

JUL 08 1992

Docket No. 50-315
Docket No. 50-316

Indiana Michigan Power Company
ATTN: Mr. E. E. Fitzpatrick
Vice President
Nuclear Operations Division
1 Riverside Plaza
Columbus, OH 43216

Dear Mr. Fitzpatrick:

SUBJECT: LICENSED OPERATOR POSITIVE COCAINE TEST

Your facility reported on June 26, 1992, that an NRC-licensed operator tested positive for cocaine following a for cause drug test taken on June 25, 1992. 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,

ORIGINAL SIGNED BY HUBERT J. MILLER

H. J. Miller, Director
Division of Reactor Safety

See Attached for Enclosures
and Distribution

RIII

[Signature]
Burdick/mab
07/8/92

^(YES)
RIII

[Signature]
Jorgensen
07/08/92

NRR

[Signature]
V.W. FAX
Gallo
07/07/92

RIII

[Signature]
Wright
07/08/92

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Martin
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Miller
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JUL 08 1992

Enclosures:

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

Distribution:

cc w/enclosures:

A. A. Blind, Plant Manager
P. F. Carteaux, Training Department
R. M. Gallo, NRR/LOLB
DCD/DCB (RIDS)
OC/LFDCB
Resident Inspector, RIII
James R. Padgett, Michigan
Public Service Commission
EIS Coordinator, USEPA,
Region V Office
Michigan Department of
Public Health
D. C. Cook LPM, NRR



ENCLOSURE 1

Licensed Operator Fitness-for-Duty Questionnaire

Indiana Michigan Power Company is requested to provide the following information concerning the Fitness-for-Duty occurrence of June 25, 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 cocaine 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 cocaine.
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. If the operator is still employed by Indiana Michigan Power Company, you are expected to review the operator's medical qualification and are 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.
9. If the operator is no longer employed by Indiana Michigan Power Company, you are expected to provide notification to the NRC of license termination per 10 CFR 50.74.

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 82,000 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 58 FR 13750-13751 on April 4, 1991.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 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. 91-16762 Filed 7-12-91; 8:45 am]
BILLING CODE 3410-34-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 28, 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 28, "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 28. 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 28, 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

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.

and alcohol testing programs conducted 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.
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); sec. 201, as amended, 202, 88 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, 96 Stat. 2282 (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. 161, 68 Stat. 949, as amended (42 U.S.C. 2201(j)); and §§ 55.23, 55.25, and 55.53(f) are issued under sec. 161a, 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]
BILLING CODE 7900-01-M

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 202-634-3366.

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.