

Ex Parte Memorandum

On Tuesday, April 10, 2012, members of the Office of Security Policy and Office of Physical Protection, both within the Department of Energy's Office of Health, Safety and Security, met with members of senior management team from the contractor providing protective force services for the Department of Energy Headquarters Forrestal and Germantown buildings.

Participants to the meeting were as follows:

Bill Dwyer, DOE Office of Physical Protection
John Cronin, DOE Office of Security Policy
Dave Dietz, DOE Office of Security Policy
Mark Jamsay, Paragon Technical Services
Terry Cuba, Paragon Technical Services

DOE staff provided opening remarks. DOE noted that since the public comment period for the proposed amendments to 10 CFR Part 1046 is still open, areas of specific concern and requests for clarification could be expressed, but DOE would not provide any proposed resolution for a perceived issue within the rule. The major discussion points are documented in the following paragraphs.

One area of concern expressed by the Paragon representatives regarded their perception for increased assumption of the risk by the Designated Physicians (DP). The context was the language in proposed rule which requires the DPs to make both a medical suitability or soundness determination and a physical readiness evaluation. The concern was associated with having a provision which would allow a SPO to challenge the physical readiness evaluation by the DP. What would happen if the SPO then had a medical issue while attempting the standard? DOE staff pointed out that it would be no different than it is today. Today the DP must medically clear a SPO as being medically sound before the SPO can attempt the annual qualification runs. That same process would have to be followed if the proposed rule were adopted. The proposed rule would include a second evaluation which requires the DP to make a determination whether or not a SPO has a reasonable expectation of passing the appropriate physical readiness standard. If so, unless the SPO is subsequently randomly selected to physically demonstrate ability to meet the standard, no further testing is required. However, based upon his/her evaluation the DP may find that a SPO is medically sound enough to safely attempt the runs but does not appear to be physically ready to meet the associated standard. In that case, the SPO can challenge the physical readiness evaluation and attempt a run. The SPO cannot challenge the medical suitability/soundness determination and attempt the run.

Another area of concern was the potential of economic impact on the contractors. The DOE staff clarified that it was not the intent that the contractors should bear the burden of implementing any of the provisions of the proposed rule. A brief discussion occurred amongst the Paragon representatives regarding revisions to contracts with medical

providers and subsequent discussions which would have to be held with their DOE contracting officer.

The Paragon representatives also requested clarification regarding the Fixed Post Readiness Standard (FPRS) and the language which also allows sites (with approval of Federal oversight) to add site specific readiness standards. DOE staff clarified that there was no intent to require sites to have FPRS posts. However, given that such posts are identified, SPOs staffing those posts must at least meet the FPRS requirements. The new readiness standard is proposed to allow sites greater flexibility in how they staff certain posts, i.e, those posts with no programmed response away from that post. The Paragon representatives then discussed with each other various ways that they could address testing FPRS SPOs to ensure they could meet the standard. DOE staff also clarified the intent behind the inclusion of language to add site specific requirements. It was pointed out this language was included not only in the FPRS language but also in the language addressing other readiness standards. The language was included to support a site's ability to test for a site specific physical capability which is demonstrably job or task related. Postulated examples included the need to climb and descend long ladders in order to staff a post or to transverse a long, low, equipment tunnel in order to respond to a critical location. The difficulties which would be faced by sites choosing to develop a standard which would require meeting human testing requirements also was discussed. Further discussion regarding FPRS included the application of the standard at Headquarters as incumbent security officers have to transition to SPO status. The implications associated with BSPOT certifications during such transitions also was discussed.

Another area of concern regarded the medical removal protection provisions. The DOE staff clarified that this provision is for a very narrow set of circumstances, e.g., those associated with training for or taking a physical readiness standard test or participating in a force-on-force exercise. The process for validating any associated claims also should have the same rigor as it does today.

The DOE staff verified that the change in access authorization requirements would allow uncleared SPOs to be armed. However, a locally adjudicated background check would be required. DOE staff noted that having uncleared SPOs probably would make sense only at a limited number of DOE sites which did not have classified matter or special nuclear materials. In that context, it was also pointed that all other requirements like those for participation in a human reliability program also would be required.

Use of simulators for firearms qualifications also was briefly discussed. DOE staff clarified that while at least one semi-annual qualification had to occur with duty weapons and ammunition, the other semi-annual qualification could but did not have to be conducted with simulators (which meet the intent of other requirements within the proposed rule).