

(AD 68-2)

024



RULEMAKING ISSUE
(Affirmation)

April 6, 1993

SECY-93-089

FOR: The Commissioners
FROM: James M. Taylor, Executive Director for Operations
SUBJECT: FINAL AMENDMENTS TO 10 CFR PARTS 26, 70, AND 73 TO ESTABLISH FITNESS-FOR-DUTY REQUIREMENTS FOR LICENSEES AUTHORIZED TO POSSESS, USE, OR TRANSPORT FORMULA QUANTITIES OF STRATEGIC SPECIAL NUCLEAR MATERIAL

PURPOSE:

To obtain Commission approval to publish a notice of final rulemaking.

CATEGORY:

This paper covers a major policy question requiring Commission consideration.

ISSUE:

Whether the fitness-for-duty requirements should be imposed on NRC licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) of a particular weight or size.

BACKGROUND:

On June 7, 1989 (54 FRN 24468), the Commission published a final rule that required licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program. Subsequently, in an SRM dated June 26, 1990, the Commission requested that the staff develop a proposed rule to extend fitness-for-duty requirements to licensees who possess, use, or transport Category I Material (formula quantities of SSNM).

CONTACT:
Stanley P. Turel, RES
492-3739

NOTE: TO BE MADE PUBLICLY AVAILABLE
WHEN THE FINAL SRM IS MADE
AVAILABLE

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On April 30, 1992 (57 FR 18415), the Commission published a proposed rule in the Federal Register that would require this category of licensee to implement such requirements.

A 90-day public comment period expired on July 29, 1992. Three letters were received from three commenters; one SSNM licensee, one trade association, and one private citizen. The private citizen was in favor of the rule. The licensee was against the promulgation of the rule stating that it was unnecessary and burdensome. The trade association was neutral about the rule provided it did not cause duplicate random testing. At their request, the staff met with the licensee to discuss their comments. The Chairman also received a letter from the same licensee citing its concerns.

DISCUSSION:

Based on the public comments, the following two modifications have been made to the proposed rule.

1. The term Category IA Material has been substituted throughout the body of the rule in place of Category I Material. Category IA Material is SSNM which can be easily concealed on an individual. The effect of this is to require chemical testing only for those who have unescorted access to Category IA Material.
2. All transporters authorized to transport formula quantities of SSNM who are subject to the United States Department of Transportation drug and alcohol fitness programs that have random testing for drugs and alcohol are exempt from this rule.

In addition, the statement of considerations in the Federal Register Notice mentions that the Commission is contemplating a rulemaking to reduce the required rate of random testing of power reactor employees from 100 percent per year to 50 percent per year, as presented to the Commission in SECY-93-014. It is noted that the testing rate for affected fuel cycle personnel will be the same as for power reactor employees.

RESOURCES:

Resources to implement this rulemaking are included in the FY 1993-1997 Five-Year Plan and no additional resources would be required for its implementation.

COORDINATION:

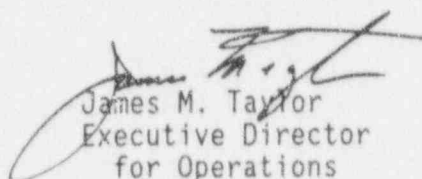
The Office of the General Counsel has no legal objection to this paper.

RECOMMENDATION:

That the Commission:

1. Approve publication of the final amendment in the Federal Register (Enclosure A).
2. Certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).
3. NOTE:
 - a. An environmental assessment stating that the final rulemaking will not have a significant environmental impact will be placed in the NRC Public Document Room (Enclosure B).
 - b. A Regulatory Analysis will be placed in the NRC Public Document Room (Enclosure C).
 - c. The appropriate Congressional Committees will be informed of the Commission's action (Enclosure D).
 - d. A public announcement will be issued (Enclosure E).
 - e. The Federal Register Notice will be distributed to applicable licensees. The notice will be sent to other interested parties upon request.
 - f. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it as required by the Regulatory Flexibility Act.

- g. This final rule amends information collection requirements that are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget.


James M. Taylor
Executive Director
for Operations

Enclosures:

- A. Federal Register Notice
- B. Environmental Assessment
- C. Regulatory Analysis
- D. Congressional Letter
- E. Public Announcement

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Wednesday, April 21, 1993.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, April 14, 1993, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the week of April 26, 1993. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

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ENCLOSURE A

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 26, 70, and 73

RIN 3150-AD68

Fitness-For-Duty Requirements for Licensees Authorized to
Possess, Use, or Transport Formula Quantities of
Strategic Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) to institute fitness-for-duty programs. The amended regulation is limited to licensees who are authorized to possess, use, or transport unirradiated Category I Material. This action is necessary to provide greater assurance that individuals who have a drug or alcohol problem do not have access to or control over SSNM.

EFFECTIVE DATE: (180 days after publication in the Federal Register)

FOR FURTHER INFORMATION CONTACT: Stanley P. Turel, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3739.

SUPPLEMENTARY INFORMATION:

Background

The NRC recognizes drug and alcohol abuse to be a social, medical, and safety problem affecting every segment of our society. Given the pervasiveness of the problem, it must be recognized to exist to some extent in the nuclear industry. Accordingly, on June 7, 1989 (54 FR 24468), the Commission published a final rule that required licensees authorized to construct or operate nuclear power plants to implement a fitness-for-duty program. During the first year (calendar year 1990) of drug and alcohol testing of nuclear power plant workers, approximately one percent of all tests administered under the Part 26 requirements were positive. The NRC has no reason to believe that the incidence of positive tests for workers affected by this rulemaking would be appreciably different. However, existing regulations contained in 10 CFR Part 26 do not contain fitness-for-duty requirements for licensees authorized to possess, use, or transport formula quantities of SSNM.

Summary of Public Comment

On April 30, 1992 (57 FR 18415), the Commission published a proposed rule in the Federal Register which would require this category of licensee to implement fitness-for-duty requirements. The 90-day comment period expired on July 29, 1992. Three comment letters were received: one from an SSNM licensee, one from a trade association, and one from a private citizen. The private citizen was in favor of the rule. The licensee was against the

promulgation of the rule, stating that it was unnecessary and burdensome. The trade association was neutral about the rule provided it did not cause duplicate random testing.

Changes have been made in the final rule in response to the public comments to better equate the requirements of random testing to the risk of diversion and to prevent the duplication of chemical testing of some drivers of transport vehicles. A summary of the comments received and the NRC's responses are presented below.

1. Comment. Diversion of special nuclear material is not more likely by persons with drug or alcohol problems.

Response. A substance abuser is more vulnerable to coercion and may be more easily suborned into cooperating, actively or passively, in a diversion of SSNM. Also, an individual under the influence of drugs or alcohol will not be as effective in conducting his or her safeguards responsibilities. For these reasons, the NRC believes it essential that these individuals are not permitted access to or control over SSNM or be responsible for any safeguards functions.

2. Comment. Public safety could not be seriously threatened by impaired workers.

Response. The NRC does not fully agree with this comment. The effects of most mistakes by impaired workers are expected to be largely contained within the boundaries of the facility with little or no consequence to the general public. However the potential for more serious consequences exists. The impaired worker is a danger to himself and his coworkers and is of concern to the Commission. Further, the theft of SSNM could pose a serious threat to the national security.

3. Comment. Current NRC and DOE requirements already address trustworthiness of personnel by requiring security clearances for certain jobs.

Response. Current NRC regulations do require security clearances for certain jobs. However, the security clearance investigation alone might not detect a drug habit. Moreover, the current 5-year period between reinvestigations is too long for the timely detection of individuals who become substance abusers during that time.

4. Comment. Because of the "Drug-Free Workplace Act of 1988," adequate drug and alcohol programs are already in effect at the proposed licensee facilities.

Response. When issuing the Part 26 fitness-for-duty rule in 1989, NRC determined that, to be both effective and appropriate for assuring protection of the health and safety of the public, the fitness-for-duty program must include random, unannounced, urinalysis for drugs and breath testing for alcohol. The Drug-Free Workplace Act of 1988 does not require random testing. The Act requires testing for drugs and alcohol only for cause. Although a licensee program may meet the provisions of the Drug-Free Workplace Act, in the Commission's view, it will not be adequate without the provision for random testing.

5. Comment. Implementation costs for the new rule would be very high but the results would be minimal.

Response. A facility that is already in compliance with the Drug Free Workplace Act of 1988 would have less implementation and continuing costs than one that is not. However, as indicated in the above response to Comment 4, the Drug-Free Workplace Act does not require random testing.

Random testing detects and deters substance abuse in the workplace. Random testing of persons in a position to divert or conceal a diversion of SSNM at the facility would strengthen the safeguarding of the SSNM.

6. Comment. Any category of worker that deals with the physical material or its primary "paper trail" should not be exempted from random testing. NRC should require licensees to ensure that workers do not come to work so impaired by distraction, fatigue, or infirmity that they cannot perform at a minimally acceptable level.

Response. The revisions to 10 CFR Part 26 will require random testing for all employees who:

(1) Are granted unescorted access to SSNM that is directly useable in the manufacture of a nuclear explosive device and would be easily concealed and removed by an individual (Category IA Material);

(2) Create or have access to procedures or records for safeguarding SSNM;

(3) Make measurements of Category IA Material;

(4) Transport or escort Category IA Material; or

(5) Guard Category IA Material.

Category IA Material is defined in § 26.3 Definitions. The other impairments listed by the commenter are addressed in §§ 26.10 and 26.20 of this rule.

7. Comment. The proposed drug and alcohol testing requirements should not be applied to railroads because they would duplicate the Federal Railroad Administration's testing program.

Response. Transporters of SSNM who are subject to DOT drug and alcohol fitness programs that have random testing for drugs and alcohol are exempt from the requirements of this rule.

Discussion

The final rule differs from the proposed rule in the following ways. Chemical testing is required only for those who have unescorted access to easily concealed SSNM. This was done by removing the term Category I Material from the definitions section (10 CFR 26.3) and replacing it with the term Category IA Material (this term is also defined in 10 CFR 74). Category IA Material is defined as SSNM directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms which may be easily concealed on an individual.

The term Category IA Material has been substituted throughout the body of the rule in place of Category I Material. All transporters of SSNM who are subject to DOT's drug and alcohol fitness programs that have random testing for drugs and alcohol are exempt from this rule.

The licensee personnel subject to this final rulemaking will be subject to a 100 percent annual random testing rate, the same as the rate that currently applies to power reactor employees. However, there is a proposed rulemaking being prepared that will reduce that random testing rate to 50 percent. If that proposal becomes final it will also have the effect of

reducing the rate to 50 percent for those licensees that are affected by this final rulemaking.

Applicability of Criminal Penalties

In this final rule the amendments to the following sections of the codified regulations are issued under the authority of Secs. 161b, 161i, or 161o of the Atomic Energy Act of 1954, as amended, and therefore violations may be subject to the Criminal Penalty provisions of Sec. 223 of the Atomic Energy Act: 10 CFR Secs. 26.10, 26.24, 26.27, 26.73; 10 CFR Part 26, Appendix A; 10 CFR 70.20a.

Finding of no Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The amendment will require subjecting certain licensee employees to a fitness-for-duty program of random tests for the use of drugs or alcohol. Specifically, all persons who are

- (1) Granted unescorted access to Category IA Material;
- (2) Given responsibilities to create or have access to procedures or records for safeguarding SSNM;
- (3) Given responsibilities to measure Category IA Material;

(4) Given responsibilities to transport or escort Category IA Material;
or

(5) who are given responsibilities to guard Category IA Material will be subject to the program.

These requirements have no identifiable environmental impact.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact may be obtained from Stanley P. Turel, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3739.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). These requirements and amendments were approved by the Office of Management and Budget, approval number 3150-0146.

The public reporting burden for this collection of information is estimated to average 29 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0146), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Stanley P. Turel, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3739.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects licensees who are authorized to possess, use, or transport formula quantities of SSNM. These licensees do not fall within the scope of the definition of "small entities" set forth in the Small Business Size Standards adopted by the Commission in 1985 (December 9, 1985, 50 FR 50241; and, November 6, 1991, 56 FR 56671).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not impose requirements on existing 10 CFR Part 50 licensees. Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Parts 26, 70, and 73

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Criminal penalties, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Hazardous materials - transportation, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements, and Special nuclear material.

10 CFR Part 70

Criminal penalties, Hazardous materials - transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, and Special nuclear material.

10 CFR Part 73

Criminal penalties, Hazardous materials - transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, and Security measures.

For the reasons stated 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 Parts 26, 70, and 73.

PART 26 - FITNESS-FOR-DUTY PROGRAMS

1. The authority citation for Part 26 continues to read as follows:

AUTHORITY: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. Section 26.1 is revised to read as follows:

§ 26.1 Purpose.

This part prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness-for-duty programs and procedures by the licensed nuclear power industry, and by licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

3. Section 26.2 is revised to read as follows:

§ 26.2 Scope.

(a) The regulations in this part apply to licensees authorized to operate a nuclear power reactor, to possess or use formula quantities of SSNM, or to transport formula quantities of SSNM. Each licensee shall implement a fitness-for-duty program which complies with this part. The provisions of the fitness-for-duty program must apply to all persons granted unescorted access

to nuclear power plant protected areas, to licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures, and to SSNM licensee and transporter personnel who:

- (1) Are granted unescorted access to Category IA Material;
- (2) Create or have access to procedures or records for safeguarding

SSNM;

- (3) Make measurements of Category IA Material;
- (4) Transport or escort Category IA Material; or
- (5) Guard Category IA Material.

(b) The regulations in this part do not apply to NRC employees, to law enforcement personnel or offsite emergency fire and medical response personnel while responding onsite, or SSNM transporters who are subject to U. S. Department of Transportation drug or alcohol fitness programs that require random testing for drugs and alcohol. The regulations in this part also do not apply to spent fuel storage facility licensees or non-power reactor licensees who possess, use, or transport formula quantities of irradiated SSNM as these materials are exempt from the Category I physical protection requirements as set forth in 10 CFR Part 73.6.

(c) Certain regulations in this part apply to licensees holding permits to construct a nuclear power plant. Each construction permit holder, with a plant under active construction, shall comply with §§ 26.10, 26.20, 26.23, 26.70, and 26.73 of this part; shall implement a chemical testing program, including random tests; and shall make provisions for employee assistance

programs, imposition of sanctions, appeals procedures, the protection of information, and recordkeeping.

4. In § 26.3, the terms Category IA Material, and Transporter are added to read as follows:

§ 26.3 Definitions.

* * * * *

Category IA Material means strategic special nuclear material (SSNM) directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms.

* * * * *

Transporter means a general licensee pursuant to 10 CFR 70.20a, who is authorized to possess formula quantities of SSNM in the regular course of carriage for another or storage incident thereto, and includes the driver or operator of any conveyance, and the accompanying guards or escorts.

* * * * *

5. In § 26.10, the introductory text and paragraph (a) are revised to read as follows:

§ 26.10 General performance objectives.

Fitness-for-duty programs must:

(a) Provide reasonable assurance that nuclear power plant personnel, transporter personnel, and personnel of licensees authorized to possess or use formula quantities of SSNM, will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;

* * * * *

6. In § 26.24, paragraphs (a)(2) and (b) are revised to read as follows:

§ 26.24 Chemical and alcohol testing.

* * * * *

(a) * * *

(2) Unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an equal probability of being selected and tested. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the

day. Random testing shall be conducted at an annual rate equal to at least 100 percent of the workforce.

* * * * *

(b) Testing for drugs and alcohol, at a minimum, must conform to the "Guidelines for Drug and Alcohol Testing Programs," issued by the Nuclear Regulatory Commission and appearing in Appendix A to this rule, hereinafter referred to as the NRC Guidelines. Licensees, at their discretion, may implement programs with more stringent standards (e.g., lower cutoff levels, broader panel of drugs). All requirements in this part still apply to persons who fail a more stringent standard, but do not test positive under the NRC Guidelines. Management actions must be the same with the more stringent standards as if the individual had failed the NRC standards.

* * * * *

7. In § 26.27, paragraphs (a), (b)(2), and (b)(3) are revised to read as follows:

§ 26.27 Management actions and sanctions to be imposed.

(a)(1) The licensee shall obtain a written statement from the individual as to whether activities within the scope of this part were ever denied the individual before the initial

(i) Granting of unescorted access to a nuclear power plant protected area;

(ii) Granting of unescorted access by a formula quantity SSNM licensee to Category IA Material;

(iii) Assignment to create or the initial granting of access to safeguards of procedures for SSNM;

(iv) Assignment to measure Category IA Material;
(v) Assignment to transport or escort Category IA Material;
(vi) Assignment to guard Category IA Material; or
(vii) Assignment to activities within the scope of this part to any person.

(2) The licensee, as applicable, shall complete a suitable inquiry on a best-efforts basis to determine if that person was, in the past

(i) Tested positive for drugs or use of alcohol that resulted in on-duty impairment;

(ii) Subject to a plan for treating substance abuse (except for self-referral for treatment);

(iii) Removed from activities within the scope of this part;

(iv) Denied unescorted access at any other nuclear power plant;

(v) Denied unescorted access to SSNM;

(vi) Removed from responsibilities to create or have access to safeguards records or procedures for SSNM;

(vii) Removed from responsibilities to measure SSNM;

(viii) Removed from the responsibilities of transporting or escorting SSNM; or

(ix) Removed from the responsibilities of guarding SSNM at any other facility in accordance with a fitness-for-duty policy.

(3) If a record of the type described in paragraph (a)(2) of this section is established, the new assignment to activities within the scope of this part or granting of unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program, provided the restrictions of paragraph

(b) of this section are observed. To meet this requirement, the identity of persons denied unescorted access or removed under the provisions of this part and the circumstances for the denial or removal, including test results, will be made available in response to a licensee's, contractor's or vendor's inquiry supported by a signed release from the individual.

(4) Failure to list reasons for removal or revocation of unescorted access is sufficient cause for denial of unescorted access. Temporary access provisions are not affected by this part if the prospective worker passes a chemical test conducted according to the requirements of 26.24(a)(1).

(b) * * *

(2) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs onsite, a confirmed positive test result must be presumed to be an indication of offsite drug use. The first confirmed positive test must, as a minimum, result in immediate removal from activities within the scope of this part for at least 14 days and referral to the EAP for assessment and counseling during any suspension period. Plans for treatment, follow-up, and future employment must be developed, and any rehabilitation program deemed appropriate must be initiated during such suspension period. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this part must be obtained before permitting the individual to be returned to these activities. Any subsequent confirmed positive test must result in, as applicable,

(i) Removal from unescorted access to nuclear power plant protected areas;

(ii) Removal from unescorted access to Category IA Material;

(iii) Removal from responsibilities to create or have access to records or procedures for safeguarding SSNM;

(iv) Removal from responsibilities to measure Category IA Material;

(v) Removal from the responsibilities of transporting or escorting Category IA Material;

(vi) Removal from the responsibilities of guarding Category IA Material at any other licensee facility; and

(vii) Removal from activities within the scope of this part for a minimum of 3 years from the date of removal.

(3) Any individual determined to have been involved in the sale, use, or possession of illegal drugs, while, as applicable, within a protected area of any nuclear power plant, within a facility that is licensed to possess or use SSNM, or within a transporter's facility or vehicle, must be removed from activities within the scope of this part. The individual may not

(i) Be granted unescorted access to nuclear power plant protected areas;

(ii) Be granted unescorted access to Category IA Material;

(iii) Be given responsibilities to create or have access to safeguards records or procedures for SSNM;

(iv) Be given responsibilities to measure Category IA Material;

(v) Be given responsibilities to transport or escort Category IA Material;

(vi) Be given responsibilities to guard Category IA Material; or

(vii) Be assigned to activities within the scope of this part for a minimum of 5 years from the date of removal.

* * * * *

8. In § 26.73, paragraph (d) is revised to read as follows:

§ 26.73 Reporting requirements.

* * * * *

(d) By [date 6 months after publication of final rule] each licensee who is authorized to possess, use, or transport formula quantities of SSNM shall certify to the NRC that it has implemented a fitness-for-duty program that meets the requirements of 10 CFR Part 26. The certification shall describe any licensee cut-off levels more stringent than those imposed by this part.

9. In Appendix A, the title and Subpart A-General 1.1 Applicability (1) is revised to read as follows:

Appendix A--Guidelines for Drug and Alcohol Testing Programs

* * * * *

Subpart A-General

1.1 Applicability

(1) These guidelines apply to licensees authorized to operate nuclear power reactors and licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

* * * * *

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

10. The authority citation for Part 70 continues to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.20a. General license to possess special nuclear material for transport.

11. In § 70.20a, paragraph (d)(3) is revised to read as follows:

§ 70.20a General license to possess special nuclear material for transport.

* * * * *

(d) * * *

(3) Shall be subject to Part 26 and § 73.80 of this chapter.

* * * * *

PART 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIALS

12. The authority citation for Part 73 continues to read as follows:

AUTHORITY: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C., 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

FEDERAL REGISTER CITATION: November 24, 1992; 57 FR 55062.

DESIRED AUTHORITY CITATION: Yes.

13. In § 73.6, the introductory paragraph is revised to read as follows:

§ 73.6 Exemptions for certain quantities and kinds of special nuclear material.

A licensee is exempt from the requirements of 10 CFR Part 26 and §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.70 and 73.72 with respect to the following special nuclear material:

* * * * *

Dated at Rockville, Maryland, this ____ day of _____, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

ENCLOSURE B

ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT
FOR THE FINAL RULE AMENDING 10 CFR PARTS 26, 70, AND 73

Fitness-For-Duty Requirements for Licensees Authorized to Possess, Use,
or Transport Formula Quantities of Strategic Special Nuclear Material

I. Introduction

The Nuclear Regulatory Commission (NRC) is amending its regulations to require licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) to institute fitness-for-duty programs. This action will help ensure that individuals who have access to or control over SSNM do not have a drug or alcohol problem. This rule does not affect spent fuel storage facility licensees or non-power reactors licensees possessing, using, or transporting formula quantities of irradiated SSNM, as these materials are exempt from the Category I physical protection requirements as set forth in 10 CFR Part 73.6.

II. Need for Action

Employees of licensees who are authorized to possess, use, or transport SSNM might be more easily coerced into participating in, or covering up, a diversion of strategic special nuclear material, if those employees have a drug or alcohol problem. Also, an individual under the influence of drugs or alcohol will not be as effective in conducting his or her safeguards responsibilities. Government sponsored studies such as Fitness for Duty in the Nuclear Power Industry, Volume 2, NUREG/CR-5758, August 1992, have indicated a significant relationship between drug use and criminal conduct. Workers with drug or alcohol problems often have financial difficulties which make them susceptible to approaches by criminal, terrorist, or foreign intelligence entities who might recruit the workers to provide them with sensitive information or property in return for money. Workers with substance abuse problems may engage in additional activities which make them more vulnerable to blackmail, and as a result, they may participate or assist in acts of theft, sabotage, or the diversion of information or property. In addition, if the human component of a safeguards system fails or is compromised, then the safeguards system would be seriously degraded or negated. Therefore, it is necessary also to ensure that those employees who are a critical component of a safeguards system do not have a drug or alcohol problem. (An example of such a failure would be a guard on duty that was incapacitated because of a drug or alcohol problem, thus enabling a theft of SSNM by a group of determined personnel.) A related issue is safety. The use of alcohol or drugs can impair a worker's motor skills and judgment sufficiently that accidents of neglect or error are significantly more likely. The effects of such accidents are such that

they will be contained largely within the boundaries of the facility having little or no actual consequence to the general public. Nonetheless, these accidents do pose a real hazard to those who work at the licensee's facility.

Existing requirements for fitness-for-duty programs contained in 10 CFR Part 26 are applicable to nuclear power plant personnel and do not include the employees of SSNM licensees. Under normal circumstances, the risk of diversion is not high for these licensees because specific safeguards controls are already in place. However, collusion would more easily enable the diversion to happen or be covered up, and substance abuse could provide the leverage by which employees could be induced to participate in these types of acts. Also, security personnel with a drug or alcohol problem can cause a degradation or cessation of security systems or procedures.

III. Environmental Impact of the Proposed Action

This amendment will not directly affect either the safety of operation or the routine release of, or exposure to, radioactivity from the licensees possessing, using, or transporting SSNM.

The amendment would require subjecting certain licensee employees to a chemical testing program, including random tests for the use of drugs or alcohol. Specifically all persons: (1) who are granted unescorted access to Category IA Material, (2) who are given responsibilities to create or have access to material control and accounting records, (3) who are given responsibilities to measure Category IA Material, (4) who are given responsibilities to transport or escort Category IA Material, or (5) who are given responsibilities to guard Category IA Material will be subject to the fitness-for-duty program required by the rulemaking. These requirements have no identifiable environmental impact.

IV. Alternatives to the Proposed Action

The objective of this amendment is to provide greater assurance that those employees who have a drug or alcohol problem will not have unescorted access to, will not transport, will not guard, and will not measure Category IA Material; and will not create or have access to safeguards records.

Two alternatives to the proposed amendment were examined. The first was to take no action. This alternative was rejected because drug and alcohol abuse is a social, medical, and safety problem affecting every segment of our society. Given the pervasiveness of the problem, it must be recognized to exist to some extent in the nuclear industry. The Commission believes it prudent to undertake measures to provide reasonable assurance that a person who is under the influence of alcohol,

or any other substance, legal or illegal, that affects that person's ability to adequately perform duties associated with the safe use of nuclear materials will not have unescorted access to, will not transport, will not guard, and will not measure Category IA Material; and will not create or have access to safeguards records. The second alternative considered was to impose these requirements on licensees who possess, use, or transport SSNM through the issuance of license conditions, orders, or regulatory guides. This alternative was rejected because the requirements to be modified are currently codified in the Code of Federal Regulations and amendments to them should be imposed through formal rulemaking. Also, formal rulemaking has the additional benefit of providing public notice and allowing public comment.

V. Alternative Use of Resources

Subsequent to the submission of the licensee's certification that it has implemented a fitness-for-duty program that meets the requirements contained in 10 CFR Part 26, the NRC will use about one staff week to review the certifications.

VI. Agencies and Persons Consulted

During the development of the proposed amendment, cognizant officials and managers at the Department of Energy and the Department of Transportation were consulted.

VII. Finding of No Significant Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that the proposed amendments are not a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The amendments, through the requirements of subjecting certain licensee employees to a chemical testing program, including random tests for the use of drugs or alcohol, will provide greater assurance that those employees who have a drug or alcohol problem, will not: (1) be granted unescorted access to Category IA Material, (2) be given responsibilities to create or have access to material control and accounting records, (3) be given responsibilities to measure Category IA Material, (4) be given responsibilities to transport or escort Category IA Material, or (5) be given responsibilities to guard Category IA Material.

ENCLOSURE C

REGULATORY ANALYSIS OF FITNESS FOR DUTY PROGRAMS FOR LICENSEES AUTHORIZED TO
POSSESS, USE, OR TRANSPORT FORMULA QUANTITIES OF STRATEGIC SPECIAL MATERIAL

Enclosure C

SUMMARY

The NRC has promulgated a rulemaking action that requires certain employees of licensees authorized to possess, use, or transport formula quantities of strategic special material (SSNM) to undergo testing for drugs and alcohol. Current licensees that may be affected by the rulemaking are 1) Babcock and Wilcox (B&W), Lynchburg, Virginia, 2) Nuclear Fuel Services (NFS), Erwin, Tennessee, and 3) various licensees authorized to transport SSNM. The testing will be undertaken according to the procedures in the fitness-for-duty (FFD) regulations for nuclear power reactor personnel contained in 10 CFR Part 26. This document contains a regulatory analysis of the final rulemaking. The document was prepared according to the guidance in Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/BR-0058, May 1984.

The rulemaking supports the NRC's statutory mission to assure that civilian uses of nuclear materials in the U.S. are conducted so as to protect the public health and safety, the environment, and national security. Specifically, the safety concern is that use of drugs and alcohol can make accidents more likely. The security concern is that employees using drugs or alcohol may be more likely to, or may be more vulnerable to being coerced to divert or sabotage Category I Material, defined as a formula quantity of strategic special nuclear material (SSNM), or information related to Category I Material.

The action is to subject personnel of licensees authorized to possess, use, or transport Category I Material to the drug testing requirements contained in 10 CFR Part 26. The following categories of workers are covered under the final rulemaking:

- employees who physically handle Category IA Material
- employees who are authorized to enter Category IA Material storage or process areas
- employees who do the accounting and recordkeeping for the SSNM
- employees who measure the Category IA Material

- employees who are responsible for the material control and accounting of the SSNM
- employees who write or have the authority to modify the procedures governing the preceding activities
- employees who guard the Category IA Material
- employees who are responsible for transporting Category IA Material.

Category IA Material is defined in Part 26 as strategic special nuclear material (SSNM) directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms.

It was not possible to quantify the benefits associated with the rulemaking. A similar determination was made in the Backfit Analysis which preceded issuance of the Part 26 Fitness-For-Duty (FFD) regulations in June 1989. The estimated first year costs to implement the rulemaking for the B&W and NFS facilities are approximately \$1. million. Continuing annual costs in 1991 dollars for the two facilities are estimated to be approximately \$792,000. Nevertheless, the staff concluded that the potential benefits of the rulemaking outweigh the estimated costs.

ABBREVIATIONS

| | |
|--------|--|
| ANPRM | Advanced Notice of Proposed Rulemaking |
| B&W | Babcock and Wilcox |
| CFR | Code of Federal Regulations |
| CY | Calendar Year |
| DHHS | U.S. Department of Health and Human Services |
| DOT | U.S. Department of Transportation |
| FFD | Fitness-for-Duty |
| FR | Federal Register |
| GET | General Employee Training |
| MOU | Memorandum of Understanding |
| NFS | Nuclear Fuel Services |
| NRC | U.S. Nuclear Regulatory Commission |
| NUMARC | Nuclear Management and Resources Council |
| SRM | Staff Requirements Memorandum |
| SSNM | Strategic Special Nuclear Material |
| U | Uranium |

CONTENTS

SUMMARY i

ABBREVIATIONS iii

1.0 INTRODUCTION 1.1

 1.1 BACKGROUND 1.2

 1.2 STATEMENT OF THE PROBLEM 1.3

 1.3 OBJECTIVES OF THE RULEMAKING. 1.4

 1.4 DRUG TESTING RULES ISSUED BY MODAL ADMINISTRATIONS WITHIN DOT .1.5

2.0 REASONABLE ALTERNATIVES FOR MEETING THE REGULATORY OBJECTIVE 2.1

 2.1 TYPES OF WORKERS TO BE INCLUDED 2.1

 2.2 INTERACTION WITH THE DOT DRUG TESTING RULES 2.2

3.0 CONSEQUENCES 3.1

 3.1 ESTIMATION OF BENEFITS 3.1

 3.1.1 Safety Related Benefits 3.1

 3.2.2 Security Related Benefits 3.3

 3.2 ESTIMATION OF COSTS 3.4

 3.2.1 Current FFD Programs of Affected Licensees 3.4

 3.2.2 FFD Cost Centers 3.5

 3.2.3 Summary of Cost Estimates 3.10

 3.3 IMPACT ON OTHER REQUIREMENTS 3.12

4.0 DECISION RATIONALE 4.1

1.0 INTRODUCTION

The U.S. Nuclear Regulatory Commission (NRC) is promulgating a rulemaking action that requires certain employees of licensees authorized to possess, use, or transport Category I Material⁽¹⁾ to undergo testing for drugs and alcohol. Current licensees affected by the rulemaking are 1) Babcock and Wilcox (B&W), Lynchburg, Virginia, 2) Nuclear Fuel Services (NFS), Erwin, Tennessee, and 3) various licensees authorized to transport SSNM. The testing would be undertaken according to the procedures in NRC's fitness-for-duty (FFD) rules contained in 10 CFR Part 26. This document contains a regulatory analysis of the final rulemaking. The document was prepared according to the guidance in Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/BR-0058, Rev. 1, May 1984.

Section 1 of this Regulatory Analysis includes background information, a statement of the problem to be addressed by the rulemaking, the objectives of the rulemaking, and a discussion of existing drug testing rules issued by modal administrations within the U.S. Department of Transportation (DOT). Section 2 identifies and discusses reasonable alternative actions for meeting the regulatory objectives. Section 3 contains a discussion of the projected benefits and an estimate of the implementation costs associated with the rulemaking. Section 4 contains the decision rationale.

(1) The term "Category I Material" means an unirradiated formula quantity of strategic special nuclear material. A formula quantity means any combination in a quantity of 5,000 grams or more computed by the formula: grams = (grams contained U-235) + 2.5(grams U-233 + grams plutonium).

1.1 BACKGROUND

NRC issued FFD regulations on June 7, 1989 (54 FR 24494) applicable to licensees authorized to operate a nuclear power reactor. The regulations became effective January 3, 1990. The regulations require affected licensees to establish and implement written policies and procedures to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance which adversely affects performance.

The FFD regulations establish chemical testing requirements to test for the use of alcohol and drugs. Four types of chemical testing are required 1) preaccess, 2) random, 3) for-cause, and 4) followup.⁽²⁾ Preaccess (preemployment) chemical testing may detect drug use prior to hiring, but the applicant knows about the testing and can potentially evade detection. Preaccess testing does not address detection and deterrence in the workplace. For-cause testing is linked to job performance, but has a relatively low deterrent effect and does not provide for early detection. For-cause testing depends on a supervisor's ability to detect problems and willingness to make referrals. When problems are not detected, for-cause testing may not be initiated until after an incident has occurred. Followup testing is essentially a procedure to verify continued abstinence. It does not provide early detection, but it may have some deterrent effect. In conjunction with issuing the Part 26 FFD rules in 1989, NRC determined that, to be effective, chemical testing must include random unannounced urinalysis for drugs and breath testing for alcohol. Moreover, evidence derived from random testing programs implemented by other federal agencies indicates that random testing effectively detects and strongly deters substance abuse in the workplace.⁽³⁾

The existing Part 26 regulations are limited to NRC licensees authorized to construct or operate a nuclear power reactor. The NRC noted, however, that in the future it may consider the need to extend the coverage of the rule to

(2) 10 CFR 26.24.

(3) V. Barnes, et al., Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues, NUREG/CR-5227, September 1988.

other types of licensed facilities.⁽⁴⁾ Approval to proceed with rulemaking to extend a fitness-for-duty program to other licensees was granted by the Commission in a Staff Requirements Memorandum (SRM) dated June 26, 1990. The SRM also disapproved the use of a policy statement addressing the need for FFD programs for licensees not affected by the existing Part 26 regulations.

1.2 STATEMENT OF THE PROBLEM

The rulemaking has been promulgated for both safety and security reasons.⁽⁵⁾ The safety concern is that evidence has shown that use of alcohol or drugs can impair a worker's motor skills and judgment sufficiently that accidents attributable to neglect or error are significantly more probable. The security concern is diversion or sabotage of SSNM or related information for illegal activities. Licensee employees with drug or alcohol problems are more susceptible to blackmail or coercion which could enable terrorists or unfriendly governments to manipulate an otherwise trustworthy individual into assisting them with their unlawful activities. Also security personnel with a drug or alcohol problem can cause a degradation or violation of security systems or procedures.

During the first year (calendar year 1990) of drug and alcohol testing of nuclear power plant workers, approximately 0.87 percent of tests administered under the Part 26 requirements were positive. The breakdown by test category is shown in the following box:⁽⁶⁾

-
- (4) L.L. Bush and B.K. Grimes, Fitness-for-Duty in the Nuclear Power Industry: Responses to Public Comments, NUREG-1354, p. 4-1, May 1989.
 - (5) The safety and security concerns are discussed in 1) V. Barnes, et al., 1988; and 2) N. Durbin, et al., Fitness-for-Duty in the Nuclear Power Industry: A Review of the First Year of Program Performance and an Update of the Technical Issues, prepared by the Battelle Human Affairs Research Centers, August 1990.
 - (6) N. Durbin, et al., Fitness-for-Duty in the Nuclear Power Industry: Annual Summary of Program Performance (CY 1990), prepared by the Battelle Human Affairs Research Centers, p. 2, July 1991.

| Test Category | No. of Tests | No. of Positive Tests | Percent Positive |
|---------------|--------------|-----------------------|------------------|
| Preemployment | 122,491 | 1,548 | 1.26% |
| Random | 148,743 | 550 | 0.37% |
| For-Cause | 732 | 214 | 29.23% |
| Followup | 2,633 | 65 | 2.47% |
| TOTAL | 274,599 | 2,377 | 0.87% |

The NRC has no reason to believe that the incidence of positive tests for workers who will be affected by this rulemaking will be appreciably different from that observed at nuclear power plants. As noted in the Supplementary Information accompanying the final Part 26 regulations (54 FR 24469), the NRC has a statutory responsibility under the Atomic Energy Act to protect the public health and safety. The NRC believes that use of drugs and abuse of alcohol in the nuclear industry is counter to public health and safety and warrants NRC intervention.

1.3 OBJECTIVES OF THE RULEMAKING

The fundamental objective of the rulemaking is to provide reasonable assurance that a person who is under the influence of drugs, alcohol, or any other substance that affects a person's ability to perform duties associated with the safe use or safeguarding of SSNM does not have access to such material. The general performance objectives expressed at 10 CFR 26.10 are also objectives of the rulemaking. These are:

- to provide reasonable assurance that affected workers (see Section 2.1) will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties,
- to provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of the rulemaking

- to have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances.

1.4 DRUG TESTING RULES ISSUED BY MODAL ADMINISTRATIONS WITHIN DOT

Authorized carriers of Category I Material are currently subject to the drug testing rules issued by the modal administrations within DOT. DOT has issued procedures for transportation workplace drug testing programs (49 CFR Part 40). The procedures require testing for marijuana, cocaine, opiates, amphetamines, and phencyclidine (49 CFR 40.21). DOT does not currently have alcohol testing requirements at the Department level. The DOT modal administrations do, however, prohibit 1) alcohol consumption while on duty, 2) operating a transport vehicle while under the influence of alcohol, and 3) in certain cases, consumption of alcohol during defined preduty periods.⁽⁷⁾ DOT issued an advanced notice of proposed rulemaking (ANPRM) covering an alcohol abuse prevention program for the transportation industry including an alcohol testing program on November 2, 1989 (54 FR 46326).⁽⁸⁾ DOT's most recent Regulatory Agenda, however, states that the next action on the ANPRM is undetermined.⁽⁹⁾

(7) 54 FR 46329-46330, November 2, 1989.

(8) The ANPRM notes that three of the DOT modal administrations have limited alcohol testing requirements (54 FR 46343). The Coast Guard and the Federal Railroad Administration provide for postaccident and reasonable cause testing. The Federal Aviation Administration requires crew members to submit to alcohol testing upon request.

(9) 56 FR 17608, April 22, 1991.

The four DOT agencies whose regulated community may transport SSNM, and its citation to the Code of Federal Regulations (CFR) for drug testing requirements, are shown in the following box:

| AGENCY | CITATION |
|---------------------------------|-----------------------|
| Coast Guard | 46 CFR Part 16 |
| Federal Aviation Administration | 14 CFR 121.457 |
| Federal Highway Administration | 49 CFR 391, Subpart H |
| Federal Railroad Administration | 49 CFR Part 219 |

The rules of all four of the agencies provide for random drug testing.

DOT and NRC entered into a Memorandum of Understanding (MOU) in 1979 concerning their respective roles in the regulation of the transportation of radioactive materials.⁽¹⁰⁾ DOT's responsibilities under the MOU include the development of special transport controls (excluding safeguards) and safety standards for the qualifications of carrier personnel. The DOT has been informed of NRC's adopting drug and alcohol testing rules for carrier personnel consistent with the MOU. Discussions have been held with DOT to minimize the potential for dual regulation of carrier personnel.

(10) 44 FR 38690, July 2, 1979.

2.0 REASONABLE ALTERNATIVES FOR ACHIEVING THE REGULATORY OBJECTIVE

This section discusses the reasonable alternatives considered for meeting the regulatory objectives identified in Section 1.3. Two categories of alternative actions were considered 1) the type of workers to be included within the FFD requirements, and 2) the potential interaction with the DOT drug testing rules.

2.1 TYPES OF WORKERS TO BE INCLUDED

The rulemaking applies to the following categories of Category I Material licensee or transporter workers:

- employees who physically handle Category IA Material⁽¹⁾
- employees who are authorized to enter Category IA Material storage or process areas
- employees who do the accounting and recordkeeping for the SSNM
- employees who measure the Category IA Material
- employees who are responsible for the material control and accounting of the SSNM
- employees who write or have the authority to modify the procedures governing the preceding activities
- employees who guard the Category IA Material
- employees who are responsible for transporting Category IA Material.

(1) Category IA Material is defined in 10 CFR Part 74.4 as strategic special nuclear material (SSNM) directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms.

All of the employees in the preceding categories either have 1) physical contact with or access to Category IA Material, or 2) responsibility for control of SSNM through recordkeeping or report and procedure writing. Both of these categories of employees are considered important by the NRC in meeting the regulatory objectives identified in section 1.3 and, consequently, are included in the rulemaking. Although individuals in the second category do not have physical access to SSNM, they potentially can act in concert with individuals in the first category to cover up a diversion of SSNM. Subornation has a greater likelihood of occurrence if the individuals involved are using illegal drugs.

A similar comprehensive inclusion of workers was adopted in the FFD rulemaking for nuclear power plant personnel (54 FR 24471), where all workers with unescorted access to the protected area were included within the scope of the rule including such categories of workers as vendors, secretaries, and clerical personnel.

2.2 INTERACTION WITH DOT DRUG TESTING RULES

As discussed in Section 1.4, carriers of Category I Material are currently subject to the drug testing rules of DOT and its various modal administrations. The drug testing rules are similar, but not identical to, NRC's Part 26 regulations. Options that were available for addressing the DOT regulations in the proposed rulemaking included:

- 1) omitting carrier personnel from the proposed rulemaking
- 2) making carrier personnel subject to the proposed rulemaking without regard to the existing DOT rules
- 3) making carrier personnel subject to the proposed rulemaking but also adopting certain incremental changes for carrier personnel so that the NRC FFD rules for carrier personnel and other workers within the scope of the proposed rulemaking are basically the same
- 4) adopting no additional drug testing rules for carrier personnel beyond the DOT requirements, but subjecting carrier personnel to the Part 26 procedures for alcohol testing.

A modified Option 2 was chosen as the preferred option. Option 1 was not selected because in NRC's view alcohol is an appropriate FFD concern. The basis for this view is summarized in the Supplementary Information section of the final Part 26 rule (54 FR 24480). Option 3 was not selected because incremental changes for only transporter personnel were considered as potentially confusing to licensees. Option 4 was not selected because of the disadvantages of the two major groups of personnel to be covered in the case of fitness-for-duty by two different regulatory bodies. A modified Option 2 was selected because in the context of Category I Material, fitness-for-duty is a safeguards issue, and according to the NRC-DOT Memorandum of understanding, the NRC is the lead Agency for safeguards issues. However, in the final rule, after recent review of the Department of Transportation fitness-for-duty requirements it was decided to exempt from the requirements of this rule, those transporters of SSNM who are subject to United States Department of Transportation drug or alcohol fitness programs that require random testing for both drugs and alcohol.

3.0 CONSEQUENCES

This section discusses the anticipated consequences of the rulemaking. Section 3.1 discusses the projected benefits in qualitative terms. Section 3.2 covers the estimated costs of implementing the rulemaking. Section 3.3 discusses potential impacts on groups other than licensees. Section 3.4 discusses potential implementation constraints.

3.1 ESTIMATION OF BENEFITS

The benefits of the rulemaking are analyzed in terms of the objectives stated in Section 1.3, the essence of which is to guarantee as much as possible that the categories of workers listed in Section 2.1 are always fit for duty. These benefits are not readily quantifiable. Therefore, the benefit analysis is essentially qualitative and expressed in terms of the fundamental reason for the rule: to ensure that those individuals who have a drug or alcohol problem do not have access to or control over SSNM. There are also likely to be secondary benefits accruing to affected licensees including enhanced work-force productivity, reduced absenteeism, lower medical and insurance costs, and less plant downtime.⁽¹⁾ These secondary benefits will offset to some extent the costs identified in Section 3.2, but were not taken into account in the decision rationale for the rulemaking (Section 4.0).

3.1.1 Safety Related Benefits

Drug or alcohol abuse can impair job performance. This impairment is not only a significant threat to the safety of the workers themselves, but may also endanger the health and safety of the public.⁽²⁾ Drug use or alcohol consumption on the job can adversely affect behavior and diminish both physical and cognitive abilities. The effects of withdrawal, hangover, and

(1) U.S. Nuclear Regulatory Commission, Backfit Analysis: Fitness-for-Duty, prepared in conjunction with the 10 CFR Part 26 Final Rule, June 7, 1989, p. 7. (Hereafter, "Backfit Analysis").

(2) V. Barnes, et al., op cit.

long term chronic off-duty substance abuse can also affect job performance and safety. As an example, the Federal Railroad Administration reported 48 incidents between 1975 and 1983 caused by drug or alcohol impaired workers which resulted in 34 fatalities, 66 injuries and \$28 million in property damage.⁽³⁾ Furthermore, drug users have been found to be three or four times as likely as non-users to have an on-the-job accident.⁽⁴⁾ Finally, drug or alcohol abuse by nuclear industry workers is considered by the NRC to be an indicator of a lack of "reliability, integrity, and trustworthiness"⁽⁵⁾ and is a legitimate safety and security concern for the NRC.

In its Backfit Analysis prepared in 1989 in conjunction with the Part 26 FFD rule, the NRC concluded that substance abuse significantly increases the risk of accidents as a result of neglect or human error. Although the reduction of risk due to FFD programs was not quantified, the NRC concluded that drug and alcohol testing as part of a comprehensive FFD program can significantly increase the assurance that employees will be fit for duty.⁽⁶⁾ The NRC further concluded that the implementation costs were justified by the protection to public health and safety that the program would assure. In addition, it was observed that assuring that workers were not impaired by drugs or alcohol is likely to decrease the probability of human error and to reduce the risk of accidental radiological exposure to the individual employee and other workers.⁽⁷⁾ The reasoning contained in the Backfit Analysis applies to this final rulemaking.

While the probability of a significant accidental radiological release due to substance abuse may be low, the consequences of such a release could be great. Even a relatively small radiological accident attributable to drug or

(3) 50 FR 31516, August 2, 1985.

(4) C.M. Cornish, Drugs and Alcohol in the Workplace: Testing and Privacy, Callaghan & Co., Wilmette, Illinois, p. 12, 1988.

(5) 54 FR 24470, June 7, 1989.

(6) Backfit Analysis, p .6.

(7) Backfit Analysis, p. 7.

alcohol use could undermine public confidence in the safety and integrity of the nuclear industry. The relatively low positive test rates reported in Section 1.2 suggest that substance abuse among nuclear power plant workers may not be as great as in the national work force.⁽⁸⁾ Nevertheless, even a low positive test rate is indicative of previously undetected drug use among workers. Further, the test rates do not reveal the actual incidence of drug use and may possibly represent a low estimate within the industry. In any case, the positive test result rates do illustrate that there is likely to be a sufficient substance abuse problem in the nuclear industry overall to warrant the extension of the Part 26 FFD rules to the categories of workers listed in Section 2.1.

3.1.2 Security Related Benefits

The trustworthiness of nuclear industry workers with access to SSNM or involved in material control and accountability positions is an important security concern. These positions require a high degree of trust and confidence. Occupation of these positions by workers engaged in substance abuse presents a threat to security. Government sponsored studies have indicated a significant relationship between drug use and criminal conduct.⁽⁹⁾ Workers with drug or alcohol problems often have financial difficulties which make them susceptible to approaches by criminal, terrorist, or foreign intelligence entities who might recruit such workers to provide them with sensitive information or property in return for money. Workers with substance abuse problems may engage in activities which make them vulnerable to blackmail, and as a result, they may participate or assist in acts of sabotage or in the diversion of information or property. Drug users may also steal to obtain money to support their habit. In addition, security personnel with a drug or alcohol problem can cause a degradation or cessation of

(8) N. Durbin, et al., Fitness-for-Duty in the Nuclear Power Industry: A Review of the First Year of Program Performance and an Update of the Technical Issues, prepared by the Battelle Human Affairs Research Centers, August 1990, p. 23.

(9) C.M. Cornish, op cit., p. 16.

security systems or procedures. A drug and alcohol testing program will minimize the likelihood that such individuals occupy positions with access to or control over SSNM.

The rulemaking is expected to provide the following security benefits: 1) a reduction in drug use by deterring initial or continued substance abuse, and 2) detection of substance abusers enabling their removal from sensitive positions which could threaten security. The reduced security risk derived from the rulemaking is a benefit that warrants its application to the types of employees listed in Section 2.1.

3.2 ESTIMATION OF COSTS

The rulemaking will expand the coverage of the NRC's FFD rules to include facilities and carriers licensed to possess or transport Category I Material. This section analyzes the estimated costs for these licensees to implement the FFD program. When appropriate, estimated costs are compared to the calendar year 1990 costs incurred by nuclear power reactor licensees as estimated by the Nuclear Management and Resources Council (NUMARC). These costs were collected by NUMARC from cost data submitted to it by utilities operating all 115 reactors currently subject to the Part 26 rules.⁽¹⁰⁾

3.2.1 CURRENT FFD PROGRAMS OF AFFECTED LICENSEES

All non-carrier licensees affected by this rulemaking currently have a limited FFD program. In each case the licensees have preemployment drug testing and "for-cause" drug testing. None of the licensees have random drug testing programs, and the programs test for alcohol only "for cause." To implement the FFD program, each affected licensee will be starting with a foundation from which to develop and operate the required FFD program. However, since a significant expense of the FFD program is the required random

(10) The cost data are summarized in a September 20, 1991 letter from Thomas E. Tipton, NUMARC, to Brian K. Grimes, NRC.

chemical testing program, the licensees are unlikely to find great savings from the existence of their present FFD programs.

Carriers who will be affected by the rulemaking should not see nearly as large development and implementation costs as licensees authorized to use or possess Category I Material. First, only about 1 percent of workers affected by the rulemaking are expected to be employed by carriers. Second, carriers, as discussed in Section 1.4, are presently subject to the drug testing requirements of DOT's modal administrations. The most significant modifications to the carriers' existing FFD programs would be the addition of alcohol testing and the corresponding need to change written policies and procedures. Most of the costs estimated in Section 3.2.2 are unlikely to be applicable to the affected carriers. Costs that are likely to affect carriers are noted.

3.2.2 FFD COST CENTERS

The requirements of 10 CFR Part 26 encompass more than implementation of drug testing. The FFD program requirements are comprehensive, requiring the development of policies, procedures, training courses, continual monitoring, as well as chemical testing. The expected costs which will be incurred by affected licensees when implementing the regulations are broken down in the following discussion into various cost centers. The cost centers are similar to those used in the 1989 Backfit Analysis prepared in conjunction with the existing Part 26 rules. Estimates of employee salaries and training costs are derived from the document Generic Cost Estimates, NUREG/CR-4627, Rev. 1, February 1989.

3.2.2.1 Development of Written Policies and Procedures

Each licensee covered by the rulemaking will be required to develop written policies and procedures to implement and operate its FFD program. The cost incurred to develop such policies and procedures is considered to be a one-time implementation cost. In the Backfit Analysis for implementation of the existing 10 CFR Part 26 rules, it was estimated that each licensee would need to expend a 16-person-week effort (640 hours) to develop the policies and procedures. Some licensees currently required to comply with Part 26 have reported more difficulty than originally anticipated when developing their internal written policies and procedures.⁽¹¹⁾ In an effort to reflect and not underestimate actual costs, the number of hours estimated to develop written policies and procedures has been increased from a 16-person week to a 20-person week effort. An additional 20-person week will result in 800 actual hours spent developing and preparing the policies and procedures.

The average cost of a licensee technical person (including fringe benefits) in 1991 is approximately \$54.00 per hour. The estimated cost per facility to develop the policies and procedures is approximately \$43,200 (800 hours x \$54.00). For the two affected facilities (B&W and NFS) to implement the policies and procedures, the cost is estimated to be approximately \$86,400 (2 facilities x \$43,200).

3.2.2.2 Awareness Training Program

It is assumed that all affected employees at each facility having Category I Material will need an initial training course to inform and orient them to the FFD program. The training is estimated to be no more than a 1-hour course. This is considered a one-time implementation cost. The training cost per student is estimated to be approximately \$25 per hour. This figure is exclusive of the student's time away from work; however, it does include the instructor's time for development, preparation, delivery, evaluation and revisions to the course and materials for the course. A student's time is

(11) N. Durbin, et al., op cit., August 1990, p. 8, 9.

valued at \$41.00 in 1991, which is an average salary paid to various utility workers and management personnel adjusted for fringe benefits. The average supervisor's salary is also estimated to be \$54.00. Thus, the estimated individual student awareness training cost (including lost productivity and worker to supervisor ratio of about 14:1) is approximately \$70. Licensees may be able to incorporate the training into existing employee courses and realize a corresponding cost saving.

3.2.2.3 Refresher Training Program

Persons subject to the rules will also be required to attend annual refresher training programs. NRC licensed facilities generally conduct annual General Employee Training (GET) programs covering safety and security issues. It is assumed that refresher training for the FFD program can be incorporated into the present GET programs. No additional costs are therefore assumed for implementation of the rulemaking.⁽¹²⁾

3.2.2.4 Preemployment and For Cause Chemical Testing

Each facility affected by the rulemaking presently has an FFD program which includes drug testing prior to employment as well as testing "for cause." These programs do not test for alcohol. Laboratories certified by the U.S. Department of Health and Human Services (DHHS) do not generally charge any additional fee to test urine for alcohol. Thus, no additional costs are likely to be incurred by the final rule.

3.2.2.5 Random Testing

The rule requires all facilities having Category I Material to conduct random chemical testing of many of their workers. Each licensee is required to test to the equivalent of nuclear power plants, which is currently 100 percent of its covered employees each year. None of the licensees presently

(12) In its September 20, 1991 letter, NUMARC estimates the annual retraining cost to be approximately \$100,000 for each nuclear power reactor.

authorized to handle Category I Material have random chemical testing as a part of its drug testing program. As a result, one of the areas in which affected facilities will incur the most expense will be the development and implementation of a random chemical testing program.

The estimated cost to conduct random chemical testing is based on the following assumptions:

- It is assumed that no licensee conducts random chemical testing as part of its present FFD program.
- It is believed that less than one-half of the population of the facility would be required to participate in the random chemical testing program. The number of workers actually affected is not available at this time. Testing one-half of the entire population is assumed, and, therefore is likely to yield a higher cost than actual practice.
- The average cost for chemical tests is assumed to be \$40. This cost includes both the costs of the initial screening and the confirmatory test. Laboratory charges for analyzing samples have dropped substantially in the past 3 years. Almost all laboratories charge one flat rate per specimen, which includes both screening and confirmatory tests. The range of charges for the combined testing currently varies between \$27 and \$55.⁽¹³⁾
- It is estimated that, on average, it will take an employee 1 hour to travel to the test site, be tested, and then return to work.
- Since the type of employee (job classification) which will be affected by the rulemaking varies widely, a rate of \$47.62 per hour including fringe benefits is assumed.

(13) From a Pacific Northwest Laboratory random survey of ten DHHS approved laboratories as listed in 56 FR 13648 (April 3, 1991).

Using these assumptions, it is estimated that the average cost per test per employee will be \$87.62. This is the cost of the test plus the cost of an employee's time away from work.

3.2.2.6 Quality Assurance

Licensees will need to conduct blind performance testing to assure that testing is done properly and the results are accurate. Based upon the experience of licensees currently subject to the Part 26 rules, this cost is estimated to be \$2.00 per employee. This estimate is based on the assumption that 5 percent of the specimens tested would be further tested at an alternative certified laboratory (.05 x \$40 per test x number of employees tested = \$2.00 per employee tested). There would not be any additional lost productivity expenses because the samples would be collected at the same time and location. The other assumptions relating to chemical testing mentioned above would apply.

3.2.2.7 Additional Personnel

It is estimated that each affected licensee will need three additional clerical people for program administration, information collection and processing, and recordkeeping. It is assumed that these clerical workers can also conduct the "suitable inquiries" of prospective employees required by 10 CFR 26.27(a).⁽¹⁴⁾ These workers are assumed to receive a salary of \$21,000 with an additional burden factor of 1.59. Each licensee could thus incur an additional annual clerical expense of \$100,170. Each licensee may also need to hire a physician as a Medical Review Officer. If the physician is paid a salary of \$75,000 per year and also receives a 35 percent benefits package, the cost to each licensee would be approximately \$101,250 per year. Carriers affected by the rulemaking are assumed to be able to implement the program with no additional medical or clerical staff.

(14) The September 20, 1991 NUMARC letter estimates, however, that "suitable inquiry" costs are approximately \$200,000 per reactor per year.

3.2.2.8 Record and Specimen Storage

Each DHHS certified laboratory includes in its testing charge a fee to store the specimen for 1 year. Additional charges would be incurred if a longer storage period is desired. On average, the cost to store a specimen per year (following the standard 1 year storage) is \$10 per specimen.⁽¹⁵⁾

3.2.2.9 Employee Assistance Program

It is anticipated that with the addition of random drug testing at the affected facilities, an expanded Employee Assistance Program will be needed. It is estimated that one additional professional staff and one additional clerical person will be required. Each facility will thus incur an additional average cost of approximately \$116,000 (assuming \$52,000/yr for the professional staff person and \$21,000/yr for the clerical person with a burden factor for each of 1.59).

3.2.2.10 Additional NRC Costs

The NRC does not anticipate the need to add any additional staff or administrative personnel. The administration of the expanded FFD program will be absorbed by current personnel and staff.

3.2.3 SUMMARY OF COST ESTIMATES

The estimated costs for the B&W and NFS facilities to implement the rule are summarized in the box below. The B&W facility has approximately 2500 employees. The NFS facility has approximately 1000 employees. Costs for carriers subject to the rule are not shown in the box. It is estimated that only about 30 carrier personnel will be subject to the chemical testing requirements in the rule. As discussed in Section 1.4, the affected carriers must presently comply with the drug testing rules of the DOT modal

(15) From a Pacific Northwest Laboratory random survey of ten DHSS approved laboratories as listed in 56 FR 13648 (April 3, 1991).

administrations. The anticipated cost to the carriers to incorporate the NRC's rulemaking (include testing for alcohol) is therefore expected to be relatively small.

| (16) COST CENTERS | B&W - 1st Yr. | B&W-Annual | NFS-1st Yr. | NFS-Annual |
|-------------------------------|---------------|------------|-------------|------------|
| Develop Policies/Procedures | \$43,300 | 0 | \$43,300 | 0 |
| Awareness Training Program | \$87,500 | 0 | \$35,000 | 0 |
| Chemical Testing | \$110,000 | \$110,000 | \$43,810 | \$43,810 |
| Quality Assessment | \$2,500 | \$2,500 | \$1,000 | \$1,000 |
| Additional Clerical Personnel | \$100,170 | \$100,170 | \$100,170 | \$100,170 |
| Medical Review Officer | \$101,250 | \$101,250 | \$101,250 | \$101,250 |
| Employee Assistance Program | \$116,000 | \$116,000 | \$116,000 | \$116,000 |
| TOTAL ESTIMATED COSTS | \$561,000 | \$430,000 | \$440,500 | \$362,000 |

The costs, which will be incurred by affected licensees when the final rulemaking becomes effective, are difficult to estimate with precision. A licensee's ability to integrate the rules with an existing FFD program will have a significant effect on costs. For example, a licensee may be able to incorporate the initial awareness training in GET sessions or limit the number of new employees needed to implement the rule if duties associated with the rulemaking can be absorbed by existing employees.

The NUMARC estimates of actual costs incurred by reactor licensees in 1990, as reported in its September 20, 1991 letter to the NRC, were derived using different assumptions and cost centers from those used in this Regulatory Analysis. Nevertheless, the estimated costs are comparable to those displayed above, especially considering that total employment at a reactor typically falls between the employment levels at the affected NFS and B&W facilities. NUMARC's estimated annual operating cost is approximately \$565,000 per reactor. This figure includes training, suitable inquiry, and lost productivity costs while an employee is off the job for chemical testing.

(16) Many of these costs are offset by programs already in place for licensees subject to the Drug Free Workplace Act of 1988.

NUMARC also estimates that initial year start-up costs are approximately \$84,000 per reactor.

3.3 IMPACT ON OTHER REQUIREMENTS

The impacts on NRC programs and requirements are expected to be relatively small. NRC has had existing personnel and procedures for FFD programs since issuance of the Part 26 regulations in 1989. The incremental impact of the regulations on NRC is, consequently, expected to be modest.

4.0 DECISION RATIONALE

The action is to subject 1) certain personnel of licensees authorized to use and possess Category I Material and 2) certain carrier personnel of licensees authorized to transport Category I Material to all of the fitness-for-duty requirements in 10 CFR Part 26. The following categories of workers are covered under the rulemaking:

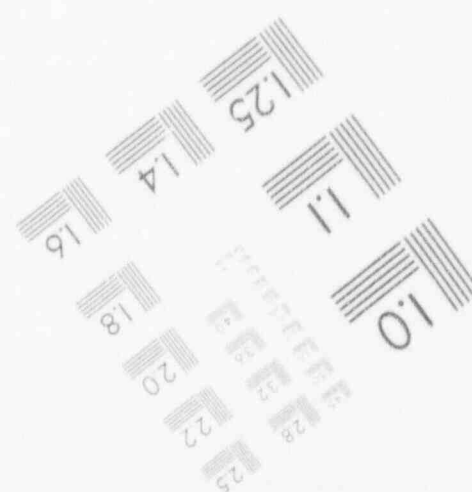
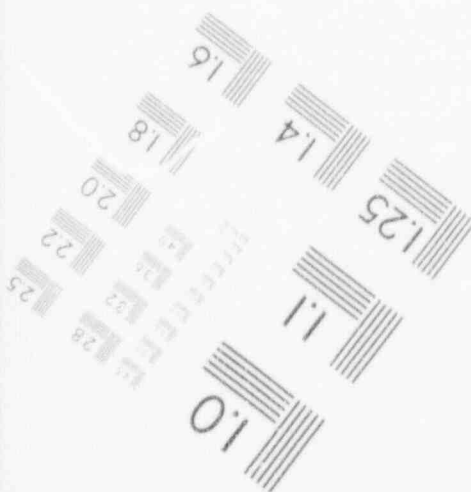
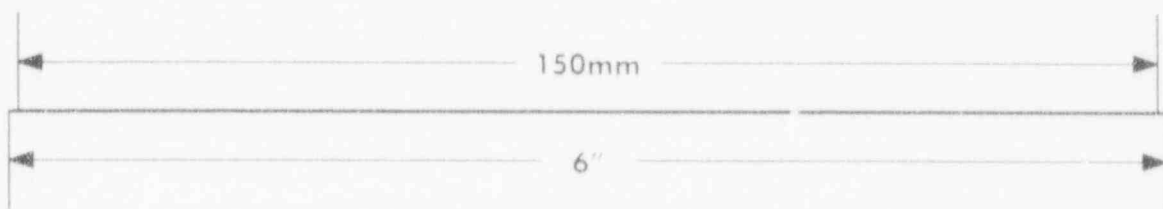
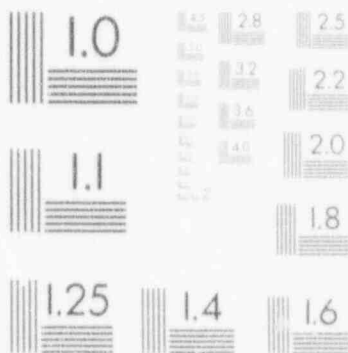
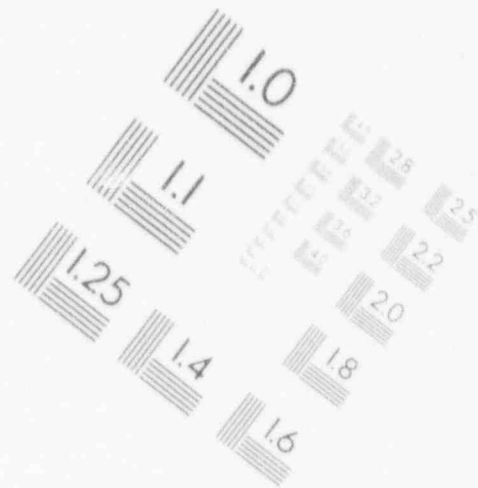
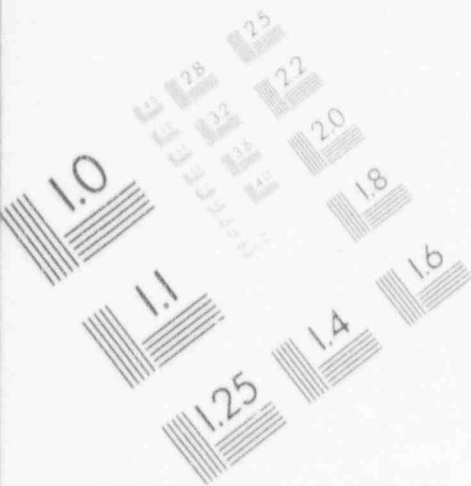
- employees who physically handle Category IA Material
- employees who are authorized to enter Category IA Material storage or process areas
- employees who do the accounting and recordkeeping for the SSNM
- employees who measure the Category IA Material
- employees who are responsible for the material control and accounting of the SSNM
- employees who write or have the authority to modify the procedures governing the preceding activities
- employees who guard the Category IA Material
- employees who are responsible for transporting Category IA Material.

As discussed further in Section 2.1, inclusion of all of the preceding categories of employees is considered important to meeting the objectives of the rulemaking.

It was not possible to quantify the benefits associated with the rulemaking. A similar determination was made in the Backfit Analysis which preceded issuance of the final Part 26 regulations. Nevertheless, NRC concludes that implementation of the rulemaking will reduce security and safety risks associated with the possession, use, and transportation of Category IA Material and also further NRC's statutory mandate to protect public health and safety, the environment, and national security. The estimated costs to implement the rulemaking are considered to be reasonable in relation to the expected benefits.

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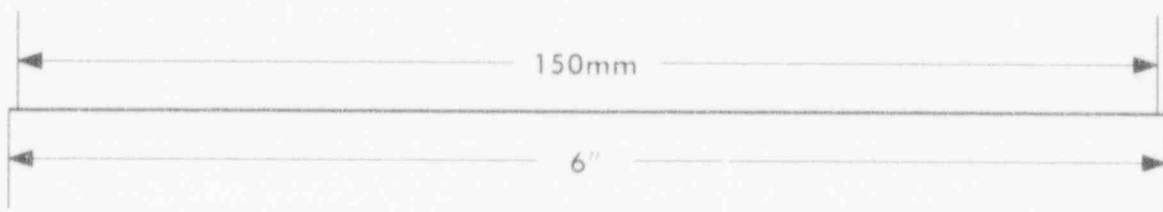
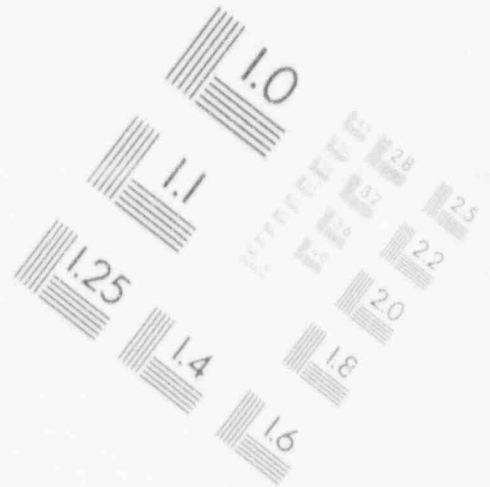
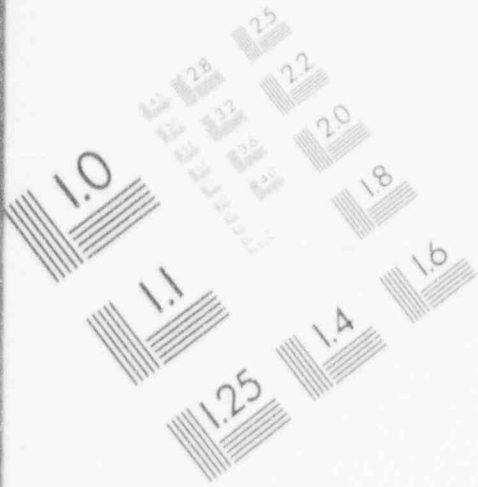
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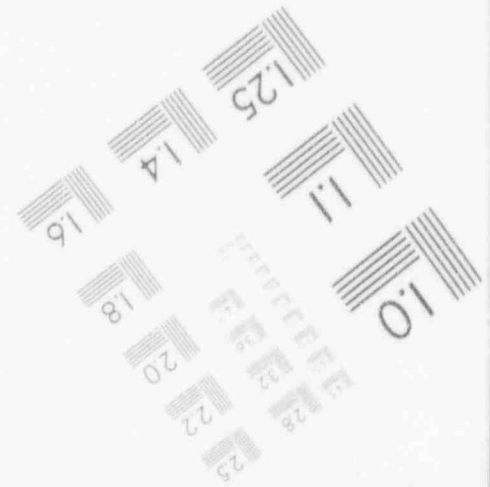
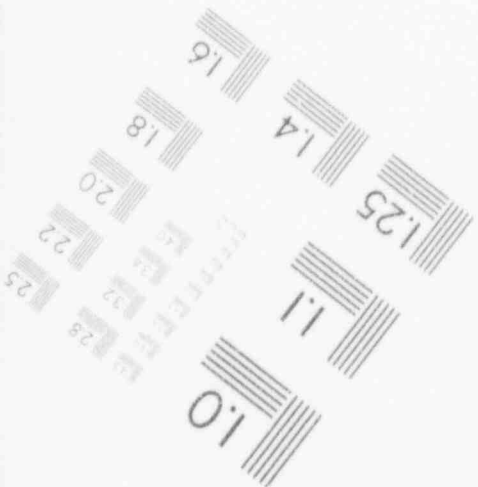
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IMAGE EVALUATION TEST TARGET (MT-3)

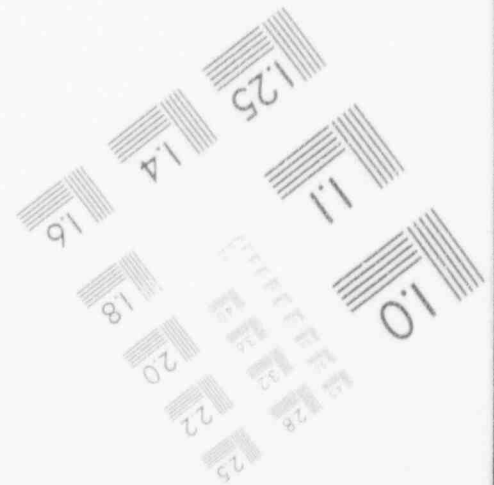
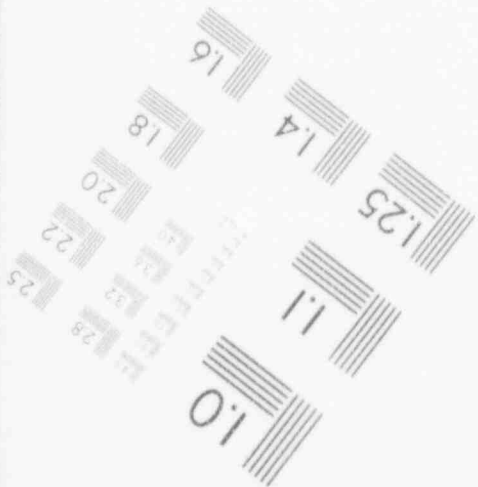
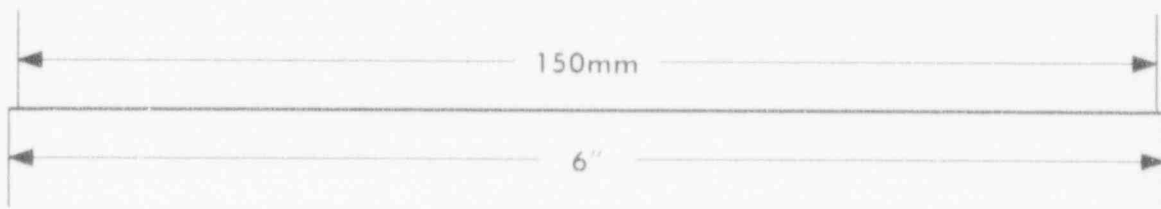


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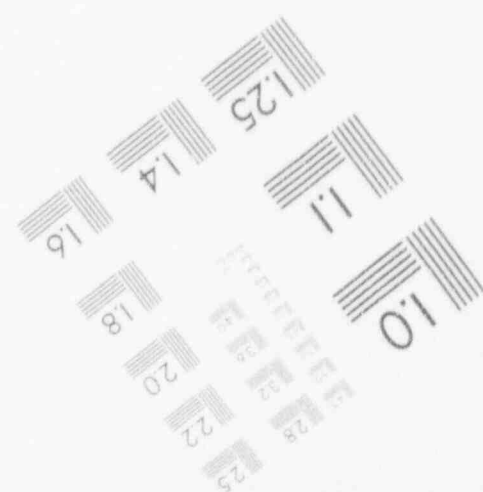
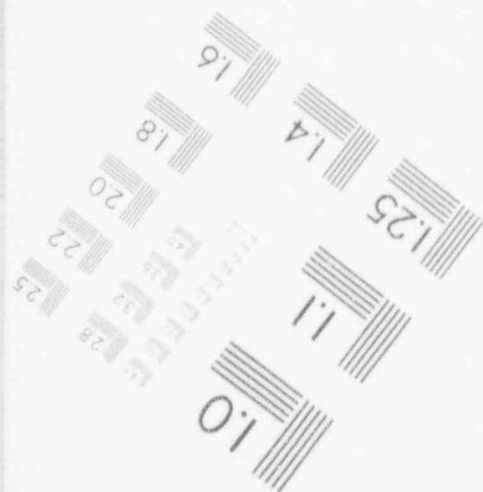
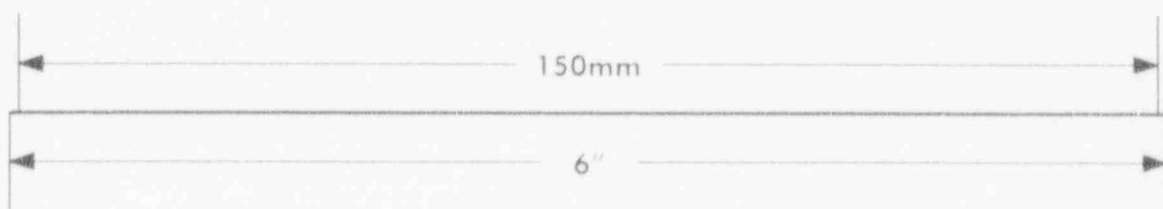
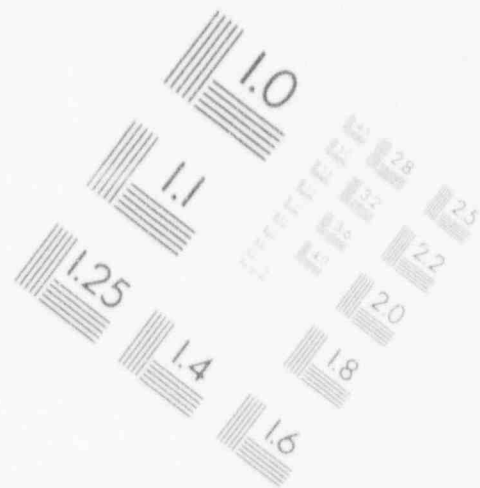
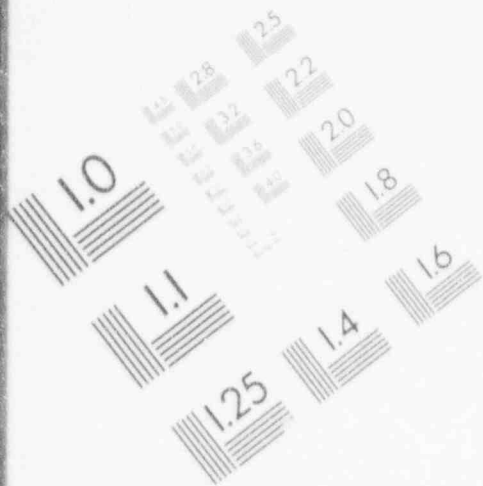
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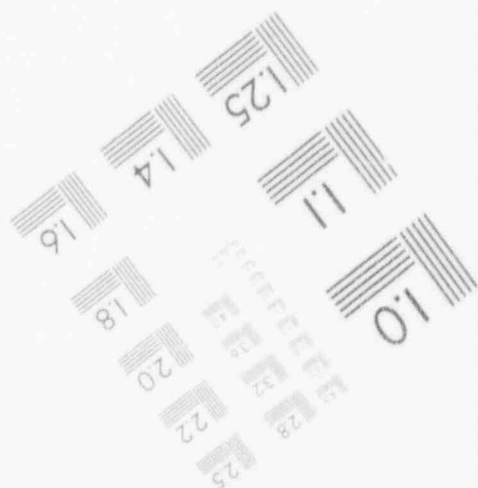
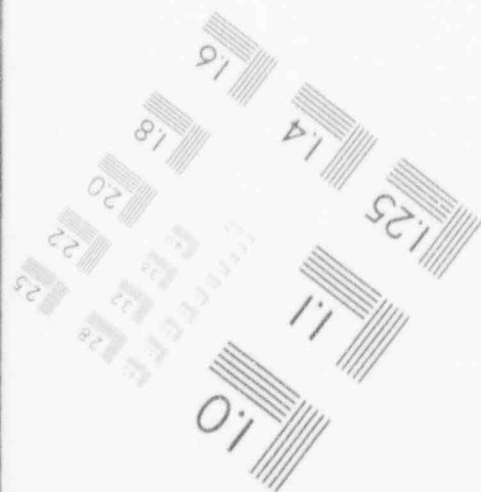
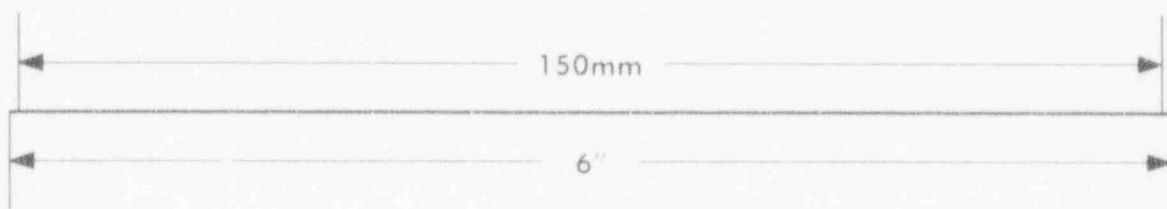
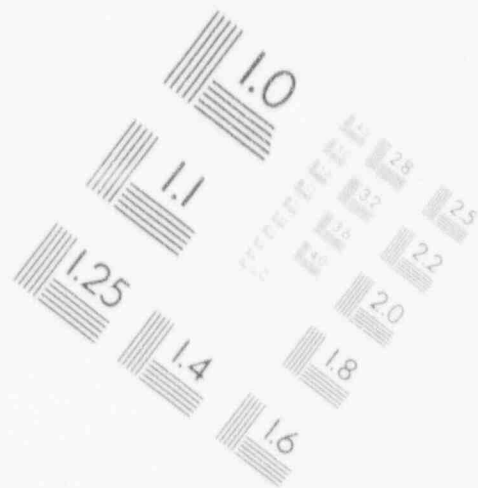
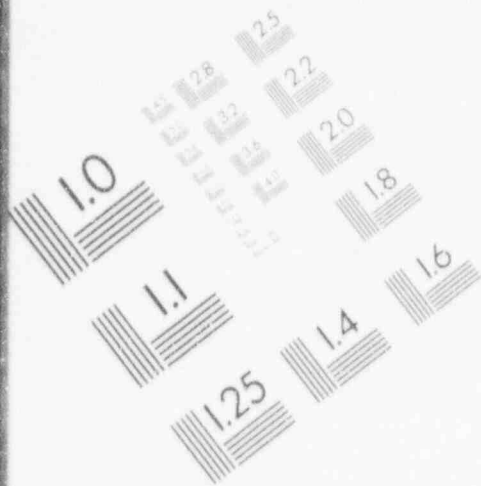
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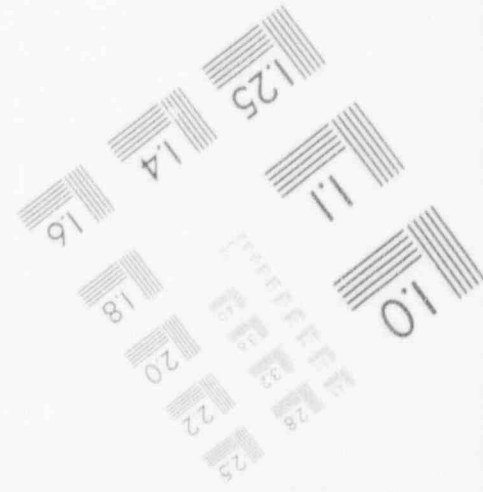
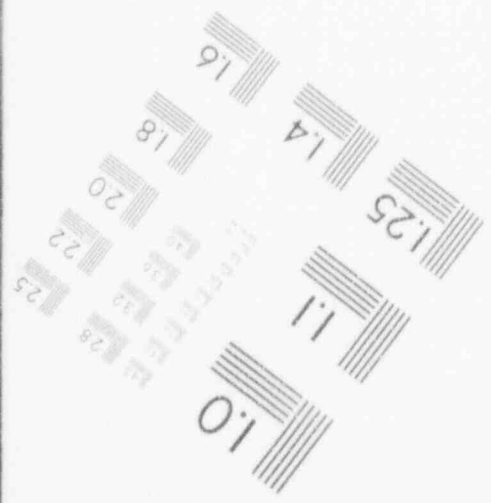
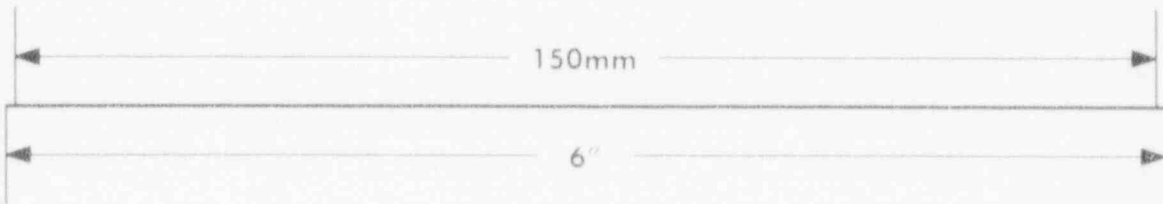
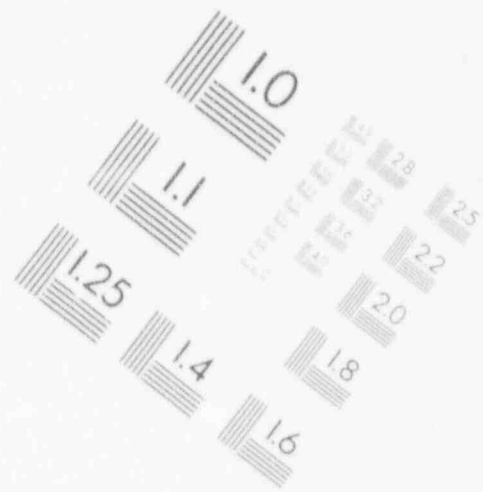
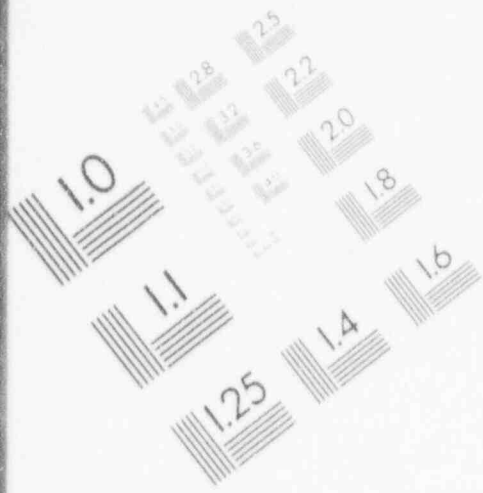
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IMAGE EVALUATION TEST TARGET (MT-3)



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ENCLOSURE D



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Barbara Vucanovich



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Michael Bilirakis



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

The Honorable Joseph Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Alan K. Simpson

ENCLOSURE E

PUBLIC ANNOUNCEMENT

NRC EXTENDING FITNESS-FOR-DUTY REQUIREMENTS

The U.S. Nuclear Regulatory Commission (NRC) is amending the fitness-for-duty requirements contained in 10 CFR Part 26 to include licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

The amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

[AD 68-2]

023

5204-93-089

April 6, 1993

FOR: The Commissioners
FROM: James M. Taylor, Executive Director for Operations
SUBJECT: FINAL AMENDMENTS TO 10 CFR PARTS 26, 70, AND 73 TO ESTABLISH FITNESS-FOR-DUTY REQUIREMENTS FOR LICENSEES AUTHORIZED TO POSSESS, USE, OR TRANSPORT FORMULA QUANTITIES OF STRATEGIC SPECIAL NUCLEAR MATERIAL

PURPOSE:

To obtain Commission approval to publish a notice of final rulemaking.

CATEGORY:

This paper covers a major policy question requiring Commission consideration.

ISSUE:

Whether the fitness-for-duty requirements should be imposed on NRC licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) of a particular weight or size.

BACKGROUND:

On June 7, 1989 (54 FRN 24468), the Commission published a final rule that required licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program. Subsequently, in an SRM dated June 26, 1990, the Commission requested that the staff develop a proposed rule to extend fitness-for-duty requirements to licensees who possess, use, or transport Category I Material (formula quantities of SSNM).

CONTACT:
Stanley P. Turel, RES
492-3739

On April 30, 1992 (57 FR 18415), the Commission published a proposed rule in the Federal Register that would require this category of licensee to implement such requirements.

A 90-day public comment period expired on July 29, 1992. Three letters were received from three commenters; one SSNM licensee, one trade association, and one private citizen. The private citizen was in favor of the rule. The licensee was against the promulgation of the rule stating that it was unnecessary and burdensome. The trade association was neutral about the rule provided it did not cause duplicate random testing. At their request, the staff met with the licensee to discuss their comments. The Chairman also received a letter from the same licensee citing its concerns.

DISCUSSION:

Based on the public comments, the following two modifications have been made to the proposed rule.

1. The term Category IA Material has been substituted throughout the body of the rule in place of Category I Material. Category IA Material is SSNM which can be easily concealed on an individual. The effect of this is to require chemical testing only for those who have unescorted access to Category IA Material.
2. All transporters authorized to transport formula quantities of SSNM who are subject to the United States Department of Transportation drug and alcohol fitness programs that have random testing for drugs and alcohol are exempt from this rule.

In addition, the statement of considerations in the Federal Register Notice mentions that the Commission is contemplating a rulemaking to reduce the required rate of random testing of power reactor employees from 100 percent per year to 50 percent per year, as presented to the Commission in SECY-93-014. It is noted that the testing rate for affected fuel cycle personnel will be the same as for power reactor employees.

RESOURCES:

Resources to implement this rulemaking are included in the FY 1993-1997 Five-Year Plan and no additional resources would be required for its implementation.

COORDINATION:

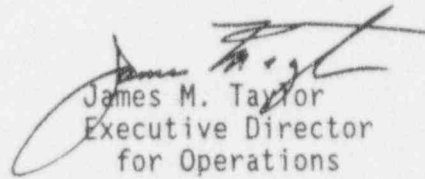
The Office of the General Counsel has no legal objection to this paper.

RECOMMENDATION:

That the Commission:

1. Approve publication of the final amendment in the Federal Register (Enclosure A).
2. Certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).
3. NOTE:
 - a. An environmental assessment stating that the final rulemaking will not have a significant environmental impact will be placed in the NRC Public Document Room (Enclosure B).
 - b. A Regulatory Analysis will be placed in the NRC Public Document Room (Enclosure C).
 - c. The appropriate Congressional Committees will be informed of the Commission's action (Enclosure D).
 - d. A public announcement will be issued (Enclosure E).
 - e. The Federal Register Notice will be distributed to applicable licensees. The notice will be sent to other interested parties upon request.
 - f. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it as required by the Regulatory Flexibility Act.

- g. This final rule amends information collection requirements that are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget.



James M. Taylor
Executive Director
for Operations

Enclosures:

- A. Federal Register Notice
- B. Environmental Assessment
- C. Regulatory Analysis
- D. Congressional Letter
- E. Public Announcement

- g. This final rule amends information collection requirements that are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget.

Original signed by
James M. Taylor
 James M. Taylor
 Executive Director
 for Operations

Enclosures:

- A. Federal Register Notice
- B. Environmental Assessment
- C. Regulatory Analysis
- D. Congressional Letter
- E. Public Announcement

RECORD NOTE: A draft copy of the final rule was sent to OIG for information on February 3, 1993.

[FFDFIN3.COM]

*SEE PREVIOUS CONCURENCES

| | | | | | |
|-------------------|-----------------|------------|------------|-----------|----------------------|
| Offc: :DRA | :DRA | :DRA | DD:DRA:RES | D:DRA:RES | DD/GIR:RES |
| Name: :Sturel* | JTelford* | SBahadur* | FCostanzi | BMorris | CJHeltemes |
| Date: / /93 | / /93 | / /93 | 3/30/93 | 3/30/93 | / /93 (on travel) |
| Offc: D:OE | D:IRM | D:NMSS | | | |
| Name: JLieberman* | GCranford* | RBernero* | | | |
| Date: / /93 | / /93 | / /93 | | | |
| Offc: D:ADM | G... WPac... | D:RES | EDO | | |
| Name: PNorry* | | ESBeckjord | JMTaylor | | |
| Date: / /93 | 3/31/93 | 3/30/93 | 4/6/93 | | |

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Barbara Vucanovich
Distribution: [FFDCONG.FIN]
Subj-circ-chron
Reading Files\SBahadur
CKammerer (OSP)
JMTaylor (EDO)
BMorris
STurel

DWilliams (OIG)
EBeckjord
FCostanzi

DRathbun (OCA)
CHeltemes
JTelford

*See previous concurrences

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| Offc: | RDB:DRA:RES | RDB:DRA:RES | RDB:DRA:RES | DD:DRA:RES | D:DRA:RES | DD:GIR:RES | D:RES |
| Name: | STurel:jw* | JTelford* | SBahadur* | FCostanzi | BMorris | CHeltemes | EBeckjord* |
| Date: | 03/11/93 | 03/19/93 | 03/22/93 | 03/30/93 | 03/30/93 | / /93 | 03/30/93 |

Offc: OCA:
Name: DRathbun
Date: / /93

OFFICIAL RECORD COPY

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice
cc: Representative Michael Bilirakis

Distribution: [FFDCONG.FIN]
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Reading Files\Sbahadur
Ckammerer (OSP) Dwilliams (OIG) Drathbun (OCA)
JMTaylor (EDO) EBeckjord CHeltemes
BMorris FCostanzi JTelford
STurel

*See previous concurrences

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| Offc: | RDB:DRA:RES | RDB:DRA:RES | RDB:DRA:RES | DD:DRA:RES | D:DRA:RES | DD:RES | D:RES |
| Name: | STurel:jw* | JTelford* | SBahadur* | FCostanzi | BMorris | CHeltemes | EBeckjord |
| Date: | 03/11/93 | 03/19/93 | 03/22/93 | / /93 | / /93 | / /93 | / /93 |

Offc: OCA:
Name: DRathbun
Date: / /93

(OFFICIAL RECORD COPY

The Honorable Joseph Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Alan K. Simpson

Distribution: [FFDCONG.FIN]
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CKammerer (OSP)
JMTaylor (EDO)
BMorris
STurel

DWilliams (OIG)
EBeckjord
FCostanzi

DRathbun (OCA)
CHeltemes
JTelford

*See previous concurrences

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| Offc: | RDB:DRA:RES | RDB:DRA:RES | RDB:DRA:RES | DD:DRA:RES | D:DRA:RES | DD/GIR:RES | D:RES |
| Name: | STurel:jw* | JTelford* | SBahadur* | FCostanzi | BMorris | CJHeltemes | ESBeckjord |
| Date: | 03/11/93 | 03/19/93 | 03/22/93 | / /93 | / /93 | / /93 | / /93 |

Offc: OCA
Name: DKRathbun
Date: / /93

OFFICIAL RECORD COPY

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Barbara Vucanovich

Distribution: [FFDCONG.FIN]

Subj-circ-chron

Reading Files\SBahadur

CKammerer (OSP)

JMTaylor (EDO)

BMorris

STurel

DWilliams (OIG)

EBeckjord

FCostanzi

DRathbun (OCA)

CHeltemes

JTelford

*See previous concurrences

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|-------|-------------|-------------|-------------|------------|-----------|------------|-----------|
| Offc: | RDB:DRA:RES | RDB:DRA:RES | RDB:DRA:RES | DD:DRA:RES | D:DRA:RES | DD:GIR:RES | D:RES |
| Name: | STurel:jw* | JTelford* | SBahadur* | FCostanzi | BMorris | CHeltemes | EBeckjord |
| Date: | 03/11/93 | 03/19/93 | 03/22/93 | 3/30/93 | 3/30/93 | 1/93 | 3/30/93 |

Offc: OCA:
Name: DRathbun
Date: / /93

OFFICIAL RECORD COPY

DOC. FILE NAME: FFDFIN.EVR
Disk

LONG DISPLAY:

CREATED: 11/12/92, STurel

AUTHOR: STurel

REVISED: 1/15/93 1/27/93 3/11/93
TYPIST: STurel STurel STurel
TIME: 9:07 am 11:15am 11:15am

REVISED:
TYPIST:
TIME:

EXCERPT:

ENCLOSURE B
ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT
FOR THE FINAL RULE AMENDING 10 CFR 26

Fitness-For-Duty Programs for Category I
Materials Facilities and Transporters

- g. This final rule amends information collection requirements that are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget.

James M. Taylor
Executive Director
for Operations

Enclosures:

- A. Federal Register Notice
- B. Environmental Assessment
- C. Regulatory Analysis
- D. Congressional Letter
- E. Public Announcement

RECORD NOTE: A draft copy of the final rule was sent to OIG for information on February 3, 1993.

[FFDFIN3.COM]

***SEE PREVIOUS CONCURRENCES**

| | | | | | |
|----------------|---------------------|--------------------|------------|-----------|------------|
| Offc: :DRA | :DRA <i>HST</i> | <i>RD</i> :DRA | DD:DRA:RES | D:DRA:RES | DD/GIR:RES |
| Name: :STurel* | <i>for</i> JTelford | SBahadur | FCostanzi | BMorris | CJHeltemes |
| Date: / / 93 | 3/19/93 | <i>for</i> 3/22/93 | / / 93 | / / 93 | / / 93 |

| | | |
|-------------------|------------|-----------|
| Offc: D:OE | D:IRM | D:NMSS |
| Name: JLieberman* | GCranford* | RBernero* |
| Date: / / 93 | / / 93 | / / 93 |

| | | | |
|---------------|----------|------------|----------|
| Offc: D:ADM | GC | D:RES | EDO |
| Name: PNorry* | WParler* | ESBeckjord | JMTaylor |
| Date: / / 93 | / / 93 | / / 93 | / / 93 |

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- b. A final Regulatory Analysis will be placed in the NRC Public Document Room (Enclosure C).
- c. The appropriate Congressional Committees will be informed of the Commission's action (Enclosure D).
- d. A public announcement will be issued (Enclosure E).
- e. The Federal Register Notice will be distributed to applicable licensees. The notice will be sent to other interested parties upon request.
- f. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it as required by the Regulatory Flexibility Act.
- g. This final rule contains information collection requirements that are subject to review by the Office of Management and Budget. Upon Commission affirmation, formal request for OMB review and clearance will be initiated.

James M. Taylor
 Executive Director
 for Operations

Enclosures:

- A. Federal Register Notice
- B. Final Environmental Assessment
- C. Final Regulatory Analysis
- D. Congressional Letter
- E. Public Announcement

RECORD NOTE: A draft copy of the final rule was sent to OIG for information on February 3, 1993.

[FFDFIN3.COM]

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| Date: 3/11/93 | / / 93 | / / 93 | / / 93 | / / 93 | / / 93 |

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|------------------|-----------|----------|
| Offc: D:OE | D:IRM | D:NMSS |
| Name: JLieberman | GCranford | RBernero |
| Date: 2/10/93 | 2/24/93 | 3/5/93 |

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| Offc: D:ADM | GC | D:RES | EDO |
| Name: PNorry | WParler | ESBeckjord | JMTaylor |
| Date: 2/17/93 | 3/11/93 | / / 93 | / / 93 |

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DOC. FILE NAME: FFDFIN3.COM
Disk

LONG DISPLAY: FFD Commission Paper (Final)

CREATED: 11/12/92 (S.Turel)

AUTHOR: S.Turel

REVISED: 11/24/92 12/18/92 1/4/92 3/5/93 3/16/93
TYPIST: STurel STurel jw STurel STurel
TIME: 12:51 pm 3:07 pm 1:55pm 10:54am 2:55pm

REVISED:
TYPIST:
TIME:

EXCERPT:

FOR: The Commissioners

FROM: James M. Taylor, Executive Director for Operations

SUBJECT: FINAL AMENDMENTS TO 10 CFR PARTS 26, 70, AND 73 TO ESTABLISH FITNESS-FOR-DUTY REQUIREMENTS FOR LICENSEES AUTHORIZED TO POSSESS, USE, OR TRANSPORT FORMULA QUANTITIES OF STRATEGIC SPECIAL NUCLEAR MATERIAL

PURPOSE:

To obtain Commission approval to publish a notice of final rulemaking.

CATEGORY:

This paper covers a major policy question requiring Commission consideration.

ISSUE:

Whether the fitness for duty requirements set forth in Enclosure A should be imposed on NRC licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) of a particular weight or size.

DOC. FILE NAME: FFDFIN3.COM
Disk

LONG DISPLAY: FFD Commission Paper (Final)

CREATED: 11/12/92 (S.Turel)

AUTHOR: S.Turel

| | | | | | |
|----------|----------|----------|--------|---------|---------|
| REVISED: | 11/24/92 | 12/18/92 | 1/4/92 | 3/5/93 | 3/16/93 |
| TYPIST: | STurel | STurel | jw | STurel | STurel |
| TIME: | 12:51 pm | 3:07 pm | 1:55pm | 10:54am | 2:55pm |

REVISED:
TYPIST:
TIME:

EXCERPT:

FOR: The Commissioners

FROM: James M. Taylor, Executive Director for Operations

SUBJECT: FINAL AMENDMENTS TO 10 CFR PARTS 26, 70, AND 73 TO ESTABLISH FITNESS-FOR-DUTY REQUIREMENTS FOR LICENSEES AUTHORIZED TO POSSESS, USE, OR TRANSPORT FORMULA QUANTITIES OF STRATEGIC SPECIAL NUCLEAR MATERIAL

PURPOSE:

To obtain Commission approval to publish a notice of final rulemaking.

CATEGORY:

This paper covers a major policy question requiring Commission consideration.

ISSUE:

Whether the fitness for duty requirements set forth in Enclosure A should be imposed on NRC licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) of a particular weight or size.

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:

As stated

cc: Representative Barbara Vucanovich

Distribution: [FFDCONG.FIN]

Subj-circ-chron

Reading Files\SBahadur

CKammerer (OSP)

DWilliams (OIG)

DRathbun (OCA)

JMTaylor (EDO)

EBeckjord

CHeltemes

BMorris

FCostanzi

JTelford

STurel

Offc: RDB: ~~DRA~~: RES ^{HST} RDB: DRA: RES ^{for} RDB: DRA: RES DD: DRA: RES D: DRA: RES DD: GIR: RES D: RES ^B
Name: ~~STurel~~: jw JTelford SBahadur FCostanzi BMorris CHeltemes EBeckjord
Date: 3/11/93 3/19/93 X 3/24/93 / /93 / /93 / /93 3/2/93
Offc: OCA:
Name: DRathbun
Date: / /93

OFFICIAL RECORD COPY

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice
cc: Representative Michael Bilirakis

Distribution: [FFDCONG.FIN]
Subj-circ-chron
Reading Files\Sbahadur
Ckammerer (OSP) Dwilliams (OIG) Drathbun (OCA)
JMTaylor (EDO) EBeckjord CHeltemes
BMorris FCostanzi JTelford
STurel

*See previous concurrences

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| Offc: | RDB:DRA:RES | RDB:DRA:RES | RDB:DRA:RES | DD:DRA:RES | D:DRA:RES | DD:RES | D:RES |
| Name: | STurel:jw* | JTelford* | SBahadur* | FCostanzi | BMorris | CHeltemes | EBeckjord |
| Date: | 03/11/93 | 03/19/93 | 03/22/93 | 3/30/93 | 3/30/93 | 1/93 | 3/13/93 |

Offc: OCA:
Name: DRathbun
Date: / /93

OFFICIAL RECORD COPY

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

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Sincerely,

Dennis K. Rathbun, *Director*
Office of Congressional Affairs

Enclosure:

As stated

cc: Representative Michael Bilirakis

Distribution: [FFDCONG.FIN]

Subj-circ-chron

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Ckammerer (OSP)

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JMTaylor (EDO)

EBeckjord

CHeltemes

BMorris

FCostanzi

JTelford

STurel

Offc: RDB:DRA:RES ^{HST} RDB:DRA:RES ^{Dunne} RDB:DRA:RES DD:DRA:RES D:DRA:RES DD:RES D:RES
Name: STurel:jw for Telford for SBhadur FCostanzi BMorris CHeltemes EBeckjord
Date: 3/14/93 3/14/93 3/12/93 / /93 / /93 / /93 / /93

Offc: OCA:
Name: DRathbun
Date: / /93

OFFICIAL RECORD COPY

The Honorable Joseph Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Alan K. Simpson

Distribution: [FFDCONG.FIN]
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Reading Files\SBahadur
CKammerer (OSP)
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CHeltemes
JTelford

*See previous concurrences

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| Name: | STurel:jw* | JTelford* | SBahadur* | FCostanzi | BMorris | CJHeltemes | ESBeckjord |
| Date: | 03/11/93 | 03/19/93 | 03/22/93 | 3/30/93 | 3/30/93 | 1/93 | 2/3/93 |

Offc: OCA
Name: DKRathbun
Date: / /93

OFFICIAL RECORD COPY

The Honorable Joseph Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:

As stated
cc: Senator Alan K. Simpson
Distribution: [FFDCONG.FIN]
Subj-circ-chron
Reading Files\SBahadur
CKammerer (OSP)
DWilliams (OIG)
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JMTaylor (EDO)
EBeckjord
CHeltemes
BMorris
FCostanzi
JTelford
STurel

Offc: RDB:DRA:RES RDB:DRA:RES ^{HST} RDB:DRA:RES ^{for} DD:DRA:RES D:DRA:RES DD/GIR:RES D:RES
Name: STurel:jw JTelford SBahadur FCostanzi BMorris CJHeltemes ESBeckjord
Date: 3/11/93 3/19/93 3/24/93 / /93 / /93 / /93 / /93

Offc: OCA
Name: DKRathbun
Date: / /93

OFFICIAL RECORD COPY

DOC. FILE NAME: FFDCONG.FIN
Disk

LONG DISPLAY: FFD Congressional Letter

CREATED: 11/12/92

AUTHOR: Stan Turel

REVISED: 1/15/93 1/27/93 3/18/93
TYPIST: STurel STurel STurel
TIME: 1:54 pm 1:55pm 9:21am

EXCERPT:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

DOC. FILE NAME: FFDPR1.FIN
Turel Disk

LONG DISPLAY: FFD Public Announcement

CREATED: 11/12/92

AUTHOR: Stan Turel

REVISED: 1/4/93 1/15/93 1/27/93
TYPIST: jw STurel STurel
TIME: 3:40pm 2:17 pm 2:04pm

EXCERPT:

PUBLIC ANNOUNCEMENT

NRC AMENDING FITNESS-FOR-DUTY REQUIREMENTS

The U.S. Nuclear Regulatory Commission (NRC) is amending the fitness-for-duty requirements contained in 10 CFR Part 26 to include licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

The amendment will provide greater assurance that those

DOC. FILE NAME: REGANAL.FIN
Disk 1

LONG DISPLAY: Regulatory Analysis For FFD

CREATED: 11/18/92

AUTHOR: Stan Turel

REVISED: 12/21/92 1/27/93 3/11/93 3/18/93
TYPIST: STurel STurel STurel STurel
TIME: 1:53 pm 1:07pm 11:36am 9:06am

EXCERPT:

REGULATORY ANALYSIS OF FITNESS FOR DUTY PROGRAMS FOR LICENS. S AUTHORIZED TO
POSSESS, USE, OR TRANSPORT FORMULA QUANTITIES OF STRATEGIC SPECIAL MATERIAL

DOC. FILE NAME: FFDRUL7.FIN
Turel Disk

LONG DISPLAY: 10 CFR Part 26

CREATED: 10/04/91 (S.Turel)

AUTHOR: S.Turel

| | | | | | | |
|----------|----------|----------|----------|----------|----------|----------|
| REVISED: | 10/2/92 | 10/15/92 | 10/16/92 | 11/5/92 | 11/12/92 | 11/18/92 |
| TYPIST: | STurel | STurel | STurel | STurel | STurel | STurel |
| TIME: | 12:04 pm | 12:58 pm | 8:28 am | 10:28 am | 11:04 am | 11:28 am |
| REVISED: | 11/24/92 | 12/21/92 | 1/4/93 | 1/15/93 | 1/27/93 | 1/29/93 |
| TYPIST: | STurel | STurel | jw | STurel | STurel | STurel |
| TIME: | 9:38 am | 1:22 pm | 3:30pm | 8:08 am | 10:15am | 9:35am |

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|----------|---------|---------|---------|
| REVISED: | 3/11/93 | 3/16/93 | 3/29/93 |
| TYPIST: | STurel | STurel | STurel |
| TIME: | 1:39pm | 3:30pm | 11:26am |

REVISED:
TYPIST:
TIME:

EXCERPT:

[7590-01]

NUCLEAR REGULATORY COMMISSION
10 CFR Parts 26, 70, and 73
RIN 3150-AD68

Fitness-For-Duty Requirements for Licensees Authorized to
Possess, Use, or Transport Formula Quantities of
Strategic Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) to institute fitness-for-duty programs. The amended regulation is limited to licensees who are authorized to possess, use, or transport unirradiated Category I Material. This action is necessary to provide greater assurance that individuals who have a drug or alcohol problem do not have access to or control over SSNM.

April 6, 1993

SECY-93-089

FOR: The Commissioners

FROM: James M. Taylor, Executive Director for Operations

SUBJECT: FINAL AMENDMENTS TO 10 CFR PARTS 26, 70, AND 73 TO ESTABLISH FITNESS-FOR-DUTY REQUIREMENTS FOR LICENSEES AUTHORIZED TO POSSESS, USE, OR TRANSPORT FORMULA QUANTITIES OF STRATEGIC SPECIAL NUCLEAR MATERIAL

PURPOSE:

To obtain Commission approval to publish a notice of final rulemaking.

CATEGORY:

This paper covers a major policy question requiring Commission consideration.

ISSUE:

Whether the fitness-for-duty requirements should be imposed on NRC licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) of a particular weight or size.

BACKGROUND:

On June 7, 1989 (54 FRN 24468), the Commission published a final rule that required licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program. Subsequently, in an SRM dated June 26, 1990, the Commission requested that the staff develop a proposed rule to extend fitness-for-duty requirements to licensees who possess, use, or transport Category I Material (formula quantities of SSNM).

CONTACT:
Stanley P. Turel, RES
492-3739

NOTE: TO BE MADE PUBLICLY AVAILABLE
WHEN THE FINAL SRM IS MADE
AVAILABLE

On April 30, 1992 (57 FR 18415), the Commission published a proposed rule in the Federal Register that would require this category of licensee to implement such requirements.

A 90-day public comment period expired on July 29, 1992. Three letters were received from three commenters; one SSNM licensee, one trade association, and one private citizen. The private citizen was in favor of the rule. The licensee was against the promulgation of the rule stating that it was unnecessary and burdensome. The trade association was neutral about the rule provided it did not cause duplicate random testing. At their request, the staff met with the licensee to discuss their comments. The Chairman also received a letter from the same licensee citing its concerns.

DISCUSSION:

Based on the public comments, the following two modifications have been made to the proposed rule.

1. The term Category IA Material has been substituted throughout the body of the rule in place of Category I Material. Category IA Material is SSNM which can be easily concealed on an individual. The effect of this is to require chemical testing only for those who have unescorted access to Category IA Material.
2. All transporters authorized to transport formula quantities of SSNM who are subject to the United States Department of Transportation drug and alcohol fitness programs that have random testing for drugs and alcohol are exempt from this rule.

In addition, the statement of considerations in the Federal Register Notice mentions that the Commission is contemplating a rulemaking to reduce the required rate of random testing of power reactor employees from 100 percent per year to 50 percent per year, as presented to the Commission in SECY-93-014. It is noted that the testing rate for affected fuel cycle personnel will be the same as for power reactor employees.

RESOURCES:

Resources to implement this rulemaking are included in the FY 1993-1997 Five-Year Plan and no additional resources would be required for its implementation.

COORDINATION:

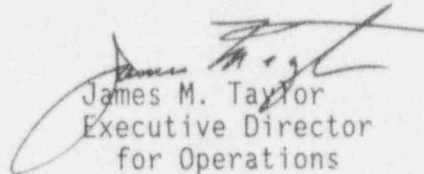
The Office of the General Counsel has no legal objection to this paper.

RECOMMENDATION:

That the Commission:

1. Approve publication of the final amendment in the Federal Register (Enclosure A).
2. Certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).
3. NOTE:
 - a. An environmental assessment stating that the final rulemaking will not have a significant environmental impact will be placed in the NRC Public Document Room (Enclosure B).
 - b. A Regulatory Analysis will be placed in the NRC Public Document Room (Enclosure C).
 - c. The appropriate Congressional Committees will be informed of the Commission's action (Enclosure D).
 - d. A public announcement will be issued (Enclosure E).
 - e. The Federal Register Notice will be distributed to applicable licensees. The notice will be sent to other interested parties upon request.
 - f. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it as required by the Regulatory Flexibility Act.

- g. This final rule amends information collection requirements that are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget.


James M. Taylor
Executive Director
for Operations

Enclosures:

- A. Federal Register Notice
- B. Environmental Assessment
- C. Regulatory Analysis
- D. Congressional Letter
- E. Public Announcement

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Wednesday, April 21, 1993.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, April 14, 1993, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the week of April 26, 1993. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

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ENCLOSURE A

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 26, 70, and 73

RIN 3150-AD68

Fitness-For-Duty Requirements for Licensees Authorized to
Possess, Use, or Transport Formula Quantities of
Strategic Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) to institute fitness-for-duty programs. The amended regulation is limited to licensees who are authorized to possess, use, or transport unirradiated Category I Material. This action is necessary to provide greater assurance that individuals who have a drug or alcohol problem do not have access to or control over SSNM.

EFFECTIVE DATE: (180 days after publication in the Federal Register)

FOR FURTHER INFORMATION CONTACT: Stanley P. Turel, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3739.

SUPPLEMENTARY INFORMATION:

Background

The NRC recognizes drug and alcohol abuse to be a social, medical, and safety problem affecting every segment of our society. Given the pervasiveness of the problem, it must be recognized to exist to some extent in the nuclear industry. Accordingly, on June 7, 1989 (54 FR 24468), the Commission published a final rule that required licensees authorized to construct or operate nuclear power plants to implement a fitness-for-duty program. During the first year (calendar year 1990) of drug and alcohol testing of nuclear power plant workers, approximately one percent of all tests administered under the Part 26 requirements were positive. The NRC has no reason to believe that the incidence of positive tests for workers affected by this rulemaking would be appreciably different. However, existing regulations contained in 10 CFR Part 26 do not contain fitness-for-duty requirements for licensees authorized to possess, use, or transport formula quantities of SSNM.

Summary of Public Comment

On April 30, 1992 (57 FR 18415), the Commission published a proposed rule in the Federal Register which would require this category of licensee to implement fitness-for-duty requirements. The 90-day comment period expired on July 29, 1992. Three comment letters were received: one from an SSNM licensee, one from a trade association, and one from a private citizen. The private citizen was in favor of the rule. The licensee was against the

promulgation of the rule, stating that it was unnecessary and burdensome. The trade association was neutral about the rule provided it did not cause duplicate random testing.

Changes have been made in the final rule in response to the public comments to better equate the requirements of random testing to the risk of diversion and to prevent the duplication of chemical testing of some drivers of transport vehicles. A summary of the comments received and the NRC's responses are presented below.

1. Comment. Diversion of special nuclear material is not more likely by persons with drug or alcohol problems.

Response. A substance abuser is more vulnerable to coercion and may be more easily suborned into cooperating, actively or passively, in a diversion of SSNM. Also, an individual under the influence of drugs or alcohol will not be as effective in conducting his or her safeguards responsibilities. For these reasons, the NRC believes it essential that these individuals are not permitted access to or control over SSNM or be responsible for any safeguards functions.

2. Comment. Public safety could not be seriously threatened by impaired workers.

Response. The NRC does not fully agree with this comment. The effects of most mistakes by impaired workers are expected to be largely contained within the boundaries of the facility with little or no consequence to the general public. However the potential for more serious consequences exists. The impaired worker is a danger to himself and his coworkers and is of concern to the Commission. Further, the theft of SSNM could pose a serious threat to the national security.

3. Comment. Current NRC and DOE requirements already address trustworthiness of personnel by requiring security clearances for certain jobs.

Response. Current NRC regulations do require security clearances for certain jobs. However, the security clearance investigation alone might not detect a drug habit. Moreover, the current 5-year period between reinvestigations is too long for the timely detection of individuals who become substance abusers during that time.

4. Comment. Because of the "Drug-Free Workplace Act of 1988," adequate drug and alcohol programs are already in effect at the proposed licensee facilities.

Response. When issuing the Part 26 fitness-for-duty rule in 1989, NRC determined that, to be both effective and appropriate for assuring protection of the health and safety of the public, the fitness-for-duty program must include random, unannounced, urinalysis for drugs and breath testing for alcohol. The Drug-Free Workplace Act of 1988 does not require random testing. The Act requires testing for drugs and alcohol only for cause. Although a licensee's program may meet the provisions of the Drug-Free Workplace Act, in the Commission's view, it will not be adequate without the provision for random testing.

5. Comment. Implementation costs for the new rule would be very high but the results would be minimal.

Response. A facility that is already in compliance with the Drug Free Workplace Act of 1988 would have less implementation and continuing costs than one that is not. However, as indicated in the above response to Comment 4, the Drug-Free Workplace Act does not require random testing.

Random testing detects and deters substance abuse in the workplace. Random testing of persons in a position to divert or conceal a diversion of SSNM at the facility would strengthen the safeguarding of the SSNM.

6. Comment. Any category of worker that deals with the physical material or its primary "paper trail" should not be exempted from random testing. NRC should require licensees to ensure that workers do not come to work so impaired by distraction, fatigue, or infirmity that they cannot perform at a minimally acceptable level.

Response. The revisions to 10 CFR Part 26 will require random testing for all employees who:

(1) Are granted unescorted access to SSNM that is directly useable in the manufacture of a nuclear explosive device and would be easily concealed and removed by an individual (Category IA Material);

(2) Create or have access to procedures or records for safeguarding SSNM;

(3) Make measurements of Category IA Material;

(4) Transport or escort Category IA Material; or

(5) Guard Category IA Material.

Category IA Material is defined in § 26.3 Definitions. The other impairments listed by the commenter are addressed in §§ 26.10 and 26.20 of this rule.

7. Comment. The proposed drug and alcohol testing requirements should not be applied to railroads because they would duplicate the Federal Railroad Administration's testing program.

Response. Transporters of SSNM who are subject to DOT drug and alcohol fitness programs that have random testing for drugs and alcohol are exempt from the requirements of this rule.

Discussion

The final rule differs from the proposed rule in the following ways. Chemical testing is required only for those who have unescorted access to easily concealed SSNM. This was done by removing the term Category I Material from the definitions section (10 CFR 26.3) and replacing it with the term Category IA Material (this term is also defined in 10 CFR 74). Category IA Material is defined as SSNM directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms which may be easily concealed on an individual.

The term Category IA Material has been substituted throughout the body of the rule in place of Category I Material. All transporters of SSNM who are subject to DOT's drug and alcohol fitness programs that have random testing for drugs and alcohol are exempt from this rule.

The licensee personnel subject to this final rulemaking will be subject to a 100 percent annual random testing rate, the same as the rate that currently applies to power reactor employees. However, there is a proposed rulemaking being prepared that will reduce that random testing rate to 50 percent. If that proposal becomes final it will also have the effect of

reducing the rate to 50 percent for those licensees that are affected by this final rulemaking.

Applicability of Criminal Penalties

In this final rule the amendments to the following sections of the codified regulations are issued under the authority of Secs. 161b, 161i, or 161o of the Atomic Energy Act of 1954, as amended, and therefore violations may be subject to the Criminal Penalty provisions of Sec. 223 of the Atomic Energy Act: 10 CFR Secs. 26.10, 26.24, 26.27, 26.73; 10 CFR Part 26, Appendix A; 10 CFR 70.20a.

Finding of no Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The amendment will require subjecting certain licensee employees to a fitness-for-duty program of random tests for the use of drugs or alcohol. Specifically, all persons who are

- (1) Granted unescorted access to Category IA Material;
- (2) Given responsibilities to create or have access to procedures or records for safeguarding SSNM;
- (3) Given responsibilities to measure Category IA Material;

(4) Given responsibilities to transport or escort Category IA Material;

or

(5) who are given responsibilities to guard Category IA Material will be subject to the program.

These requirements have no identifiable environmental impact.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact may be obtained from Stanley P. Turel, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3739.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). These requirements and amendments were approved by the Office of Management and Budget, approval number 3150-0146.

The public reporting burden for this collection of information is estimated to average 29 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0146), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Stanley P. Turel, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3739.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects licensees who are authorized to possess, use, or transport formula quantities of SSNM. These licensees do not fall within the scope of the definition of "small entities" set forth in the Small Business Size Standards adopted by the Commission in 1985 (December 9, 1985, 50 FR 50241; and, November 6, 1991, 56 FR 56671).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not impose requirements on existing 10 CFR Part 50 licensees. Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Parts 26, 70, and 73

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Criminal penalties, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Hazardous materials - transportation, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements, and Special nuclear material.

10 CFR Part 70

Criminal penalties, Hazardous materials - transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, and Special nuclear material.

10 CFR Part 73

Criminal penalties, Hazardous materials - transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, and Security measures.

For the reasons stated 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 Parts 26, 70, and 73.

PART 26 - FITNESS-FOR-DUTY PROGRAMS

1. The authority citation for Part 26 continues to read as follows:

AUTHORITY: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. Section 26.1 is revised to read as follows:

§ 26.1 Purpose.

This part prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness-for-duty programs and procedures by the licensed nuclear power industry, and by licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

3. Section 26.2 is revised to read as follows:

§ 26.2 Scope.

(a) The regulations in this part apply to licensees authorized to operate a nuclear power reactor, to possess or use formula quantities of SSNM, or to transport formula quantities of SSNM. Each licensee shall implement a fitness-for-duty program which complies with this part. The provisions of the fitness-for-duty program must apply to all persons granted unescorted access

to nuclear power plant protected areas, to licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures, and to SSNM licensee and transporter personnel who:

- (1) Are granted unescorted access to Category IA Material;
- (2) Create or have access to procedures or records for safeguarding SSNM;
- (3) Make measurements of Category IA Material;
- (4) Transport or escort Category IA Material; or
- (5) Guard Category IA Material.

(b) The regulations in this part do not apply to NRC employees, to law enforcement personnel or offsite emergency fire and medical response personnel while responding onsite, or SSNM transporters who are subject to U. S. Department of Transportation drug or alcohol fitness programs that require random testing for drugs and alcohol. The regulations in this part also do not apply to spent fuel storage facility licensees or non-power reactor licensees who possess, use, or transport formula quantities of irradiated SSNM as these materials are exempt from the Category I physical protection requirements as set forth in 10 CFR Part 73.6.

(c) Certain regulations in this part apply to licensees holding permits to construct a nuclear power plant. Each construction permit holder, with a plant under active construction, shall comply with §§ 26.10, 26.20, 26.23, 26.70, and 26.73 of this part; shall implement a chemical testing program, including random tests; and shall make provisions for employee assistance

programs, imposition of sanctions, appeals procedures, the protection of information, and recordkeeping.

4. In § 26.3, the terms Category IA Material, and Transporter are added to read as follows:

§ 26.3 Definitions.

* * * * *

Category IA Material means strategic special nuclear material (SSNM) directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms.

* * * * *

Transporter means a general licensee pursuant to 10 CFR 70.20a, who is authorized to possess formula quantities of SSNM in the regular course of carriage for another or storage incident thereto, and includes the driver or operator of any conveyance, and the accompanying guards or escorts.

* * * * *

5. In § 26.10, the introductory text and paragraph (a) are revised to read as follows:

§ 26.10 General performance objectives.

Fitness-for-duty programs must:

(a) Provide reasonable assurance that nuclear power plant personnel, transporter personnel, and personnel of licensees authorized to possess or use formula quantities of SSNM, will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;

* * * * *

6. In § 26.24, paragraphs (a)(2) and (b) are revised to read as follows:

§ 26.24 Chemical and alcohol testing.

* * * * *

(a) * * *

(2) Unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an equal probability of being selected and tested. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the

day. Random testing shall be conducted at an annual rate equal to at least 100 percent of the workforce.

* * * * *

(b) Testing for drugs and alcohol, at a minimum, must conform to the "Guidelines for Drug and Alcohol Testing Programs," issued by the Nuclear Regulatory Commission and appearing in Appendix A to this rule, hereinafter referred to as the NRC Guidelines. Licensees, at their discretion, may implement programs with more stringent standards (e.g., lower cutoff levels, broader panel of drugs). All requirements in this part still apply to persons who fail a more stringent standard, but do not test positive under the NRC Guidelines. Management actions must be the same with the more stringent standards as if the individual had failed the NRC standards.

* * * * *

7. In § 26.27, paragraphs (a), (b)(2), and (b)(3) are revised to read as follows:

§ 26.27 Management actions and sanctions to be imposed.

(a)(1) The licensee shall obtain a written statement from the individual as to whether activities within the scope of this part were ever denied the individual before the initial

(i) Granting of unescorted access to a nuclear power plant protected area;

(ii) Granting of unescorted access by a formula quantity SSNM licensee to Category IA Material;

(iii) Assignment to create or the initial granting of access to safeguards of procedures for SSNM;

- (iv) Assignment to measure Category IA Material;
- (v) Assignment to transport or escort Category IA Material;
- (vi) Assignment to guard Category IA Material; or
- (vii) Assignment to activities within the scope of this part to any person.

(2) The licensee, as applicable, shall complete a suitable inquiry on a best-efforts basis to determine if that person was, in the past

- (i) Tested positive for drugs or use of alcohol that resulted in on-duty impairment;

- (ii) Subject to a plan for treating substance abuse (except for self-referral for treatment);

- (iii) Removed from activities within the scope of this part;

- (iv) Denied unescorted access at any other nuclear power plant;

- (v) Denied unescorted access to SSNM;

- (vi) Removed from responsibilities to create or have access to safeguards records or procedures for SSNM;

- (vii) Removed from responsibilities to measure SSNM;

- (viii) Removed from the responsibilities of transporting or escorting SSNM; or

- (ix) Removed from the responsibilities of guarding SSNM at any other facility in accordance with a fitness-for-duty policy.

(3) If a record of the type described in paragraph (a)(2) of this section is established, the new assignment to activities within the scope of this part or granting of unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program, provided the restrictions of paragraph

(b) of this section are observed. To meet this requirement, the identity of persons denied unescorted access or removed under the provisions of this part and the circumstances for the denial or removal, including test results, will be made available in response to a licensee's, contractor's or vendor's inquiry supported by a signed release from the individual.

(4) Failure to list reasons for removal or revocation of unescorted access is sufficient cause for denial of unescorted access. Temporary access provisions are not affected by this part if the prospective worker passes a chemical test conducted according to the requirements of 26.24(a)(1).

(b) * * *

(2) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs onsite, a confirmed positive test result must be presumed to be an indication of offsite drug use. The first confirmed positive test must, as a minimum, result in immediate removal from activities within the scope of this part for at least 14 days and referral to the EAP for assessment and counseling during any suspension period. Plans for treatment, follow-up, and future employment must be developed, and any rehabilitation program deemed appropriate must be initiated during such suspension period. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this part must be obtained before permitting the individual to be returned to these activities. Any subsequent confirmed positive test must result in, as applicable,

(i) Removal from unescorted access to nuclear power plant protected areas;

(ii) Removal from unescorted access to Category IA Material;

(iii) Removal from responsibilities to create or have access to records or procedures for safeguarding SSNM;

(iv) Removal from responsibilities to measure Category IA Material;

(v) Removal from the responsibilities of transporting or escorting Category IA Material;

(vi) Removal from the responsibilities of guarding Category IA Material at any other licensee facility; and

(vii) Removal from activities within the scope of this part for a minimum of 3 years from the date of removal.

(3) Any individual determined to have been involved in the sale, use, or possession of illegal drugs, while, as applicable, within a protected area of any nuclear power plant, within a facility that is licensed to possess or use SSNM, or within a transporter's facility or vehicle, must be removed from activities within the scope of this part. The individual may not

(i) Be granted unescorted access to nuclear power plant protected areas;

(ii) Be granted unescorted access to Category IA Material;

(iii) Be given responsibilities to create or have access to safeguards records or procedures for SSNM;

(iv) Be given responsibilities to measure Category IA Material;

(v) Be given responsibilities to transport or escort Category IA Material;

(vi) Be given responsibilities to guard Category IA Material; or

(vii) Be assigned to activities within the scope of this part for a minimum of 5 years from the date of removal.

* * * * *

8. In § 26.73, paragraph (d) is revised to read as follows:

§ 26.73 Reporting requirements.

* * * * *

(d) By [date 6 months after publication of final rule] each licensee who is authorized to possess, use, or transport formula quantities of SSNM shall certify to the NRC that it has implemented a fitness-for-duty program that meets the requirements of 10 CFR Part 26. The certification shall describe any licensee cut-off levels more stringent than those imposed by this part.

9. In Appendix A, the title and Subpart A-General 1.1 Applicability (1) is revised to read as follows:

Appendix A--Guidelines for Drug and Alcohol Testing Programs

* * * * *

Subpart A-General

1.1 Applicability

(1) These guidelines apply to licensees authorized to operate nuclear power reactors and licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

* * * * *

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

10. The authority citation for Part 70 continues to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

§ 70.20a. General license to possess special nuclear material for transport.

11. In § 70.20a, paragraph (d)(3) is revised to read as follows:

§ 70.20a General license to possess special nuclear material for transport.

* * * * *

(d) * * *

(3) Shall be subject to Part 26 and § 73.80 of this chapter.

* * * * *

PART 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIALS

12. The authority citation for Part 73 continues to read as follows:

AUTHORITY: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C., 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

FEDERAL REGISTER CITATION: November 24, 1992; 57 FR 55062.

DESIRED AUTHORITY CITATION: Yes.

13. In § 73.6, the introductory paragraph is revised to read as follows:

§ 73.6 Exemptions for certain quantities and kinds of special nuclear material.

A licensee is exempt from the requirements of 10 CFR Part 26 and §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.70 and 73.72 with respect to the following special nuclear material:

* * * * *

Dated at Rockville, Maryland, this ____ day of _____, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

ENCLOSURE B

ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT
FOR THE FINAL RULE AMENDING 10 CFR PARTS 26, 70, AND 73

Fitness-for-Duty Requirements for Licensees Authorized to Possess, Use,
or Transport Formula Quantities of Strategic Special Nuclear Material

I. Introduction

The Nuclear Regulatory Commission (NRC) is amending its regulations to require licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) to institute fitness-for-duty programs. This action will help ensure that individuals who have access to or control over SSNM do not have a drug or alcohol problem. This rule does not affect spent fuel storage facility licensees or non-power reactors licensees possessing, using, or transporting formula quantities of irradiated SSNM, as these materials are exempt from the Category I physical protection requirements as set forth in 10 CFR Part 73.6.

II. Need for Action

Employees of licensees who are authorized to possess, use, or transport SSNM might be more easily coerced into participating in, or covering up, a diversion of strategic special nuclear material, if those employees have a drug or alcohol problem. Also, an individual under the influence of drugs or alcohol will not be as effective in conducting his or her safeguards responsibilities. Government sponsored studies such as Fitness for Duty in the Nuclear Power Industry, Volume 2, NUREG/CR-5758, August 1992, have indicated a significant relationship between drug use and criminal conduct. Workers with drug or alcohol problems often have financial difficulties which make them susceptible to approaches by criminal, terrorist, or foreign intelligence entities who might recruit the workers to provide them with sensitive information or property in return for money. Workers with substance abuse problems may engage in additional activities which make them more vulnerable to blackmail, and as a result, they may participate or assist in acts of theft, sabotage, or the diversion of information or property. In addition, if the human component of a safeguards system fails or is compromised, then the safeguards system would be seriously degraded or negated. Therefore, it is necessary also to ensure that those employees who are a critical component of a safeguards system do not have a drug or alcohol problem. (An example of such a failure would be a guard on duty that was incapacitated because of a drug or alcohol problem, thus enabling a theft of SSNM by a group of determined personnel.) A related issue is safety. The use of alcohol or drugs can impair a worker's motor skills and judgment sufficiently that accidents of neglect or error are significantly more likely. The effects of such accidents are such that

they will be contained largely within the boundaries of the facility having little or no actual consequence to the general public. Nonetheless, these accidents do pose a real hazard to those who work at the licensee's facility.

Existing requirements for fitness-for-duty programs contained in 10 CFR Part 26 are applicable to nuclear power plant personnel and do not include the employees of SSNM licensees. Under normal circumstances, the risk of diversion is not high for these licensees because specific safeguards controls are already in place. However, collusion would more easily enable the diversion to happen or be covered up, and substance abuse could provide the leverage by which employees could be induced to participate in these types of acts. Also, security personnel with a drug or alcohol problem can cause a degradation or cessation of security systems or procedures.

III. Environmental Impact of the Proposed Action

This amendment will not directly affect either the safety of operation or the routine release of, or exposure to, radioactivity from the licensees possessing, using, or transporting SSNM.

The amendment would require subjecting certain licensee employees to a chemical testing program, including random tests for the use of drugs or alcohol. Specifically all persons: (1) who are granted unescorted access to Category IA Material, (2) who are given responsibilities to create or have access to material control and accounting records, (3) who are given responsibilities to measure Category IA Material, (4) who are given responsibilities to transport or escort Category IA Material, or (5) who are given responsibilities to guard Category IA Material will be subject to the fitness-for-duty program required by the rulemaking. These requirements have no identifiable environmental impact.

IV. Alternatives to the Proposed Action

The objective of this amendment is to provide greater assurance that those employees who have a drug or alcohol problem will not have unescorted access to, will not transport, will not guard, and will not measure Category IA Material; and will not create or have access to safeguards records.

Two alternatives to the proposed amendment were examined. The first was to take no action. This alternative was rejected because drug and alcohol abuse is a social, medical, and safety problem affecting every segment of our society. Given the pervasiveness of the problem, it must be recognized to exist to some extent in the nuclear industry. The Commission believes it prudent to undertake measures to provide reasonable assurance that a person who is under the influence of alcohol,

or any other substance, legal or illegal, that affects that person's ability to adequately perform duties associated with the safe use of nuclear materials will not have unescorted access to, will not transport, will not guard, and will not measure Category IA Material; and will not create or have access to safeguards records. The second alternative considered was to impose these requirements on licensees who possess, use, or transport SSNM through the issuance of license conditions, orders, or regulatory guides. This alternative was rejected because the requirements to be modified are currently codified in the Code of Federal Regulations and amendments to them should be imposed through formal rulemaking. Also, formal rulemaking has the additional benefit of providing public notice and allowing public comment.

V. Alternative Use of Resources

Subsequent to the submission of the licensee's certification that it has implemented a fitness-for-duty program that meets the requirements contained in 10 CFR Part 26, the NRC will use about one staff week to review the certifications.

VI. Agencies and Persons Consulted

During the development of the proposed amendment, cognizant officials and managers at the Department of Energy and the Department of Transportation were consulted.

VII. Finding of No Significant Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that the proposed amendments are not a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The amendments, through the requirements of subjecting certain licensee employees to a chemical testing program, including random tests for the use of drugs or alcohol, will provide greater assurance that those employees who have a drug or alcohol problem, will not: (1) be granted unescorted access to Category IA Material, (2) be given responsibilities to create or have access to material control and accounting records, (3) be given responsibilities to measure Category IA Material, (4) be given responsibilities to transport or escort Category IA Material, or (5) be given responsibilities to guard Category IA Material.

ENCLOSURE C

REGULATORY ANALYSIS OF FITNESS FOR DUTY PROGRAMS FOR LICENSEES AUTHORIZED TO
POSSESS, USE, OR TRANSPORT FORMULA QUANTITIES OF STRATEGIC SPECIAL MATERIAL

Enclosure C

SUMMARY

The NRC has promulgated a rulemaking action that requires certain employees of licensees authorized to possess, use, or transport formula quantities of strategic special material (SSNM) to undergo testing for drugs and alcohol. Current licensees that may be affected by the rulemaking are 1) Babcock and Wilcox (B&W), Lynchburg, Virginia, 2) Nuclear Fuel Services (NFS), Erwin, Tennessee, and 3) various licensees authorized to transport SSNM. The testing will be undertaken according to the procedures in the fitness-for-duty (FFD) regulations for nuclear power reactor personnel contained in 10 CFR Part 26. This document contains a regulatory analysis of the final rulemaking. The document was prepared according to the guidance in Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/BR-0058, May 1984.

The rulemaking supports the NRC's statutory mission to assure that civilian uses of nuclear materials in the U.S. are conducted so as to protect the public health and safety, the environment, and national security. Specifically, the safety concern is that use of drugs and alcohol can make accidents more likely. The security concern is that employees using drugs or alcohol may be more likely to, or may be more vulnerable to being coerced to divert or sabotage Category I Material, defined as a formula quantity of strategic special nuclear material (SSNM), or information related to Category I Material.

The action is to subject personnel of licensees authorized to possess, use, or transport Category I Material to the drug testing requirements contained in 10 CFR Part 26. The following categories of workers are covered under the final rulemaking:

- employees who physically handle Category IA Material
- employees who are authorized to enter Category IA Material storage or process areas
- employees who do the accounting and recordkeeping for the SSNM
- employees who measure the Category IA Material

- employees who are responsible for the material control and accounting of the SSNM
- employees who write or have the authority to modify the procedures governing the preceding activities
- employees who guard the Category IA Material
- employees who are responsible for transporting Category IA Material.

Category IA Material is defined in Part 26 as strategic special nuclear material (SSNM) directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms.

It was not possible to quantify the benefits associated with the rulemaking. A similar determination was made in the Backfit Analysis which preceded issuance of the Part 26 Fitness-For-Duty (FFD) regulations in June 1989. The estimated first year costs to implement the rulemaking for the B&W and NFS facilities are approximately \$1. million. Continuing annual costs in 1991 dollars for the two facilities are estimated to be approximately \$792,000. Nevertheless, the staff concluded that the potential benefits of the rulemaking outweigh the estimated costs.

ABBREVIATIONS

| | |
|--------|--|
| ANPRM | Advanced Notice of Proposed Rulemaking |
| B&W | Babcock and Wilcox |
| CFR | Code of Federal Regulations |
| CY | Calendar Year |
| DHHS | U.S. Department of Health and Human Services |
| DOT | U.S. Department of Transportation |
| FFD | Fitness-for-Duty |
| FR | Federal Register |
| GET | General Employee Training |
| MOU | Memorandum of Understanding |
| NFS | Nuclear Fuel Services |
| NRC | U.S. Nuclear Regulatory Commission |
| NUMARC | Nuclear Management and Resources Council |
| SRM | Staff Requirements Memorandum |
| SSNM | Strategic Special Nuclear Material |
| U | Uranium |

CONTENTS

SUMMARY i

ABBREVIATIONS iii

1.0 INTRODUCTION 1.1

 1.1 BACKGROUND 1.2

 1.2 STATEMENT OF THE PROBLEM 1.3

 1.3 OBJECTIVES OF THE RULEMAKING. 1.4

 1.4 DRUG TESTING RULES ISSUED BY MODAL ADMINISTRATIONS WITHIN DOT .1.5

2.0 REASONABLE ALTERNATIVES FOR MEETING THE REGULATORY OBJECTIVE 2.1

 2.1 TYPES OF WORKERS TO BE INCLUDED 2.1

 2.2 INTERACTION WITH THE DOT DRUG TESTING RULES 2.2

3.0 CONSEQUENCES 3.1

 3.1 ESTIMATION OF BENEFITS 3.1

 3.1.1 Safety Related Benefits 3.1

 3.2.2 Security Related Benefits 3.3

 3.2 ESTIMATION OF COSTS 3.4

 3.2.1 Current FFD Programs of Affected Licensees 3.4

 3.2.2 FFD Cost Centers 3.5

 3.2.3 Summary of Cost Estimates 3.10

 3.3 IMPACT ON OTHER REQUIREMENTS 3.12

4.0 DECISION RATIONALE 4.1

1.0 INTRODUCTION

The U.S. Nuclear Regulatory Commission (NRC) is promulgating a rulemaking action that requires certain employees of licensees authorized to possess, use, or transport Category I Material⁽¹⁾ to undergo testing for drugs and alcohol. Current licensees affected by the rulemaking are 1) Babcock and Wilcox (B&W), Lynchburg, Virginia, 2) Nuclear Fuel Services (NFS), Erwin, Tennessee, and 3) various licensees authorized to transport SSNM. The testing would be undertaken according to the procedures in NRC's fitness-for-duty (FFD) rules contained in 10 CFR Part 26. This document contains a regulatory analysis of the final rulemaking. The document was prepared according to the guidance in Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/BR-0058, Rev. 1, May 1984.

Section 1 of this Regulatory Analysis includes background information, a statement of the problem to be addressed by the rulemaking, the objectives of the rulemaking, and a discussion of existing drug testing rules issued by modal administrations within the U.S. Department of Transportation (DOT). Section 2 identifies and discusses reasonable alternative actions for meeting the regulatory objectives. Section 3 contains a discussion of the projected benefits and an estimate of the implementation costs associated with the rulemaking. Section 4 contains the decision rationale.

(1) The term "Category I Material" means an unirradiated formula quantity of strategic special nuclear material. A formula quantity means any combination in a quantity of 5,000 grams or more computed by the formula: grams = (grams contained U-235) + 2.5(grams U-233 + grams plutonium).

1.1 BACKGROUND

NRC issued FFD regulations on June 7, 1989 (54 FR 24494) applicable to licensees authorized to operate a nuclear power reactor. The regulations became effective January 3, 1990. The regulations require affected licensees to establish and implement written policies and procedures to provide reasonable assurance that nuclear power plant personnel are not under the influence of any substance which adversely affects performance.

The FFD regulations establish chemical testing requirements to test for the use of alcohol and drugs. Four types of chemical testing are required 1) preaccess, 2) random, 3) for-cause, and 4) followup.⁽²⁾ Preaccess (preemployment) chemical testing may detect drug use prior to hiring, but the applicant knows about the testing and can potentially evade detection. Preaccess testing does not address detection and deterrence in the workplace. For-cause testing is linked to job performance, but has a relatively low deterrent effect and does not provide for early detection. For-cause testing depends on a supervisor's ability to detect problems and willingness to make referrals. When problems are not detected, for-cause testing may not be initiated until after an incident has occurred. Followup testing is essentially a procedure to verify continued abstinence. It does not provide early detection, but it may have some deterrent effect. In conjunction with issuing the Part 26 FFD rules in 1989, NRC determined that, to be effective, chemical testing must include random unannounced urinalysis for drugs and breath testing for alcohol. Moreover, evidence derived from random testing programs implemented by other federal agencies indicates that random testing effectively detects and strongly deters substance abuse in the workplace.⁽³⁾

The existing Part 26 regulations are limited to NRC licensees authorized to construct or operate a nuclear power reactor. The NRC noted, however, that in the future it may consider the need to extend the coverage of the rule to

(2) 10 CFR 26.24.

(3) V. Barnes, et al., Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues, NUREG/CR-5227, September 1988.

other types of licensed facilities.⁽⁴⁾ Approval to proceed with rulemaking to extend a fitness-for-duty program to other licensees was granted by the Commission in a Staff Requirements Memorandum (SRM) dated June 26, 1990. The SRM also disapproved the use of a policy statement addressing the need for FFD programs for licensees not affected by the existing Part 26 regulations.

1.2 STATEMENT OF THE PROBLEM

The rulemaking has been promulgated for both safety and security reasons.⁽⁵⁾ The safety concern is that evidence has shown that use of alcohol or drugs can impair a worker's motor skills and judgment sufficiently that accidents attributable to neglect or error are significantly more probable. The security concern is diversion or sabotage of SSNM or related information for illegal activities. Licensee employees with drug or alcohol problems are more susceptible to blackmail or coercion which could enable terrorists or unfriendly governments to manipulate an otherwise trustworthy individual into assisting them with their unlawful activities. Also security personnel with a drug or alcohol problem can cause a degradation or cessation of security systems or procedures.

During the first year (calendar year 1990) of drug and alcohol testing of nuclear power plant workers, approximately 0.87 percent of tests administered under the Part 26 requirements were positive. The breakdown by test category is shown in the following box:⁽⁶⁾

-
- (4) L.L. Bush and B.K. Grimes, Fitness-for-Duty in the Nuclear Power Industry: Responses to Public Comments, NUREG-1354, p. 4-1, May 1989.
 - (5) The safety and security concerns are discussed in 1) V. Barnes, et al., 1988; and 2) N. Durbin, et al., Fitness-for-Duty in the Nuclear Power Industry: A Review of the First Year of Program Performance and an Update of the Technical Issues, prepared by the Battelle Human Affairs Research Centers, August 1990.
 - (6) N. Durbin, et al., Fitness-for-Duty in the Nuclear Power Industry: Annual Summary of Program Performance (CY 1990), prepared by the Battelle Human Affairs Research Centers, p. 2, July 1991.

| Test Category | No. of Tests | No. of Positive Tests | Percent Positive |
|---------------|--------------|-----------------------|------------------|
| Preemployment | 122,491 | 1,548 | 1.26% |
| Random | 148,743 | 550 | 0.37% |
| For-Cause | 732 | 214 | 29.23% |
| Followup | 2,633 | 65 | 2.47% |
| TOTAL | 274,599 | 2,377 | 0.87% |

The NRC has no reason to believe that the incidence of positive tests for workers who will be affected by this rulemaking will be appreciably different from that observed at nuclear power plants. As noted in the Supplementary Information accompanying the final Part 26 regulations (54 FR 24469), the NRC has a statutory responsibility under the Atomic Energy Act to protect the public health and safety. The NRC believes that use of drugs and abuse of alcohol in the nuclear industry is counter to public health and safety and warrants NRC intervention.

1.3 OBJECTIVES OF THE RULEMAKING

The fundamental objective of the rulemaking is to provide reasonable assurance that a person who is under the influence of drugs, alcohol, or any other substance that affects a person's ability to perform duties associated with the safe use or safeguarding of SSNM does not have access to such material. The general performance objectives expressed at 10 CFR 26.10 are also objectives of the rulemaking. These are:

- to provide reasonable assurance that affected workers (see Section 2.1) will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties,
- to provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of the rulemaking

- to have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances.

1.4 DRUG TESTING RULES ISSUED BY MODAL ADMINISTRATIONS WITHIN DOT

Authorized carriers of Category I Material are currently subject to the drug testing rules issued by the modal administrations within DOT. DOT has issued procedures for transportation workplace drug testing programs (49 CFR Part 40). The procedures require testing for marijuana, cocaine, opiates, amphetamines, and phencyclidine (49 CFR 40.21). DOT does not currently have alcohol testing requirements at the Department level. The DOT modal administrations do, however, prohibit 1) alcohol consumption while on duty, 2) operating a transport vehicle while under the influence of alcohol, and 3) in certain cases, consumption of alcohol during defined pre-duty periods.⁽⁷⁾ DOT issued an advanced notice of proposed rulemaking (ANPRM) covering an alcohol abuse prevention program for the transportation industry including an alcohol testing program on November 2, 1989 (54 FR 46326).⁽⁸⁾ DOT's most recent Regulatory Agenda, however, states that the next action on the ANPRM is undetermined.⁽⁹⁾

(7) 54 FR 46329-46330, November 2, 1989.

(8) The ANPRM notes that three of the DOT modal administrations have limited alcohol testing requirements (54 FR 46343). The Coast Guard and the Federal Railroad Administration provide for postaccident and reasonable cause testing. The Federal Aviation Administration requires crew members to submit to alcohol testing upon request.

(9) 56 FR 17608, April 22, 1991.

The four DOT agencies whose regulated community may transport SSNM, and its citation to the Code of Federal Regulations (CFR) for drug testing requirements, are shown in the following box:

| AGENCY | CITATION |
|---------------------------------|-----------------------|
| Coast Guard | 46 CFR Part 16 |
| Federal Aviation Administration | 14 CFR 121.457 |
| Federal Highway Administration | 49 CFR 391, Subpart H |
| Federal Railroad Administration | 49 CFR Part 219 |

The rules of all four of the agencies provide for random drug testing.

DOT and NRC entered into a Memorandum of Understanding (MOU) in 1979 concerning their respective roles in the regulation of the transportation of radioactive materials.⁽¹⁰⁾ DOT's responsibilities under the MOU include the development of special transport controls (excluding safeguards) and safety standards for the qualifications of carrier personnel. The DOT has been informed of NRC's adopting drug and alcohol testing rules for carrier personnel consistent with the MOU. Discussions have been held with DOT to minimize the potential for dual regulation of carrier personnel.

(10) 44 FR 38690, July 2, 1979.

2.0 REASONABLE ALTERNATIVES FOR ACHIEVING THE REGULATORY OBJECTIVE

This section discusses the reasonable alternatives considered for meeting the regulatory objectives identified in Section 1.3. Two categories of alternative actions were considered 1) the type of workers to be included within the FFD requirements, and 2) the potential interaction with the DOT drug testing rules.

2.1 TYPES OF WORKERS TO BE INCLUDED

The rulemaking applies to the following categories of Category I Material licensee or transporter workers:

- employees who physically handle Category IA Material⁽¹⁾
- employees who are authorized to enter Category IA Material storage or process areas
- employees who do the accounting and recordkeeping for the SSNM
- employees who measure the Category IA Material
- employees who are responsible for the material control and accounting of the SSNM
- employees who write or have the authority to modify the procedures governing the preceding activities
- employees who guard the Category IA Material
- employees who are responsible for transporting Category IA Material.

(1) Category IA Material is defined in 10 CFR Part 74.4 as strategic special nuclear material (SSNM) directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or

(3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms.

All of the employees in the preceding categories either have 1) physical contact with or access to Category IA Material, or 2) responsibility for control of SSNM through recordkeeping or report and procedure writing. Both of these categories of employees are considered important by the NRC in meeting the regulatory objectives identified in section 1.3 and, consequently, are included in the rulemaking. Although individuals in the second category do not have physical access to SSNM, they potentially can act in concert with individuals in the first category to cover up a diversion of SSNM. Subornation has a greater likelihood of occurrence if the individuals involved are using illegal drugs.

A similar comprehensive inclusion of workers was adopted in the FFD rulemaking for nuclear power plant personnel (54 FR 24471), where all workers with unescorted access to the protected area were included within the scope of the rule including such categories of workers as vendors, secretaries, and clerical personnel.

2.2 INTERACTION WITH DOT DRUG TESTING RULES

As discussed in Section 1.4, carriers of Category I Material are currently subject to the drug testing rules of DOT and its various modal administrations. The drug testing rules are similar, but not identical to, NRC's Part 26 regulations. Options that were available for addressing the DOT regulations in the proposed rulemaking included:

- 1) omitting carrier personnel from the proposed rulemaking
- 2) making carrier personnel subject to the proposed rulemaking without regard to the existing DOT rules
- 3) making carrier personnel subject to the proposed rulemaking but also adopting certain incremental changes for carrier personnel so that the NRC FFD rules for carrier personnel and other workers within the scope of the proposed rulemaking are basically the same
- 4) adopting no additional drug testing rules for carrier personnel beyond the DOT requirements, but subjecting carrier personnel to the Part 26 procedures for alcohol testing.

A modified Option 2 was chosen as the preferred option. Option 1 was not selected because in NRC's view alcohol is an appropriate FFD concern. The basis for this view is summarized in the Supplementary Information section of the final Part 26 rule (54 FR 24480). Option 3 was not selected because incremental changes for only transporter personnel were considered as potentially confusing to licensees. Option 4 was not selected because of the disadvantages of the two major groups of personnel to be covered in the case of fitness-for-duty by two different regulatory bodies. A modified Option 2 was selected because in the context of Category I Material, fitness-for-duty is a safeguards issue, and according to the NRC-DOT Memorandum of understanding, the NRC is the lead Agency for safeguards issues. However, in the final rule, after recent review of the Department of Transportation fitness-for-duty requirements it was decided to exempt from the requirements of this rule, those transporters of SSNM who are subject to United States Department of Transportation drug or alcohol fitness programs that require random testing for both drugs and alcohol.

3.0 CONSEQUENCES

This section discusses the anticipated consequences of the rulemaking. Section 3.1 discusses the projected benefits in qualitative terms. Section 3.2 covers the estimated costs of implementing the rulemaking. Section 3.3 discusses potential impacts on groups other than licensees. Section 3.4 discusses potential implementation constraints.

3.1 ESTIMATION OF BENEFITS

The benefits of the rulemaking are analyzed in terms of the objectives stated in Section 1.3, the essence of which is to guarantee as much as possible that the categories of workers listed in Section 2.1 are always fit for duty. These benefits are not readily quantifiable. Therefore, the benefit analysis is essentially qualitative and expressed in terms of the fundamental reason for the rule: to ensure that those individuals who have a drug or alcohol problem do not have access to or control over SSNM. There are also likely to be secondary benefits accruing to affected licensees including enhanced work-force productivity, reduced absenteeism, lower medical and insurance costs, and less plant downtime.⁽¹⁾ These secondary benefits will offset to some extent the costs identified in Section 3.2, but were not taken into account in the decision rationale for the rulemaking (Section 4.0).

3.1.1 Safety Related Benefits

Drug or alcohol abuse can impair job performance. This impairment is not only a significant threat to the safety of the workers themselves, but may also endanger the health and safety of the public.⁽²⁾ Drug use or alcohol consumption on the job can adversely affect behavior and diminish both physical and cognitive abilities. The effects of withdrawal, hangover, and

(1) U.S. Nuclear Regulatory Commission, Backfit Analysis: Fitness-for-Duty, prepared in conjunction with the 10 CFR Part 26 Final Rule, June 7, 1989, p. 7. (Hereafter, "Backfit Analysis").

(2) V. Barnes, et al., op cit.

long term chronic off-duty substance abuse can also affect job performance and safety. As an example, the Federal Railroad Administration reported 48 incidents between 1975 and 1983 caused by drug or alcohol impaired workers which resulted in 34 fatalities, 66 injuries and \$28 million in property damage.⁽³⁾ Furthermore, drug users have been found to be three or four times as likely as non-users to have an on-the-job accident.⁽⁴⁾ Finally, drug or alcohol abuse by nuclear industry workers is considered by the NRC to be an indicator of a lack of "reliability, integrity, and trustworthiness"⁽⁵⁾ and is a legitimate safety and security concern for the NRC.

In its Backfit Analysis prepared in 1989 in conjunction with the Part 26 FFD rule, the NRC concluded that substance abuse significantly increases the risk of accidents as a result of neglect or human error. Although the reduction of risk due to FFD programs was not quantified, the NRC concluded that drug and alcohol testing as part of a comprehensive FFD program can significantly increase the assurance that employees will be fit for duty.⁽⁶⁾ The NRC further concluded that the implementation costs were justified by the protection to public health and safety that the program would assure. In addition, it was observed that assuring that workers were not impaired by drugs or alcohol is likely to decrease the probability of human error and to reduce the risk of accidental radiological exposure to the individual employee and other workers.⁽⁷⁾ The reasoning contained in the Backfit Analysis applies to this final rulemaking.

While the probability of a significant accidental radiological release due to substance abuse may be low, the consequences of such a release could be great. Even a relatively small radiological accident attributable to drug or

(3) 50 FR 31516, August 2, 1985.

(4) C.M. Cornish, Drugs and Alcohol in the Workplace: Testing and Privacy, Callaghan & Co., Wilmette, Illinois, p. 12, 1988.

(5) 54 FR 24470, June 7, 1989.

(6) Backfit Analysis, p .6.

(7) Backfit Analysis, p. 7.

alcohol use could undermine public confidence in the safety and integrity of the nuclear industry. The relatively low positive test rates reported in Section 1.2 suggest that substance abuse among nuclear power plant workers may not be as great as in the national work force.⁽⁸⁾ Nevertheless, even a low positive test rate is indicative of previously undetected drug use among workers. Further, the test rates do not reveal the actual incidence of drug use and may possibly represent a low estimate within the industry. In any case, the positive test result rates do illustrate that there is likely to be a sufficient substance abuse problem in the nuclear industry overall to warrant the extension of the Part 26 FFD rules to the categories of workers listed in Section 2.1.

3.1.2 Security Related Benefits

The trustworthiness of nuclear industry workers with access to SSNM or involved in material control and accountability positions is an important security concern. These positions require a high degree of trust and confidence. Occupation of these positions by workers engaged in substance abuse presents a threat to security. Government sponsored studies have indicated a significant relationship between drug use and criminal conduct.⁽⁹⁾ Workers with drug or alcohol problems often have financial difficulties which make them susceptible to approaches by criminal, terrorist, or foreign intelligence entities who might recruit such workers to provide them with sensitive information or property in return for money. Workers with substance abuse problems may engage in activities which make them vulnerable to blackmail, and as a result, they may participate or assist in acts of sabotage or in the diversion of information or property. Drug users may also steal to obtain money to support their habit. In addition, security personnel with a drug or alcohol problem can cause a degradation or cessation of

(8) N. Durbin, et al., Fitness-for-Duty in the Nuclear Power Industry: A Review of the First Year of Program Performance and an Update of the Technical Issues, prepared by the Battelle Human Affairs Research Centers, August 1990, p. 23.

(9) C.M. Cornish, op cit., p. 16.

security systems or procedures. A drug and alcohol testing program will minimize the likelihood that such individuals occupy positions with access to or control over SSNM.

The rulemaking is expected to provide the following security benefits: 1) a reduction in drug use by deterring initial or continued substance abuse, and 2) detection of substance abusers enabling their removal from sensitive positions which could threaten security. The reduced security risk derived from the rulemaking is a benefit that warrants its application to the types of employees listed in Section 2.1.

3.2 ESTIMATION OF COSTS

The rulemaking will expand the coverage of the NRC's FFD rules to include facilities and carriers licensed to possess or transport Category I Material. This section analyzes the estimated costs for these licensees to implement the FFD program. When appropriate, estimated costs are compared to the calendar year 1990 costs incurred by nuclear power reactor licensees as estimated by the Nuclear Management and Resources Council (NUMARC). These costs were collected by NUMARC from cost data submitted to it by utilities operating all 115 reactors currently subject to the Part 26 rules.⁽¹⁰⁾

3.2.1 CURRENT FFD PROGRAMS OF AFFECTED LICENSEES

All non-carrier licensees affected by this rulemaking currently have a limited FFD program. In each case the licensees have preemployment drug testing and "for-cause" drug testing. None of the licensees have random drug testing programs, and the programs test for alcohol only "for cause." To implement the FFD program, each affected licensee will be starting with a foundation from which to develop and operate the required FFD program. However, since a significant expense of the FFD program is the required random

(10) The cost data are summarized in a September 20, 1991 letter from Thomas E. Tipton, NUMARC, to Brian K. Grimes, NRC.

chemical testing program, the licensees are unlikely to find great savings from the existence of their present FFD programs.

Carriers who will be affected by the rulemaking should not see nearly as large development and implementation costs as licensees authorized to use or possess Category I Material. First, only about 1 percent of workers affected by the rulemaking are expected to be employed by carriers. Second, carriers, as discussed in Section 1.4, are presently subject to the drug testing requirements of DOT's modal administrations. The most significant modifications to the carriers' existing FFD programs would be the addition of alcohol testing and the corresponding need to change written policies and procedures. Most of the costs estimated in Section 3.2.2 are unlikely to be applicable to the affected carriers. Costs that are likely to affect carriers are noted.

3.2.2 FFD COST CENTERS

The requirements of 10 CFR Part 26 encompass more than implementation of drug testing. The FFD program requirements are comprehensive, requiring the development of policies, procedures, training courses, continual monitoring, as well as chemical testing. The expected costs which will be incurred by affected licensees when implementing the regulations are broken down in the following discussion into various cost centers. The cost centers are similar to those used in the 1989 Backfit Analysis prepared in conjunction with the existing Part 26 rules. Estimates of employee salaries and training costs are derived from the document Generic Cost Estimates, NUREG/CR-4627, Rev. 1, February 1989.

3.2.2.1 Development of Written Policies and Procedures

Each licensee covered by the rulemaking will be required to develop written policies and procedures to implement and operate its FFD program. The cost incurred to develop such policies and procedures is considered to be a one-time implementation cost. In the Backfit Analysis for implementation of the existing 10 CFR Part 26 rules, it was estimated that each licensee would need to expend a 16-person-week effort (640 hours) to develop the policies and procedures. Some licensees currently required to comply with Part 26 have reported more difficulty than originally anticipated when developing their internal written policies and procedures.⁽¹¹⁾ In an effort to reflect and not underestimate actual costs, the number of hours estimated to develop written policies and procedures has been increased from a 16-person week to a 20-person week effort. An additional 20-person week will result in 800 actual hours spent developing and preparing the policies and procedures.

The average cost of a licensee technical person (including fringe benefits) in 1991 is approximately \$54.00 per hour. The estimated cost per facility to develop the policies and procedures is approximately \$43,200 (800 hours x \$54.00). For the two affected facilities (B&W and NFS) to implement the policies and procedures, the cost is estimated to be approximately \$86,400 (2 facilities x \$43,200).

3.2.2.2 Awareness Training Program

It is assumed that all affected employees at each facility having Category I Material will need an initial training course to inform and orient them to the FFD program. The training is estimated to be no more than a 1-hour course. This is considered a one-time implementation cost. The training cost per student is estimated to be approximately \$25 per hour. This figure is exclusive of the student's time away from work; however, it does include the instructor's time for development, preparation, delivery, evaluation and revisions to the course and materials for the course. A student's time is

(11) N. Durbin, et al., op cit., August 1990, p. 8, 9.

valued at \$41.00 in 1991, which is an average salary paid to various utility workers and management personnel adjusted for fringe benefits. The average supervisor's salary is also estimated to be \$54.00. Thus, the estimated individual student awareness training cost (including lost productivity and worker to supervisor ratio of about 14:1) is approximately \$70. Licensees may be able to incorporate the training into existing employee courses and realize a corresponding cost saving.

3.2.2.3 Refresher Training Program

Persons subject to the rules will also be required to attend annual refresher training programs. NRC licensed facilities generally conduct annual General Employee Training (GET) programs covering safety and security issues. It is assumed that refresher training for the FFD program can be incorporated into the present GET programs. No additional costs are therefore assumed for implementation of the rulemaking.⁽¹²⁾

3.2.2.4 Preemployment and For Cause Chemical Testing

Each facility affected by the rulemaking presently has an FFD program which includes drug testing prior to employment as well as testing "for cause." These programs do not test for alcohol. Laboratories certified by the U.S. Department of Health and Human Services (DHHS) do not generally charge any additional fee to test urine for alcohol. Thus, no additional costs are likely to be incurred by the final rule.

3.2.2.5 Random Testing

The rule requires all facilities having Category I Material to conduct random chemical testing of many of their workers. Each licensee is required to test to the equivalent of nuclear power plants, which is currently 100 percent of its covered employees each year. None of the licensees presently

(12) In its September 20, 1991 letter, NUMARC estimates the annual retraining cost to be approximately \$100,000 for each nuclear power reactor.

authorized to handle Category I Material have random chemical testing as a part of its drug testing program. As a result, one of the areas in which affected facilities will incur the most expense will be the development and implementation of a random chemical testing program.

The estimated cost to conduct random chemical testing is based on the following assumptions:

- It is assumed that no licensee conducts random chemical testing as part of its present FFD program.
- It is believed that less than one-half of the population of the facility would be required to participate in the random chemical testing program. The number of workers actually affected is not available at this time. Testing one-half of the entire population is assumed, and, therefore is likely to yield a higher cost than actual practice.
- The average cost for chemical tests is assumed to be \$40. This cost includes both the costs of the initial screening and the confirmatory test. Laboratory charges for analyzing samples have dropped substantially in the past 3 years. Almost all laboratories charge one flat rate per specimen, which includes both screening and confirmatory tests. The range of charges for the combined testing currently varies between \$27 and \$55.⁽¹³⁾
- It is estimated that, on average, it will take an employee 1 hour to travel to the test site, be tested, and then return to work.
- Since the type of employee (job classification) which will be affected by the rulemaking varies widely, a rate of \$47.62 per hour including fringe benefits is assumed.

(13) From a Pacific Northwest Laboratory random survey of ten DHHS approved laboratories as listed in 56 FR 13648 (April 3, 1991).

Using these assumptions, it is estimated that the average cost per test per employee will be \$87.62. This is the cost of the test plus the cost of an employee's time away from work.

3.2.2.6 Quality Assurance

Licensees will need to conduct blind performance testing to assure that testing is done properly and the results are accurate. Based upon the experience of licensees currently subject to the Part 26 rules, this cost is estimated to be \$2.00 per employee. This estimate is based on the assumption that 5 percent of the specimens tested would be further tested at an alternative certified laboratory ($.05 \times \$40$ per test \times number of employees tested = \$2.00 per employee tested). There would not be any additional lost productivity expenses because the samples would be collected at the same time and location. The other assumptions relating to chemical testing mentioned above would apply.

3.2.2.7 Additional Personnel

It is estimated that each affected licensee will need three additional clerical people for program administration, information collection and processing, and recordkeeping. It is assumed that these clerical workers can also conduct the "suitable inquiries" of prospective employees required by 10 CFR 26.27(a).⁽¹⁴⁾ These workers are assumed to receive a salary of \$21,000 with an additional burden factor of 1.59. Each licensee could thus incur an additional annual clerical expense of \$100,170. Each licensee may also need to hire a physician as a Medical Review Officer. If the physician is paid a salary of \$75,000 per year and also receives a 35 percent benefits package, the cost to each licensee would be approximately \$101,250 per year. Carriers affected by the rulemaking are assumed to be able to implement the program with no additional medical or clerical staff.

(14) The September 20, 1991 NUMARC letter estimates, however, that "suitable inquiry" costs are approximately \$200,000 per reactor per year.

3.2.2.8 Record and Specimen Storage

Each DHHS certified laboratory includes in its testing charge a fee to store the specimen for 1 year. Additional charges would be incurred if a longer storage period is desired. On average, the cost to store a specimen per year (following the standard 1 year storage) is \$10 per specimen.⁽¹⁵⁾

3.2.2.9 Employee Assistance Program

It is anticipated that with the addition of random drug testing at the affected facilities, an expanded Employee Assistance Program will be needed. It is estimated that one additional professional staff and one additional clerical person will be required. Each facility will thus incur an additional average cost of approximately \$116,000 (assuming \$52,000/yr for the professional staff person and \$21,000/yr for the clerical person with a burden factor for each of 1.59).

3.2.2.10 Additional NRC Costs

The NRC does not anticipate the need to add any additional staff or administrative personnel. The administration of the expanded FFD program will be absorbed by current personnel and staff.

3.2.3 SUMMARY OF COST ESTIMATES

The estimated costs for the B&W and NFS facilities to implement the rule are summarized in the box below. The B&W facility has approximately 2500 employees. The NFS facility has approximately 1000 employees. Costs for carriers subject to the rule are not shown in the box. It is estimated that only about 30 carrier personnel will be subject to the chemical testing requirements in the rule. As discussed in Section 1.4, the affected carriers must presently comply with the drug testing rules of the DOT modal

(15) From a Pacific Northwest Laboratory random survey of ten DHSS approved laboratories as listed in 56 FR 13648 (April 3, 1991).

administrations. The anticipated cost to the carriers to incorporate the NRC's rulemaking (include testing for alcohol) is therefore expected to be relatively small.

| ⁽¹⁶⁾ COST CENTERS | B&W - 1st Yr. | B&W-Annual | NFS-1st Yr. | NFS-Annual |
|-------------------------------|---------------|------------|-------------|------------|
| Develop Policies/Procedures | \$43,300 | 0 | \$43,300 | 0 |
| Awareness Training Program | \$87,500 | 0 | \$35,000 | 0 |
| Chemical Testing | \$110,000 | \$110,000 | \$43,810 | \$43,810 |
| Quality Assessment | \$2,500 | \$2,500 | \$1,000 | \$1,000 |
| Additional Clerical Personnel | \$100,170 | \$100,170 | \$100,170 | \$100,170 |
| Medical Review Officer | \$101,250 | \$101,250 | \$101,250 | \$101,250 |
| Employee Assistance Program | \$115,000 | \$116,000 | \$116,000 | \$116,000 |
| TOTAL ESTIMATED COSTS | \$561,000 | \$430,000 | \$440,500 | \$362,000 |

The costs, which will be incurred by affected licensees when the final rulemaking becomes effective, are difficult to estimate with precision. A licensee's ability to integrate the rules with an existing FFD program will have a significant effect on costs. For example, a licensee may be able to incorporate the initial awareness training in GET sessions or limit the number of new employees needed to implement the rule if duties associated with the rulemaking can be absorbed by existing employees.

The NUMARC estimates of actual costs incurred by reactor licensees in 1990, as reported in its September 20, 1991 letter to the NRC, were derived using different assumptions and cost centers from those used in this Regulatory Analysis. Nevertheless, the estimated costs are comparable to those displayed above, especially considering that total employment at a reactor typically falls between the employment levels at the affected NFS and B&W facilities. NUMARC's estimated annual operating cost is approximately \$565,000 per reactor. This figure includes training, suitable inquiry, and lost productivity costs while an employee is off the job for chemical testing.

(16) Many of these costs are offset by programs already in place for licensees subject to the Drug Free Workplace Act of 1988.

NUMARC also estimates that initial year start-up costs are approximately \$84,000 per reactor.

3.3 IMPACT ON OTHER REQUIREMENTS

The impacts on NRC programs and requirements are expected to be relatively small. NRC has had existing personnel and procedures for FFD programs since issuance of the Part 26 regulations in 1989. The incremental impact of the regulations on NRC is, consequently, expected to be modest.

4.0 DECISION RATIONALE

The action is to subject 1) certain personnel of licensees authorized to use and possess Category I Material and 2) certain carrier personnel of licensees authorized to transport Category I Material to all of the fitness-for-duty requirements in 10 CFR Part 26. The following categories of workers are covered under the rulemaking:

- employees who physically handle Category IA Material
- employees who are authorized to enter Category IA Material storage or process areas
- employees who do the accounting and recordkeeping for the SSNM
- employees who measure the Category IA Material
- employees who are responsible for the material control and accounting of the SSNM
- employees who write or have the authority to modify the procedures governing the preceding activities
- employees who guard the Category IA Material
- employees who are responsible for transporting Category IA Material.

As discussed further in Section 2.1, inclusion of all of the preceding categories of employees is considered important to meeting the objectives of the rulemaking.

It was not possible to quantify the benefits associated with the rulemaking. A similar determination was made in the Backfit Analysis which preceded issuance of the final Part 26 regulations. Nevertheless, NRC concludes that implementation of the rulemaking will reduce security and safety risks associated with the possession, use, and transportation of Category IA Material and also further NRC's statutory mandate to protect public health and safety, the environment, and national security. The estimated costs to implement the rulemaking are considered to be reasonable in relation to the expected benefits.

ENCLOSURE D



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20655-0001

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Barbara Vucanovich



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Michael Bilirakis



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Joseph Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment which extends the fitness-for-duty requirements contained in 10 CFR Part 26 to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). This amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Alan K. Simpson

ENCLOSURE E

PUBLIC ANNOUNCEMENT

NRC EXTENDING FITNESS-FOR-DUTY REQUIREMENTS

The U.S. Nuclear Regulatory Commission (NRC) is amending the fitness-for-duty requirements contained in 10 CFR Part 26 to include licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

The amendment will provide greater assurance that those employees who have a drug or alcohol problem will not guard, transport, measure, or otherwise have access to or control over SSNM, particularly concealable forms and quantities of SSNM, and will not be responsible for safeguards records.