

NOTATION VOTE

RESPONSE SHEET

RELEASED TO THE PDR	
4/1/94	<i>[Signature]</i>
date	initials

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER DE PLANQUE

SUBJECT: SECY-94-016 - REEVALUATION OF THE SCOPE OF THE RANDOM DRUG TESTING REQUIREMENTS IN 10 CFR PART 26 (FITNESS-FOR-DUTY RULE)

APPROVED  (w/comments) DISAPPROVED \_\_\_\_\_ ABSTAIN \_\_\_\_\_

NOT PARTICIPATING \_\_\_\_\_ REQUEST DISCUSSION \_\_\_\_\_

COMMENTS:

See attached comments.

9404110344 940318  
PDR COMMS NRCC  
CORRESPONDENCE PDR

*E. Gail de Planque*  
\_\_\_\_\_  
SIGNATURE

RELEASE VOTE  XX

WITHHOLD VOTE

March 18, 1994  
\_\_\_\_\_  
DATE

ENTERED ON "AS" YES  No \_\_\_\_\_

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*[Handwritten initials]*  
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Commissioner de Planque's Comments on SECY-94-016:

I approve publication of the draft Federal Register notice subject to the revisions made in the EDO's February 14, 1994 Memorandum to the Secretary, the changes suggested by Commissioner Remick and additional changes as described below:

1. Question 4 - The first sentence of Question 4 asks: "Is there any evidence that licensee or contractor employees have engaged in trafficking in illegal drugs within the protected area?" The next two sentences ask whether any of the alternative testing regimes identified in Question 2 might (a) deter the trafficking, and (b) deter "the use of coercion to influence an employee to participate in an illicit drug activity." The problem with Question 4 is that the different testing regimes mentioned in Question 2 all involve testing for drug usage and/or for impairment. Whatever regime of such testing is used, it is not going to reveal drug trafficking or coercion. Staff's intent may be to ask what, if any, steps NRC can, or should, take to deter drug trafficking or coercion to force someone to participate in drug trafficking. This might be a useful question since it is by no means clear that deterring drug trafficking is an activity within NRC's mission. If this is staff's intent, the question ought to be asked more directly.
2. Question 3b - While I do not object to asking whether evidence exists which "links substance abuse to an increase in the substance abuser's susceptibility to blackmail," I have serious reservations about the usefulness of potential answers unless evidence is forthcoming that a substance abuser is significantly more susceptible to blackmail than others who also engage in activities which might make them susceptible to blackmail, e.g., financial irregularities, criminal behavior, etc. Whatever may be the case, it is not at all clear to me that the NRC should extend its efforts to detect impairment or drug usage to efforts to determine whether an individual engages in activities which could lead to blackmail.
3. Staff should add material to the FRN which will identify "protected area" and "vital area" and apprise readers of the distinction between the two.
4. Additional edits. I attach additional minor edits.

DATE: The comment period expires (insert date 90 days following publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Charles H. Hendren, Safeguards Branch, Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, (301) 504-3209.

AVAILABILITY OF DOCUMENTS: Copies of the staff's report, "Reevaluation of the Scope of the FFD Rule with Respect to Persons Covered by Random Drug Testing (COMSECY-92-018)," and comments received may be examined and/or copied for a fee at the NRC Public Document Room, 2120 L Street NW, (Lower Level) Washington, DC.

Be sure title is identical to title of document labeled Enclosure 1

Copies of NUREG/CR-1879, NUREG/CR-5227, and Supplement 1 to NUREG/CR-3227 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA

5. Should the Commission continue to investigate new testing methods that could be used for all workers who have unescorted access to protected areas? What are some methods that might be acceptable and some effective alternatives to the existing approach? For proposed methods, please provide data that establishes accuracy (i.e., test's error rate), specificity (i.e., degree to which the test can measure what it's supposed to measure), reliability (i.e., the precision with which the test can be repeated and the consistency of test results), and similar supporting parameters. The Commission is specifically interested in data on the validity of performance testing measures.

would be the expected

6. What ~~is the perceived~~ effect on the need for random drug testing under each of the four approaches above (2a-2d) ~~risk or vulnerability of nuclear power plants~~ if vital area access controls are reduced (i.e., by eliminating requirements for locks and/or for alarms on vital area access points)? allowing certain vital area doors to normally be unlocked, but be capable of (i) being remotely locked on demand in the event of a security contingency, and (ii) generating an alarm if a vital area door is opened without an authorized key card.]

#### Backfit Analysis

Because this notice makes no changes to any requirement or interpretation and merely solicits public comments and information, no backfit analysis has been performed. Should the subsequent analysis and resolution of the received comments and inputs lead to proposed changes to 10 CFR Part 26,

are current technical limitations, primarily varying degrees of detectability, reliability, sensitivity, and accuracy. (This is related to question 5, below.)

3. a) For each of the four approaches above (2. - 2d), what is the <sup>potential</sup> ~~perceived~~ effect on risks to public health and safety or to the vulnerability of nuclear power plants due to accidental acts or deliberate acts of sabotage or vandalism? Will vulnerability or risk increase or decrease to any significant degree, or will they remain unchanged?
- b) Is there any evidence that links substance abuse to the performance of deliberate and malicious acts or that links substance abuse to an increase in the substance abuser's susceptibility to blackmail?
4. Is there any evidence that licensee or contractor employees have engaged in trafficking in illegal drugs within the protected area? If so, which testing regime would more fully and competently deter the illicit trafficking in drugs within the protected area? Do any of the alternatives show better promise of deterring the use of coercion to influence an employee to participate in an illicit drug activity?

is forced to shut down. The concern is that, although the plant is designed to sustain such transients, a disruptive event can unnecessarily challenge safety systems, [and repeated stresses could result in catastrophic failure].

One ongoing NRC activity that could affect considerations for changes in regulatory requirements for persons subject to random testing is a study of security requirements associated with the insider threat. In this study, the staff is considering possible reductions in the safeguards that control access into vital areas from protected areas. Substantial reductions in the access control safeguards for vital areas could alter the safety impact assessments for optional approaches to random drug testing. These safety assessments are based to some degree on the use of access controls to segregate persons having access to vital areas from persons whose access is limited to protected areas (i.e., persons who do not have access to vital areas). Depending on how much importance is given to concerns about deliberate acts based on influence from illegal drug or alcohol abuse, future relaxation of the safeguards to control access into vital areas from protected areas could significantly affect any considerations for narrowing the scope of persons subject to random testing.

To assist in the ongoing evaluation of alternative approaches to the scope of random testing, the Commission seeks comments on the proposed alternative approaches to the scope for random testing and other related issues. Specifically, comments are requested on the following:

Further information on these alternative approaches is contained in the staff's report, "Reevaluation of the Scope of the FFD Rule with Respect to Persons Covered by Random Drug Testing" which is available in the Public Document Room.

## Discussion

Random drug testing involves two distinct functions: (1) random selection of persons to be tested, and (2) collection and analysis of test specimens. The random selection process is designed to ensure that all persons subject to drug testing will have an equal <sup>probability of</sup> exposure to testing at any time. Random drug testing also serves as a very strong deterrent to substance abuse.

In developing the FFD rule, the NRC decided to specify random drug testing because of a concern about the threat that substance-impaired workers posed to the public health and safety. Based upon comments received during rulemaking, the Commission concluded that all workers with unescorted access to protected areas of operating nuclear power plants should be included within the scope of the rule. However, some workers have argued that they do not perform safety-related functions and have now questioned whether random testing is an undue encroachment on individual expectations of privacy. See International Brotherhood of Electrical Workers, Local 1245 v. NRC, 966 F. 2d 521 (9th Cir. 1992). Other viewpoints contend that expectations of privacy are diminished when workers apply for and accept jobs in the nuclear industry, because job applicants willingly agree to significant privacy encroachments, including preemployment urinalysis tests, detailed background investigations, security and fingerprint checks with the Federal Bureau of Investigation, credit checks, and psychological assessments. Accordingly, the Commission is now re-assessing the scope of random urinalysis testing as applied to workers without safety-related duties, to ensure a proper balance between safeguarding individual rights and the Commission's responsibility to protect public health and safety.