



UNITED STATES **REQUEST REPLY BY:**
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

3/24/03
COMSECY-03-0012

March 10, 2003

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

Approved, subject to the
attached comments and edi

FROM: William D. Travers
Executive Director for Operations

Richard A. Meserve
Richard A. Meserve 3/25/03

SUBJECT: FITNESS-FOR-DUTY ENHANCEMENTS TO ADDRESS CONCERNS
REGARDING FATIGUE OF NUCLEAR FACILITY SECURITY FORCE
PERSONNEL - DRAFT ORDER AND COMPENSATORY MEASURES
FOR POWER REACTOR LICENSEES

This memorandum describes the actions the NRC has taken and intends to take in implementing the Commission's directions in Staff Requirements Memorandum (SRM) titled "Staff Requirements-COMSECY-02-0066-Fitness for Duty Enhancements to Address Concerns Regarding Fatigue of Nuclear Facility Security Force Personnel-Draft Order and Compensatory Measures for Power Reactor Licensees," dated December 26, 2002. The SRM directed the staff, in part, to solicit discussions from a broad range of interested external stakeholders, including the industry. The SRM also directed the staff to extend the work hour limits of this Order promptly to security personnel at other facilities (decommissioning reactors, independent spent fuel storage installations (ISFSIs), Category I fuel cycle facilities, gaseous diffusion plants (GDPs), and Honeywell). This memorandum forwards a standard cover letter to power reactor licensees (Attachment 1) requiring implementation of a draft Order (Attachment 2) and Compensatory Measures (CMs) (Attachment 3) that the NRC intends to issue to power reactor licensees to address concerns regarding fatigue of security force personnel.

At two public meetings held on January 23, 2003, and February 21, 2003, the staff met with a broad range of external stakeholders (e.g., licensees, the Nuclear Energy Institute, nuclear security officers, union representatives, the Project on Government Oversight, the Union of Concerned Scientists, the Nuclear Control Institute, the news media, law firms, and members of the public) to discuss the draft Order and CMs related to fatigue of nuclear facility security force personnel.

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David Desaulniers, NRR
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COMMENTS OF CHAIRMAN MESERVE ON COMSECY-03-0012

I approve the proposed Order and its Compensatory Measures, subject to the following comments.

Our licensees have been faced with the formidable challenge of enhancing security under circumstances in which the scope and duration of the period of heightened security has been uncertain. As a result, a few licensees have been slow in hiring necessary additional security personnel, with the result that the existing corps of guards have been forced to work excessively long hours. It has become apparent that the period of heightened security awareness will be an abiding obligation. There is a need to ensure that security personnel have the alertness to fulfill their important obligations.

Some commenters have suggested that the requirements of the Order should be extended to all personnel who have responsibility for safety. In fact, the Commission has a rulemaking underway that is intended to deal with the longer-term problem of ensuring the fitness for duty of such staff. See SECY-01-0134 (July 23, 2001). The justification for this Order is not that the alertness of security personnel is more important than that of other staff, but rather that the additional security requirements have created a near-term problem with security personnel that demands a swift response. I expect that this Order will no longer be necessary after a permanent and harmonized set of requirements to control fatigue for all critical staff is put into place.

It might be appropriate to question whether the group limits serve any purpose because it is the alertness of the individual that is essential. Staff has sought to reconcile the demands of some security officers who seek the opportunity to work long hours of overtime -- under the threat that they will "moonlight" on another job if security overtime is not available -- with the demands of other security officers who seek protection from excessive overtime. The mix of high individual limits with lower group averages is intended to balance the interests of both groups, albeit with some lack of precision. Staff should be prepared to modify the Order if the limits or the process for calculating the group averages proves ineffective, counterproductive, or excessively burdensome.

I join in Commissioner McGaffigan's comment to the effect that deviations should be reviewed by the licensee's Security Manager.

Chief Nuclear Officer
Licensee Address

SUBJECT: ISSUANCE OF ORDER FOR COMPENSATORY MEASURES RELATED TO
FITNESS-FOR-DUTY ENHANCEMENTS APPLICABLE TO NUCLEAR
FACILITY SECURITY FORCE PERSONNEL - PLANT NAME

Dear Mr./Ms. :

The U.S. Nuclear Regulatory Commission (NRC) has issued the enclosed Order that modifies the current license for your facility to require compliance with the specified compensatory measures (CMs). The Order applies to all Addressees listed in Attachment 1 to the enclosed Order. The CMs are listed in Attachment 2 to the enclosed Order. The Commission recognizes that you have voluntarily and responsibly implemented additional security measures following the events of September 11, 2001. However, work hour demands on security force personnel have increased substantially over the past 17 months, and the current terrorist threat environment continues to require heightened security measures. Therefore, the Commission has determined that the security measures addressed by the enclosed CMs should be implemented by licensees as prudent measures to address issues that may arise from fatigue of nuclear facility security force personnel. The Commission has determined that the current threat environment requires that the enclosed Order be effective immediately.

[The Order is needed to require prompt prudent actions to ensure that the appropriate security posture is maintained given the current threat environment.] This Order does not obviate the need for licensees to continue to meet the objectives of the current security protective measures level described in NRC Regulatory Issue Summary 2002-12A, "Power Reactors NRC Threat Advisory and Protective Measures System," as promulgated by updated security advisories. Licensees must also continue to maintain the effectiveness of existing security measures taken in response to the events of September 11, 2001, and the Order issued on February 25, 2002. The requirements will remain in effect until the Commission determines otherwise.

The enclosed Order requires responses and actions within specified time frames. Please contact your Licensing Project Manager to facilitate resolution of any issues related to compliance with the requirements in the enclosed Order, or if you have any other questions.

Attachment 1

February 25, 2002, the Commission issued Orders to the licensees of operating power reactors to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive security review.

Work hour demands on nuclear facility security force personnel have increased substantially since the September 11, 2001 attacks and the current threat environment continues to require heightened security measures. The Commission has determined that the security measures addressed by the enclosed compensatory measures are required to be implemented by licensees as prudent measures to address issues that may arise from work-hour related fatigue of nuclear facility security force personnel. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, the NRC finds that in the circumstances described above, the public health, safety and interest require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202



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MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

Approved with comments.

FROM: William D. Travers
Executive Director for Operations

Greta Joy Dicus 3/28/03

SUBJECT: FITNESS-FOR-DUTY ENHANCEMENTS TO ADDRESS CONCERNS REGARDING FATIGUE OF NUCLEAR FACILITY SECURITY FORCE PERSONNEL - DRAFT ORDER AND COMPENSATORY MEASURES FOR POWER REACTOR LICENSEES

This memorandum describes the actions the NRC has taken and intends to take in implementing the Commission's directions in Staff Requirements Memorandum (SRM) titled "Staff Requirements-COMSECY-02-0066-Fitness for Duty Enhancements to Address Concerns Regarding Fatigue of Nuclear Facility Security Force Personnel-Draft Order and Compensatory Measures for Power Reactor Licensees," dated December 26, 2002. The SRM directed the staff, in part, to solicit discussions from a broad range of interested external stakeholders, including the industry. The SRM also directed the staff to extend the work hour limits of this Order promptly to security personnel at other facilities (decommissioning reactors, independent spent fuel storage installations (ISFSIs), Category I fuel cycle facilities, gaseous diffusion plants (GDPs), and Honeywell). This memorandum forwards a standard cover letter to power reactor licensees (Attachment 1) requiring implementation of a draft Order (Attachment 2) and Compensatory Measures (CMs) (Attachment 3) that the NRC intends to issue to power reactor licensees to address concerns regarding fatigue of security force personnel.

At two public meetings held on January 23, 2003, and February 21, 2003, the staff met with a broad range of external stakeholders (e.g., licensees, the Nuclear Energy Institute, nuclear security officers, union representatives, the Project on Government Oversight, the Union of Concerned Scientists, the Nuclear Control Institute, the news media, law firms, and members of the public) to discuss the draft Order and CMs related to fatigue of nuclear facility security force personnel.

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COMMISSIONER DICUS' COMMENTS ON COMSECY-03-0012, "FITNESS-FOR-DUTY ENHANCEMENTS TO ADDRESS CONCERNS REGARDING FATIGUE OF NUCLEAR FACILITY SECURITY FORCE PERSONNEL - DRAFT ORDER AND COMPENSATORY MEASURES FOR POWER REACTOR LICENSEES"

I believe that there is a need to address potential fatigue of security force personnel and agree, as the Chairman has pointed out in his vote, that there is a greater sense of urgency to deal with security force fatigue because of additional requirements and enhanced security posture at the sites. It is important to note that most licensees appear to be addressing the workload challenges appropriately by managing resources, monitoring overtime, and when appropriate, hiring additional security personnel.

One of the central issues for me is determining what we are trying to regulate. It is arguably easy to regulate work hours by establishing limits, either group or individual. But in regulating work hours are we, in fact, regulating fatigue and establishing reasonable fitness for duty standards.

Regulating work hours may be the best surrogate for regulating fatigue, but I remain unconvinced that it is sufficient. We cannot control what choices an individual makes or the demands they may be placed on an individual after they leave the site, whether it may be a second job or staying up all night with a sick child. Fatigue depends on the individual. Limiting work hours is an important consideration in regulating fatigue, but I believe that the key to regulating fatigue is establishing a more robust and comprehensive screening and evaluation tool.

In addition to individual work hour limitations, the staff has proposed "group limits". I understand the "group" limitations would likely be the more limiting criteria. I recognize that regulating fatigue is not simple and may not be addressed by a simple solution. However, my initial impression is that, while perhaps effective, the group limits scheme may be overly complex.

I believe the goal -to help ensure that fatigue does not adversely impact the readiness of licensee security forces- could also be achieved by establishing more restrictive individual limits. These individual limits would be used to limit overtime and, if additional individual overtime is needed, trigger implementation of, as discussed above, a more robust and comprehensive screening and evaluation tool.

Therefore, I approve of the proposed Order and associated Compensatory measures provided that an option be developed within the Order that would allow a licensee to choose either 1) the individual work hour limits and group limits specified in the proposed Order or 2) a more restrictive set of individual work hour limitations requiring a more robust and comprehensive individual fatigue screening and evaluation for individual deviations. Should the draft Order be approved by the Commission, the staff must carefully consider 1) the information provided by licensees in their "20-day" responses and 2) lessons learned from implementation to determine whether modifications to the Order may be warranted and inform ongoing fitness-for-duty rulemaking efforts.

gjd
3-28-03



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MEMORANDUM TO: Chairman Meserve
 Commissioner Dicus
 ✓ Commissioner Diaz
 Commissioner McGaffigan
 Commissioner Merrifield

FROM: William D. Travers *William Travers*
 Executive Director for Operations

SUBJECT: FITNESS-FOR-DUTY ENHANCEMENTS TO ADDRESS CONCERNS
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Approved, subject to including measures to address actions that should be taken should the group hour limits be exceeded, e.g., "the licensee shall take prompt action to limit hours worked to those specified by the compensatory measures in a timely manner and take action to prevent recurrence."

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Nils J. Diaz
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March 10, 2003

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
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FROM: William D. Travers
Executive Director for Operations

Approved with comments
Ellie Hoffmann
3/20/03

SUBJECT: FITNESS-FOR-DUTY ENHANCEMENTS TO ADDRESS CONCERNS REGARDING FATIGUE OF NUCLEAR FACILITY SECURITY FORCE PERSONNEL - DRAFT ORDER AND COMPENSATORY MEASURES FOR POWER REACTOR LICENSEES

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Commissioner McGaffigan's Comments on COMSECY-03-0012

I approve the proposal Order and Compensatory Measures. I commend the staff for their efforts in producing these documents, especially for the open and public processes used for gathering stakeholder input. The measures in these documents serve to establish limits - where previously there were none - for security personnel whose alertness, judgment, and overall freedom from the debilitating effects of fatigue are vital to the safety and security of NRC licensed facilities. NRC requirements in the areas of design, construction, and security have ensured that nuclear power plants the most robust and hardened elements of our nation's civilian infrastructure. This Order is a continuation of that regulatory intent, in that it enhances the assurance of security personnel vigilance and readiness.

Nonetheless, I remain concerned because I am not sure these limits go far enough. I am concerned about guards working more than 60 hours per week, particularly involuntarily, when DOE guards are generally limited to a 60 hour work week. Although the data gathered by the staff suggest that the great majority of licensees do not use excessive overtime, others have done so, and security officers at those facilities have voiced their concerns publicly.

While individual work hour limits could have been tightened further, those proposed by the staff are reasonably consistent with previous regulatory positions (Generic Letter 82-12), and the differences from GL 82-12 are well thought out. I note that a fatigue assessment must be conducted and documented as a pre-condition for deviation. However, there is no provision that addresses those documents once they have been created, including if they must be reviewed by management, or even if they must be retained at all. GL 82-12 requires higher level approval of deviations. I would not go that far, but I would suggest higher level subsequent review be required. Item C.1.(b) should be revised as follows:

"The number and duration of approved deviations shall be reviewed by the Security Manager and limited to the extent practicable." (Addition underlined)

The limits on "group" work hours were originally intended to apply to each "shift," assuring that, on average, each "shift" would not suffer from excess fatigue. Implementation and other administrative concerns led the staff to jettison controls on a shift-by-shift or assignment-by-assignment basis and, instead, apply them to the entire population of the permanent security force who worked most of each assessed period. While the implementation problems might be very considerable, a "group" size of over one hundred individuals means that these limits have been very greatly weakened and may provide no meaningful controls. The staff should continue to evaluate possible enhancements to group limits and report those results to the Commission.

Finally, I believe that this paper and the voting record on it should be made public, since the process of producing the paper up to this point has been conducted in public.





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Executive Director for Operations

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*Disapproved subject to
the attached comments.*

[Signature]

3/31/03

This memorandum describes the actions the NRC has taken and intends to take in implementing the Commission's directions in Staff Requirements Memorandum (SRM) titled "Staff Requirements-COMSECY-02-0066-Fitness for Duty Enhancements to Address Concerns Regarding Fatigue of Nuclear Facility Security Force Personnel-Draft Order and Compensatory Measures for Power Reactor Licensees," dated December 26, 2002. The SRM directed the staff, in part, to solicit discussions from a broad range of interested external stakeholders, including the industry. The SRM also directed the staff to extend the work hour limits of this Order promptly to security personnel at other facilities (decommissioning reactors, independent spent fuel storage installations (ISFSIs), Category I fuel cycle facilities, gaseous diffusion plants (GDPs), and Honeywell). This memorandum forwards a standard cover letter to power reactor licensees (Attachment 1) requiring implementation of a draft Order (Attachment 2) and Compensatory Measures (CMs) (Attachment 3) that the NRC intends to issue to power reactor licensees to address concerns regarding fatigue of security force personnel.

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Commissioner Merrifield's Comments on COMSECY-03-0012

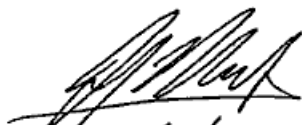
I disapprove the proposed Order and its Compensatory Measures and offer the following comments.

In the months following September 11, 2001, valid concerns were raised about security guard fatigue. As a result of a number of Commission issued advisories and the Interim Compensatory Measures (ICM's) licensees increased the total number of hours worked by security guard forces. Because these actions were taken in response to a changing threat environment there was uncertainty as to whether these increased work hours were temporary or permanent. Even if these requirements were permanent, licensees needed time to hire and train new security guard forces. Consequently, in the fall of 2001 and early 2002 the existing guard forces had to cover the increased work hours.

However, it has now been more than a year and a half since September 11, and more than a year since the Commission issued the ICM's to power reactors. In that intervening time, for the most part, industry has taken necessary steps to address security guard fatigue, as indicated by the latest information on the working hours of security guard forces. The situation still needs to be monitored, but the exigent circumstances that may have supported an industry-wide Order have long passed.

Given these events and the current timing of our ongoing rulemaking activities, I am not convinced that an Order is the appropriate vehicle for addressing this issue. By issuing Orders, the agency does not allow the same amount of stakeholder participation (from the public or our licensees) because the agency need not create a public record that addresses stakeholder concerns. An Order among other differences, also does not permit a uniform approach for general fatigue issues that concern not only security guard forces, but other critical personnel. Consequently, I do not agree with the decision to address fatigue by Order.

I recognize that my colleagues do not agree. Nonetheless, I believe the Commission must be more judicious about issuing Orders outside the traditional enforcement context. The Commission has a responsibility to address licensing issues in a reasoned and considered manner. At a minimum, these Orders will call into question whether the Commission remains open minded about fatigue issues to be addressed in later rulemakings. Simply put, where safeguards are not at issue, absent exigent circumstances, an Order is not warranted.



3/31/03