

MAR 20 1992

Docket No. 50-237
Docket No. 50-249

Commonwealth Edison Company
ATTN: Mr. Cordell Reed
Senior Vice President
Licensing Department-Suite 300
Opus West III
1400 Opus Place
Downers Grove, IL 60515

Dear Mr. Reed:

SUBJECT: LICENSED OPERATOR POSITIVE MARIJUANA TEST

Your facility reported on March 19, 1992, that an NRC-licensed operator tested positive for marijuana following a random drug test taken on March 18, 1992. This letter is a request in accordance with 10 CFR 55.31(b) for information pertaining to this occurrence. Please provide the details of the circumstances pertaining to this occurrence, answers to the questions listed in Enclosure 1 to this letter, and other records and information on this employee's past fitness for duty which are relevant to the occurrence. Any other information that you think is pertinent or useful regarding this incident would be appreciated.

The information in your reply to this letter will be evaluated to see if further action by the NRC pursuant to 10 CFR 55 is warranted. A copy of 10 CFR 55 amendments which were effective on December 16, 1991, is included as Enclosure 2. The information supplied will be maintained in NRC Privacy Systems of Records-16, and it will be subject to the Privacy Act. If you have any questions, please feel free to contact me at (708) 790-5788. Your cooperation is appreciated.

Sincerely,

T. O. Martin for:

H. J. Miller, Director
Division of Reactor Safety

See Attached for Enclosures
and Distribution

RIII

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Jordan
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Miller
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Commonwealth Edison Company

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MAR 20 1992

Enclosures:

1. Licensed Operator Fitness-
For-Duty Questionnaire
2. Federal Register, Vol. 56,
No. 135, dated Monday,
July 15, 1991 (Excerpt)

cc w/enclosures:

D. Galle, Vice President -
BWR Operations
T. Kovach, Nuclear
Licensing Manager
C. W. Schroeder, Station Manager
S. R. Stiles, Training Department
DCD/DCB (RIDS)
OC/LFDCB
Resident Inspectors-Dresden,
LaSalle, Quad Cities
Richard Hubbard
J. W. McCaffrey, Chief
Public Utilities Division
Robert Newmann, Office of Public
Counsel, State of Illinois Center
R. M. Gallo, NRR/LOLB
Licensing Project Manager, NRR
State Liaison Officer

ENCLOSURE 1

Licensed Operator Fitness-for-Duty Questionnaire

Commonwealth Edison Company is requested to provide the following information concerning the Fitness-for-Duty occurrence of March 18, 1992, regarding the involved licensed operator:

1. Name and responsibilities of the operator involved.
2. The date(s) the operator was tested, and the date(s) that the test(s) were confirmed positive for marijuana under your Fitness-for-Duty Program.
3. Whether the operator used/consumed, sold, or possessed illegal drugs or alcohol within the protected area.
4. Results of previous fitness-for-duty testing involving the operator.
5. Whether the operator was at the controls or supervising licensed activities while under the influence of marijuana.
6. Whether the operator was involved in procedural errors which resulted in, or exacerbated the consequences of, an emergency classified as an Alert or higher.
7. Your intentions with regard to the operator's resumption of duties under the Part 50 and Part 55 licenses, including plans for followup testing to demonstrate that the operator has remained drug and alcohol-free.
8. You are expected to review the operator's medical qualification and expected to take one of the following two actions:
 - (a) If it is determined that the licensed operator no longer meets the medical qualifications described in 10 CFR 55.33(a)(1), then you should notify the NRC via letter of the licensed operator's incapacitation in accordance with 10 CFR 55.25. For example, a notification to the NRC would be required if a determination is made as part of your employee assistance program, in consultation with your designated physician, that the licensed individual can no longer meet the medical criteria of ANSI/ANS 3.4-1983.
 - (b) If it is determined that the operator meets the requirements of Section 55.33(a)(1), then you should submit a medical certification on NRC Form 396 in order to allow the NRC to confirm that the operator's medical condition meets the requirements of Section 55.33(a)(1). Your submittal should also include documentation describing the basis regarding the designated physician's conclusion that the individual meets the general health requirements of ANSI/ANS 3.4-1983 and does not have a disqualifying condition under section 5.3 of that standard.

compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Oklahoma from Class B to Class A reduces certain testing and other requirements governing the interstate movement of cattle from Oklahoma. However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The principal group affected will be the owners of noncertified herds in Oklahoma not known to be affected with brucellosis who seek to sell cattle.

There are an estimated 62,000 herds in Oklahoma that could potentially be affected by this rule change. We estimate that 99 percent of these herds are owned by small entities. During fiscal year 1990, Oklahoma tested 294,213 eligible cattle at livestock markets. We estimate that approximately 15 percent of this testing was done to qualify cattle for interstate movement for purposes other than slaughter. Testing costs approximately \$3.50 per head. Since herd sizes vary, larger herds will accumulate more savings than smaller herds. Also, not all herd owners will choose to market their cattle in a way that accrues these costs savings. The overall effect of this rule on small entities should be to provide very small economic benefit.

Therefore, we believe that changing Oklahoma's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping

requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.41 (b) and (c) that was published at 56 FR 13750-13751 on April 4, 1991.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-128, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 9th day of July 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-16782 Filed 7-12-91; 8:45 am]

BILLING CODE 3470-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 55

RIN 3150-AD55

Operators' Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to specify that the conditions and cutoff levels established pursuant to the Commission's Fitness-for-Duty Programs are applicable to licensed operators as conditions of their licenses. The final rule provides a basis for taking enforcement actions against licensed operators: (1) Who use drugs or alcohol in a manner that would exceed the cutoff levels contained in the fitness-for-duty rule, (2) who are determined by a facility medical review officer (MRO) to be under the influence of any prescription or over-the-counter drug that could adversely affect his or her ability to safely and competently perform licensed duties, or (3) who sell, use, or possess illegal drugs. The final rule will ensure a safe operational

environment for the performance of all licensed activities by providing a clear understanding to licensed operators of the severity of violating requirements governing drug and alcohol use and substance abuse.

EFFECTIVE DATE: August 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Gallo, Chief, Operator Licensing Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-1031.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1989 (54 FR 24468), the NRC issued a new 10 CFR part 26, entitled "Fitness-for-Duty Programs," to require licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program. The general objective of this program is to provide reasonable assurance that nuclear power plant personnel will perform their tasks in a reliable and trustworthy manner, and not under the influence of any prescription, over-the-counter, or illegal substance that in any way adversely affects their ability to safely and competently perform their duties. A fitness-for-duty program, developed under the requirements of this rule, is intended to create a work environment that is free of drugs and alcohol and the effects of the use of these substances.

On April 17, 1990 (55 FR 14288), the NRC published in the Federal Register proposed amendments to 10 CFR part 55 to specify that the conditions and cutoff levels established in 10 CFR part 26, "Fitness-for-Duty Programs," are applicable to licensed operators as a condition of their licenses. These amendments also provide a basis for taking enforcement action against licensed operators who violate 10 CFR part 26. The proposed rule also described contemplated changes to the NRC enforcement policy. The comment period ended on July 2, 1990.

The Commission is adding specific conditions to operator licenses issued under 10 CFR part 55 to make fitness-for-duty requirements directly applicable to licensed operators. As pointed out in the supplementary information accompanying the promulgation of 10 CFR part 26, the scientific evidence shows conclusively that significant decrements in cognitive and physical performance result from the use of illicit drugs as well as from the use and misuse of prescription and over-the-counter drugs. Given the addictive and impairing nature of

certain drugs, even though the presence of drug metabolites does not necessarily relate directly to a current impaired state, the presence of drug metabolites in an individual's system strongly suggests the likelihood of past, present, or future impairment affecting job activities. More specifically, the Commission stated, "Individuals who are not reliable and trustworthy, under the influence of any substance, or mentally or physically impaired in any way that adversely affects their ability to safely and competently perform their duties, shall not be licensed or permitted to perform responsible health and safety functions." (See 54 FR 24468, June 7, 1989.) Although there is an underlying assumption that operators will abide by the licensees' policies and procedures, any involvement with illegal drugs, whether on site or off site, indicates that the operator cannot be relied upon to obey the law and therefore may not scrupulously follow rigorous procedural requirements with the integrity required to ensure public health and safety in the nuclear power industry.

The Commission believes strongly that licensed operators are a critical factor in ensuring the safe operation of the facility and consequently considers unimpaired job performance by each licensed operator or senior operator vital in ensuring safe facility operation. The NRC routinely denies Part 55 license applications or imposes conditions upon operator and senior operator licenses if the applicant's medical condition and general health do not meet the minimum standards required for the safe performance of assigned job duties. Further, under § 55.25, if an operator develops, during the term of his or her license, a physical or mental condition that causes the operator to fail to meet the requirements for medical fitness, the facility licensee is required to notify the NRC. Any such condition may result in the operator's license being modified, suspended, or revoked.

The power reactor facility licensee is further required under § 26.20(a) to have written policies and procedures that address fitness-for-duty requirements on abuse of prescription and over-the-counter drugs and on other factors such as mental stress, fatigue, and illness that could affect fitness for duty. The Commission expects each licensed operator or senior operator at these facilities to follow the licensee's written policies and procedures concerning the use and reporting requirements for prescription and over-the-counter drugs and other factors that the facility has determined could affect fitness for duty.

The use of alcohol and drugs can directly impair job performance. Other causes of impairment include use of prescription and over-the-counter medications, emotional and mental stress, fatigue, illness, and physical and psychological impairments. The effects of alcohol, which is a drug, are well known and documented and, therefore, are not repeated here. Drugs such as marijuana, sedatives, hallucinogens, and high doses of stimulants could adversely affect an employee's ability to correctly judge situations and make decisions (NUREG/CR-3196, "Drug and Alcohol Abuse: The Bases for Employee Assistance Programs in the Nuclear Industry," available from the National Technical Information Service). The greatest impairment occurs shortly after use or abuse, and the negative short-term effects on human performance (including subtle or marginal impairments that are difficult for a supervisor to detect) can last for several hours or days. The amendment to 10 CFR part 55 will establish a condition of an operator's license that will prohibit conduct of licensed duties while under the influence of alcohol or any prescription, over-the-counter, or illegal substance that would adversely affect performance of licensed duties as described by the facility's fitness-for-duty program. The amendment will be applicable to licensed operators of power and non-power reactors. This rulemaking is not intended to apply the provisions of 10 CFR part 26 to non-power facility licensees, but to make it clear to all licensed operators (power and non-power) through conditions of their licenses that the use of drugs or alcohol in any manner that could adversely affect performance of licensed duties would subject them to enforcement action.¹

As explained in the Commission's enforcement policy (see 53 FR 40027; October 13, 1988), the Commission may take enforcement action if the conduct of an individual places in question the NRC's reasonable assurance that licensed activities will be conducted properly. The Commission may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, enforcement action may be taken regarding matters that raise issues of trustworthiness, reliability, use of sound judgment, integrity, competence, fitness of duty, or other matters that may not necessarily be a violation of specific Commission requirements.

¹ It should be noted that discussion of fitness-for-duty programs of Part 50 licensees is only applicable for power reactor licensees.

The Commission is amending § 55.53 to establish as a condition of an operator's license a provision precluding performance of licensed duties while under the influence of drugs or alcohol in any manner that could adversely affect performance. The Commission further amends § 55.61 to provide explicit additional notice of the terms and conditions under which an operator's license may be revoked, suspended, or modified. In addition, confirmed positive test results and failures to participate in drug and alcohol testing programs will be considered in making decisions concerning renewal of a part 55 license. These provisions will apply to any fitness-for-duty program established by a facility licensee, whether or not required by Commission regulations, including programs that establish cutoff levels below those set by 10 CFR part 26, appendix A. The Commission notes, however, that it has the discretion to forgo enforcement action against a licensed operator if the facility licensee established cutoff levels that are so low as to be unreasonable in terms of the uncertainties of testing. The Commission has reserved the right to review facility licensee programs against the performance objectives of 10 CFR part 26, which require reasonable detection measures. The revised rule will not impose the provisions of 10 CFR part 26 on non-power facility licensees. It is revised to make compliance with the cutoff levels and the policy and procedures regarding the use of legal and illegal drugs established pursuant to 10 CFR part 26 a license condition for all holders of a 10 CFR part 55 license.

Part 26 requires that facility licensees provide appropriate training to licensed operators, among others, to ensure that they understand the effect of prescription and over-the-counter drugs and dietary conditions on job performance and on chemical test results. The training also should include information about the roles of supervisors and the medical review officer in reporting an operator's current use of over-the-counter drugs or prescription drugs that may impair his or her performance. Licensed operators are required to follow their facility's policies and procedures regarding fitness-for-duty requirements.

Licensed operators will be subject to notices of violation, civil penalties, or orders for violation of their facility licensee's fitness-for-duty requirements. Therefore, in addition to amending the regulations to establish the 10 CFR part 55 licensed operators' obligations, the Commission is modifying the NRC

enforcement policy (Appendix C to 10 CFR part 2) in conjunction with the final rulemaking as described below.

In cases involving a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a notice of violation or a civil penalty to a licensed operator, or an order to suspend, modify or revoke the license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR part 26 or the facility licensee's cutoff levels, if lower. However, normally only a notice of violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties. In addition, the NRC intends to issue an order to suspend the part 55 license for up to three years the second time an individual exceeds those cutoff levels. If there are less than three years remaining in the term of the individual license, the NRC may consider not renewing the individual license or not issuing a new license until the three-year period is completed. The NRC intends to issue an order to revoke the part 55 license the third time an individual exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is subject to license suspension, revocation, or denial.

To assist in determining the severity levels of potential violations, 10 CFR part 2, appendix C, supplement I, is modified to provide a Severity Level I example of a licensed operator or senior operator involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and subsequently receiving a confirmed positive test for drugs or alcohol, two Severity Level II examples of (1) a licensed operator involved in the sale, use, or possession of illegal drugs or the consumption of alcoholic beverages within the protected area, or (2) a licensed operator or senior operator involved in procedural errors and subsequently receiving a confirmed positive test for drugs or alcohol, and a Severity Level III example of a licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation.

Summary of Public Comments

Letters of comment were received from 39 respondents. One commenter wrote two letters, which brought the total number of responses to 40. Thirty-

one of the commenters wrote that the rule is unnecessary because the regulations already exist to ensure that the reactor operators adhere to 10 CFR part 26. The Commission agrees that the necessary regulations exist to have licensed power reactor operators comply with the provisions of part 26. However, the Commission realizes that the licensed operator is one of the main components and possibly the most critical component of continued safe reactor operation. Therefore, it wants to emphasize to and clearly inform the operators that as conditions of their licenses they must comply with their facility's fitness-for-duty program. The Commission also wants to clarify the term "use" versus "consumption" of alcohol in protected reactor areas. The rule has been rewritten to indicate that the "use of alcohol" means consumption of alcoholic beverages. The rule does not prohibit the use of alcohol within the protected areas for other than ingestion, such as application to the body. The use of medicine that contains alcohol is allowed within the parameters of the facility's fitness-for-duty program. However, use of over-the-counter or prescription drugs containing alcohol must be within the prescribed limitations and in compliance with the facility's fitness-for-duty program. Further, as 10 CFR part 26 does not apply to non-power reactor licensees, the Commission wishes to make it clear to licensed operators at these facilities that the use of drugs or alcohol in any manner that could adversely affect performance of licensed duties would subject them to enforcement action.

Twenty-eight of the commenters wrote that this rule singles out licensed operators for special treatment to the detriment of their morale. The Commission has considered the issue of morale and believes that most licensed operators already take their personal fitness for duty quite seriously. If there are any negative impacts on licensed operator morale these effects are expected to be short-lived as the vast majority of licensed operators will be unaffected. This rule may, in fact, increase operator confidence that their peers are fit for duty. This rule stresses to licensed operators that because of their critical role in the safe operation of their reactors, they must be singled out for special treatment to stress that their continuous unimpaired job performance is a highly necessary component of the overall safe operation of the reactors. The rule also stresses to licensed operators that their licenses are a privilege and not a right, and that refusal to participate in facility fitness-

for-duty requirements can lead to enforcement action and/or licensing action. There has been no change to the rulemaking because of these comments.

Twenty commenters stated that it is an unnecessary burden that the proposed rule requires medical personnel to be available 24 hours a day to make judgments about prescription and over-the-counter drugs. Medical personnel are not required by part 26 or part 55 to be on duty 24 hours a day for prescription and over-the-counter drug evaluation. The intent of the rule is that licensed operators follow the facility fitness-for-duty program for supervisory notification of fitness-for-duty concerns about the use of legal drugs. The rulemaking has been clarified to more fully explain this intent.

There were two questions about the basis for the rulemaking—(1) What is the basis or need for the rule change? (2) Is it an industry wide problem? These questions were discussed above under the need for the rule (regulations already exist). The Commission can have nothing but a zero tolerance level for drug and alcohol use or abuse because of the critical nature of the industry. Therefore, the Commission deemed it necessary to stress compliance with facility fitness-for-duty programs as a condition of licensure. There is no change to the rulemaking as a result of these comments.

There was one question about the reporting of legal drugs. A licensed operator asked how operators who do not report medicinal use of drugs will be treated. Licensed operators are required to follow the fitness-for-duty program procedures and policies developed by their facility.

Two comments were specific to licensed operators at test and research reactor facilities. One was that formal drug testing programs should not be required for non-power facilities. These programs are not required by Part 26 or Part 55; however, if a fitness-for-duty program has been established at a non-power facility, licensed operators are required to participate. The second comment, regarding over-the-counter and prescription medication, was that medical review officers do not exist at non-power facilities. That statement is true; there are no requirements in either part 26 or part 55 that they do. No change to the rulemaking was required as a direct result of these comments. However, as a result of the previous comment regarding medical personnel availability, the rule was changed to clearly include supervisory notification when medical officers are not available.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0018.

Regulatory Analysis

The regulations in 10 CFR part 55 establish procedures and criteria for the issuance of licenses to operators and senior operators of utilization facilities licensed pursuant to the Atomic Energy Act of 1954, as amended, or section 202 of the Energy Reorganization Act of 1974, as amended, and 10 CFR part 50. These established procedures provide the terms and conditions upon which the Commission will issue, modify, maintain, and renew operator and senior operator licenses.

Subpart F of part 55, under § 55.53, "Conditions of Licenses," sets forth the requirements and conditions for the maintenance of operator and senior operator licenses.

This rule serves to emphasize to the holders of operator and senior operator licenses the conditions they are required to comply with under 10 CFR part 26, "Fitness-for-Duty Programs." A regulatory analysis has been prepared for the final rule resulting in the promulgation of part 26 and is available for inspection in the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC. This analysis examines the costs and benefits of the alternatives considered by the Commission for compliance with the conditions and cutoff levels. The Commission previously requested public comment on the regulatory analysis as part of the rulemaking proceeding that resulted in the adoption of part 26.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic effect on a substantial number of small entities. Many applicants or holders of operator licenses fall within the definition of small businesses found in section 34 of the Small Business Act (15 U.S.C. 632) or

the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121 or the NRC's size standards published December 9, 1985 (50 FR 50241). However, the rule will only serve to provide notice to licensed individuals of the conditions under which they are expected to perform their licensed duties.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.108, does not apply to this final rule, and therefore, that a backfit analysis is not required for this rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.108(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 55

Criminal penalty, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2 and 10 CFR part 55.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-815, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 938, 937, 938, as amended (42 U.S.C. 2073, 2082, 2083, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 68 Stat. 1248 (42 U.S.C. 5877). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat.

955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.608 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 938, as amended (42 U.S.C. 2133); and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-258, 71 Stat. 579 as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Appendix C to 10 CFR part 2 is amended by—

- a. Adding an undesignated paragraph at the end of section V. E.,
- b. Adding paragraph (8) to section VIII, and
- c. Adding paragraph A. 5., B. 3., B. 4., and C. 9 to supplement I to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

V. Enforcement Actions

E. Enforcement Actions Involving Individuals

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a notice of violation or a civil penalty to the part 55 licensee, or an order to suspend, modify or revoke the license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is receives a confirmed positive test that exceeds the cutoff levels of 10 CFR part 26 or the facility licensee's cutoff levels, if lower. However, normally only a notice of violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties. In addition, the NRC intends to issue an order to suspend the part 55 license for up to three years the second time a licensed operator exceeds those cutoff levels. In the event there are less than three years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the

drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is subject to license suspension, revocation, or denial.

VIII. Responsibilities

(8) Any proposed enforcement action involving a civil penalty to a licensed operator.

Supplement I—Severity Categories

Reactor Operations

A. Severity I

5. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. Severity II

3. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area.

4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

C. Severity III

9. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation.

PART 55—OPERATORS' LICENSES

3. The authority citation for part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 68 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97-425, 98 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 55.3, 55.21, 55.49, and 55.53 are issued under sec. 1611, 68 Stat. 949, as amended (42 U.S.C. 2201(j)); and §§ 55.9, 55.23, 55.25, and 55.53(f) are issued under sec. 1810, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 55.53, paragraph (j) is redesignated as paragraph (1) and new

paragraphs (j) and (k) are added to read as follows:

§ 55.53 Conditions of licenses.

(j) The licensee shall not consume or ingest alcoholic beverages within the protected area of power reactors, or the controlled access area of non-power reactors. The licensee shall not use, possess, or sell any illegal drugs. The licensee shall not perform activities authorized by a license issued under this part while under the influence of alcohol or any prescription, over-the-counter, or illegal substance that could adversely affect his or her ability to safely and competently perform his or her licensed duties. For the purpose of this paragraph, with respect to alcoholic beverages and drugs, the term "under the influence" means the licensee exceeded, as evidenced by a confirmed positive test, the lower of the cutoff levels for drugs or alcohol contained in 10 CFR part 26, appendix A, of this chapter, or as established by the facility licensee. The term "under the influence" also means the licensee could be mentally or physically impaired as a result of substance use including prescription and over-the-counter drugs, as determined under the provisions, policies, and procedures established by the facility licensee for its fitness-for-duty program, in such a manner as to adversely affect his or her ability to safely and competently perform licensed duties.

(k) Each licensee at power reactors shall participate in the drug and alcohol testing programs established pursuant to 10 CFR part 26. Each licensee at non-power reactors shall participate in any drug and alcohol testing program that may be established for that non-power facility.

5. In § 55.61, a new paragraph (b)(5) is added to read as follows:

§ 55.61 Modification and revocation of licenses.

(b) . . .

(5) For the sale, use or possession of illegal drugs, or refusal to participate in the facility drug and alcohol testing program, or a confirmed positive test for drugs, drug metabolites, or alcohol in violation of the conditions and cutoff levels established by § 55.53(j) or the consumption of alcoholic beverages within the protected area of power reactors or the controlled access area of non-power reactors, or a determination of unfitness for scheduled work as a result of the consumption of alcoholic beverages.

Dated at Rockville, Maryland, this 5th day of July 1991.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-16687 Filed 7-12-91; 8:45 am]

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10 CFR Part 9

Duplication Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the charges for copying records publicly available at the NRC Public Document Room in Washington, DC. The amendment is necessary in order to reflect the change in copying charges resulting from the Commission's award of a new contract for the copying of records.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michelle Schroll, Public Document Room Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 202-634-3368.

SUPPLEMENTARY INFORMATION: The NRC maintains a Public Document Room (PDR) at its headquarters at 2120 L Street, NW., Lower Level, Washington, DC. The PDR contains an extensive collection of publicly available technical and administrative records that the NRC receives or generates. Requests by the public for the duplication of records at the PDR have traditionally been accommodated by a duplicating service contractor selected by the NRC. The schedule of duplication charges to the public established in the duplicating service contract is set forth in 10 CFR 9.35 of the Commission's regulations. The NRC has recently awarded a new duplicating service contract. The revised fee schedule reflects the changes in copying charges to the public that have resulted from the awarding of the new contract for the duplication of records at the PDR.

Because this is an amendment dealing with agency practice and procedures, the notice provisions of the Administrative Procedures Act do not apply pursuant to 5 U.S.C. 553(b)(A). In addition, the PDR users were notified on June 27, 1991, that the new contract was being awarded and that the new prices would go into effect on July 10, 1991. The amendment is effective upon publication.