

Ex Parte Memorandum

On Wednesday, March 14, 2012, members of the Protective Forces Career Options Committee (PFCOC) met to discuss proposed changes to 10 CFR part 1046, which was published in the Federal Register on March 6, 2012 (77 FR 13206).¹

Participants to the meeting were as follows:

Donald Barnes, DOE Office of Nuclear Energy
Jason Brown, NCSP Oak Ridge
John Cronin, DOE Office of Health, Safety and Security
Jeffrey Cutler, Wohlner, Kaplon, Phillips, Young & Cutler (on behalf of NCSP)
Dave Dietz, DOE Office of Health, Safety and Security
Ken Freeman, DOE, Los Alamos National Laboratory
Doug Fremont, DOE, National Nuclear Security Administration
Steve Gibbs, WSI
Rex A. Harding, NCSP, UPPSR Local 12S
Martin Hewitt, NCSP, UPPSR Local 12S
Rod Johnson, Pantex
Betsy Kohl, DOE Office of the General Counsel
Randy Lawson, NCSP Y-12
Jim McGee, DOE Office of Health, Safety and Security
Thomas Norton, NCSP Y-12
Leo T. Salazar, Pantex
Frank White, Pantex
Steve Wanzer, DOE, National Nuclear Security Administration
Karen Wilburn, DOE Office of Health Safety and Security
Josh Williams, DOE Office of Emergency Management

DOE staff provided opening remarks.

A question was raised regarding the cost of physical training and who would pay for any additional training required by the proposed rule. DOE staff responded that this would be worked out at individual sites and that the rule was not intended to change processes that work. The rule was also not intended to take away or mandate additional training requirements. The required physical readiness level would be the same, but the testing burden would be alleviated. The fixed post readiness standard (FPRS) was also added.

Contractor management groups noted that there are changes to the existing 1046 regulations, so messaging is critical, and DOE needs to explain what the rule means and how to make it happen. DOE noted that further interpretation of 1046 could occur in subsequent guidance documents.

¹ Other topics, including a retirement options study (available at <http://pantexsecurity.org/Microsoft%20Word%20-%20Career%20Options%20Study%20for%20ProForce%20Report%206-30-09.pdf>), were also discussed but are not referred to further in this memorandum.

DOE clarified in response to a question about the advanced readiness standard (ARS) that special response team members would need to meet the ARS and that the FPRS proposed in the rule would give additional staffing flexibility to sites.

NCSP members also asked about additional site specific requirements and whether the officially designated Federal security authority or contractor management would determine those requirements, whether DOE would approve such requirements before they were prescribed, and whether failure to meet the additional site-specific requirements would disqualify an officer from the position. [DOE staff responded that] approval by DOE would be required. The intent here is that sites with specific additional job related requirements, e.g., those with special response teams, could develop obstacle courses with barriers (e.g., consistent with those on site which would have to be negotiated in order to execute response plans). Another example would be a site which requires the use of long ladders in order to staff a fixed post. The intent was not to allow sites to layer on additional physical testing which would cause human testing protocols to be invoked in order to develop the new standard. Nor would such an additional standard automatically be a disqualifying factor for protective force employment. Failure to meet the additional requirement would prevent the SPO from being assigned to posts where that physical readiness standard is required.

NCSP members asked about medical removal protection and the standardization of medical interpretations. DOE staff responded that medical removal protection was intended for a narrowly defined set of circumstances to include injuries sustained during physical readiness training and testing, and participation in certain events like force-on-force testing. The comment on the request for standardization of medical interpretations was noted.

NCSP members asked what would happen in the event of a disagreement between the supervisor and the doctor on a reasonable accommodation. DOE responded that the consultation with the supervisor was to be a check to ensure the doctor had a complete understanding of task requirements before saying that the person could do the assigned tasks with a particular accommodation.

NCSP members also asked whether section 1046.16 requires an officer who fails the physical readiness test to re-test as a new hire at the highest level available at that particular site. DOE staff responded that the intent of the regulations was not to impose this higher level of testing on an officer who fails the physical readiness test, but rather that the steps for physical testing associated with the new hire process would be applied. However, the level of readiness which the officer would have to physically demonstrate would be the one the officer previously failed to meet, not any higher standard at the site.

The submission of comments was also discussed. DOE staff indicated that comments at the public meeting would be transcribed by a court reporter, and that comments could also be submitted in writing. DOE staff also indicated that responses to comments would be provided in the final rule, and requested that comments be as specific as possible, and

that commenters refer to specific sections of the regulation and provide redline edits where possible, as well as provide a justification for any requested changes. A question was raised about extending the comment period; DOE staff responded that an extension was possible but to keep in mind the need to move forward. DOE staff requested that any extension request be submitted in writing. The process for submission of comments was also discussed.