



OFFICE OF THE SECRETARY

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

acs

August 2, 1991

IN RESPONSE, PLEASE REFER TO: M910725B

MEMORANDUM FOR: James M. Taylor Executive Director for Operations William C. Parler, General Counsel FROM: Samuel J. Chilk, Secretary SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION AND VOTE, 3:00 P.M., THURSDAY, JULY 25, 1991, COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-91-200 - Amendment to the Fitness-for-Duty Rule

The Commission, by a 4-0 vote, approved amendments (as modified on the attached pages) to 10 CFR Part 26 to clarify NRC's intent concerning the acceptability of taking action against an individual based solely on the preliminary results of a drug screening test.

Commissioner Remick, while approving, would have preferred the staff's recommended 80 percent reliability level for the presumptive positive test confirmations.

The Federal Register Notice should be modified as noted in the attached pages, reviewed by the Regulatory Publications Branch, ADM, and returned for signature and publication.

(EDO) (SECY Suspense: 8/30/91)

II. Shoreham Nuclear Power Station - Emergency Motion for Stay

The Commission, by a 4-0 vote, approved an order responding to two separate "Emergency Motion(s) for Stay" filed by the Shoreham-Wading River Central School District and the Scientists and Engineers for Secure Energy requesting that the Commission stay the effectiveness of the Shoreham "possession only" license amendment. The order denied the stay requests.

Handwritten initials and date: JF-02 1/1

(Subsequently, on July 25, 1991, the Secretary signed the Order.)

Attachments:  
As stated

cc: The Chairman  
Commissioner Rogers  
Commissioner Curtiss  
Commissioner Remick  
GPA  
ACRS  
PDR - Advance  
DCS - P1-24

[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR PART 26

R1N 3150-AD61

FITNESS-FOR-DUTY PROGRAMS

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing fitness-for-duty programs that are applicable to licensees who are authorized to construct or operate nuclear power reactors. The final rule is necessary to clarify the NRC's intent concerning the unacceptability of taking action against an individual that is based solely on the preliminary results of a drug screening test and to permit, under certain conditions, temporary removal of an individual from unescorted access or from normal duties, based on an unconfirmed positive result from an initial screening test for marijuana or cocaine. *employment actions, up to and including the action of*

EFFECTIVE DATE: (30 days after publication), except for the amended information collection requirements contained in §§ 26.24(d)(2)(iv), and 26.71(d). These information collection requirements will become effective upon the Office of Management and Budget (OMB) approval. The NRC will publish a notice of the effective date in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Eugene McPeck, Reactor Safeguards Branch, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-3210.

SUPPLEMENTARY INFORMATION

Background

On August 31, 1990, the Commission published in the Federal Register (55 FR 35648) proposed amendments to its <sup>fitness-for-duty</sup> regulations applicable to licensees authorized to construct or operate nuclear power reactors. The proposed amendments sought to clarify the Commission's intent about the unacceptability of taking actions against an individual that are based solely on <sup>unconfirmed</sup> preliminary <sup>drug</sup> test results.

Interested parties were invited to submit comments on the proposed amendments within 60 days after their publication in the Federal Register. The staff received a total of 32 comment letters in response to the Notice of Proposed Rulemaking (NPRM). Upon consideration of the comments received, the NRC is modifying the proposed regulation as discussed in the Statement of Considerations.

## Comments on the Proposed Rule and Responses

Comments were received from the general public, two Congressmen, workers in nuclear power plants, the international headquarters of two unions, the Nuclear Management and Resources Council (NUMARC), 21 power reactor licensees, two contractor organizations, one law firm, and a professional society.

1. Comments concerning the balance between safety and individual rights.

### Comments opposing the proposed amendment.

NUMARC and 19 licensees believe that the current rule is adequate and that the proposed amendment should not be adopted. The central argument for their opposition to the proposed amendment was that the public health and safety would be best protected by a practice where an individual with a positive result for certain illegal substances from a preliminary positive initial screening test can be placed in a nonwork pay status, pending confirmation of the test result.

### Comments supporting the proposed amendment.

The NRC received comments from Congressmen Dingell and Bliley, two licensees, two contractor organizations, two unions, employees of licensees, private citizens, and a professional society that supported the proposed amendment to 10 CFR Part 26. These commenters agreed that no action should be taken against an individual that is based on a preliminary screening test result unless the individual exhibits other signs



of impairment or indications that he or she might pose a safety hazard. Their central argument was that the proposed rule will provide a degree of fairness to an individual whose initial test result may indeed prove in error, thereby furthering the protection of worker's rights. One licensee indicated that the delay in the revocation of unescorted access until the Medical Review Officer (MRO) has reviewed the confirmed laboratory test results has not affected the reliability or safety of its plants.

NRC response.

The arguments for and against the amendment to the rule center on the proper balance between safeguarding an individual's rights and protecting public health and safety. This is the same basic issue that was considered during the development of 10 CFR Part 26.

The Commission believes that <sup>taking employment actions against</sup> temporarily suspending <sup>up to and including the actions</sup> a person's access <sup>of temporarily removing an</sup> to a site, based on a presumptive positive result from an initial screening test has validity from a safety perspective when there is high confidence that the initial results will be confirmed, and when measures are taken to <sup>or</sup> ensure that the individual's rights are protected in those few instances when the preliminary test results are not confirmed. The confirmation rate after the initial screening tests varies substantially among <sup>the</sup> drugs <sup>that are</sup> A large fraction of presumptive positive results from initial screening tests for ~~some~~ <sup>certain</sup> drugs are subsequently confirmed as positive. From a safety perspective, actions that are based on the results of these initial screening tests <sup>removal from normal duties or an earlier</sup> would result in an earlier suspension of access to a site for individuals who are later determined by the confirmation test as having used drugs.

Some of those who favored administrative actions that are based on the results of initial screening tests also commented that such a practice and procedure needed to be handled carefully. The Commission agrees that carefully prepared and implemented procedures are needed to protect the reputations and careers of individuals whose test results are not confirmed. As a minimum, the Commission believes those procedures must ensure that there is no record or disclosure linking the tested person to a <sup>positive screening test result when the screening</sup> ~~temporary suspension that~~ is not confirmed. As pointed out by commenters, the administrative action is obvious to fellow workers. However, the Commission believes that there is a limited set of circumstances when the safety benefit from <sup>administrative action against</sup> ~~temporary removal of workers~~ <sup>who test positive on the screening test</sup> outweighs the potential impact on an individual.

In developing the fitness-for-duty (FFD) rule, the Commission tried to achieve a proper balance between safeguarding an individual's reputation and right of privacy and its responsibility to protect public health and safety. The Commission carefully considered how to achieve this balance during the rule's development and requested comments on the issue (see 53 FR 36796; September 22, 1988). Prohibition against disclosure to licensee management of presumptive positive results of preliminary testing<sup>1</sup> was one measure adopted by the Commission for the purpose of protecting individual rights. The Commission believes that the proper balance <sup>will be</sup> ~~is~~ maintained by placing <sup>substantial and limitations</sup> ~~certain~~ conditions on the exercise of management prerogatives <sup>in the face of unconfirmed positive screening test results</sup>.

<sup>1</sup>See Section 2.7(g)(2) of Appendix A to 10 CFR Part 26.

From a broad perspective, FFD testing is only one element of many elements included in licensee programs (e.g., quality assurance, quality control, training, and access authorization) that addresses reactor safety from the standpoint of assurance that both equipment and people will perform their functions as intended. These programs, taken as a whole, provide an integrated approach to ensure that individual actions do not adversely affect safe plant operations. The FFD rule includes a number of specific elements to ensure that nuclear power plant workers are fit to perform their assigned tasks. For example, the requirements for the training of supervisors in behavioral observation is an element which, although not adequate to detect impairment in all cases, adds to the likelihood of removal of obviously ~~are~~ *that individuals who* impaired ~~individuals~~ *will be recognized and removed from activities that can affect safety* individuals. In this regard, 10 CFR 26.27(b)(1) requires that impaired workers or those whose fitness may be questionable be removed until determined fit to safely and competently perform duties.

The purpose of testing is not only to make impairment on the job less likely but to ensure a trustworthy and highly reliable workforce and increase the assurance that workers will act properly in stressful situations resulting from "off-normal" events. The Commission believes that the benefits of removing individuals a few days earlier, except in limited circumstances, may have been over-emphasized by commenters opposed to the rule. First, as stated at (53 FR 36798), a positive result from a urine test does not establish that an individual is currently impaired, only that the individual *may have* ~~has~~ drugs present in his or her system and, therefore, may not be reliable. Information that a person may not be reliable indicates a less immediate safety risk than a determination of impairment would imply. Second, as stated in the final rule on July 7, 1989, (54 FR 24470), the existence of drug problems in the workplace cannot be entirely eliminated and an undetected presence of drugs will exist



no matter how thorough the program. This undetected presence of drugs implies that a constant, but small, safety risk exists even under the best program. Other aspects of the Commission's regulations, including design margins, redundancy of accident mitigation systems, quality assurance, and training supervisors in behavioral observation provide reasonable assurance of safe plant operations. Third, those sites without onsite testing regularly experience the delays in receipt of test results sought to be avoided by the commenters opposed to the amendment. Fourth, anecdotal evidence indicates that <sup>generally</sup> those individuals who abuse drugs have unrealistic hopes of not exceeding the cutoff levels until confronted with the confirmed positive results. Malevolent acts in anticipation of positive test results are therefore unlikely. The NRC is not aware of any ~~such~~ <sup>of malevolent action by such individuals</sup> instances during the first year of testing under the FFD rule. Considering these factors, the Commission concludes that the increment of risk in clearly prohibiting ~~removal~~ <sup>employment action solely on the basis of</sup> except in ~~unconfirmed~~ <sup>positive</sup> narrowly limited circumstances is negligible. The Commission also concludes that <sup>employment action against individuals</sup> ~~temporary suspensions~~ under the narrowly limited circumstances defined herein should be left as a management prerogative of individual utilities and not made mandatory. C

The Commission, therefore, considers that the rule, as modified as a result of further consideration of the issues raised during the comment period, would continue to achieve the Commission's original objective and would <sup>strike</sup> ~~preserve~~ a fair balance between individual rights and the protection of public health and safety.

In certain unusual circumstances, 10 CFR 26.24(e) may require the reporting of test results to management by the Medical Review Officer (MRO) before

NRC response.

The Commission recognizes that the immunoassay process used for onsite preliminary screening tests (as well as the initial screening at the HHS-certified laboratory) will result in presumptive positives due to the consumption of certain food products and over-the-counter drugs. Also, the Commission is aware that the immunoassay is a more reliable predictor for marijuana and cocaine than for other drugs.

The National Institute on Drug Abuse (NIDA) has confirmed that data provided by TVA is fairly consistent with that reported by HHS-certified laboratories except that the TVA confirmation rate for amphetamines is much lower. NIDA believes that this may be caused by the use of over-the-counter stimulants, commonly associated with long hours and shift work. Such use is usually declared acceptable by the MRO. The Commission collected data from several licensees where onsite testing is conducted to compare those results to the results of GC/MS confirmation testing and MRO-confirmed positives. The licensees were geographically diverse and the data collected does provide an overview of onsite screening tests conducted by these licensees. The degree of agreement between prescreening tests and HHS GC/MS confirmatory tests varies widely by drug type. Using NIDA-established cut-off levels, presumptive positives for cocaine are confirmed by the laboratories almost 90% of the time. For delta-9-tetrahydrocannabinol-9-carboxylic acid (THC), the confirmation rate was 88.5%.\* These statistics support the acceptability of temporarily *taking employment action, up to the point of* suspending an individual from unescorted access, based on an unconfirmed positive test result from a drug test for marijuana or cocaine.

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Provided licensees maintain a high confirmation rate <sup>(85% or higher)</sup> for these two illegal drugs, the Commission concludes <sup>employment action up to and including</sup> that temporary removal from unescorted access or normal work duties is acceptable if measures are taken to limit the negative impact on those ~~few~~ individuals (fewer than one out of five) whose onsite <sup>positive</sup> tests <sup>are not confirmed.</sup> <sup>results for these two drugs</sup>

3. Comments concerning fairness and individual rights.

Although NUMARC and several licensees opposed the proposed amendment, they pointed out that presumptive positive results from initial screening tests could be caused by the consumption of ordinary food products and over-the-counter medications. NUMARC therefore recommended that licensees be allowed to take precautionary, nondisciplinary action to remove a worker from unescorted access only when the results of initial screening tests are presumptively positive for illegal, nonmedical drugs <sup>specifically</sup> cocaine, phencyclidine (PCP), and marijuana.

One licensee disagreed with NUMARC's recommendation and said that removal procedures, no matter how carefully written and implemented, could not adequately prevent tainting an innocent individual's reputation. Several licensees, including two that opposed the amendment, indicated that the program needed to be sensitive to the potential effect on the individual and must include measures to ensure that the individual's reputation and career were not adversely affected. Also, a major contractor commented that unwarranted removal or temporary suspension had serious detrimental consequences to the individual's reputation and results in other adverse effects on employment. For example, the job

sensitive to unwarranted personal attack. The society contended that the current rule has a great potential for "ratchet-prone rule interpreters" to damage an individual's reputation and self-esteem that has contributed greatly to the decline in the number of experienced nuclear professionals and indicates that the nuclear industry is becoming less desirable as a profession for future generations.

NRC response.

The Commission believes that its amendment to 10 CFR 26.24(d) will continue to provide the proper balance between individual rights and the need to protect public health and safety. The Commission has limited <sup>licensees' option to take administrative action against employees</sup> ~~temporary suspensions~~ to two illegal drugs provided that the specific reporting location confirmation rate remains high for the drugs in question. In addition, for such <sup>administrative actions against employees</sup> ~~suspensions~~, the Commission is providing the following ameliorating actions to minimize the impact of ~~the suspensions~~ on those ~~few~~ individuals whose onsite test is not confirmed: of unconfirmed positive screening test result

- ° The option to take action for unconfirmed positive screening test results will be limited to marijuana and/or cocaine and will be confined to those licensees with screening test protocols and controls which provide high levels of accuracy ~~or~~ <sup>and reliability of 85 percent or higher;</sup>
- ° Any person removed from his or her position on the basis of an unconfirmed positive screening test must be retained in a pay status pending the results of the test confirmation process;



- ° No personnel or other record containing information linking the employee to the positive screening test result ~~and which later might be released in response to a suitable inquiry or background investigation~~ may be retained when the screening test result is not confirmed;
- ° Disclosure of a temporary removal or suspension based on a test result not later confirmed is prohibited; and
- ° Measures are provided to assure that disclosures of unconfirmed tests are not required by the tested individual.

If all locations now using onsite testing adopted the policy permitted by this rule, about 50 individuals per year <sup>e</sup>would be temporarily suspended after random tests and later restored (assuming 90% confirmation for cocaine and 85% for marijuana). However, about 350 individuals per year who are later confirmed positive <sup>would be subject to earlier administrative action</sup> ~~would be earlier removed from unescorted access~~. A provision has been added to the final rule to assure that data on the number of occasions that this rule provision is exercised, and that the management actions, including appeals, are reported to the Commission as well as information which will allow the Commission to monitor confirmation rates from onsite and HHS-certified laboratory screening processes.

4. Comments concerning MRO reviews.

Several commenters, including Congressmen Dingell and Bliley and NUMARC, emphasized the importance of the MRO review in the testing process.



6. Comment concerning onsite testing.

A licensee that supported the proposed amendment stated that permitting temporary removal of an individual based upon unconfirmed test results would put its existing program in jeopardy and could result also in the loss of the onsite testing option. This licensee reported that delays in granting access caused by the loss of pre-access onsite drug testing could cost it approximately \$15 million annually.

NRC response.

The Commission recognizes that the onsite testing option permits a licensee to develop an efficient process for putting a new person to work, especially during outages. The Commission believes that the final rule change, which <sup>in certain circumstances, permits temporary administrative</sup> ~~provides for the temporary suspension~~ <sup>action</sup> of an individual on <sup>against</sup> the basis of <sup>unconfirmed</sup> onsite positive screening test results for marijuana and/or cocaine, is soundly based and does not place the onsite testing option in jeopardy. ~~In addition,~~ This provision is not mandatory and licensees need not adopt a policy of <sup>temporary</sup> ~~suspension~~ <sup>based on unconfirmed</sup> onsite positives. <sup>taking administrative action</sup>

7. Comment concerning work/pay status.

One commenter recommended that the rule should protect an employee's right to receive pay during the interim period between suspension and the completion of the confirmatory testing.

NRC Response.

The Commission agrees. The rule requires that there not be any loss of compensation or benefits during <sup>the period of</sup> any temporary <sup>administrative action.</sup> ~~suspension~~

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, the NRC has not prepared an environmental impact statement nor an environmental assessment for this final rule.

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). Existing requirements were approved by the Office of Management and Budget (OMB) under approval number 3150-0146. The amended information collection requirements contained in the final rule will not become effective until after they are approved by the OMB. Notice of OMB approval will be published in the Federal Register.

Regulatory Analysis

The regulations in 10 CFR Part 26 establish requirements for licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program.

This final amendment to 10 CFR Part 26 clarifies the Commission's previous position that no action should be taken against an individual that is based solely on an unconfirmed positive result from an initial screening test and to permit, under certain conditions, <sup>administrative action, up to</sup> temporary removal of an individual from unescorted access or from normal duties, based on an unconfirmed positive result from an initial screening test for marijuana or cocaine.

It is estimated that if all locations now using onsite testing adopted the policy permitted by this rule, about 50 individuals per year <sup>could</sup> be temporarily suspended after random tests and later restored (assuming 90% confirmation for cocaine and 85% for marijuana). However, about 350 individuals per year who are later confirmed positive would be <sup>subject to earlier</sup> ~~removed from unescorted access~~ <sup>administrative action.</sup>

#### Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, [5 U.S.C. 605(b)], the Commission certifies that this rule will not have a significant economic effect on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards issued by the Small Business Administration in 13 CFR Part 121.

#### Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule. This is a minor modification to a final rule,

\* \* \* \* \*

(d) (1) Licensees may conduct initial screening tests of an aliquot before forwarding selected specimens to a laboratory certified by the Department of Health and Human Services (HHS), provided the licensee's staff possesses the necessary training and skills for the tasks assigned, the staff's qualifications are documented, and adequate quality controls for the testing are implemented. Quality control procedures for initial screening tests by a licensee's testing facility must include the processing of blind performance test specimens and the submission to the HHS-certified laboratory of a sampling of specimens initially tested as negative. Except for the purposes discussed below, access to the results of preliminary tests must be limited to the licensee's testing staff, the Medical Review Officer (MRO), the Fitness-for-Duty Program Manager, and the employee assistance program staff, when appropriate.

*or be subjected to other administrative action*

(2) No individual may be removed or temporarily suspended from unescorted access based solely on an unconfirmed positive result from any drug test, other than for marijuana (THC) or cocaine, unless other evidence indicates that the individual is impaired or might otherwise pose a safety hazard. With respect to onsite initial screening tests for marijuana (THC) and cocaine, licensees

*management  
by  
staff  
& licensees*

may temporarily suspend individuals from unescorted access or from normal duties based on ~~presumptive~~ <sup>or take ~~other~~ lesser administrative actions against the individual</sup> presumptive positive result provided the licensee complies with the following conditions:  
*an unconfirmed*

(i) For the drug for which action will be taken, at least ~~80~~<sup>5</sup> percent of the specimens which were determined to be presumptively positive as a



result of preliminary onsite screening tests during the last 6-month data reporting period submitted to the Commission under §26.71(d) were subsequently reported as positive by the HHS-certified laboratory as the result of a GC/MS confirmatory test.

(ii) There is no loss of compensation or benefits to the tested person during <sup>the period of temporary administrative action.</sup> ~~a temporary suspension~~

(iii) Immediately upon receipt of a negative report from the HHS-certified laboratory, any matter which could link the individual to a temporary suspension is eliminated from the tested individual's personnel record or other records, ~~which may later be consulted during a suitable inquiry or background investigation,~~

(iv) No disclosure of the temporary removal or suspension of <sup>or other administrative action against,</sup> an individual whose test is not subsequently confirmed as positive by the MRO may be made in response to a suitable inquiry conducted under the provisions of §26.27(a), a background investigation conducted under the provisions of §73.56, or to any other inquiry or investigation. For the purpose of assuring that no records have been retained, access to the system of files and records must be provided to licensee personnel conducting appeal reviews, inquiries into an allegation, or audits under the provisions of §26.80, or to an NRC inspector or other Federal officials. The tested individual must be provided a statement that the records in paragraph (d)(2)(iii) of this section have not been retained and must be informed in writing that the temporary removal or suspension <sup>or other administrative action that was taken</sup> will not be disclosed, and need not be disclosed by the individual, in response to requests for information concerning removals, suspensions, <sup>administrative actions</sup> or history of substance abuse.



\* \* \* \* \*

3. In §26.71, paragraph (d) is revised to read as follows

\* \* \* \* \*

(d) Collect and compile fitness-for-duty program performance data on a standard form and submit this data to the Commission within 60 days of the end of each 6-month reporting period (January-June and July-December). The data for each site (corporate and other support staff locations may be separately consolidated) must include: random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for other drugs; workforce populations tested; numbers of tests and results by population, process stage (i.e., on-site screening, laboratory screening, confirmatory tests, and MRO determinations), and type of test (i.e., pre-badging, random, for-cause, etc.); substances identified; the number of temporary suspensions <sup>or other administrative actions taken against individuals</sup> based on onsite presumptive positives for marijuana (THC) and for cocaine; summary of management actions, including appeals and their resolutions; and a list of events reported. The data must be analyzed and appropriate actions taken to correct program weaknesses. The data and analysis must be retained for 3 years.

4. In Section 2.7 of Appendix A to Part 26, paragraph (g)(2) is revised to read as follows:

Appendix A to Part 26 - Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs

## NRC PROPOSES TO CLARIFY FITNESS-FOR-DUTY REQUIREMENTS

The Nuclear Regulatory Commission is proposing to amend its requirements governing fitness for duty at licensed nuclear power plants.

The amendment would clarify the Commission's intent concerning the unacceptability of taking action against an individual that is based solely on the preliminary <sup>unconfirmed</sup> results of a drug screening test and to permit, under certain conditions, temporary removal of an individual from unescorted access to such normal duties, based on an unconfirmed positive result from an initial screening test for marijuana or cocaine. To minimize the impact of <sup>such administrative actions</sup> the suspensions on those <sup>subsequently</sup> individuals whose onsite test is not confirmed, the Commission is requiring that the testing protocols and controls provide high levels of accuracy and reliability, that there be no loss of compensation or benefits pending completion of the testing process, and that there be no disclosure or record of any suspension based on a test <sup>that is</sup> not subsequently confirmed.

The Federal Register Notice also points out that under the current rule, an individual must be removed from unescorted access if there is any question concerning the individual's fitness to safely and competently perform duties.

The clarifying amendment is being finalized after one licensee advised the NRC that it had implemented a fitness-for-duty program that included a provision for placing individuals in a non-work pay status on the basis of a positive but unconfirmed initial drug test.



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

The Honorable Peter H. Kostmayer, Chairman  
Subcommittee on Energy and the Environment  
Committee on Interior and Insular Affairs  
Washington, D.C. 20515

Dear Mr. Chairman:

*administrative actions, up to and including*

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final amendment to the fitness-for-duty rule to clarify its intent concerning the unacceptability of taking action against an individual that is based solely on the preliminary results of a drug screening test and to permit, under certain conditions, temporary removal of an individual from unescorted access or from normal duties, based on an unconfirmed positive result from an initial screening test for ~~marijuana~~ *such* or cocaine. To minimize the impact of ~~the suspensions~~ *on those few* individuals whose onsite test is not confirmed, the Commission is requiring that the testing protocols and controls provide high levels of accuracy and reliability, that there be no loss of compensation or benefits pending completion of the testing process, and that there be no disclosure or record of any ~~suspension~~ *administrative action against an individual* based on a test ~~not~~ *that is* subsequently confirmed.

The Commission's rule for establishing fitness-for-duty programs at nuclear power plants was previously published on June 17, 1989 (54 FR 24468). The amendment will become effective 30 days after its publication.

Sincerely,

Dennis K. Rathbun, Director  
Congressional Affairs  
Office of Governmental and  
Public Affairs

Enclosure:  
As stated

cc: Representative John J. Rhodes