

ORIGINAL

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Title:** Briefing on Proposed Rule on Fitness for Duty

**Location:** Bethesda, Maryland

**Date:** Tuesday, June 21, 1988

**Pages:** 1 - 70

**RETURN TO SECRETARIAT RECORDS**

**Ann Riley & Associates**

*Court Reporters*

1625 I Street, N.W., Suite 921

Washington, D.C. 20006

(202) 293-3950

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on June 21, 1988 in the Commission's office at One White Flint North, Rockville, Maryland. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected or edited, and it may contain inaccuracies.

The transcript is intended solely for general informational purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determination or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of, or addressed to, any statement or argument contained herein, except as the Commission may authorize.

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 \*\*\*

4 BRIEFING ON PROPOSED RULE ON FITNESS FOR DUTY

5 \*\*\*

6 PUBLIC MEETING

7 \*\*\*

8 Nuclear Regulatory Commission  
9 One White Flint North  
10 Rockville, Maryland

11  
12 Tuesday, June 21, 1988  
13

14 The Commission met in open session, pursuant to  
15 notice, at 2:00 p.m., the Honorable LANDO W. ZECH, Chairman of  
16 the Commission, presiding.

17 COMMISSIONERS PRESENT:

18 LANDO W. ZECH, Chairman of the Commission  
19 THOMAS M. ROBERTS, Member of the Commission  
20 KENNETH CARR, Member of the Commission  
21 KENNETH ROGERS, Member of the Commission  
22  
23  
24  
25

1           **STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:**

2                   **S. CHILK**

3                   **J. TAYLOR**

4                   **J. PARTLOW**

5                   **R. ERICKSON**

6                   **W. PARLER**

7                   **L. BUSH**

8                   **B. GRIMES**

9           **REGION REPRESENTATIVES ON TELEPHONE:**

10                   **J. ALLEN**

11                   **C. PAPERIELLA**

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## P R O C E E D I N G S

[2:00 p.m.]

CHAIRMAN ZECH: Good afternoon, ladies and gentlemen.

The purpose of today's meeting is for the NRC Staff to brief the Commission on a proposed rulemaking, Fitness for Duty Programs, which comes under our classification SECY 88-129. This is an information briefing.

On July 30, 1986, the Commission issued a policy statement on fitness for duty of nuclear power plant personnel which became effective on August 4, 1986. Following a Commission briefing by industry representatives and the NRC Staff on the status of implementation of fitness for duty programs in December of 1987, the Commission requested that the Staff prepare a proposed fitness for duty rule.

As I stated in the Commission meeting in December, I commended the utilities for actions they have taken to put in place fitness for duty programs. However, I feel we should do everything we possibly can to ensure that nuclear power plant personnel are not under the influence of any substance, legal or illegal, or that would mentally or physically impair from any cause their ability to safely and competently perform their duties.

A major element of a fitness for duty program is to ensure that nuclear power plant operators can carry out their assignments in an environment which is free of the effect of

1 drugs; in other words, a drug-free workplace. This is the  
2 intent of the proposed rule. In the meantime, before the rule  
3 becomes effective, I want to emphasize to all NRC employees,  
4 headquarters and regions that first the Commission has a policy  
5 statement in effect now which outlines what is unacceptable  
6 with regard to fitness for duty at nuclear power plant sites  
7 and what an acceptable fitness for duty program should as a  
8 minimum include. If plant safety is potentially affected  
9 because a person is unfit for duty, the Commission, the NRC,  
10 the Agency has the authority to order remedial action to  
11 correct the potentially unsafe condition.

12 To further reiterate what was provided in  
13 Announcement No. 89 to all employees issued on June 19, 1987,  
14 just a little over a year ago, "We should view the  
15 effectiveness of a utility fitness for duty program with the  
16 same importance as any other activity which has the potential  
17 to affect plant safety. While we may not use the policy  
18 statement as a basis for enforcement actions such as civil  
19 penalties, there should be no doubt of our ability to address  
20 any condition that has the potential to compromise safety."

21 The NRC can issue orders directing appropriate  
22 corrective actions when necessary. This is why it is important  
23 that all of our employees bring any situation potentially  
24 affecting safety to the attention of management, whether or not  
25 specific regulations apply to the situation.

1 I understand that today we have a conference call  
2 arrangement set up, and Regions I, II, III and IV are on the  
3 line. I understand from my secretary we are having a little  
4 problem with Region V, but we hope we will get them on the line  
5 shortly.

6 I understand further that copies of slides are  
7 available at the entrance to the room.

8 Do any of my fellow Commissioners have opening  
9 comments to make before we begin?

10 [No response.]

11 If not, Mr. Taylor, you may begin, please.

12 MR. TAYLOR: Yes, sir.

13 The Staff presented to the Commission last month, May  
14 10th, a proposed rule that they propose to publish for comment.  
15 Today's briefing will be given principally by Mr. Grimes, and  
16 also at the table are others who have participated heavily in  
17 this general area of preparing this rule package, Mr.  
18 Erickson, on Mr. Grimes' right, and Mr. Lorne Bush and Mr. Jim  
19 Partlow, and they will assist Mr. Grimes with any issues that  
20 may come up.

21 I will now ask Mr. Grimes to give the Staff  
22 presentation.

23 CHAIRMAN ZECH: Thank you very much.

24 You may proceed.

25 MR. GRIMES: The subject of fitness for duty has been

1 actively considered by the Commission for some time. A very  
2 general proposed rule which would have required licensees to  
3 develop and implement fitness-for-duty programs was published  
4 for comment in 1982 but deferred in view of initiatives and  
5 commitments by the industry. Voluntary industry guidelines  
6 were subsequently developed and programs put into place by 100  
7 percent of the nuclear utilities.

8           Although we have seen some inconsistency in  
9 implementation, the general industry effort in this area has  
10 been noteworthy and we feel it has met the industry's  
11 commitment to the Commission. I believe also it has resulted  
12 in fitness-for-duty programs which are at least equal to those  
13 which would have been achieved by the earlier general proposed  
14 rule.

15           Over the past few years, however, we have seen an  
16 increasing problem of drug abuse in all strata of society, and  
17 the nuclear industry has not been exempted. It has not been  
18 uncommon for a utility to turn away as many as 20 percent of  
19 its job applicants based on the employment drug screening which  
20 has been voluntarily implemented by all utilities. Some  
21 utilities have reported positive tests of several percent of  
22 the tested workforce based on tests associated with announced  
23 annual physicals.

24           The Commission decided in December of last year,  
25 after considering the results of the industry's efforts, that

1 consideration of rulemaking was appropriate to achieve further  
2 improvements through the establishment of requirements for  
3 random direct drug testing or some alternative to this form of  
4 testing.

5 The Staff, with the assistance of the Battelle P&L  
6 Human Affairs Research Centers, and after consultation with the  
7 National Institute for Drug Abuse, has concluded and recommends  
8 that random testing should be required. The Staff, as  
9 discussed in the proposed Statement of Considerations which  
10 would accompany the proposed rule, has found no viable  
11 alternative to random testing which provides an acceptable  
12 ability to deter and detect drug use.

13 While some utilities have instituted random drug  
14 testing, others have not adopted this approach or have been  
15 barred by court or arbitrator rulings. Several states have  
16 under consideration laws which would prevent employers from  
17 instituting random drug testing. An NRC rule could help  
18 overcome these bars to random drug testing.

19 Using the handouts which have been provided to the  
20 Commission, I will go over the principal features of the  
21 proposed rule and those aspects in particular on which public  
22 comment is sought. Mr. Taylor has introduced those at the  
23 table. We also have Dr. John Olsen from Battelle P&L Human  
24 Affairs Research Centers with us today to assist in answering  
25 questions if there are specific questions on drug effects and

1 drug testing aspects.

2 CHAIRMAN ZECH: Thank you.

3 MR. GRIMES: The first overhead, please.

4 [Slide]

5 The general objective of the fitness-for-duty rule as  
6 it is proposed is to assure the ability of nuclear power plant  
7 personnel to perform duties safely and competently in a way not  
8 adversely affected by any substance or mentally or physically  
9 impaired. It is also the objective to detect persons not fit  
10 to perform the duties and to achieve a drug-free workplace.

11 It is also the goal of the rule to achieve a  
12 workplace that is free of the effects of off-site use of drugs  
13 to the extent possible. That is where the random testing  
14 provision, we believe, is important.

15 The next overhead, please, No. 2.

16 [Slide]

17 While there is a general requirement in the proposed  
18 rule for a broad program covering all aspects of the fitness-  
19 for-duty areas, the focus of the rule is really on those things  
20 which the Staff concludes cannot be adequately done without a  
21 rule. It focuses on illegal drugs at operating nuclear power  
22 plants. The approach proposed is to use random testing  
23 utilizing the HHS guidelines to assure a high quality and high  
24 confidence in the results of such testing.

25 The rule includes specific actions by licensees,

1 specific minimum actions by licensees which would be required  
2 to deal with identified drug abuse.

3 COMMISSIONER ROBERTS: Question. Why illegal drugs  
4 only? There are a lot of legal drugs that can impair one.

5 MR. GRIMES: Yes. We believe that is covered under  
6 the broad requirement to have a program which covers such  
7 things as abusive over-the-counter drugs or prescription drugs,  
8 but the specific testing is to be done for those things which  
9 are illegal. I believe the general behavior observation may be  
10 able to pick up such things as alcohol and other abuses. We  
11 believe that the --

12 COMMISSIONER ROBERTS: I obviously speak out of  
13 ignorance. Are the tests that selective that the tests can  
14 differentiate between legal and illegal drugs?

15 MR. GRIMES: No. I'm sorry. I was speaking to the  
16 fact that the tests will not cover all legal drugs. If drugs  
17 are detected, whether illegal or legal, then a determination is  
18 made by the medical officer after interviewing the individual  
19 whether the drug use is legitimate or excessive even in the  
20 case of legal drugs.

21 CHAIRMAN ZECH: Does the proposed rule cover the  
22 abuse of alcohol?

23 MR. GRIMES: In a general way in that there is a  
24 requirement to have a fitness-for-duty program which addresses  
25 all of these areas. However, there are no specific requirements

1 or testing levels or testing frequency for alcohol.

2 CHAIRMAN ZECH: But it is broad enough to cover that  
3 if it were necessary.

4 MR. GRIMES: Yes. It is broad enough to require that  
5 licensees do have a program to cover that area, but it has no  
6 specific requirements on testing frequency or cut-off levels.

7 COMMISSIONER CARR: Your statement says that NRC  
8 believes the programs already established within the industry  
9 adequately address the matter of alcohol, but I don't know what  
10 those are and I don't know they adequately do or not.

11 MR. BUSH: The programs that the licensees have in  
12 place really started as alcohol abuse programs, alcohol abuse  
13 prevention programs, and it wasn't until the mid-1970s when  
14 they started to get into the drug abuse. The alcohol abuse  
15 problem preceded the drug abuse 20 or 30 years, so they had in  
16 place programs to cope with the alcohol abuse problem.

17 COMMISSIONER CARR: You are telling me that all the  
18 utilities have got an alcohol abuse program in place?

19 MR. BUSH: It is part of the program they have now,  
20 yes.

21 MR. PARTLOW: I wrote that statement. Alcohol abuse  
22 programs are part of the industry initiative covered by the  
23 Edison Electric Institute guidelines that have been implemented  
24 at all the plants. So what we meant there was what really  
25 needs to be addressed in this rule are some inconsistencies in

1 illegal drug abuse, the different cut-off levels, the  
2 management actions to be taken, but that the programs in place,  
3 by virtue of the industry initiative, Edison Electric  
4 Institute, long-standing practice, should be sufficient for  
5 alcohol abuse.

6 COMMISSIONER ROGERS: Just one other point. You  
7 refer to random testing. Is that synonymous with chemical  
8 testing? When you use the term "random testing," are you  
9 really saying chemical testing? Is that what you really mean?  
10 I mean there are all kinds of ways in which one could test a  
11 random selection of people.

12 MR. GRIMES: Yes. We are talking specifically about  
13 chemical testing with a urine sample.

14 COMMISSIONER ROGERS: That is precisely what you mean  
15 when you say random testing.

16 MR. GRIMES: Yes.

17 COMMISSIONER ROGERS: I think it would be good to say  
18 that because there are all kinds of tests that could be  
19 conducted on a randomly-selected sample, and I would like to  
20 come back to that a little bit later.

21 MR. GRIMES: Yes. There is some discussion about  
22 that in the statement of considerations in the proposed rule.

23 CHAIRMAN ZECH: Let's proceed, please.

24 MR. GRIMES: Number 3.

25 [Slide]

1           Who is covered by the proposed rule. We propose that  
2 all persons allowed unescorted access to the protected areas be  
3 covered by this rule; and in addition, any licensee and  
4 contractor personnel who are specifically required to be  
5 available to report to site, technical support centers or off-  
6 site emergency operations facilities in the event of an  
7 emergency also be part of this program. So I believe we have  
8 covered those persons with the greatest impact, potential  
9 direct impact on reactor safety.

10           Number 4.

11           [Slide]

12           Before granting initial access, a drug test would be  
13 required, or before assignment to the technical support center  
14 or emergency operations facility. Again here we are talking  
15 about a chemical test and a urine sample. Also, for cause  
16 testing in response to any behavioral observation or post-  
17 accident testing in certain circumstances where there is a  
18 significant event which appears to involve human failure.

19           Follow-up testing and post-rehabilitation testing  
20 would also be required for indications of drug use.

21           The last bullet refers to random testing. The Staff  
22 proposes for random testing a rate of 100 percent of the work  
23 force per year, but as we state in the paper, we have not found  
24 a technical basis in the literature for a minimum rate which  
25 would provide an adequate deterrent to drug use and provide a

1 reasonable chance of detection.

2 The range used in other programs ranges from a few  
3 percent to 300 percent per year. The degree of chance of  
4 detecting various types of drugs depends on the half-life of  
5 the drug in the body and is discussed in the statement of  
6 considerations for each type of drug.

7 CHAIRMAN ZECH: Would you elaborate on that just a  
8 little bit? That is a very important point and should be  
9 clearly understood. When you say 100 percent of the workforce  
10 to be tested, subject to being tested, that doesn't mean 100  
11 percent are going to be tested.

12 MR. GRIMES: That is correct.

13 CHAIRMAN ZECH: You need to test quite a high  
14 percentage of that in order to get anywhere near 100 percent.  
15 So I think it is important. Would you elaborate a little bit on  
16 that?

17 MR. GRIMES: Yes. Testing at a rate of 100 percent  
18 per year of the number of people in the workforce will give a  
19 fairly high probability that at least 60 percent receive a test  
20 in any particular year.

21 CHAIRMAN ZECH: And, I might say, only 60 percent.

22 MR. GRIMES: Yes.

23 COMMISSIONER CARR: What is the rationale for picking  
24 100 percent as opposed to 190 percent?

25 MR. GRIMES: We don't have a specific rationale. We

1 have looked at a number of things. The NRC has picked 100  
2 percent per year as its standard. The Transportation  
3 Department is proposing 125 percent per year for such things as  
4 pilots and maintenance personnel.

5 COMMISSIONER CARR: The NRC hasn't picked any yet.

6 MR. GRIMES: Is proposing. The NRC internal  
7 employees, the proposal is at a rate of 100 percent per year.

8 CHAIRMAN ZECH: You know, I think that is worth  
9 talking about, too, because I'm not so sure that that is the  
10 right number. I must say that I think that is a very important  
11 thing. First of all, I think for NRC people it ought to be  
12 tougher than that for the utilities. That is just my personal  
13 feeling. But our proposed rule that we have now for our NRC  
14 people covers 100 percent, which mean only maybe 60 percent  
15 would be tested. I'm not so sure we did the right thing in  
16 that regard. Why did we do that?

17 MR. TAYLOR: We selected that number because we think  
18 the effect of random testing is the deterrent effect. That is  
19 number one. Number two, it was thought to be a good start  
20 point comparatively across the government.

21 CHAIRMAN ZECH: I think that is what I recall  
22 hearing.

23 MR. TAYLOR: There are other agencies that are much  
24 less than that. We did a quick, informal survey of other  
25 government agencies, and there are a considerable number that

1 are much less than that.

2 CHAIRMAN ZECH: But maybe that is for good reason.  
3 It seems to me that our agency, dealing in public health and  
4 safety, ought to be on the high side.

5 MR. TAYLOR: I understand that, sir. The other  
6 situation that we considered, too, was the cost. We have gone  
7 to our OMB with our cost projections based upon this particular  
8 level and said that based on experience, we would either  
9 increase or decrease.

10 CHAIRMAN ZECH: Perhaps we shouldn't go on with it  
11 here today, but I would like to review it.

12 COMMISSIONER ROGERS: I would hope that we could hear  
13 a little more about that in terms of the comparability of the  
14 base group from agency to agency. Talking about percentage,  
15 that is percentage of some base number. What is that? How is  
16 that base picked?

17 MR. TAYLOR: It is something we have to decide  
18 internally and then for this rule. One hundred percent happens  
19 to be DOJ. The Department of Justice has had a coordinating  
20 role and an approval role for Federal programs, and that is a  
21 number that they thought --

22 COMMISSIONER ROGERS: But again, 100 percent of what?  
23 We select a group of people within the Agency, and then a  
24 percentage of that, namely, 100 percent. Is that the procedure  
25 that the other agencies take? Do they identify people in

1 particularly sensitive areas and then base the percentage on  
2 that?

3 MR. TAYLOR: Yes. That is basically the way the  
4 other agencies do it.

5 MR. PARTLOW: I think all agencies follow basically  
6 the same rules and the same rationale in coming up with their  
7 own testing programs.

8 CHAIRMAN ZECH: As I understand it -- there are  
9 different ways to look at this whole number thing. Usually  
10 when you say 100 percent, people think you mean 100 percent.  
11 In this case, as I understand it now, we don't really  
12 necessarily mean that, and the reason we don't mean that is  
13 because although you are going to test 100 percent of the total  
14 number, some people may get testing more than once.

15 MR. TAYLOR: That's correct, because of the random  
16 selection process.

17 CHAIRMAN ZECH: Some people may get tested not at  
18 all. So the statisticians have told us that you generally  
19 figure about 60 percent of the whole group will be tested at  
20 least once. That is an important point, I think. I agree with  
21 you that it is a deterrent feature.

22 MR. TAYLOR: As you increase -- say you went to 150  
23 percent, that means --

24 CHAIRMAN ZECH: But you have to go to about 300  
25 percent, as I understand it, to give a fairly good assurance

1 you are going to test everybody at least once.

2 MR. TAYLOR: I think that is right. I have to check  
3 with our staff. We did have a statistician look at this when  
4 we talked about our own internal program. Dick Dopp, weren't  
5 they in that range?

6 CHAIRMAN ZECH: Would you come to the microphone,  
7 please, and identify yourself?

8 MR. TAYLOR: He is not the statistician. I am trying  
9 to recall.

10 CHAIRMAN ZECH: He probably would be close enough to  
11 the statistician.

12 [Laughter.]

13 MR. TAYLOR: He talked to one recently.

14 CHAIRMAN ZECH: You may speak to us. Identify  
15 yourself to the reporter, please.

16 MR. DOPP: My name is Richard Dopp. I am with the  
17 Division of Security here at NRC.

18 In our consideration, as Mr. Taylor has indicated, we  
19 followed a strong recommendation by the Department of Justice  
20 to test first of all at 100 percent, noting that agencies do  
21 have some discretion in the rate at which they test against the  
22 random pool. A very significant factor has been pointed out,  
23 and that is 100 percent of what number, because the agencies  
24 across the board in the Federal Government have literally from  
25 10 or 20 individuals in a random testing pool up to about

1 80,000, depending on what civilian agency you are looking at.

2 I am not exactly sure at what rate you would have to  
3 test in order to come close to assuring that you test 100  
4 percent of the individuals in the pool annually. I don't know  
5 if it is quite as high as 300 percent, but I know it is well  
6 above 100 percent. The statisticians would indicate that part  
7 of that decision is based on one parameter, and that is how  
8 many times a year will you actually be testing?

9 For some agencies they are going to test at a rate of  
10 100 percent but they are only testing twice a year. NRC has  
11 chosen in its plan to test 12 times a year. So that to test  
12 above 100 percent would probably require some simulations in  
13 terms of how high would it have to go in order to actually test  
14 100 percent of the people in the random pool.

15 CHAIRMAN ZECH: Thank you very much. You sound like  
16 a statistician. That is pretty close.

17 COMMISSIONER CARR: Obviously, the only trade-offs,  
18 other than convenience or inconvenience, is cost.

19 MR. TAYLOR: Cost is part of the issue.

20 COMMISSIONER CARR: Why don't you give us the range  
21 of percentages versus costs and let us choose that number?

22 MR. TAYLOR: I can do that for internal.

23 COMMISSIONER CARR: I mean after all the comments are  
24 in.

25 MR. TAYLOR: That is the internal policy. We can

1 tell you what our costs are. It is representative. We could  
2 do that.

3 CHAIRMAN ZECH: We are talking about the fitness-for-  
4 duty rule for the plant people here today, but I would like to  
5 suggest also perhaps the Staff give us a paper that would  
6 reflect on this issue so that we could even reconsider, if we  
7 wanted to, or review the number that we have placed on our own  
8 employees' rule that is pending.

9 MR. TAYLOR: Yes, sir.

10 CHAIRMAN ZECH: In other words, give the Commission a  
11 paper that discusses this very subject so that we can take  
12 another look at it, I think, and even if it is too late to  
13 review the NRC proposal because we want to get it executed as  
14 soon as we can, we may want to modify it in due time. Again,  
15 my feeling is that we should have --

16 COMMISSIONER CARR: Well, this rule is going out for  
17 comment anyway, isn't it?

18 MR. TAYLOR: It is going out for comment.

19 COMMISSIONER CARR: Why don't we put a higher number  
20 in and get comments on it instead of a lower number, and then  
21 we won't have to worry about re-commenting.

22 MR. TAYLOR: We could do that, sir, if you wanted to  
23 require of the Staff.

24 CHAIRMAN ZECH: Well, we are going to get a chance to  
25 look at this thing.

1 MR. TAYLOR: We can prepare -- it can be a very  
2 short, direct paper giving you the idea of these numbers and  
3 the assurance to what --

4 CHAIRMAN ZECH: It is an important area. I think it  
5 would be helpful to us.

6 MR. TAYLOR: We can give you that paper and then give  
7 you a rough estimate of cost based upon our own cost.

8 CHAIRMAN ZECH: Fine.

9 COMMISSIONER CARR: Well, it is almost critical to  
10 the value of random testing. I mean you want to get a good  
11 sample.

12 MR. TAYLOR: We will do that, sir.

13 COMMISSIONER CARR: Whatever that is.

14 CHAIRMAN ZECH: Let's proceed.

15 MR. GRIMES: I will just note that, recognizing the  
16 lack of a specific scientific basis for the number, we are  
17 asking specifically in the proposed rule for comments on this  
18 issue.

19 Number 5, please.

20 [Slide.]

21 The licensee minimum actions which would be required  
22 as a result of this rule are on the first confirmed positive  
23 blood test, unescorted access would be denied and duties  
24 restricted, such as assignment to the emergency roles, pending  
25 a rehabilitation, a conscious management decision that this

1 individual was prepared to resume duties. A second confirmed  
2 positive test would require the utilities as a minimum to deny  
3 unescorted access and restrict duties for a minimum of three  
4 years. The rule does not speak to dismissal from employment  
5 and specifies minimums rather than required actions. So that  
6 some utilities which dismiss on a first offense would be able  
7 to continue with their current practice.

8 Number 6.

9 CHAIRMAN ZECH: Wait a minute, now. How many chances  
10 are we giving people? How many times are we going to do this?

11 MR. GRIMES: We have two confirmed positive tests,  
12 and then after three years, there would be a chance of people  
13 being inserted back into the program.

14 CHAIRMAN ZECH: He goes out after the second positive  
15 for three years, and then can come back again?

16 MR. GRIMES: Then the utility could propose to bring  
17 the individual back again.

18 COMMISSIONER CARR: They can keep him employed, as I  
19 read this, but on some non-sensitive operation.

20 MR. GRIMES: That is correct.

21 CHAIRMAN ZECH: But not in a nuclear --

22 COMMISSIONER CARR: In a non-protected area.

23 MR. GRIMES: Not with unescorted access.

24 CHAIRMAN ZECH: What you are suggesting here is that  
25 after three years, the possibility is the individual could come

1 back and work in the nuclear area.

2 MR. GRIMES: Yes. One of the bases for that is that  
3 some of the rehabilitation studies indicate that a period of up  
4 to three years is required to gain assurance that an individual  
5 is not relapsing in some of the chemically-dependent  
6 situations, so we specified somebody could remain free of drugs  
7 for three years, then with a conscious decision by the utility,  
8 it is possible that somebody could be declared rehabilitated  
9 and adequate assurance obtained to insert them again into the  
10 program.

11 COMMISSIONER CARR: Are you going to keep testing  
12 them during that three-year period, then?

13 MR. GRIMES: Yes.

14 CHAIRMAN ZECH: It is considered a rehabilitation  
15 period?

16 MR. GRIMES: Yes.

17 CHAIRMAN ZECH: But what it really means is that  
18 after the first confirmed positive, he does have to go through  
19 a rehabilitation period, and what is the minimum time for that?

20 MR. GRIMES: We have not specified a minimum time.

21 CHAIRMAN ZECH: Have you thought about it?

22 MR. GRIMES: Typically it is at least month in the  
23 programs we have seen.

24 Loren, have we got any typical rehab program times  
25 for first offenses? I was saying that I believe typical is a

1 month, but you have more experience.

2 MR. BUSH: After the first confirmed part of the  
3 test, the first part of the rehabilitation program, depending  
4 on the chemical that is involved, the medical authorities will  
5 design a program. The program will vary anywhere from six  
6 months to up to three years, and as the program progresses in  
7 time, the frequency of testing will typically start at probably  
8 a random test at least once a week and then taper off as you go  
9 through the months.

10 CHAIRMAN ZECH: But wouldn't it be sensible to  
11 establish some kind of a minimum time for rehabilitation? Say  
12 for marijuana, what is it ordinarily in other agencies?

13 MR. BUSH: I'm not a medical doctor, but my  
14 understanding is it varies quite a bit depending upon the drug  
15 and the state of abuse or addiction on the part of the  
16 individual.

17 CHAIRMAN ZECH: We don't want necessarily somebody to  
18 be rehabilitated in two days or something like that. It seems  
19 to me like we ought to have some minimum period, 30 days, 60, I  
20 don't know what, but I think we ought to look at that and see.  
21 It seems to me that the doctors, experts in this area could  
22 give us some kind of an assurance that a rehabilitation program  
23 is going to be meaningful, even if it is on one of the so-  
24 called softer drugs. I recognize that if it is on some of the  
25 harder drugs, it is going to take longer, but it seems to me we

1 don't want to find somebody on even marijuana and have them  
2 back in the plant in a very short period of time. We have to  
3 have some kind of assurance that he is -- the rehabilitation  
4 program would test him several different times, I presume, and  
5 give him a clean bill of health before we allow the individual  
6 to come back. I would think that there is some minimum time  
7 that we might want to look at.

8 MR. BUSH: The rehabilitation program itself  
9 typically lasts four to six weeks, but usually the intensive  
10 testing that is required goes beyond that period of time before  
11 they feel comfortable with returning him.

12 CHAIRMAN ZECH: I understand that. I am only  
13 concerned about the minimum period.

14 MR. TAYLOR: We don't now set the minimum. We could  
15 look at that. That period of time of four to six weeks usually  
16 involves, besides additional testing, interviews with a doctor  
17 to try to establish the degree and base of the habit and  
18 psychological factors.

19 CHAIRMAN ZECH: If that takes four to six weeks, that  
20 is fine, but it ought to be something, not just ten days or two  
21 days of something like that.

22 MR. TAYLOR: We will look at a minimum. Most of us  
23 would think something like that short couldn't be a very  
24 effective rehabilitation program.

25 CHAIRMAN ZECH: I would think so, too. No.

1                   COMMISSIONER CARR: Presumably, most of those  
2 programs have got some kind of educational thing in them they  
3 have to complete.

4                   MR. TAYLOR: They are intended to do that.

5                   MR. BUSH: In some cases I understand that the  
6 rehabilitation program is not necessarily the course of action  
7 that is needed. Sometimes counseling along the lines of your  
8 job is in jeopardy if a person is a very occasional user. That  
9 was why the rule was written the way it was, was to give the  
10 discretion to the medical authorities as to what was  
11 appropriate.

12                  CHAIRMAN ZECH: I don't mind giving them discretion  
13 at all and I think it is certainly appropriate, but I do think  
14 we should at least consider some kind of a minimum time that  
15 would at least give all of us the confidence that somebody is  
16 not going to go right back in the plant without having some  
17 degree of confidence that he truly is rehabilitated.

18                  COMMISSIONER CARR: How are you going to keep track  
19 of the three-year guy if he quits that one and goes somewhere  
20 else to hire out?

21                  MR. GRIMES: We will get to that a bit later in the  
22 slides, but let me briefly say that part of the screening  
23 process for employment is to first ask for a statement by the  
24 individual whether he has had these sorts of problems before,  
25 been dismissed from a utility in the past for these reasons,

1 and then to do a background check, which is also covered by the  
2 access authorization program, do a background check with his  
3 previous employers. It doesn't give absolute assurance, but if  
4 an individual is discovered to have not responded  
5 straightforwardly, that is a grounds for dismissal.

6 COMMISSIONER CARR: So we are going to require the  
7 employers to keep track?

8 MR. GRIMES: We are requiring employers to make a  
9 background check, and we are requiring previous employers to  
10 keep records.

11 COMMISSIONER CARR: That's what I mean. Okay.

12 CHAIRMAN ZECH: Did you consider at the second  
13 confirmed positive test having an individual permanently banned  
14 from nuclear activities?

15 MR. BUSH: Yes.

16 CHAIRMAN ZECH: Why didn't you accept that? Why did  
17 you give them three years? In other words, one chance,  
18 somebody ought to be pretty well impressed by the fact that he  
19 was lucky to get one chance, as far as I am concerned. If he  
20 is caught the second time, it seems to me that is almost prima  
21 facie evidence that he hasn't taken to the importance of his  
22 safety responsibilities.

23 MR. ERICKSON: It was suggested, sir, that lifetime  
24 banning is probably a penalty that is almost without peer.

25 CHAIRMAN ZECH: I don't understand that at all. We

1 are dealing with safety. We are dealing with human safety. He  
2 is liable to kill people. He is liable to do something  
3 terrible if he is completely out of his mind on drugs, so  
4 banning him forever is not the end of the world. Let him do  
5 something else. When we are dealing with human safety, you are  
6 talking about other people's lives. It is a great  
7 responsibility.

8 MR. TAYLOR: Mr. Chairman, I think we talked quite a  
9 bit about this; is this not right, Jim?

10 MR. PARTLOW: Yes. We discussed it within Staff.

11 MR. TAYLOR: It was a question of fairness in  
12 something that would be law as a regulation; that somebody  
13 might be able to --

14 CHAIRMAN ZECH: It is a judgment and I can  
15 understand, but I would only suggest this. If somebody does go  
16 through this three-year period after a second test, the  
17 positive test, that individual be very, very carefully  
18 screened. To bring somebody back, a two-time loser, and to  
19 bring them back again and then have them do it again, that is  
20 almost our responsibility, as far as I am concerned. This is a  
21 very important policy to make. If we would agree with this  
22 policy, I would submit that somebody should be carefully  
23 reviewed at the end of that three-year period, and not  
24 everybody would be able to come back.

25 You would have to be awfully good, as far as I am

1 concerned. Utilities ought to be some way or another  
2 encouraged, if this is the way it is going to go through, to  
3 have a very special screening process for an individual that is  
4 a two-time loser. If he gets a third chance, he certainly  
5 ought to know it is a very exceptional case, as far as I am  
6 concerned.

7 MR. ERICKSON: I think that is what was intended,  
8 sir. The object was to not completely close that window,  
9 however remote it might be.

10 CHAIRMAN ZECH: I understand that.

11 COMMISSIONER CARR: His clock doesn't start over  
12 after he comes back after three years. The next time, he is  
13 not a first offender?

14 MR. ERICKSON: He is carrying a lot of baggage, sir.

15 CHAIRMAN ZECH: And if he does it one more time, I  
16 suppose you don't give him these two more chances? If he does  
17 it one more time, I hope you just move him out.

18 COMMISSIONER CARR: I don't read that anywhere.

19 MR. GRIMES: The rule is silent on that. We would  
20 expect --

21 CHAIRMAN ZECH: Why should it be silent?

22 MR. BUSH: Wait a minute. The rule does have some  
23 words on 2627(a). This is part of the background inquiry, and  
24 we say that if there is an indication that the individual has  
25 ever been denied access because of a fitness-for-duty problem,

1 that before the person is brought on board, that there must be  
2 a management and a medical determination as to whether or not  
3 the person is fit for duty and there must be established an  
4 appropriate follow-up testing program.

5 MR. GRIMES: But we are talking about what about the  
6 positive result of that testing program, and I believe the rule  
7 is silent at this point on that.

8 COMMISSIONER CARR: After he came back.

9 MR. GRIMES: Yes.

10 COMMISSIONER ROGERS: I don't understand why you  
11 don't close that loophole.

12 CHAIRMAN ZECH: Third time he is out. Why not say  
13 that?

14 COMMISSIONER ROGERS: Yes, three strikes and you're  
15 out.

16 CHAIRMAN ZECH: You know, three strikes is out.  
17 That's a pretty good rule. Anybody that has been rehabilitated  
18 for three years after being positive twice and comes back and  
19 is positive again? I have no reason to believe he shouldn't be  
20 out of the business. I really don't think we should have too  
21 much sympathy for somebody who has not been impressed with the  
22 situation he is in. I would say the third time and you're out,  
23 at least, if not the second time.

24 Let's proceed.

25 MR. GRIMES: Number 6.

1 [Slide]

2 Number 6 speaks to the drug-related activity and  
3 licensee minimum actions for use or possession on site. Here,  
4 instead of three years we specify five years and do not give a  
5 second chance. Here the first time for on-site sale, use or  
6 possession would be denying unescorted access and restricting  
7 duties for a minimum of five years.

8 COMMISSIONER ROBERTS: Again, I don't mean to nit-  
9 pick, but what about alcohol? That is certainly a drug, and it  
10 is not illegal.

11 MR. GRIMES: As I described, we did not specify any  
12 specific requirements for alcohol. There is a requirement that  
13 there be a program which covers alcohol, but we have not made a  
14 judgment on what the action should be in that case.

15 CHAIRMAN ZECH: Again let me just give you my  
16 personal thought on this one. The sale, use or possession of  
17 alcohol on a nuclear power site. Why are we so easy? Why  
18 isn't he out immediately? I mean what was the judgment there?  
19 I see what you mean. You put him out for five years. But if  
20 you sell on a site or use it on a site? Or even possess it on  
21 a site. It seems to me it is --

22 MR. TAYLOR: Are you speaking of alcohol now?

23 CHAIRMAN ZECH: No, I'm talking about drugs, illegal  
24 drugs. I'm sorry. I didn't mean to jump away from Mr.  
25 Roberts' point. Do you want to consider that?

1           COMMISSIONER ROBERTS: I just want to make sure that  
2 alcohol is treated with the same severity as "illegal" drugs.

3           MR. TAYLOR: The Staff's base position was that the  
4 alcohol detection and treatment programs that exist were  
5 adequate. There are not tests prescribed or alcohol and so on.  
6 So that was the basic Staff decision based upon the programs  
7 Mr. Bush outlined.

8           With regard to the sale, use or possession, decision  
9 was made here again to set a period of time that seemed to set  
10 a suitable punishment. I believe one of the things the Staff  
11 was trying to consider was subsequent legal challenge to the  
12 rule, too. Wasn't that a consideration, Jim Parler, that we  
13 talked about, should they ever be permitted back on site?  
14 There was some consideration about putting up a barrier like  
15 that.

16           MR. PARLER: I would think, Mr. Chairman, if I may, I  
17 think I heard legal challenge. I think what the Commission  
18 should do here is to adopt a policy with regard to the illegal  
19 drugs or the alcohol which the Commission believes is sound  
20 regulatory policy from the standpoint of the Commission's or  
21 the Agency's regulatory business. For legal challenges we have  
22 a competent staff of attorneys that I believe would be able to  
23 handle those, sir.

24           CHAIRMAN ZECH: I agree with that. I like that  
25 answer. Certainly the courts are important in our government,

1 but I think what general counsel is saying, and I certainly  
2 agree, is we ought to do what we think is right as far as the  
3 policy on illegal drugs and alcohol, and then let the lawyers  
4 help us out if we have any court challenges. We probably will,  
5 but so be it. We should really do what we think is right.

6 On this one here, though, I would just like to say  
7 that I hope we have the same kind of consideration for bringing  
8 anybody back even after five years, and that perhaps that  
9 screen would be very small, especially for somebody selling on  
10 a nuclear power plant site. Anybody that comes back even after  
11 five years, there ought to be an awfully special reason, as far  
12 as I'm concerned.

13 MR. TAYLOR: Again I should point out these are  
14 minimum actions. The company has the discretion to do what it  
15 wants beyond the minimum.

16 COMMISSIONER CARR: This is in addition, I assume, to  
17 any civil action that might be taken outside.

18 MR. TAYLOR: Right.

19 CHAIRMAN ZECH: The company has no obligation to  
20 bring them back after five years.

21 MR. TAYLOR: No, no.

22 CHAIRMAN ZECH: This is just a minimum time.

23 MR. TAYLOR: These are minimums in all cases.

24 MR. GRIMES: I would say the general practice that I  
25 have understood from utility executives is that an individual

1 in this situation would be dismissed from the company and not  
2 rehired.

3 MR. PARLER: Anything, Mr. Chairman, in excess of the  
4 minimum requirements of this proposed rule that a utility would  
5 decide to do would be the utility's business. The rule, in my  
6 judgment, would not be applicable at all, if it is adopted, to  
7 those things which the utility would do in excess of the rule.

8 CHAIRMAN ZECH: All right. Thank you.

9 All right, let's proceed.

10 [Slide.]

11 MR. GRIMES: Number 7 just restates what we discussed  
12 briefly earlier on the screening of personnel; that a written  
13 statement is required and a suitable background check must be  
14 made in each case. Later, we also note that records must be  
15 kept by the employer for some period of time to allow this  
16 check to be made.

17 If there are no questions on that one, I'll move to  
18 Number 8.

19 CHAIRMAN ZECH: Has the tracking system got some kind  
20 of consistency to it? Some kind of foundation where other  
21 utilities would be informed? Could you explain that just a  
22 little bit more? What are your intentions there?

23 MR. GRIMES: The intentions are not to require  
24 utilities to actively notify other utilities, but to maintain  
25 records so that they could respond to an inquiry.

1           CHAIRMAN ZECH: Do we give them to the FBI? If not,  
2 why not?

3           MR. BUSH: My understanding is that it's not a  
4 criminal action on the part of an employer who has identified  
5 somebody using drugs on site to dismiss that employee, so that  
6 would not be provided to the FBI.

7           COMMISSIONER CARR: Well, use of illegal drugs is  
8 some kind of a record you can make. It's not legal. I don't  
9 know who should be the repository of the record, but I'm  
10 certain that --

11          CHAIRMAN ZECH: The only reason I mention the FBI is  
12 that, as I recall, fairly recently we've got a system whereby  
13 utilities can go to the FBI for checks on future employees. If  
14 the FBI had that kind of information, it might be very helpful  
15 for the utility to know that.

16          But it wouldn't have to be there. I suppose it could  
17 be somewhere else. I'm just concerned about a tracking system  
18 that would be really meaningful, that would really be --

19          MR. BUSH: What we used, sir, was basically the  
20 tracking system, if you would, that would be formed as part of  
21 the background checks under the Access Authorization Program.  
22 There, each utility is expected to contact previous employers  
23 and this type of information should be gathered at that time.

24          CHAIRMAN ZECH: I see. So you would envision that if  
25 somebody had a problem at one plant and was trying to be

1 employed by another one, part of the check would be the check  
2 of his previous position. At that time, it would come to light  
3 that he'd had that kind of a problem.

4 MR. PARTLOW: That is part of the access  
5 authorization plans, that that hiring utility has to look into  
6 a five-year history of employment.

7 CHAIRMAN ZECH: I guess that's really my --

8 COMMISSIONER CARR: But only if he lists it, right?

9 MR. PARTLOW: Yes, sir, only if he lists it.

10 COMMISSIONER CARR: But they also develop the  
11 backgrounds.

12 MR. PARTLOW: They will only receive the FBI -- the  
13 arrest history on that person, if there is one.

14 CHAIRMAN ZECH: That's my point. The rule, though,  
15 that we've come forth with here and the access authorization  
16 policy itself should be consistent with the tracking system.  
17 Is that what you're telling me; that the tracking system would  
18 be consistent with the rule and the access policy?

19 MR. BUSH: The Access Authorization Program we  
20 envision would be consistent with the fitness for duty rule.  
21 There might have to be some revisions to the industry guideline  
22 that we published for comment a few months ago to reference  
23 this rule.

24 CHAIRMAN ZECH: Does the tracking requirement appear  
25 in the fitness for duty rule? Does it --

1 MR. BUSH: Yes.

2 CHAIRMAN ZECH: It does? It's in there?

3 MR. BUSH: Yes.

4 CHAIRMAN ZECH: It references that? It talks about  
5 the tracking requirement?

6 MR. BUSH: Yes.

7 MR. ERICKSON: It's probably not correct to  
8 characterize it as a tracking requirement. There is a  
9 requirement that information be available against inquiries and  
10 that those inquiries are to be made by persons who are going to  
11 hire people so that they make sure that persons who are hired,  
12 in fact, do have proper backgrounds. The information that you  
13 spoke about, sir, with regard to the criminal history with the  
14 FBI fingerprint rule, is, of course, a record on criminal  
15 history as such.

16 I'm not certain that failing to meet the cutoff  
17 levels of chemical tests and being discharged from employment  
18 would constitute a criminal act that would end up registered on  
19 that.

20 MR. PARLER: Mr. Chairman, whether it does or not, I  
21 think begs the question. I believe that your question is,  
22 however you would describe that event, where is that data going  
23 to be located, so that some subsequent employer can have access  
24 to it?

25 CHAIRMAN ZECH: That's right exactly. That's what

1 I'm trying to -- so it doesn't get lost somewhere and is not  
2 ever recovered. It's used.

3 MR. ERICKSON: With the employing utility -- the  
4 previous employers.

5 CHAIRMAN ZECH: Let me just ask you one more on this  
6 particular slide. What does suitable inquiry mean? Have you  
7 defined that anywhere? What does that really mean, "suitable  
8 inquiry"?

9 MR. BUSH: That was intended to mean the inquiries,  
10 the background checks, develop references and so on, that would  
11 be conducted in accordance with the Access Authorization  
12 Program.

13 CHAIRMAN ZECH: Okay, I guess we'll get back to the  
14 general counsel to help me out here. What I think we should  
15 have is some kind of system, call it what we will, so that an  
16 employee that has been found to test positive, can be  
17 identified if he seeks other employment, either through FBI or  
18 other means.

19 Perhaps the company, the utility program that you  
20 have in mind, and a tracking system like that is adequate. I  
21 don't know. But I'm just afraid that if it's not tightened up a  
22 little bit, we're going to have a lot of good words and all  
23 feel very comfortable about it and then people are just going  
24 to slip through the cracks and we're not going to be able to  
25 keep track of them. I don't know what kind of system we need,

1 but we need a system.

2 MR. BUSH: If the utilities do what we ask them to  
3 do, as part of our looking at their program, we want to see if  
4 they are using that system. We would expect that if a rule  
5 were passed like this, we would go out and see how it was  
6 working at the utilities.

7 We'd check to see that when they hired, and by our  
8 usual sample process, they hired people, did they go back and  
9 make such checks at the previously employed utilities. It was  
10 that concept, I think, was in the --

11 CHAIRMAN ZECH: I guess that's what I'm talking  
12 about. We need that kind of followup through an  
13 implementation. That's what --

14 MR. TAYLOR: If this came out in rule, that's exactly  
15 what we'd try to do. We'd be sampling, but we'd go in and  
16 check to see that those people -- by taking some selections --  
17 did they check with the previously employing utility? If they  
18 didn't, then we'd have a problem. If they did and confirmed  
19 that there was a previous case, then we would have expected  
20 them to handle it accordingly.

21 CHAIRMAN ZECH: I guess the implementation of the  
22 tracking system is my concern.

23 MR. TAYLOR: Yes, sir, we'd have to see that it  
24 actually worked.

25 COMMISSIONER CARR: It seems to me that the easiest

1 way for the thing to be handled would be for us to keep the  
2 list.

3 MR. PARTLOW: I was going to say the staff --

4 COMMISSIONER CARR: It's not going to be a massive  
5 list, I hope. I would imagine you could keep it in one little  
6 disk of your computer.

7 MR. PARTLOW: When staff started working on this, I  
8 think that's one of the first decisions that we made, was that  
9 we probably can't afford to be the trackers. To keep track of  
10 everybody's name whose access is denied by virtue of a positive  
11 drug test and be the clearinghouse for the 54 utilities as to  
12 whether or not they can hire that person by virtue of their  
13 drug testing history.

14 COMMISSIONER CARR: How many accesses you think have  
15 been denied in the last two years?

16 MR. PARTLOW: Hundreds, yes, sir. My answer was  
17 hundreds.

18 COMMISSIONER CARR: I'd like to run that inventory if  
19 we could, just for --

20 MR. PARTLOW: Low hundreds, but hundreds.

21 COMMISSIONER CARR: I have only seen one licensed guy  
22 that we got wrapped up.

23 MR. TAYLOR: Many of the times access is denied to  
24 multiple people who are not operators.

25 COMMISSIONER CARR: We're talking about drug use --

1 detected.

2 MR. GRIMES: For example, the figure I gave of up to  
3 20 percent of employment applicants.

4 COMMISSIONER CARR: But they're not ex-employees,  
5 they're pre-employment. They aren't going to be reported by  
6 the guy; he didn't hire them. They're going to fall out of the  
7 data bank immediately.

8 MR. GRIMES: They would be listed as being rejected,  
9 probably in the same list as any that were background  
10 investigated. I'm not sure there would be a distinction in the  
11 data.

12 MR. TAYLOR: The Commission usually hears of the  
13 operators. We do hear multiple reports -- correct, Jim and  
14 Loren -- of five or six security people who have tested  
15 positive, for example, or somebody out in the protected area  
16 where they've made -- and sometimes it's a group of people.

17 COMMISSIONER CARR: You better hurry up and get the  
18 rule out.

19 MR. TAYLOR: The number, whether it's hundreds -- but  
20 the number is substantial and the cost of running a tracking  
21 system, we felt, was better to set up the system with the  
22 utilities themselves and then check on it by our process. We  
23 thought that would be --

24 COMMISSIONER CARR: But it seems to me that we should  
25 have a central repository of those names, than it is to have 15

1 different guys checking.

2 MR. TAYLOR: I'm only trying to tell you why we did  
3 what we did.

4 COMMISSIONER CARR: I understand.

5 MR. TAYLOR: Avoid the cost and the responsibility  
6 for the accuracy of such a system. Remember what this means.  
7 We take on that responsibility.

8 MR. BUSH: And if we already have --

9 COMMISSIONER CARR: It won't be any better than the  
10 input they give you on names.

11 MR. TAYLOR: Right.

12 MR. BUSH: We already have an expectation as part of  
13 the Access Authorization Program, that the gaining utility  
14 would, as a part of their inquiry, check with the previous  
15 employer. This is only one of the many things that that  
16 particular inquiry would be conducted for.

17 CHAIRMAN ZECH: Maybe we could encourage some  
18 organization like INPO or NUMARC or somebody like that to take  
19 on this task -- somebody in the industry, a utility. Then we  
20 could check on that like you do on so many other things. Did  
21 you think about that?

22 MR. ERICKSON: The industry is taking some steps in  
23 this regard, because they have a keen interest in efficient  
24 means for screening people --

25 CHAIRMAN ZECH: Yes, it's in their own best

1 interests.

2 MR. ERICKSON: -- at a minimum cost and they have  
3 developed a couple of different computer arrangements for  
4 tracking personnel -- one in particular for the fingerprint and  
5 criminal history type of activity -- was the person denied on  
6 the basis of the criminal history? That type of information is  
7 being shared and available through computerized networks. The  
8 industry is taking initiatives in this regard.

9 CHAIRMAN ZECH: I'd ask the staff to please not let  
10 this one drop through the cracks. We're very interested in  
11 some kind of an implementation system for tracking that we have  
12 confidence in and that's meaningful.

13 Maybe we should proceed.

14 MR. GRIMES: Number 8.

15 [Slide.]

16 The testing standards required by the proposed rule  
17 would be those specified in the HHS guidelines which have now  
18 been published for federal workplace drug testing programs so  
19 that they would be the same in terms of quality checks and  
20 testing standards as those used by the NRC itself.

21 Employee assistance programs would be specified to  
22 achieve early intervention and confidential assistance to  
23 people who seek help prior to being tested for their drug  
24 abuse.

25 The employee assistance area is one that we debated

1 some but we did decide that it did provide a means of early  
2 detection which might not otherwise be available.

3 [Slide.]

4 Other requirements of the proposed rule include a  
5 requirement for written policy and procedures, training for  
6 supervisors and employees, including those who might escort  
7 people from outside in doing work on plant systems. Perhaps  
8 somebody comes in as an expert on a diesel for a day and has to  
9 be escorted. This would require behavioral observation  
10 training for that escort.

11 It covers contractor programs and specifies that  
12 either contractors must have standards which the utility finds  
13 meet this rule or those contractor individuals must be  
14 encompassed by the utility's own program. There are also  
15 provisions for employee appeals and privacy of information in  
16 the rule.

17 [Slide.]

18 I'll just go through briefly those areas which we did  
19 not put in the proposed rule but on which we are seeking  
20 comment as to whether or not they should be covered. First is  
21 activities outside the protected area or performed by escorted  
22 persons, for example, engineering or QA activities performed  
23 outside the protected area.

24 For the most part, these people would be covered by  
25 those individuals who require access and we would expect them

1 to be covered in the other groups of people but there may be  
2 some engineering design personnel and perhaps corporate QA  
3 people who would not necessarily fall under the scope of the  
4 rule.

5 The second item not included is the pro-active  
6 measures to deter on-site sale, possession, or use of drugs and  
7 alcohol including periodic searches, bringing in dogs to check  
8 lockers, things like this. While they are not unusual  
9 practices by utilities, we did not specifically specify that as  
10 a requirement. We did not specify any particular frequency for  
11 licensee audits of the program effectiveness.

12 COMMISSIONER CARR: Didn't even specify audits.

13 MR. GRIMES: You're correct. I should have said, we  
14 don't specify audits or any --

15 MR. TAYLOR: We are seeking comment on that. Just  
16 what is the reasonable basis. That was the intention of  
17 seeking comment.

18 MR. GRIMES: And we do not at this point require in  
19 the rule licensee collection and analysis of programmatic data  
20 although we have thought through what a program that the  
21 industry may want to implement would consist of and what the  
22 NRC indeed may decide is appropriate and we have put that form  
23 out as part of an appendix to the material we're asking comment  
24 on so that we can get specific comments on whether a detailed  
25 collection of data would be appropriate for these programs.

1           COMMISSIONER CARR: You'll have the data. If we want  
2 to put that in the final rule, we can.

3           MR. GRIMES: We'll have the form ready and commented  
4 on --

5           COMMISSIONER CARR: My personal opinion is if you  
6 don't take a look at the program effectiveness and you don't  
7 get the data you need, how do you know it's working and how do  
8 you know 100 percent or 125 percent or 150 percent is doing the  
9 job? I don't see how we can do it without getting the data  
10 back.

11          MR. TAYLOR: I think that was the intention of  
12 seeking comments, don't you? Isn't that correct?

13          MR. GRIMES: I think the balance was what we would do  
14 on an individual basis through our inspection program or  
15 whether we would want to collect in a central point and analyze  
16 across the industry what was going on. But your point's well  
17 taken.

18          CHAIRMAN ZECH: Some kind of a system of auditing  
19 effectiveness or feedback system to check and see actually how  
20 it's working is absolutely mandatory. I agree with --

21          COMMISSIONER CARR: The first month the program was  
22 in place, I want to know how many guys we get as opposed to 12  
23 months later, how many guys we get. That's --

24          CHAIRMAN ZECH: The program will be effective if we  
25 follow through on it, I think, but we really must do that.

1 It's a very important element. I would think so, too.

2 COMMISSIONER CARR: If you're going to tell me  
3 hundreds, I'll go to a different program.

4 [Slide.]

5 MR. GRIMES: Number 11. We seek specific comments on  
6 any alternatives there may be to random testing, the rate of  
7 random testing that should be specified by the rule, whether  
8 there are any areas of the HHS guidelines which need to be  
9 augmented, whether the protection of individual rights is  
10 adequate. We ask for comment on the periods for reinstatement,  
11 three years and five years that we discussed, and we also ask  
12 comment for other regulatory activities other than nuclear  
13 power reactors which the Commission licenses and ask whether  
14 there are specific parts of this rule that should apply to  
15 those activities. Those include nonpower reactors and the many  
16 other forms of radioactivity use licensed by the Commission.

17 MR. PARTLOW: As well as construction sites.

18 MR. GRIMES: Yes, good point, Jim. This rule does  
19 not speak to anything except operating nuclear power plant  
20 sites, so we are asking for comment on whether there should be  
21 specific requirements for the plants during the construction  
22 period or whether we should continue to rely on our final  
23 inspection and testing programs to provide assurance of  
24 adequate quality, then.

25 COMMISSIONER CARR: I don't see how we can omit the

1 construction sites after all the heat we've been getting for  
2 having some program in place at one of those plants that shall  
3 go unnamed.

4 CHAIRMAN ZECH: When we issue a construction permit,  
5 that means we take some cognizance of that activity. It seems  
6 to me that perhaps we should indeed have some kind of  
7 responsibility on the part of the utility when they get that  
8 construction permit, for a fitness for duty program.  
9 Construction of a plant is a very important element as we all  
10 know. Perhaps that can be part of the comment period. Is that  
11 what you had in mind?

12 MR. GRIMES: Yes. We've asked for specific comments  
13 and whether they should be included in the final rule.

14 CHAIRMAN ZECH: Yes. Fine. I hope we get some  
15 comments on that. It seems to me you should. All right.

16 MR. GRIMES: One other item I just wanted to mention.  
17 That is, while this rule is in place, we expect to continue the  
18 actions which we have had with the regions in terms of  
19 overseeing the existing programs which are in place.

20 We expect licensees to follow those programs that  
21 they have put in place voluntarily and in accordance with the  
22 EEI guidelines and the NRC staff will take actions in those  
23 cases where it appears to be a significant departure from what  
24 we expect or where there appears to be a potential significant  
25 safety problem.

1           The regions have been active; while not in a routine  
2 inspection program, they have been active in terms of  
3 allegations and following those allegations. This may include  
4 resident inspector interaction with the utility or regional  
5 management. We have had several cases where their regional  
6 administrator has become involved in particular cases with  
7 licensee management.

8           That completes my prepared presentation. If there  
9 are additional questions --

10           CHAIRMAN ZECH: Thank you very much. Commissioner  
11 Roberts?

12           COMMISSIONER ROBERTS: Well, I just want to make a  
13 couple of comments and make sure you understand where I'm  
14 coming from. I'm certainly opposed to drugs. I think they're  
15 a scourge on our society. I'm for a drug and alcohol-free  
16 workplace in nuclear power plants. Let me say this. If the  
17 only criterion for confirmation for the Supreme Court was that  
18 one had not smoked marijuana, I could get confirmed. Having  
19 said all that, I have real problems with this whole area.

20           I think there are some basic constitutional rights  
21 issues. I worry about the accuracy of the test. I have a lot  
22 of difficulty with this. I grew up in the so-called silent  
23 '50s and I was an officer in the Navy also and a division  
24 officer, and drugs didn't exist.

25           Now I would suspect your and Ken's experience were

1 quite different when you had command in the '70s, but I don't  
2 have any knowledge of drugs. I've never been around them and  
3 I'm opposed to them but I think there are a lot of flaws in  
4 this rule that do inflict on people's constitutional rights.  
5 Okay? That's all I've got to say.

6 CHAIRMAN ZECH: I'll just make a brief comment to  
7 that and then we'll continue. We live in a world that's  
8 different than it was in the '50s.

9 COMMISSIONER ROBERTS: Unfortunately; I agree with  
10 that.

11 CHAIRMAN ZECH: And drugs are a blight on our  
12 society. There's no question about it but it's real. It's in  
13 our schools. It's in all of our society. It's in our  
14 military. It's in a cross-section of America. We have a  
15 serious drug problem in our country. A very, very serious drug  
16 problem, in my judgment, and we've got to do something about  
17 it. We don't want people on drugs or alcohol, abusing alcohol,  
18 unable to perform in our nuclear power plants.

19 COMMISSIONER ROBERTS: I agree with that. I'm  
20 concerned about how you achieve that goal.

21 CHAIRMAN ZECH: Well, I think we can do it with a  
22 rule and if we can't, of course, it will be challenged and so  
23 forth and we have to accept those challenges. I think we have  
24 a responsibility to put a rule out that's tough, indicates we  
25 want a drug-free workplace and we should make every effort to

1 get just that. I think we should put the rule out, take  
2 whatever heat we have to and get on with it. That's our  
3 responsibility. That's my view.

4 COMMISSIONER CARR: I'd like to ask one question. If  
5 you bounce this against the Senate authorization bill and had  
6 some words on what to do, do you think you can comply with  
7 those areas where we don't? They do mention alcohol and  
8 periodic reappearing tests like annual physicals and things  
9 which we don't say. I want to make sure that that goes  
10 through.

11 I'm a little uneasy about when they find legal drugs.  
12 Presumably, the guy is supposed to tell them what he's taken  
13 before he goes and gets his test, I assume.

14 MR. BUSH: Let me interject. The HHS guidelines  
15 expect that that disclosure would be entered by the employee  
16 after the test results are back, rather than before.

17 COMMISSIONER CARR: Afterwards?

18 MR. BUSH: Afterwards.

19 COMMISSIONER CARR: Okay, so he finds he's on legal  
20 drugs and so doesn't do anything about it. But somebody ought  
21 to evaluate whether the legal drugs are impairing his  
22 capability or not.

23 MR. GRIMES: Yes, that's supposed to be a part of the  
24 determination at that time.

25 COMMISSIONER CARR: I didn't see that covered in

1 there very thoroughly. It's kind of iffy that the medical guy  
2 just makes his evaluation and that's all we do.

3 The other thing I would say is, the one part of this  
4 that I am not worried about is the validity of the testing.  
5 We've been through that for the last seven or nine years.

6 COMMISSIONER ROBERTS: You don't have any concern  
7 about that?

8 COMMISSIONER CARR: No, I'm convinced that --

9 COMMISSIONER ROBERTS: We've been reading different  
10 materials.

11 COMMISSIONER CARR: Probably.

12 COMMISSIONER ROBERTS: Maybe I should ask the doctor.  
13 A hypothetical -- suppose I'm a reactor operator and it's  
14 Saturday night and I'm at home and I smoke a marijuana  
15 cigarette and that's Saturday night. I've never smoked  
16 marijuana, so I don't know. I assume with time, the effect  
17 goes away. I go to work on Monday and get tested and in my  
18 blood is found marijuana. Now, was I impaired?

19 CHAIRMAN ZECH: Yes.

20 COMMISSIONER ROBERTS: I was?

21 CHAIRMAN ZECH: Absolutely. You're impaired.

22 COMMISSIONER CARR: That's what we're testing for.

23 COMMISSIONER ROBERTS: Lawyers are going to have a  
24 field day with this.

25 CHAIRMAN ZECH: They already have. They've had a

1 wonderful field day for a number of years.

2 COMMISSIONER ROBERTS: I'm not advocating smoking  
3 marijuana.

4 COMMISSIONER CARR: The lawyers I'm familiar with  
5 haven't won a case yet.

6 CHAIRMAN ZECH: But they won a few at first and then  
7 they started losing them all. Now, I think that the court  
8 system is working. It's true, it has been challenged, but it's  
9 my experience, too, that the system now is generally well  
10 accepted. It's been my experience that it's a good system.

11 COMMISSIONER CARR: I've been tested on numerous  
12 occasions and haven't turned up positive yet. I can vouch for  
13 that side of the equation.

14 CHAIRMAN ZECH: I've been tested and turned up  
15 negative every time. You know, I think that's part of it.  
16 You've never done it before, why, then, you don't -- it's an  
17 unknown. Lots of people have been tested and most people do  
18 turn up negative.

19 COMMISSIONER CARR: There is a problem with the chain  
20 of custody. You've got to have a system that makes sure the  
21 chain of custody is not lost.

22 MR. PARLER: Mr. Chairman, may I make a comment,  
23 please?

24 CHAIRMAN ZECH: Yes, please.

25 MR. PARLER: There are, as Mr. Roberts has suggested,

1 serious constitutional questions that are involved,  
2 particularly with regard to random testing. There are two  
3 cases before the Supreme Court which will probably be decided,  
4 hopefully will be decided some time next year. One of them has  
5 to do with whether or not the Fourth Amendment protection of  
6 our citizens against illegal search and seizure applies to  
7 these random chemical tests.

8 The other probably concerns the question that Mr.  
9 Roberts just asked that he said that he would address to the  
10 doctor, is a relevance of the test results to the impairment.  
11 I would like to emphasize that it's not lawyers or whatever it  
12 is that's causing these problems of concern. It's the  
13 Constitution of the United States and the Fourth Amendment  
14 which the Supreme Court is the final decider of, unless the  
15 Congress and the people amend the Constitution.

16 CHAIRMAN ZECH: Thank you, General Counsel.

17 COMMISSIONER CARR: I still say the tests are the  
18 least thing in this whole thing that worry me.

19 MR. PARLER: The validity of the tests.

20 COMMISSIONER CARR: The validity of the tests.

21 MR. PARLER: Not the constitutionality of the random  
22 testing. That's the point that I was trying to make.

23 COMMISSIONER CARR: That's beyond my capability to  
24 handle.

25 COMMISSIONER ROBERTS: But, you know, in practice,

1 let's say, with this Agency, we're going to take the lowest bid  
2 for whoever's going to provide the service.

3 COMMISSIONER CARR: You don't have to take the lowest  
4 bid.

5 CHAIRMAN ZECH: No, no.

6 COMMISSIONER CARR: In fact, HHS has already told you  
7 who you can take as a bidder, I think.

8 CHAIRMAN ZECH: You're going to get --

9 COMMISSIONER CARR: You've got to get a certified  
10 bidder. Let me tell you --

11 CHAIRMAN ZECH: It's got to be somebody that's  
12 certified to do it.

13 MR. TAYLOR: For our own program we're following, we  
14 are doing that. We are getting certified laboratories. We can  
15 brief you separately on that. We're trying to institute lots  
16 of protections.

17 MR. GRIMES: Mr. Chairman, if I could make one remark  
18 for the record --

19 CHAIRMAN ZECH: Please.

20 MR. GRIMES: -- on impairment versus these drug  
21 testing levels. The levels in the HHS guidelines don't  
22 necessarily indicate an impairment at the time of the test.  
23 What they do indicate is that there was a drug use and there's  
24 the potential for impairment. One doesn't know if the test is  
25 on Monday, whether it was a week ago Saturday or a week ago

1 Wednesday that the person took the marijuana.

2 So all it shows is that there's a potential for the  
3 impairment and it casts some doubt on the reliability of that  
4 individual who's a trusted individual and expected to follow  
5 all procedures and here we have evidence, positive evidence  
6 that he has specifically broken a law. The intent is not to  
7 directly correlate impairment with a particular tested level,  
8 but rather to indicate drug use and take action on that.

9 CHAIRMAN ZECH: Thank you very much.

10 Mr. Roberts, did you have questions? Mr. Carr? Mr.  
11 Rogers?

12 COMMISSIONER ROGERS: Well, I just would like to hear  
13 a little bit more on this question of how you came to the  
14 conclusion that a random sample of individuals that are looked  
15 at and examined by a competent, let's say physician, without  
16 doing urine tests, cannot turn up a substantial fraction or an  
17 acceptable fraction of those people that should then be subject  
18 to a chemical test.

19 In other words, to deal with this issue of cause --  
20 providing sufficient cause for carrying out a chemical test.  
21 In reading the documentation on this that you supplied to us  
22 earlier, I didn't really -- you stated the conclusion but you  
23 didn't really state why that was the conclusion that that kind  
24 of process is insufficient or not acceptable. I'd like to hear  
25 a little bit more on that because a lot hinges on that in terms

1 of privacy and so on and so forth.

2 MR. PARTLOW: One utility on the West Coast, when  
3 they were thwarted in their attempt to have a random sampling  
4 by urinalysis, adopted a random medical screening evaluation.  
5 If that's the area you're referring to. The data is limited.  
6 It's the only case like that that we know of, but when we  
7 looked at the limited statistics coming out of that, it wasn't  
8 very reliable. Again a small data base, but not very reliable.  
9 In other words, some of the -- a fair portion of those who the  
10 screener said, "let's test," were negative.

11 Some portion of those who the screening did not  
12 identify for testing later on, I believe, ended up with some  
13 positive test results. Again, that's the only case that we  
14 know of where they have used that.

15 COMMISSIONER ROGERS: I just didn't see that really  
16 addressed in the documentation on this. This is a point that's  
17 being considered as an alternative way to go, to have a random  
18 sample that is then sent to be examined by someone who is  
19 capable of looking at various symptoms without doing the urine  
20 test and then those that show any reasonable basis for being  
21 sent on for a urine test are selected out.

22 MR. PARTLOW: This program included, I believe, a  
23 physical test, a psychological interview.

24 COMMISSIONER CARR: Everything but a urinalysis.

25 MR. PARTLOW: Everything but a urinalysis.

1 COMMISSIONER ROGERS: And that failed in --

2 MR. PARTLOW: In my view, with the limited statistics  
3 that were presented, it did not appear to me to be very  
4 reliable yet.

5 COMMISSIONER ROGERS: Is that the only data you have  
6 to go on, on that?

7 MR. BUSH: There were some other alternatives to  
8 urinalysis, but there again, we're talking about technologies  
9 that are early in their development period and there isn't  
10 enough data and experience to establish validity. A few years  
11 down the road we may have acceptable alternatives, but not  
12 right now.

13 MR. TAYLOR: Mr. Rogers, as I recall a commission  
14 meeting some time ago in which two utilities made a  
15 presentation to the Commission, one had a program principally  
16 based on behavioral observation and then follow-up along the  
17 lines and the other program was successful in getting a random  
18 chemical testing, and I don't remember the numbers but there  
19 was a definite contrast. One was a rather large utility and  
20 the one with random chemical testing was small, but the  
21 difference between the results of the two programs were quite  
22 evident.

23 You may remember that --

24 COMMISSIONER ROGERS: I remember those two  
25 situations. I don't remember the results exactly, but -- well,

1 it just seems to me that it's a good idea to get as much data  
2 as you can and that doesn't sound to me like an adequate  
3 examination of the data base, just those two cases, myself. I  
4 mean we don't know how well that one utility did it. We don't  
5 know what the quality of the examiner was and so on and so  
6 forth. A lot hinges on that. That sounds to me a little bit  
7 flimsy from the standpoint of data to support the notion that  
8 you must go directly to chemical testing.

9 I have a little trouble with it, but I recognize  
10 where we're going and what we want to accomplish here and I  
11 certainly share the concerns of the Chairman and others about  
12 the necessity of maintaining a drug-free workplace in a nuclear  
13 power plant. There's no question in my mind whatsoever about  
14 that. I don't even think it should be limited to just the  
15 people who are in the restricted areas.

16 I think anyone who comes on site in my view should be  
17 free of drugs, but I do think there are some questions here and  
18 I haven't heard from you folks today that you really looked at  
19 all of the data that would lead you to the conclusion that you  
20 must go directly to urinalysis and that there are no  
21 alternatives that are satisfactory from a statistical point of  
22 view in turning up this.

23 It seems to me that when all is said and done the  
24 purpose of such a program is deterrence and however you achieve  
25 deterrence of drug use is as good as any other system provided

1 it produces the same results and so I haven't really heard data  
2 here to support the contention that you must go to random urine  
3 analysis.

4 MR. PARTLOW: Detection as well as deterrence.

5 COMMISSIONER ROGERS: Well, the detection, yes, is  
6 certainly desirable. I mean, you know, you want to get that,  
7 but you really want people to stay away from them because you  
8 have a detection system that can turn it up.

9 The other question relates again to some of the  
10 concerns of Commissioner Roberts. I'm not sure whether I doubt  
11 the efficacy or not of the testing, but I do know that every  
12 system breaks down sometime and has a flaw in it. What are the  
13 provisions for employee appeals when someone happens to be  
14 caught in a system here that in some way is producing incorrect  
15 results?

16 It seems to me that it's going to be rare, but it's  
17 the rare individual who is being misidentified and mistreated  
18 under such a system that I am concerned about. I mean you want  
19 to protect everybody, but I do think there should be some very  
20 clear way for a real review of a possibility of an error  
21 creeping in that would brand someone professionally for life  
22 here.

23 I'm concerned about the public health and safety. I  
24 think we also should be concerned about the individuals  
25 involved. It's conceivable that someone somehow gets

1 misidentified this way and can't get out, can't get the  
2 situation corrected.

3           How many times have you had your department store  
4 bill computerized that's wrong that you can't get straightened  
5 out? You know, I just want to make sure that we do have an  
6 adequate provision for a careful review of that very rare  
7 situation where an individual is caught in a technological  
8 snarl throughout that has nothing to do with their own fault.

9           I don't know. I haven't looked at it as carefully as  
10 probably I should have from that point of view, but I am  
11 concerned about that aspect. That there is a thorough  
12 provision for that very rare, but occasionally appearing  
13 situation in which the wrong person's identified in something  
14 like this. So, that's just a comment. I don't know that you  
15 can really address it.

16           MR. PARTLOW: I don't know that there are any  
17 absolute safeguards in the HHS guidelines. Interestingly --

18           COMMISSIONER ROGERS: Well, maybe we can put some in  
19 of our own that --

20           MR. BUSH: They do have safeguards, but like you  
21 said, there's not a perfect system that's ever come up.  
22 Basically the HHS guidelines have an expectation that there be  
23 a certain quality assurance and control measures in the  
24 laboratory itself and for the process. Then when the results  
25 come back, the medical review officer reviews those results and

1 considers information and all kinds of facts and determines  
2 whether or not there is a confirmed positive result.

3 In the rule itself, we have a provision for appeals  
4 that --

5 COMMISSIONER ROGERS: Is there some third party  
6 outside the principals that --

7 MR. BUSH: We don't specify, but generally speaking,  
8 most of the utilities have some sort of a collective bargaining  
9 arrangement where you get into an arbitration --

10 COMMISSIONER ROGERS: Well, it may not be somebody  
11 that's a member of a collective bargaining unit. It could be a  
12 manager.

13 MR. PARTLOW: Again -- I would say again, we do have  
14 appeals and so forth in here, but I do not believe that there's  
15 any absolute safeguard against you or I somehow having the  
16 system breaking down and us getting a bum rap. We had written  
17 this up in our first, in one draft of this, that said that the  
18 utility will save a portion of the sample and carefully archive  
19 it and put it away just in case there is the need to appeal on  
20 that.

21 My recollection is that Health and Human Services  
22 told us that is just not the way the government is going in  
23 this program and encouraged us not to write that into our  
24 rules.

25 COMMISSIONER CARR: But there is split sample, isn't

1       there? Back-up sample for confirmation?

2               MR. BUSH: That's retained by the laboratory.

3               MR. PARTLOW: At the laboratory. But you know --

4               COMMISSIONER CARR: Chain of custody is important.

5               COMMISSIONER ROGERS: Of course it is. Very  
6       important. Well, it's an area that I'm concerned about. I  
7       think that we shouldn't forget about it. I think that it's a  
8       very important one and I would hope that every reasonable  
9       thought is applied to that unlikely eventuality but there is  
10      some way to deal with it.

11              The other is this general notion that we're talking  
12      about fitness for duty. We've talked about alcohol. This is  
13      advertised as a fitness for duty rule. It really isn't a  
14      fitness for duty rule. It's a fitness for duty rule with just  
15      the illegal drug component considered.

16              I'm also concerned not only about the alcohol  
17      question which is a serious one, but also the possibility of  
18      mental instability and that the likelihood of that is not so  
19      very, very small and I just wonder what thoughts have been  
20      given to that possibility and a way of dealing with that tricky  
21      area, of course. Difficult. But it is not so low in  
22      probability as to be beyond our concern at all, in my opinion.  
23      The possibility of mental instability on a key employee arises.

24              MR. ERICKSON: The Access Authorization Program,  
25      which is a companion in a sense to this fitness for duty rule,

1 does directly address the question of a person's fitness in  
2 these other areas. For example, it requires that when you  
3 employ a person that they be subject to a psychological  
4 evaluation, that they be subject to monitoring and behavioral  
5 observation and things of this nature, which I think addressed  
6 the Commissioner's concern straight on.

7           There are ancillary things which are at work and  
8 which complement this --

9           COMMISSIONER ROGERS: Well, if they are employed at  
10 the entrance level, of course that's an easy thing to do, but  
11 what about the possibility of something happening after an  
12 employee has been with the company for 25 years?

13           MR. ERICKSON: That is where the continual behavioral  
14 observation programs of industry apply and these, of course,  
15 are what the Commission has endorsed at the moment in its  
16 proposed Access Authorization Policy Statement.

17           COMMISSIONER ROGERS: Well, I think we shouldn't just  
18 not keep returning to that, I think we should keep examining  
19 it. It is an important issue. We are very preoccupied with  
20 the drug problem. It is a big national problem and so on and  
21 so forth, but this is also a problem and it can crop up and I  
22 think -- or I'd like to feel a little more comfort that somehow  
23 there is an alertness to that, that it's reinforced  
24 periodically.

25           CHAIRMAN ZECH: As I understand the fitness for duty

1 rule you discussed earlier in the presentation, it is not  
2 focused entirely on the illegal drug program but it does have  
3 broadening language that it could be used to cover abuse of  
4 alcohol or possibly even some other type of physical or mental  
5 incapacity. Is that correct?

6 MR. GRIMES: Yes. That's correct. There would be a  
7 requirement to have programs in these areas, but the NRC does  
8 not specify any details for those programs at all, but it does  
9 have an umbrella, a general umbrella, and then as Mr. Erickson  
10 has noted, the Access Authorization Policy also complements  
11 this area.

12 CHAIRMAN ZECH: One thing I noted was that you had a  
13 120 day comment period. This rule and this issue has been  
14 discussed at great length for some time. Did you think about  
15 trying to reduce that comment period maybe to 60 days or 90  
16 days? Would that be feasible, do you think?

17 MR. BUSH: We felt that that was the appropriate  
18 amount of time to solicit, if you would, intelligent comments  
19 from the public. There is a need to understand on their part,  
20 although yes, there has been a lot of discussion, but we felt  
21 that the whole spectrum of issues needed to be understood and  
22 commented on and we were a little concerned that the short  
23 comment period might deny them and us the benefit of a good  
24 comment period.

25 We are certainly receptive to a shorter comment

1 period.

2 CHAIRMAN ZECH: Well, it just seems to me it has been  
3 discussed at great length and we've had a policy in effect for  
4 some time. Perhaps it could be shortened a bit.

5 One point I'd like to make is the fact that we have  
6 in place now a fitness for duty policy. We are converting it  
7 to a rule, as we discussed here today. I guess one of the  
8 things that has concerned me as much as anything since my visit  
9 to the regions and visiting with the residents around the  
10 country, too, as well as talking with people here at  
11 headquarters, it seems to me that perhaps still there are those  
12 in the Agency who feel that you don't have the authority you  
13 need unless you get a rule because you can't conduct  
14 enforcement and civil penalties and so forth.

15 I hope that is not prevalent. We do in my judgment  
16 have plenty of authority. Our residents, our regional people,  
17 should indeed be aware of the fact that if they find somebody  
18 at the utility that is impaired in their judgment or if they  
19 have any concerns about safety, they have plenty of authority  
20 to act. Because there was misunderstanding on this about a  
21 year ago, I put out an announcement on behalf of my fellow  
22 Commissioners and worked with the staff on these words, and let  
23 me just read a couple sentences from it here and now, because I  
24 hope the regional people are on there and when I finish this  
25 I'm going to ask them, each one of them very briefly, if they

1 have any comments or if they understand this.

2 The policy says, and I will quote:

3 "I want to emphasize to all NRC employees some key  
4 points of the Commission policy statement on fitness for duty  
5 of nuclear power plant personnel. Recently concerns have been  
6 expressed about the fact that this is a policy statement rather  
7 than a rule. In fact, this point was controversial and debated  
8 prior to the adoption of the policy statement by a Commission  
9 majority. As regulators, we are responsible for acting on any  
10 allegation or observation of an unsafe occurrence or practice.  
11 All such findings should be appropriately reviewed, addressed  
12 and escalated to higher management's attention, regardless of  
13 whether the matter is covered by a rule or a policy."

14 Then the statement goes on to describe the  
15 significant elements of the policy statement -- I won't go  
16 through those now -- and it also describes the acceptable  
17 fitness for duty program at a minimum and talks about essential  
18 elements.

19 Let me just read you a couple sentences of the  
20 conclusion of this, all hands -- all employees -- fitness for  
21 duty policy, and it is dated June 19, 1987. It is Announcement  
22 No. 89, for anybody that wants to review it. It concludes like  
23 this: "If plant safety is potentially affected because a  
24 person is unfit for duty, the Commission's authority to order  
25 remedial action, to correct a potential unsafe condition is not

1 diminished simply because the above is a matter of policy  
2 rather than rule. I expect that we should view the  
3 effectiveness of a utility fitness for duty program with the  
4 same importance as any other activity which has the potential  
5 to affect plant safety. While we may not use the policy  
6 statement as the basis for enforcement action such as civil  
7 penalties, there should be no doubt of our ability to address  
8 any condition that has the potential to compromise safety. The  
9 NRC can issue orders directing appropriate corrective actions  
10 when necessary. This is why it is important that all employees  
11 -- all employees -- bring any situation potentially affecting  
12 safety to the attention of management whether or not specific  
13 regulations apply to the situation."

14 The reason I mention this is because we're not going  
15 to have the rule in place for some time -- fairly lengthy  
16 comment period, longer time to put the rule in place -- and  
17 until that actually gets in place, I hope everyone understands  
18 that this Agency is not without authority to act in cases of  
19 safety of the plants. I specifically hope that the  
20 headquarters people who are here today and you in the  
21 leadership roles in this particular issue as well as the  
22 regions would agree with what I have said.

23 Is there any comment on this? Mr. Taylor?

24 MR. TAYLOR: Mr. Chairman, from our aspect, we  
25 recognize that authority and we recognize that responsibility.

1 We did take action with an operator, as you are aware of, on an  
2 operator license recently because we learned of this condition  
3 and we considered it just unacceptable.

4 CHAIRMAN ZECH: Well, that's very good.

5 MR. TAYLOR: We talked about it and it was the right  
6 thing to do.

7 CHAIRMAN ZECH: I just want to make sure that people  
8 don't think they have to wait around for the rule to get in  
9 place to find some authority. This Agency has authority. We  
10 have a responsibility for public health and safety.

11 Let me ask the regions very briefly, if we still have  
12 them on the line here, if they understand this policy or if  
13 they have anything they'd like to comment on briefly here  
14 today.

15 Region I, are you there?

16 MR. ALLEN: Yes.

17 CHAIRMAN ZECH: Any problem with this policy  
18 statement and your authority to protect public health and  
19 safety?

20 MR. ALLEN: No question at all.

21 CHAIRMAN ZECH: Region II?

22 [No comment.]

23 CHAIRMAN ZECH: Region III? Did you hear that,  
24 Region III?

25 MR. PAPERIELLA: No. We're having a hard time

1 following. Most of this fades in and out, but we endorse the  
2 proposed regulation.

3 CHAIRMAN ZECH: How about the policy? Do you think  
4 you have the authority under the policy to protect the public  
5 health and safety before we get the rule?

6 MR. PAPERIELLA: Say it again?

7 CHAIRMAN ZECH: How about the policy statement that  
8 is in effect now? I was trying to explain the fact that we  
9 would hope that you feel that you have the authority you need  
10 under that policy statement to protect public health and safety  
11 in spite of the fact that you cannot conduct enforcement or  
12 civil penalties with it?

13 MR. PAPERIELLA: We, I think, have been successful  
14 under the policy statement and the licensees' own programs to  
15 take care of most of the problem.

16 CHAIRMAN ZECH: All right. Thank you very much.

17 Region IV, are you with us?

18 [No response.]

19 CHAIRMAN ZECH: Region V, did you ever come into this  
20 conversation?

21 [No response.]

22 CHAIRMAN ZECH: Well, we got two out of five.

23 MR. CHILK: We have had trouble all throughout.

24 CHAIRMAN ZECH: Growing pains in the building still,  
25 I know.

1                   MR. CHILK: We will send a transcript to the regions  
2 first thing tomorrow morning.

3                   CHAIRMAN ZECH: Will you do that? Thank you very  
4 much. Regions, thank you very much for at least trying to  
5 listen in, those of you who could.

6                   Any other questions from my fellow Commissioners?  
7 Thanks for an excellent briefing to the staff and to all of  
8 you.

9                   We stand adjourned.

10                  [Whereupon, at 3:40 p.m., the hearing was adjourned.]

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF TRANSCRIBER

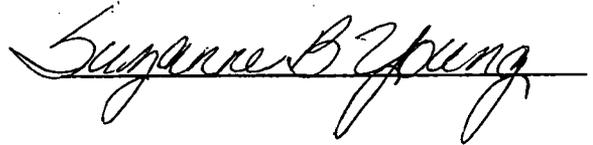
This is to certify that the attached events of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: Briefing on Proposed Rule on Fitness for Duty

PLACE OF MEETING: Washington, D.C.

DATE OF MEETING: Tuesday, June 21, 1988

were transcribed by me. I further certify that said transcription is accurate and complete, to the best of my ability, and that the transcript is a true and accurate record of the foregoing events.

A handwritten signature in cursive script, reading "Suzanne B. Young", written over a horizontal line.

Ann Riley & Associates, Ltd.

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

FITNESS FOR DUTY PROGRAM OBJECTIVES

- \* ASSURE ABILITY OF NUCLEAR POWER PLANT PERSONNEL TO PERFORM DUTIES SAFELY & COMPETENTLY
  - NOT ADVERSELY AFFECTED BY ANY SUBSTANCE
  - NOT MENTALLY OR PHYSICALLY IMPAIRED
- \* DETECT PERSONS NOT FIT TO PERFORM DUTIES
- \* ACHIEVE DRUG-FREE WORKPLACE

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

MAIN POINTS

- \* FOCUS: ILLEGAL DRUGS AT OPERATING  
NUCLEAR POWER PLANTS
- \* APPROACH: RANDOM TESTING USING HHS  
GUIDELINES
- \* INCLUDES: LICENSEE ACTIONS TO DEAL  
WITH THE DRUG ABUSE

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

PEOPLE COVERED

- \* ALL PERSONS ALLOWED UNESCORTED  
ACCESS TO PROTECTED AREAS
  
- \* LICENSEE & CONTRACTOR PERSONNEL  
REQUIRED IN EMERGENCY AT SITE  
TECHNICAL SUPPORT CENTER (TSC) OR  
EMERGENCY OPERATIONS FACILITY (EOF)

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

DRUG TESTING

- \* BEFORE GRANTING INITIAL UNESCORTED  
ACCESS OR ASSIGNMENT TO TSC OR EOF
- \* FOR-CAUSE AND POST-ACCIDENT
- \* FOLLOW-UP TESTING POST-REHABILITATION
- \* RANDOM TESTING

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

DRUG TEST RESULTS & LICENSEE MINIMUM  
ACTIONS

FIRST CONFIRMED POSITIVE DRUG TEST:

- \* DENY UNESCORTED ACCESS & RESTRICT DUTIES PENDING REHABILITATION

SECOND CONFIRMED POSITIVE DRUG TEST:

- \* DENY UNESCORTED ACCESS & RESTRICT DUTIES FOR MINIMUM OF 3 YEARS

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

DRUG-RELATED ACTIVITY & LICENSEE MINIMUM  
ACTIONS

SALE, USE OR POSSESSION OF ILLEGAL DRUGS  
IN PROTECTED AREA:

- \* DENY UNESCORTED ACCESS & RESTRICT  
DUTIES FOR MINIMUM OF 5 YEARS

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

SCREENING OF PERSONNEL

BEFORE GRANTING INITIAL UNESCORTED ACCESS  
OR ASSIGNMENT TO TSC OR EOF

- \* WRITTEN STATEMENT FROM INDIVIDUAL ABOUT  
PAST ACCESS DENIAL OR ASSIGNMENT  
RESTRICTIONS BASED ON "FITNESS FOR DUTY"
- \* SUITABLE INQUIRY (BACKGROUND CHECK  
BY LICENSEE OVERLAPS WITH PROPOSED  
NUCLEAR POWER PLANT ACCESS AUTHORIZATION  
PROGRAM: 53 FR 7534)

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

TESTING STANDARDS

- \* ADOPTS GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS DEVELOPED BY U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES

EMPLOYEE ASSISTANCE PROGRAMS (EAPS)

- \* REQUIRES LICENSEES TO MAINTAIN EAPS TO ACHIEVE EARLY INTERVENTION AND CONFIDENTIAL ASSISTANCE

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

OTHER REQUIREMENTS

- \* LICENSEE WRITTEN POLICY & PROCEDURES
- \* TRAINING FOR SUPERVISORS & EMPLOYEES
- \* CONTRACTOR PROGRAMS
- \* PROVISIONS FOR EMPLOYEE APPEALS &  
PRIVACY

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

SEEKING COMMENT ON MATTERS EXCLUDED  
FROM PROPOSED RULE

- \* SAFETY RELATED ACTIVITY OUTSIDE  
PROTECTED AREA OR PERFORMED BY ESCORTED  
PERSON
- \* MEASURES TO DETER ONSITE SALE, POSSESSION  
OR USE OF DRUGS AND ALCOHOL
- \* LICENSEE AUDITS OF PROGRAM EFFECTIVENESS
- \* LICENSEE COLLECTION AND ANALYSIS OF  
DATA

DRAFT FITNESS FOR DUTY RULE  
(SECY 88-129)

SEEKING SPECIFIC COMMENTS ON:

- \* ALTERNATIVES TO RANDOM TESTING
- \* RANDOM TESTING RATES
- \* APPROPRIATENESS OF HHS GUIDELINES
- \* PROTECTING INDIVIDUAL RIGHTS
- \* PERIODS OF RESTRICTION/CIRCUMSTANCES  
OF REINSTATEMENT
- \* REGULATED ACTIVITIES AFFECTED