

Ex Parte Memorandum

Staff members from the Office of Security Policy (HS-51) within the Department of Energy's Office of Health, Safety and Security attended the 40th Anniversary Security Police Officer Training Competition which was held at the Savannah River Site from April 22 - 26, 2012. Representatives from the site requested a formal meeting to discuss the proposed rule. On Tuesday, April 24, 2012, HS-51 met with a Headquarters Office of Environmental Management representative, local Federal staff, site medical staff, and with members of the team from the contractor providing protective force services for the Department of Energy's Savannah River Site.

Participants in the meeting were as follows:

Mr. John Cronin, DOE Office of Security Policy
Mr. Dave Dietz, DOE Office of Security Policy
Mr. Josh Williams, DOE Office of Environmental Management
Mr. Bill Dennis, DOE Savannah River Site
Ms. Marcia Delmore, DOE Savannah River Site
Mr. Charles Koss, DOE Savannah River Site
Ms. Patricia Padezanin, Savannah River Nuclear Solutions Medical
Dr. Monica Mangio-Johnson, Savannah River Nuclear Solutions Medical
Mr. Randy Garver, Wackenhut Services Incorporated-Savannah River Site
Mr. Mark Bolton, Wackenhut Services Incorporated-Savannah River Site
Mr. Ted Spain, Wackenhut Services Incorporated-Savannah River Site
Mr. James Wilson, Wackenhut Services Incorporated-Savannah River Site
Ms. Joyce Hopperton, Wackenhut Services Incorporated-Savannah River Site
Mr. Danny Bowles, Wackenhut Services Incorporated-Savannah River Site

DOE's HS-51 staff provided opening remarks to include a summary of the major changes in the proposed rule. Additionally, HS-51 noted that even though the public comment period for the proposed amendments to 10 CFR Part 1046 had closed that restrictions on what DOE could address in the meeting were still in force as the proposed rule has not been issued in its final form. Specifically it was made clear that areas of concern and requests for clarification could be expressed, but DOE would not provide any proposed resolution for a perceived issue within the rule. It should be noted that at the end of the meeting, the Wackenhut Services Incorporated Savannah River Site (WSI) representatives stated that all of the points discussed in the meeting also were addressed in comments submitted through the formal process. Major discussion points from the meeting are documented below in this memorandum.

The WSI expressed three concerns regarding the potential costs associated with implementing the medical removal protection provisions of the proposed rule. First, they believe the provision will result in an increased number of claims being filed. Second, they noted that in South Carolina workers compensation payments equal 66.66 percent of an employee's wage up to a maximum of \$723 per week which is tax-exempt. WSI believes that the medical removal protection provisions may disincentivize return to

work. WSI also wanted to know if the intent was for medical removal protection compensation also to be tax-exempt. HS-51 representatives stated it was not the intent to make any such payments tax exempt. The logic being that the rule proposes that base pay would be maintained for a Security Police Officer injured while engaged in a very narrow set of covered activities, e.g., training for physical readiness, conducting a physical readiness test, or participating in a force-on-force exercise. The base pay would not be replaced with a lesser dollar figure. Third, WSI expressed concern that in addition to workers compensation payments the employer would be supplementing that employee's wage to 100 percent. HS-51 noted these concerns.

Inclusion of the 40 yard dash from the prone position as part of the BRS and ARS physical readiness standards was discussed. WSI suggested two options for addressing this element of the BRS and ARS. The first would be deleting the part of the test which requires rising from the prone. They made this suggestion in part because they did not see the validity of rising from the prone and then running 40 yards as being tactically sound. HS-51 indicated that modifying any part of that element would require human testing and its associated rigorous protocols to establish new times for the run. This would result in a significant delay in the ability to finalize the proposed rule. WSI also suggested deleting the 40 yard dash in its entirety as this change would not require human testing to implement. As a follow-on question, HS-51 asked if rising from the prone and dashing a shorter distance does have tactical validity. WSI responded affirmatively.

There were several requests that language in the proposed rule either be clarified or more narrowly defined. The HS-51 representatives stated that as much as possible the language had been written to describe only what is required by the DOE and wherever possible avoids detail which stipulates how to meet the requirements. The approach was consciously chosen to support the Secretary of Energy's initiative to provide as much leeway for sites and program offices to determine effective and efficient ways to achieve objectives. As an example, one of the concerns expressed by WSI was associated with the proposed language requiring that the physical training program be supervised. WSI's interpretation of this language is that on site/shift training would result in approximately an approximate \$6 million increase in yearly protective force costs. HS-51 noted the concern.

WSI noted that the proposed rule established the requirement for semi-annual assessments for those required to be able to demonstrate ability to meet basic or advanced physical readiness standards. They asked that assessments be more clearly and narrowly defined. Discussion followed regarding what would or would not be required for such assessments. HS-51 pointed out that the assessments do not require that the Security Police Officers (SPOs) have to have to run as part of the assessment requirement. Assessments conducted according to Cooper Fitness Institute and the Rockport Walk Protocol (and as identified in the proposed rule) specifically were mentioned by HS-51. WSI also requested that specificity be provided regarding how SPOs should be required to demonstrate ability to meet the new Fixed Post Readiness Standard (FPRS).

WSI asked for clarification regarding the intent and expectations for having 10 percent of the SPO populations physically demonstrate their abilities to meet the applicable physical readiness standard (i.e., Basic Readiness Standard [BRS] or Advanced Readiness Standard [ARS]). WSI also expressed the concern that by using a sampling process that an SPO could theoretically go many years without ever being selected to demonstrate the standard. HS-51 explained that this 10 percent sample applies only BRS and ARS SPOs. All SPOs (BRS, ARS, and FPRS) must physically demonstrate ability to meet the physical readiness elements of the FPRS. Thus the 10 percent sampling process does not apply to the FPRS. Just as is required by the rule currently in force, annually all SPOs are to be examined to determine whether or not the SPO is medically sound and thus able to perform SPO duties without being a risk to him/herself or to others. Additionally, the proposed rule calls for the Designated Physician to make a determination (similar to the process used by law enforcement agencies) whether or not an SPO has a reasonable expectation of meeting the applicable BRS or ARS standard. WSI believes that 100% of the SPOs should be tested. If sampling is included in the final rule, WSI believes that 10% is not a large enough sample size. HS-51 noted the concerns.

However, the Designated Physician must examine the BRS and ARS SPOs in a two part process. The first part is the same as is the case for FPRS SPOs. The second aspect of the exam is to make either a positive or negative determination that the SPO has a reasonable expectation of meeting the applicable BRS or ARS requirements. It was noted that just like the SPO, the Designated Physician is not to be informed whether the SPO has been randomly selected to physically demonstrate the standard until after this part of the evaluation has been completed. This determination is to be based upon the SPOs past medical history and past ability to meet the required standard. Given that the SPO had previously passed the running requirements with margin to spare and there is little negative change in the current medical results, the Designated Physician could reasonably declare the SPO has a reasonable expectation of physically demonstrating the required standard. At that point, the SPO would be notified whether or not he/she had been randomly selected to physically demonstrate ability to meet the standard. This process was intended to encourage the SPOs to stay in shape and also to validate the Designated Physicians evaluations.

Concern was expressed regarding the increased responsibility that would be placed on the Designated Physicians to make such determinations. A lengthy discussion followed involving all groups present in the meeting. Important elements of the discussion included: site personnel indicated that the number of SPOs who would be borderline calls would be very small and those individuals are already known to both the medical staff and to the WSI exercise physiologist/trainers; upon clarifications provided by HS-51 (as documented in this memorandum) the medical doctor indicated that it probably would not be problematic in most cases to state whether or not there would be a reasonable expectation that a given SPO should be able to physically demonstrate a given standard; and that there is already a built in two step mechanism for a SPO who is determined to be medically sound (as described in this memorandum) to have the physician's negative declaration challenged. First, the SPO can appeal to the Physical Protection Medical Director for a second opinion and second, can challenge the physical

readiness evaluation by attempting to physically demonstrate the standard. The medical staff pointed out that from the perspective of HRP the SOMD makes the final call which could result in the loss of an HRP certification. Yet this proposed regulation would provide for a second review. They viewed the HRP requirements and these as being inconsistent. HS-51 agreed that it is different. However, this is a physical readiness evaluation, not a determination that an individual would be a danger to himself or to others. The goal when the proposed rule was drafted was to ensure that the SPO had an avenue for recourse. This proposed rule takes the process for determining continued status as a SPO based on physical readiness from the SPO's hands and places it with another individual. In the end, it will be a judgment call by the Designated Physician unless the SPO requests to physically demonstrate the ability to meet the standard. It should be noted that the SPO can only challenge the physical readiness challenge. Provision to challenge the medical soundness determination is not included.

When asked what would be used as evaluation criteria by the physician a hypothetical example similar to the following was provided by HS-51. Suppose there is a SPO who barely made the required half mile run time of four minutes and forty seconds over the last two years. This year the Designated Physician compares current medical data with previous history and finds that over the last year the SPO has experienced a five percent gain in body weight, the resting pulse rate has increased by twenty percent, and there has been a ten percent reduction in pulmonary function as measured by the SPO's force expiratory volume. Seeing such indicators in medical data that are obviously tied to ability to perform strenuous activity in a timely manner, it could be expected that the physician would be unwilling to state the SPO would have a reasonable expectation of meeting the standard.

WSI characterized its protective force as being very fit. They believe this level of fitness exists for two primary reasons: the current standard requires a minimum ability to run and the ability to meet the appropriate standard has to be demonstrated yearly by all SPOs. They expressed concern that without the incentive provided by 100 percent testing of the SPOs that an increase in body fat and a decrease in overall fitness could be expected. They also requested that language in the rule be strengthened regarding the individual SPO's personal responsibility for maintaining physical readiness capability. HS-51 indicated that a provision in the proposed rule already was included to encourage SPOs to maintain their fitness level. There is a requirement that at least 90 percent of the SPOs tested (after being randomly selected) must be able to demonstrate their ability to meet the applicable standard. Should the percentage fall below 90 percent, then all SPOs at that site in that physical readiness category will have to physically demonstrate their ability to meet the standard until a 95 percent pass rate is achieved.

A concern was expressed by WSI regarding the procedures which allow SPOs who fail to re-qualify with weapons to receive off-site training as part of a procedure to obtain reinstatement. WSI asked that consideration be given to modifying the text which allows for SPOs who have been removed from status after three successive remediations to seek off-site instruction at their own expense. Upon receiving validation from a certified firearms instructor that the individual in question can pass the applicable DOE

qualification course, the individual may be allowed the opportunity to return to SPO duties by passing the DOE qualification course. Specifically, WSI requested language that would allow for this to be only a one-time opportunity and a maximum time limit from the time of removal from SPO status to re-qualification be included in the rule.

A request for clarification was expressed by WSI regarding the language associated with special response team refresher training. They desired that clarification be added regarding whether or not all topics have to be trained semi-annually or whether at a minimum training has to be conducted semi-annually and that all topics have to be addressed annually.

At the conclusion of the meeting, HS-51 thanked the participants for their interest, comments, concerns, and suggested changes.