

D910517

The Honorable Kenneth M. Carr
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Carr:

SUBJECT: PROPOSED FINAL RULE REVISING 10 CFR PART 55, "OPERATORS'
LICENSES" TO INCLUDE FITNESS-FOR-DUTY REQUIREMENTS

During the 373rd meeting of the Advisory Committee on Reactor Safeguards, May 8-11, 1991, we heard presentations from the staff and NUMARC concerning the staff's proposal to promulgate a final rule revising 10 CFR Part 55, "Operators' Licenses," to include fitness-for-duty requirements, and to modify Appendix C of 10 CFR Part 2, "General Statement of Policy and Procedures for NRC Enforcement Actions," to reflect enforcement sanctions. We also had the benefit of the document referenced.

In our report of December 20, 1989, we concurred with the staff's plan to issue this proposed rule for public comment. This proposed final rule includes the staff's evaluation of public comments.

This proposed rule, which the staff prepared in response to a Staff Requirements Memorandum dated March 22, 1989, would amend 10 CFR Part 55 so that the conditions and cutoff levels established pursuant to 10 CFR Part 26, "Fitness for Duty Programs," become applicable to licensed operators as a condition of their licenses. The proposed rule will provide a basis for taking enforcement actions (as described in the proposed modifications to Appendix C of 10 CFR Part 2) against licensed operators who (1) use drugs or alcohol in a manner that would exceed the cutoff levels contained in the fitness-for-duty requirements of 10 CFR Part 26; (2) are determined by a facility medical review officer to be under the influence of any prescription or over-the-counter drug which could adversely affect his or her ability to safely and competently perform licensed duties; or (3) sell, use, or possess illegal drugs.

We question the need for this rule. The fitness-for-duty requirements of 10 CFR Part 26 apply to all nuclear power plant personnel (including licensed operators), and the existing bases under 10 CFR Part 55 are available to the NRC for taking enforcement action against licensed operators for violation of fitness-for-duty requirements. Although there were nineteen Part 26 fitness-for-duty incidents involving licensed operators during 1990, the staff did not present any arguments that promulgation of this rule would have had an effect on this situation.

We are also concerned that promulgation of this rule will undercut industry's ongoing efforts to enhance the professionalism of all nuclear power plant personnel. The proposed rule appears to unnecessarily challenge the trustworthiness of licensed operators.

We recommend that this proposed rule not be issued. We believe that the industry has undertaken a substantial effort to deal with the difficult issue of fitness for duty and should be given the opportunity to demonstrate the effectiveness of its programs.

Sincerely,

David A. Ward
Chairman

Reference:

Memorandum dated April 11, 1991, from Jack W. Roe, Office of Nuclear Reactor Regulation, NRC, to Raymond F. Fraley, ACRS, Subject: Revision of 10 CFR 55 to Require Compliance with Fitness-For-Duty Programs and Conforming Modification to Commission's Enforcement Policy