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The Honorable Lando W. Zech, Jr.  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Chairman Zech:

SUBJECT: PROPOSED RULE ON FITNESS FOR DUTY PROGRAM -- ACRS COMMENTS

During the 336th meeting of the Advisory Committee on Reactor Safeguards, April 7-9, 1988, we reviewed the proposed rule on Fitness for Duty Program. Our Subcommittee on Human Factors met on March 28, 1988 to discuss this matter. We also had the benefit of discussions with the NRC Staff and of the documents referenced. This subject was also considered during the 280th meeting on August 4-6, 1983, and we previously commented on this matter in a report to the Commission dated August 9, 1983.

The Commission issued a policy statement on Fitness for Duty of Nuclear Plant Personnel on August 4, 1986. The policy statement was issued in place of rulemaking in recognition of industry efforts to voluntarily establish a fitness for duty program. The Committee considered the policy statement during our 316th meeting on August 7-9, 1986, and provided comments in a report dated August 12, 1986. In that policy statement the Commission indicated that it would reassess the possible need for further action by considering the success of those programs during an 18 month trial period.

All nuclear utilities have developed and implemented fitness for duty programs using the "EEI Guide to Effective Drug and Alcohol/Fitness for Duty Policy Development." Although these programs have helped provide reasonable assurance that nuclear power plant personnel are fit for duty, they do not utilize uniform standards. For example, only about a third of the licensees are conducting random chemical testing of body fluids, testing or cutoff levels vary from program to program, and management actions taken in response to positive chemical test results vary. The proposed rule on fitness for duty programs is intended to correct the above noted nonuniformities in existing programs.

We indicated in our report to Chairman Zech of August 12, 1986 that we endorse the random chemical testing of body fluids as an element in effective fitness for duty programs and now recommend that the proposed rule be issued for public comment. However, we make the following detailed comments about the proposed rule and related action:

- 1) The draft of the Federal Register Notice of the proposed rule which we reviewed is, in general, a well-written and well-organized document which contains a wealth of information on the effects of certain drug uses, an extensive bibliography and a thorough ration-

ale for the proposed rule. It also identifies a number of topics for which public comments are solicited. However, in the definition of "impairment" ( 26.3), in the description of "program elements and procedures" ( 26.20), and at several other locations in the draft Federal Register Notice, one receives only the faint impression that licensee's fitness for duty programs should address a broad range of possible impairments to the ability of personnel to perform their duties; whereas the document addresses, almost exclusively, the subject of drug and alcohol abuse as an impairment. No prescription, guidance, or examples of the other types of impairments to be addressed in such programs are provided. This will result inevitably in confusing those wanting to provide comments on the proposed rule and will result in nonuniform and inconsistent fitness for duty programs. We are advised orally by the NRC Staff that this weakness has been corrected; however, we have not received a copy of the revision of the proposed rule.

- 2) On March 9, 1988 the Commission published in the Federal Register (53FR7534) a proposed policy statement on the Nuclear Power Plant Access Authorization Program which defines the policy of the NRC regarding unescorted access to protected areas and vital areas at nuclear power plants. The purpose of the proposed policy statement is to establish access authorization programs to ensure that individuals who require unescorted access to protected areas or vital areas of nuclear power plants are trustworthy, reliable, emotionally stable, and do not pose a threat to commit radiological sabotage. The access authorization programs are to have several elements similar to those that are to be required in the fitness for duty programs (e.g., supervisor training and observation for detection of alcohol and drug abuse). However, neither the relationship and similarity to, nor the differences from, fitness for duty programs are mentioned. This proposed policy statement was developed for the Commission by the Office of Nuclear Regulatory Research (RES). We were not provided copies to review.

The proposed fitness for duty rule is to provide for the public health and safety by eliminating access to protected areas (presumably this includes vital areas, although not so stated) at nuclear power plants by personnel who are judged unfit for duty. In the proposed rule, reference is made to the proposed policy statement on access authorization; however, overlap and inconsistencies exist between the two documents. This proposed rule was developed for the Commission by the Office of Nuclear Reactor Regulation (NRR) and was brought to us for review. We will not be the only ones to be confused by the fact that the Commission almost simultaneously is publishing for comment a proposed policy statement developed by RES and a proposed rule developed by NRR, both of which address unescorted access to protected areas and which contain commonalities, differences, and inconsistencies. Surely this will contribute to confusion and will adversely affect respect for the regulatory process.

- 3) In our previous reports to the Commission on fitness for duty programs, we stressed the importance of NRC employees who have unescorted access to protected areas at nuclear power plants being subject to a fitness for duty program comparable to that being imposed upon licensees. We note that such a program has not yet

been implemented by the NRC and continue to stress its importance.

Additional comments by ACRS Members William Kerr and Harold W. Lewis are presented below.

Sincerely,

Forrest J. Remick  
Acting Chairman

Additional Comments by ACRS Members William Kerr and Harold W. Lewis

We cannot endorse this proposed rule. It is ambiguous and lacks focus. If, as we were told by the NRC Staff, the principal purpose is to make legal the random testing for drugs of those having access to protected areas of a plant, a much shorter and more focused rule should be formulated. The proposed rule is subject to misinterpretation, misapplication, and probably to successful legal challenge.

References:

1. Draft SECY report for the Commission from Victor Stello, Jr., Executive Director for Operations, NRC, Subject: Proposed Rule-making - Fitness for Duty Program (Predecisional), transmitted to ACRS by memorandum dated March 17, 1988.
2. Proposed Policy Statement on Nuclear Power Plant Access Authorization Program published in the Federal Register March 9, 1988 (53FR7534).

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