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OFFICE OF SECRETARY
REGULATORY & SERVICE
BRANCH

October 7, 1982

(69)

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

-50
(47 FR 33980)

Re: Federal Register Proposed Rule (47 FR 33980)
Personnel With Unescorted Access to
Protected Areas: Fitness for Duty
10 CFR 50.54

Dear Secretary:

In response to the request for comments on the proposed
10 CFR Part 50 rule on Fitness for Duty, we are forwarding
our comments to you.

We have reviewed the proposed rule and current industry
practices and believe that procedures and methodologies
are already in existence to establish and implement adequate
criteria governing personnel fitness for duty. Accordingly,
we believe that if codified, this proposed rule would have
significant adverse impact on the operation of nuclear
power plants and therefore oppose the implementation of
this rule.

Sincerely,

R. A. Kubinak
Manager, Nuclear Operations
Support Department

ADS/cj

Attachment

cc: A. Bevens - AIF
M. S. Pollock
NOSD
SR 2

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PDR PR
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Add: Tom Ryan
5650 NL

Acknowledged by card. 10/22/82 emp

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LILCO COMMENTS ON
PROPOSED FITNESS FOR DUTY RULE
10 CFR 50.54

This proposed rule apparently was precipitated from 24 incidents over the last five years involving drug abuse at nuclear power plants. The details of the incidents were not provided in the proposed rule. However, what the rule is proposing, would create substantial restrictions and controls at nuclear power plants. While the objectives of this proposed rule appear to be of good intent and would warrant support by the Nuclear Industry, we believe that the proposed rule should not be finalized for the following reasons.

Comments

The current industry standard governing personnel access at nuclear power plants is ANSI 18.17-1973 "Industrial Security for Nuclear Power Plants". This standard provides adequate procedures to assure that personnel are screened for fitness for duty prior to obtaining unescorted access to a Nuclear Power Plant. In addition to this, Nuclear Utilities being aware of the potential threat from drug and alcohol abuse at Nuclear facilities, have instituted appropriate internal control programs to continually address this issue. This utility awareness was pointed out in NUREG-0903. One such program, the continual observation of employees by management and supervisors demonstrates how adequate methods exist to detect and correct any failure or inability of an employee to discharge his or her duties in a safe and competent manner. Together, these methodologies provide satisfactory completion of the goals and objectives of the proposed rule without the need or use of the rule.

In addition to the current industry standard and procedures, there are new and pending criteria that would establish more restrictive requirements governing fitness for duty. These new criteria include the 1982 revision to ANSI 18.17 and the proposed access authorization rule. If these methodologies were to be utilized by the industry they would represent stricter controls than the current industry practice and would establish more than adequate criteria to obtain the objectives of the proposed rule, thereby precluding the necessity of the proposed rule.

Certain aspects of the proposed rule present particularly difficult criteria to implement, such that the benefit of the rule is questionable.

The rule requires that the licensee "ensure" (emphasis added) the fitness of personnel. This requires that whatever procedures are adopted, they must guarantee that personnel are not unfit for duty, for whatever reason, including physical or mental impairment. It is unreasonable for a licensee to guarantee personnel fitness in this manner or in any other manner. Such a guarantee for just the fitness of personnel relative to drug abuse (either illegal or legal), would require the use of laboratory examination of body fluids. Even this laboratory examination has limitations, such that a guarantee is impossible, as it would require the daily repetition of at least these laboratory exams.

The rule also proposes the imposition of routine screening of all personnel accessing the security areas of Nuclear Power Plants. The current screening methodologies already present significant personnel commitments and time delays. The requiring of additional, more complex screening methodologies imposes an unreasonable and potentially impossible task on licensees. Additionally, these screening procedures could potentially impact the safe operation of a Nuclear Power Plant as the time delays alone of the proposed requirements could inhibit a licensee from being capable of responding to matters of urgency where timely response of offsite individuals is required.

The rule has been purposely broadly worded by the NRC. This vagueness poses significant hardship on licensees attempting to comply with the rule as the preparation and implementation of conforming procedures is an unobtainable goal. Due to the generalization of the governing criteria, there are many possible interpretations of the exact intent of the rule. This would lead to inconsistencies in the enforcement of the rule and the potential for licensees never being in complete compliance with the rule and thereby rendering the rule ineffective.

Summary

The "Fitness for Duty" proposed rulemaking is not required. Current industry practice which includes accepted initial personnel screening and trained supervisory observation of employees provides assurance that the failure or inability of personnel to discharge their duties in a safe and competent manner would be detected and corrected. The addition of cumbersome, ineffective and vague rulemaking would place an undue burden on the Nuclear Industry, potentially creating a hindrance on operation. Accordingly, this proposed rulemaking would not provide any greater assurance of safer and more reliable operation of Nuclear Facilities.

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Dear Sirs:

OFFICE OF SECRETARY
OF PUBLIC AFFAIRS & SERVICE

This letter is a comment by the Professional Regulator Operator Society on the Nuclear Regulatory Commission's proposed rule, as published in the Federal Register on August 5, 1982, Vol. 47, No. 151, 33980 Titled, "Personnel with Unescorted Access to Protected Areas; Fitness for Duty." This comment specifically addresses the proposed new paragraph (x) which would be added to Sec. 50.54.

According to the comments we received from nuclear facility operators across the country this proposal is first; unnecessary, second; it would not address the suspected problem in a fashion that would resolve the situation, and third; the selective nature of the proposed rule raises questions concerning its need and intention.

According to experienced operators, "Most, if not all, companies already have an adequate policy on the subject." Commercial facilities and their employees are well aware of their responsibility, and as one operator put it, "I can't imagine a facility manager anywhere in the world who doesn't understand the possible consequences of allowing such impaired persons on their property be they granted free access to vital areas or shoveling snow off the parking lot."

If employees are unfit for duty they and their peers will be the ones to realize it. In commercial facilities backup shifts are provided to replace employees when such a situation arises. There is no need for an individual to run the risk of reporting to work in an unfit condition.

It is inherent in the license issued for the commercial facility's operation, that the licensee is responsible for the safe operation of the facility. This necessarily requires the manning of the facility by physically fit personnel. Such a liability mandates that the licensee of

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a commercial nuclear facility insures for his own protection, as well as for public health and safety that his employees are physically fit and mentally fit for duty. (Also note that under 10 CFR sec. 55.11(a), sec. 55.30, and sec. 55.33(c) the NRC has already made findings of fitness for operators.)

Secondly, from the operators' viewpoint this proposed regulation would not solve the apparent problem for several reasons. As one operator put it, "There appears from my experience no valid method of determining when a person is unfit for duty. No test has yet been devised, or criteria set to define when a person is unfit for duty. I doubt that it is possible or desirable especially when 'fairness and due process', 'conditions or circumstances unique to the facility', and 'the effects of other factors . . . such as fatigue, stress, illness, and temporary physical impariments' must be considered." Upon what criteria would the NRC judge, invalidate or validate the facilities' proposed fitness procedures to ensure that they are adequate?

Even more importantly, how is the NRC going to enforce those procedures in a manner that would improve the present situation? By one operator's " . . . conservative estimate of 200 protected area entries per day at each of 72 commercial reactor sites, we arrive at an estimated 5,256,000 protected area entries per year. In 1981 twelve of these resulted in arrest or termination for 'unfit for duty' reasons. It doesn't seem the problem is widespread enough to warrant sweeping changes to the present system." This conservative estimate indicates that the present system is quite good.

If there is a belief within the NRC that the present system is inadequate to ensure personnel are fit for duty there surely must be some basis for such a belief. What basis is there for inferring that the current licensee system for ensuring fitness on duty is inadequate to protect the public health and safety?

Comment to Sec. 50.54(x)

The NRC has not made it clear who is responsible for the twelve fitness violations in 1981. Were those people staff at the facility, contractor personnel, or transient people such as delivery persons? If there is a problem, surely the NRC can be more explicit in its assessment of the source of such a small number of violations and address the situation without placing an undue burden and possibly illegal burden of the facility licensee and its staff.

Third, is the selective nature of the proposed rule. While the rule purports to control the fitness of those who have unescorted access to protected areas it clearly does not include NRC personnel. What and where are the NRC's procedures to ensure that its personnel with unescorted access to protected areas are physically fit?

Why should NRC personnel be exempt from this proposed rule? The rule is clearly drafted with the intention of ensuring that those people with unescorted access to protected areas are fit for duty. If there is a real problem or threat to the public's health and safety that this rule is attempting to address, it should address the entire problem realistically. Operators responded to this omission in the rule with such statements as, "...there is no reason to believe that NRC employees are somehow immune to whatever forces drive the rest of us to be 'unfit for duty'."

Another question that is raised by the selective nature of the proposed rule is; What makes the personnel with unescorted access to the protected areas of facilities other than commercial or industrial facilities immune to fitness problems? Public health and safety problems as well as personnel overexposures are possible at these facilities also. If this is a problem then all facilities should address it.

Operators did express concern over the possibilities of

Comment to Sec. 50.54(x)

fatigue, stress, illness and drug and alcohol problems. One suggestion is to add an operator to each shift. The individual is the best judge of when he/she is fatigued or ill. Where shifts are operating with minimum personnel or an understaffed backup crew, an additional operator per shift would help alleviate this problem.

Another suggestion is to educate everyone involved. Everyone should be trained in how to recognize the symptoms of drug and alcohol impairment. "Requiring each facility to include the drug and alcohol regulations in the training and indoctrination programs is necessary. Each company should have a strong anti-drug and alcohol abuse policy stated ... and reiterated periodically."

The legal questions raised regarding the possible violations of individual rights in implementing a program of testing personnel is another factor to consider. Couple this with what is evidentially an excellent record and it appears that the proposed rule would serve no useful purpose. It would place an undue hardship on the licensees and employees of commercial nuclear facilities without any foreseeable improvement in the situation.

A much better alternative would be to address the issue from an educational standpoint via facility training and to concentrate on cracking down on the few who do create a risk by being unfit for duty.

Date: October 18, 1982

Signed: William A. Duddy
Executive Director

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Signed: Robert Meyer
President