

# Proposed Rules

Federal Register

Vol. 75, No. 204

Friday, October 22, 2010

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

[Docket No. PRM-26-5; NRC-2010-0304]

#### Anthony R. Pietrangelo on Behalf of the Nuclear Energy Institute; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated September 3, 2010, which was filed with the NRC by Anthony R. Pietrangelo on behalf of the Nuclear Energy Institute (NEI). The petition was docketed by the NRC on September 13, 2010, and has been assigned Docket No. PRM-26-5. The petitioner requests that the NRC amend its regulations regarding its fitness for duty programs to refine existing requirements based on experience gained since the regulations were last amended in 2008.

**DATES:** Submit comments by January 5, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC-2010-0304 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

*Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0304. Address questions about NRC dockets to Carol Gallagher, telephone 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1966.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (Telephone 301-415-1966).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

**FOR FURTHER INFORMATION CONTACT:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-492-3667.

#### SUPPLEMENTARY INFORMATION:

##### Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this action using the following methods:

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC, including the

incoming petition for rulemaking (ADAMS Accession No. ML102590440), are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov).

*Federal Rulemaking Web Site:* Public comments and supporting materials related to this action can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2010-0304.

#### Background

On March 31, 2008, the NRC published a final rule (73 FR 16965) that amended its regulations governing its fitness for duty programs at 10 CFR Part 26 (Fitness for Duty rule). The rule was corrected in an amendment dated August 3, 2009 (74 FR 38326). The requirements of the rule became effective on April 30, 2008, with the implementation of Subpart A deferred until March 31, 2009. Licensees and other applicable entities were required to implement the requirements of Subpart I of 10 CFR Part 26 no later than October 1, 2009.

Anthony R. Pietrangelo, on behalf of NEI (petitioner), submitted a petition for rulemaking dated September 3, 2010, and requests that the NRC revise its regulations as they relate to the fitness for duty programs. Specifically, the petitioner requests that the NRC amend Subparts A and I of 10 CFR Part 26. The petitioner states that initial experience, including survey data across the industry, indicates that implementation of the Fitness for Duty rule has resulted in unintentional consequences that have diminished the safety benefits of the rule.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802, and the petition has been docketed as PRM-26-5. The NRC is requesting public comment on the petition for rulemaking.

#### Discussion of the Petition

The petitioner believes that the greatest contributor to the unintended

consequences of the Fitness for Duty rule lies within the prescriptive requirements for minimum days off (MDO) that appear in 10 CFR 26.205(d)(3), (d)(4), (d)(5), and (d)(6). The petitioner states that the current requirements have created an undue level of complexity and inflexibility in managing worker fatigue, and requests that the NRC replace its MDO requirements at 10 CFR 26.205(d) with a performance-based objective. The petitioner proposes eliminating the MDO requirements addressed in 10 CFR 26.205(d)(3) through (d)(6).

The petitioner also proposes performing the actual hours worked assessment required by 10 CFR 26.205(e) on a more frequent quarterly basis as opposed to annually, and to perform the averaging over the previous quarter as opposed to over a shift cycle. The petitioner proposes that 10 CFR 26.205(e)(1)(i) be amended to establish a performance objective of an average of 54 hours per week (when not in a site outage, security outage, or increased threat condition), and any hours exceeding this objective would continue to be entered into a corrective action program.

Other changes that the petitioner proposes include:

- The elimination of the definitions of shift cycle, and 8-, 10-, and 12-hour shift schedules;
- The elimination of the outage duration of 60 days;
- The elimination of the force-on-force tactical exercise exception at 10 CFR 26.207(b);
- The elimination of the word “unscheduled” in the discussion of incidental duties at 10 CFR 26.205(b)(5);
- The addition of a new exception at 10 CFR 26.207(e) to address the suspension of work hours due to acts of nature or disasters that restrict access to the site by relief personnel;
- The modification of the exception for plant emergencies in 10 CFR 26.207(d) so that it applies as long as emergency facilities are activated in accordance with the licensee’s emergency plan or implementing procedures; and
- The proposed change to the definition of “unit outage,” as submitted by the Professional Reactor Operator Society in a petition for rulemaking dated October 16, 2009 (PRM–26–3) (74 FR 62257), and modified in a letter from NEI dated February 9, 2010.

The petitioner believes that the implementation of the Fitness for Duty rule has resulted in a number of unintended consequences (numerous examples are cited in the petition) that have diminished the safety benefits of

the rule. The petitioner believes that the petition addresses these consequences by proposing amendments that will make the requirements more performance-based, resulting in improved flexibility in work scheduling while maintaining adequate provisions to protect against worker fatigue.

Dated at Rockville, Maryland, this 18th day of October 2010.

For the Nuclear Regulatory Commission,  
**Annette Vietti-Cook,**  
*Secretary of the Commission.*

[FR Doc. 2010–26715 Filed 10–21–10; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2010–0936; Airspace Docket No. 10–AEA–23]

#### Proposed Amendment of Class E Airspace and Revocation of Class E Airspace; Easton, MD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify Class E surface airspace and airspace 700 feet above the surface, and remove Class E airspace designated as an extension to Class D airspace at Easton, MD. The Easton Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed for Easton Airport/Newnam Field. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before December 6, 2010.

**ADDRESSES:** Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0936; Airspace Docket No. 10–AEA–23, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box

20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0936; Airspace Docket No. 10–AEA–23) and be submitted in triplicate to the Docket Management System (*see ADDRESSES* section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: “Comments to Docket No. FAA–2010–0936; Airspace Docket No. 10–AEA–23.” The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA’s Web page at [http://www.faa.gov/airports\\_airtraffic/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see the ADDRESSES* section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation