § 26.65(b), and the individual remained subject to a behavioral observation and arrest-reporting program that met part 26 requirements, beginning on the date on which the drug and alcohol testing was conducted through the date on which the individual is granted unescorted access to a construction site and thereafter.

The extent to which licensees and other entities could accept and rely on elements of the modified FFD program to meet the requirements for granting authorization in proposed subpart C would also be more limited than the extent to which the proposed rule would permit them to rely on other, full FFD programs. For example, if an individual who had unescorted access to a construction site had a positive drug test result that was confirmed by an NRC under the modified program, and if the FFD violation was reviewed and resolved without a determination of fitness by a substance abuse expert (as would be permitted under the modified program, but would be required for a full FFD program under proposed § 26.187), then a licensee who is seeking to grant the individual unescorted access to a nuclear power plant protected area could not do so without ensuring that a substance abuse expert made a determination of fitness in accordance with proposed § 26.189. In addition, because an individual who was subject to a modified FFD program would not have received any FFD training, a licensee who was seeking to grant unescorted access to the individual would be required to ensure that the individual received the required training before granting unescorted access to the protected area of a nuclear power plant.

The reciprocity between full FFD programs described in proposed § 26.53(d) would also be permitted between modified FFD programs. However, licensees and other entities would not be permitted to rely on program elements from a modified FFD program when granting authorization, except if the modified FFD program elements fully complied with the specific requirements in proposed part 26 for that element.

There would be several FFD program elements in the modified program that licensees and other entities would be permitted to develop and implement on the basis of the circumstances at their specific construction site. These program elements would not be required to fully comply with the specific requirements for each program element in proposed part 26, as follows:

Modified FFD programs would be required to have procedures that describe the process to be followed if an individual's behavior raises a concern regarding the possible use, sale, or possession of illegal drugs on or off site, the possible possession or consumption of alcohol on site, or impairment from any cause which in any way could adversely affect the individual's ability to safely and competently perform his or her duties, but the modified program would not be required to comply with the specific requirements in proposed § 26.77 for management actions regarding possible impairment.

Modified FFD programs would also be required to establish sanctions for FFD policy violations that, at a minimum, would prohibit the individual from having access to or performing any job duties at the construction site until the licensee or other entity determined that the individual's behavior would not pose a risk to public health and safety or the common defense and security. However, the modified programs would not be required to implement the

minimum requirements for sanctions in proposed § 26.75 or apply the specific procedures for conducting a determination of fitness in proposed § 26.189.

Modified FFD programs would be required to have procedures for determining and tracking individuals' identities and maintaining records in a manner that would enable the program to function, but would not be required to meet the specific recordkeeping requirements in proposed § 26.213.

Modified FFD programs would be required to provide for an objective and impartial review of the facts related to a determination that an individual had violated the FFD policy, but would not be required to meet the specific requirements in proposed § 26.39 for a review process for FFD violations.

Modified FFD programs would also be required to conduct audits to assure the continuing effectiveness of the FFD program, including FFD program elements that would be provided by C/Vs, the FFD programs of any C/Vs that would be accepted by the licensee or other entity, and the programs of the HHS-certified laboratories on which the licensee or other entity and its C/Vs would rely. The modified FFD program would be audited at a frequency that would assure its continuing effectiveness and corrective actions would be required to resolve any problems identified. Licensees and other entities that implemented modified FFD programs would also be permitted to jointly conduct audits, or accept audits of C/Vs and HHS-certified laboratories by other licensees and entities that are subject to part 26. However, modified FFD programs would not be required to meet the specific requirements in proposed § 26.41 for the audits and corrective actions required for a full FFD program. In addition, audits would be required to verify the honesty and integrity of FFD program personnel, but modified FFD programs would not be required to meet the specific requirements in proposed § 26.31(b).

Licensees and other entities would also be permitted, at their discretion, to implement full FFD programs to which all individuals with unescorted access to a construction site would be subject. Or they may choose to implement all of the specific requirements for any FFD program element required under part 26 or, at their discretion, a subset of program elements. However, if a licensee or other entity chose to implement one of the modified FFD program elements listed above that did not fully comply with the specific requirements for that element in proposed part 26, the NRC would require the licensee or other entity to submit its modified FFD program plans to the NRC for review and approval as part of the COL review process. These plans would then become part of the COL. The NRC believes that the flexibility to implement modified FFD program elements would eliminate undue restrictions on construction site activities while assuring that individuals who have unescorted access to construction sites are fit for duty and trustworthy and reliable, as demonstrated by the avoidance of substance abuse.

Full FFD Requirements for Certain Individuals With Unescorted Access to a Construction Site

A second tier of requirements, the full FFD program, would apply to individuals who are granted unescorted access to a construction site and who perform the following job duties: (1) Supervise construction activities at the site; (2) perform security duties as an armed security force officer, alarm station operator, response team leader, or watchperson for the construction site; (3) serve as an escort at the construction site for visitors (i.e., individuals who are not performing construction activities at the site or who will be performing construction activities but will be present on site for 5 days or fewer in a year); or (4) serve as a reviewing official to grant or deny unescorted access to the construction site. The individuals who perform these job duties will have frequent opportunities to conduct behavioral observation of construction workers who have unescorted access to the construction site, as well as visitors to the site. They would therefore be in a position to detect behavior that may indicate impairment, and to detect and deter other undesirable conditions or actions. However, it would be necessary to ensure that the individuals in these job duties are trained in behavioral observation. In addition, the individuals who perform these job duties would have important responsibilities for assuring that work is performed correctly and that construction site security is maintained. Therefore, the NRC believes it would be necessary to ensure that individuals who perform these job duties are subject to a full FFD program, including random testing. However, to reduce the logistical impact of the random testing requirement, licensees and other entities would not be required to establish specimen collection facilities at a 'greenfield' site, for example, but would be permitted to have these individuals tested at a local hospital or other facility in accordance with the requirements of 49 CFR part 40, ''Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs'' (65 FR 1944, August 9, 2001).

Specific Thoughts About FFD Requirements for Construction Sites

1. Under a modified FFD program, individuals who have unescorted access to a construction site would not be subject to random drug and alcohol testing. The purpose of random testing is to deter and detect substance abuse. However, these individuals would be subject to behavioral observation from supervisors and security personnel at the site and for-cause drug and alcohol testing if any indications of altered behavior are observed. A review of FFD program performance data, which licensees and other entities are required to report to the NRC under the current and proposed rules, indicates that short-term contractors have consistently had higher rates of positive drug and alcohol test results than long-term contractors and licensee employees. The NRC believes that the majority of construction site personnel will be contractor/vendor, rather than licensee, personnel.

2. Under a modified FFD program, licensees and other entities would be required to provide the FFD policy statement to individuals who are subject to the modified program, rather than making the policy statement ''readily available,'' as permitted in proposed § 26.27(b). The requirement to ''provide'' the policy statement to affected individuals would be necessary to ensure that these individuals are aware of what is expected of them and what consequences may result from a lack of adherence to the policy. The policy statement would be the only means by which individuals would be informed of their responsibilities under the modified program because they would not receive FFD training.

3. The modified FFD program under consideration would not require the determination of fitness process specified in proposed § 26.189 to be performed by a substance abuse expert in proposed § 26.187. The modified program also would not establish requirements for followup testing if an individual had violated the FFD policy. The modified program would not include these requirements because of past experience with how licensees and other entities respond to FFD policy violations for C/V personnel. That is, the NRC expects that licensees and other entities will terminate the unescorted access of any individual who has violated the FFD policy and

deny them further access to a construction site, because, in many cases, the skills of short-term C/V personnel are easily replaced. If a licensee or other entity sought to grant, maintain, or reinstate unescorted access to an individual who had violated the FFD policy, the modified FFD program would require the licensee or other entity to determine that the individual's behavior does not pose a risk to public health and safety or the common defense and security, but would not specify the process to be followed to achieve this goal.

4. The NRC is also seeking comment on the scope of the job duty groups who would be subject to the second tier of more stringent requirements (i.e., a full FFD program). That is, are there job duty groups, other than supervisors, escorts, security personnel, and reviewing officials, whose activities could pose a sufficient risk to public health and safety or the common defense and security that subjecting them to the full FFD program is warranted?

5. The NRC is also considering excluding holders of manufacturing licenses (under proposed part 52 of 10 CFR) from FFD requirements at this time. These potential licensees may not be constructing reactors at the same fixed sites at which the reactors would be installed and their construction activities may occur elsewhere. Therefore, the NRC believes that additional study of the circumstances of these potential licensees is warranted.

6. As discussed above, the modified FFD program under consideration retains specific requirements for some FFD program elements, eliminates requirements for some program elements, and establishes general performance objectives for other program elements without establishing specific requirements. There may be other mixes of general and specific requirements that could be applied to FFD programs at construction sites that would provide adequate assurance of public health and safety and the common defense and security, commensurate with the potential risks of construction site activities.

Subpart I—Fatigue Management

In response to the publication of the Proposed Part 26 rulemaking for public comment (70 FR 50442, August 26, 2005), the NRC received many comments from stakeholders regarding Subpart I, Fatigue Management. The full text of these comments is available at *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=Part26_risk&st=prule.* Requirements that were the subject of substantive comment include: (1) The proposed requirement for individuals to have at least one 24-hour break in any 7-day period (§ 26.199(d)(2)(ii)), (2) the proposed requirement for individuals to have at least one 48-hour break in any 14-day period (§ 26.199(d)(2)(iii)), and (3) the proposed requirement for collective work hour limits (§ 26.199(f)). Although many comments supported these provisions, a number of comments expressed concerns regarding the potential unintended consequences, necessity, or effectiveness of these requirements.

Several stakeholders commented that the proposed requirement for individuals to have at least one 24-hour break in any 7-day period would not provide the flexibility necessary for licensees to effectively schedule 8-hour shifts (many licensees currently use a schedule that includes periods of 7 consecutive 8-hour shifts). Regarding the requirement for individuals to have at least one 48-hour break in any 14-day period, several stakeholders expressed concern about the potential effect of this requirement on the ability of licensees to provide adequate coverage for unplanned maintenance (e.g., to quickly restore inoperable equipment). Other stakeholders commented that a 48-hour break during a series of night shifts would adversely affect an individual's circadian adjustment of individuals to the night shift. Several stakeholders commented that the collective work hour limits were unnecessary because they were redundant with other requirements whereas other stakeholders expressed the concern that the collective work hour limits were not adequate because they did not address worker fatigue on an individual basis. Additional comments concerning collective work hour limits included the concern that collective work hour calculations were susceptible to manipulation and that the maximum 8-week period of exemption from the collective work hour limits would not be adequate for certain longer term outages.

The NRC believes the concerns described above may be largely addressed through alternative requirements that would be equally effective in meeting the objectives of the rulemaking. To address stakeholder comment regarding the proposed minimum break requirements and collective work hour controls, the staff is considering the following concept for amending the proposed fatigue management provisions.

Proposed Resolution of Comments Concerning Minimum Break Requirements and Collective Work Hour Controls

Delete the following provisions from the proposed rulemaking:

- Requirement for a minimum 24-hour break in any 7-day period.
- Requirement for a minimum 48-hour break in any 14-day period.
- Collective work hour limits.

Add the following minimum break requirements:

- Individuals subject to work hour controls as described by § 26.199(a)(1–5) of the proposed rule would be required to have a minimum 36-hour break in any 9-day period. This requirement would be applicable whether the plant is operating or in an outage.
- While the plant is operating, individuals subject to work hour controls as described by § 26.199(a)(1–5) of the proposed rule would be subject to the following break requirements:
  - —Individuals working 8 hour shift schedules would be required to have a minimum of one 24-hour break per week, averaged over a shift cycle.
  - —Individuals working 10 hour shift schedules would be required to have a minimum of two 24-hour breaks per week, averaged over a shift cycle.
  - —Individuals working 12 hour shift schedules would be required to have a minimum of three 24-hour breaks per week, averaged over a shift cycle.
- During the first 60 days of a plant outage, individuals subject to work hour controls as described by § 26.199(a)(1–4) of the proposed rule would be required to have a minimum of three 24-hour breaks in each successive (i.e., non-rolling) 15-day period.
- During the first 60 days of a plant outage, security outage, or increased threat condition, individuals subject to work hour controls as described by § 26.199(a)(5) of the proposed rule would be required to have a minimum of four 24-hour breaks in each successive (i.e., non-rolling) 15-day period.
- Beginning day 61 of a plant outage, security outage, or increased threat condition, individuals subject to work hour controls as described by § 26.199(a)(1–5) of the proposed rule would be subject to the controls applicable to an operating plant, except as follows:
  - —The maximum 60 day period for application of outage or increased threat condition limits could be extended 7 days for an individual or

group of individuals for each independent 7 day period the individual or group works not more than 48 hours during the outage or increased threat condition.

Implementation Details

For purposes of compliance with the minimum 24-hour break requirements:

- Because work schedules may contain shifts of more than one length (e.g., combinations of 8 and 12-hour shifts), shift schedules would be defined as follows:
  - 8-hour shift schedules average not more than 9 hours per day.
  - 10-hour shift schedule average not more than 11 hours per day.
  - 12-hour shift schedule average not more than 12 hours per day.
- Only break periods of 24 consecutive hours or more would count towards the break requirements.
- Breaks would be counted in 24-hour increments. For example, a 36 hour break would count as one 24-hour break. A break of 48 consecutive hours would count as two 24-hour breaks.
- The maximum duration of a shift cycle over which a licensee would be able to average breaks would be limited to six weeks.
- Any portion of a plant outage, security outage, or increased threat condition that does not comprise a complete 15 day period would be subject to the individual work hour limits in proposed § 26.199(d)(1), § 26.199(d)(1)(I), and the requirement described above for a minimum 36-hour break in any 9-day period.

Dated at Rockville, Maryland, this 10th day of March, 2006.

For the Nuclear Regulatory Commission.

Eileen McKenna,

Chief, Financial, Policy and Rulemaking Program, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E6–3922 Filed 3–16–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19930; Directorate Identifier 2004–NE–33–AD]

Airworthiness Directives: Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM). That NPRM proposed a new airworthiness directive (AD) that applies to Rolls-Royce plc (RR) RB211 Trent 800 series turbofan engines. That proposed action would have required initial and repetitive borescope inspections of the high pressure-and-intermediate pressure (HP–IP) turbine internal and external oil vent tubes for coking and carbon buildup, and cleaning or replacing the vent tubes if necessary. Since we issued that NPRM, RR notified us that the RB211 Trent 800 series turbofan engines are significantly less susceptible to vent tube carbon build-up than the RB211 Trent 700 series turbofan engines. Repeat on-wing inspections therefore, are not required to maintain fleet safety. Accordingly, we withdraw the proposed rule.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Rolls-Royce plc RB211 Trent 800 series turbofan engines. We published the proposed AD in the **Federal Register** on December 27, 2004 (69 FR 77144). That proposed action would have required initial and repetitive borescope inspections of the HP–IP turbine internal and external oil vent tubes for coking and carbon buildup, and cleaning or replacing the vent tubes if necessary. That proposed action resulted from a report of an RB211 Trent 700 series engine experiencing a disk shaft separation, overspeed of the intermediate pressure (IP) turbine rotor, and multiple blade release of IP turbine blades.

Since we issued that NPRM, RR notified us that data collected from a onetime inspection of 200 RB211 Trent 800 series turbofan engines shows that these engines are significantly less susceptible to vent tube carbon build-up than the RB211 Trent 700 series turbofan engines. The RB211 Trent 800 series engines had no evidence of significant accumulation. RR's analysis concluded that repeat on-wing inspections are not required to maintain fleet safety. The vent tube inspection and cleaning can be done at each shop visit. This will ensure that the probability of carbon blockage and spontaneous ignition will be negligible. Based on this analysis, RR has stated they will cancel Alert Service Bulletin RB.211–72–AE362, dated May 7, 2004.

Upon further consideration, we hereby withdraw the proposed rule based on RR's analysis and conclusion stated above.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule. Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) do not cover this withdrawal.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, we withdraw the notice of proposed rulemaking, FAA–2004–19930; Directorate Identifier 2004–NE–33–AD, published in the **Federal Register** on December 27, 2004 (69 FR 77144).

Issued in Burlington, Massachusetts, on March 13, 2006.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24036; Directorate Identifier 2006–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Sicma Aero Seat, Passenger Seat Assemblies

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Sicma Aero Seat, passenger seat assemblies. This proposed AD would require modifying the aft track fittings on these passenger seat assemblies by installing new tab locks, and then torquing the aft track fitting locking bolts. This proposed AD results from