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STATUS
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TO FIND THE STAFF CONTACT OR VIEW THE RULEMAKING HISTORY PRESS PAGE DOWN KEY

HISTORY OF THE RULE

PART AFFECTED: PR-055

RULE TITLE: OPERATORS' LICENSES

PROPOSED RULE	PROPOSED RULE	DATE PROPOSED RULE
SECY PAPER: 90-054	SRM DATE: 03/13/90	SIGNED BY SECRETARY: 04/11/90
FINAL RULE	FINAL RULE	DATE FINAL RULE
SECY PAPER: 91-154	SRM DATE: 05/28/91	SIGNED BY SECRETARY: 07/05/91

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031

031

DOCKET NO. PR-055
(55FR14288)

In the Matter of
OPERATORS' LICENSES

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
05/03/90	04/27/90	COMMENT OF R.MULDER, J.PRESTON, & P.BENNECHE (3)
05/17/90	05/11/90	COMMENT OF MAINE YANKEE (C. D. FRIZZLE, PRESIDENT) (7)
05/24/90	05/20/90	COMMENT OF ROBERT F. CZACHOR (1)
06/02/90	06/20/90	COMMENT OF DANIEL DOMINQUEZ (13)
06/02/90	06/02/90	COMMENT OF MARK G. CASSELLS (14)
06/02/90	06/29/90	COMMENT OF ENTEGRY OPERATIONS (WILLIAM CAVANAUGH, III) (15)
06/11/90	06/08/90	COMMENT OF OIL, CHEMICAL & ATOMIC WORKERS INT UNION (JOSEPH M. MISBRENER, PRESIDENT) (2)
06/18/90	06/16/90	COMMENT OF LARRY T. LINDSTROM (4)
06/18/90	05/16/90	COMMENT OF IBEW (DANIEL SHERMAN) (5)
06/18/90	05/29/90	COMMENT OF RICHARD VARGA (6)
06/18/90	06/15/90	COMMENT OF LARRY T. LINDSTROM (8)
06/21/90	06/15/90	
06/26/90	06/18/90	COMMENT OF GSU (W. H. ODELL) (10)
06/27/90	06/24/90	COMMENT OF JOHN S. SANDY (11)
06/29/90	06/25/90	COMMENT OF ROBERT W. FELLINGHAM, JR. (12)
07/02/90	06/27/90	COMMENT OF PHILADELPHIA ELECTRIC COMPANY (G. A. HUNGER, JR.) (16)
07/02/90	07/02/90	COMMENT OF NUMARC (JOE F. COLVIN) (17)
07/05/90	06/22/90	COMMENT OF FLORIDA POWER & LIGHT CO. (W. H. BOHLKE, VICE PRESIDENT) (18)

DOCKET NO. PR-055 (55FR14288)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
07/05/90	07/02/90	COMMENT OF AMERICAN ELEC. POWER SRV. & INDIANA ... (M. P. ALEXICH, VICE PRESIDENT) (19)
07/05/90	06/30/90	COMMENT OF NATIONAL INSTITUTE OF STANDARDS & TECH. (J. MICHAEL ROWE) (20)
07/05/90	06/29/90	COMMENT OF INTERNATIONAL BROTHERHOOD OF ELECT. WKRS (JOHN GERRITY, BUSINESS REP.) (21)
07/05/90	06/28/90	COMMENT OF DUKE POWER COMPANY (HAL B. TUCKER) (22)
07/05/90	06/29/90	COMMENT OF GEORGIA POWER COMPANY (W. G. HAIRSTON, III, SR. VICE PRES.) (23)
07/05/90	06/29/90	COMMENT OF TVA (E. G. WALLACE) (24)
07/05/90	06/29/90	COMMENT OF YANKEE ATOMIC ELECTRIC COMPANY (DONALD W. EDWARDS) (25)
07/06/90	07/02/90	COMMENT OF IOWA ELECTRIC LIGHT & POWER CO. (DANIEL L. MINECK) (26)
07/06/90	06/29/90	COMMENT OF ALABAMA POWER COMPANY (W. G. HAIRSTON, III, SR. VICE PRES.) (27)
07/06/90	06/28/90	COMMENT OF GPU NUCLEAR (J. L. SULLIVAN, JR.) (28)
07/06/90	07/02/90	COMMENT OF COMMONWEALTH EDISON CO. (T. J. KOVACH) (29)
07/06/90	06/29/90	COMMENT OF SOUTH CAROLINA ELECTRIC & GAS COMPANY (O. S. BRADHAM) (30)
07/06/90	07/03/90	COMMENT OF WPPSS (G. C. SORENSEN) (31)
07/06/90	06/29/90	COMMENT OF ARIZONA PUBLIC SERVICE CO. (WILLIAM F. CONWAY) (32)
07/06/90	07/02/90	COMMENT OF NY POWER AUTHORITY (JOHN C. BRONS) (33)
07/09/90	07/02/90	COMMENT OF TRTR (A. FRANCIS DIMEGLIO) (34)
07/09/90	07/02/90	COMMENT OF NORTHEAST UTILITIES (E. J. MROCZKA, SR. VICE PRESIDENT) (35)
07/10/90	06/29/90	COMMENT OF BALTIMORE GAS & ELECTRIC (GEORGE C. CREEL, VICE PRESIDENT) (36)
07/11/90	07/06/90	COMMENT OF UNION ELECTRIC (DONALD F. SCHNELL, SR. VICE PRES.) (37)

DOCKET NO. PR-055 (55FR14288)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
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07/19/90	07/13/90	COMMENT OF FLORIDA POWER CORP. (P. M. BEARD, JR., SR. VICE PRES.) (38)
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07/25/90	07/11/90	COMMENT OF BOSTON EDISON CO. (R. G. BIRD, SR. VICE PRESIDENT) (39)
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01/25/91	07/02/90	COMMENT OF EAP ASSOCIATION (THOMAS J. DELANEY, JR., EXEC. DIR.) (40)
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05/28/91	05/23/91	LTR LEE TO CARR RE PROPOSED FINAL RULE REVISING 10 CFR PART 55 -- "OPERATORS" LICENSES' TO INCLUDE ADDITIONAL FITNESS-FOR DUTY REQUIREMENTS
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07/08/91	07/05/91	FEDERAL REGISTER NOTICE - FINAL RULE
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NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

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DOCKETED
USNRC

91 MAY 28 P6:32

Byron Lee, Jr.
President & Chief
Executive Officer

May 23, 1991

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

The Honorable Kenneth M. Carr
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. - 20555

SUBJECT: Proposed Final Rule Revising 10 CFR Part 55 --
"Operators' Licenses" to Include Additional Fitness-for-Duty
Requirements

Dear Chairman Carr:

We are writing you again, as a result of the May 9th Staff Presentation to the ACRS, to encourage the Commission to seriously consider the comments you have received. Virtually all of the comments believe this Rule is unnecessary and, in fact, would undermine the trust and professionalism the industry and the NRC has been striving to develop in the licensed operators. At that meeting, the Staff reported that the vast majority of responses received questioned the need for this rulemaking. They also reported that they have taken enforcement action against two licensed operators based on 10 CFR Part 26, which supports our earlier comments that the existing rules and regulations give the Commission adequate authority to enforce the basic principles expounded in this proposed rule. We believe to focus additional attention upon licensed operators would seriously undermine the trust and professionalism of the industry and the NRC which they have been striving to develop in these important individuals.

The results of the first year's Fitness-for-Duty Rule random testing program show the number of positive drug and alcohol tests was extremely small and we believe that as these programs mature, the number will be even closer to zero.

The licensed operators of the U.S. nuclear power plants are as highly-trained as any individuals in any operational-type position in the United States. They are dedicated and truly understand their responsibilities to operate these plants in a safe manner. It is our belief that to establish separate requirements over and above those already in existence would distract and certainly would not enhance the stature of that position, especially when there is little justification for that action. To do so would only send the signal to the licensed operators that they were not trustworthy. We ask you, once again, to seriously weigh the benefits you perceive to be gained versus the negative implications and climate this action would establish.

U.S. NUCLEAR REGULATORY COMMISSION
DOCKETING & SERVICE SECTION
OFFICE OF THE SECRETARY
OF THE COMMISSION

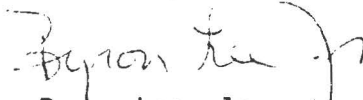
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The Honorable Kenneth M. Carr
May 23, 1991
Page Two

We appreciate the opportunity to communicate our continued concern regarding this matter.

Sincerely,


Byron Lee, Jr.

BLjr♦ec

cc: Commissioner Kenneth C. Rogers
Commissioner James R. Curtiss
Commissioner Forrest J. Remick
Mr. James M. Taylor
Dr. Thomas E. Murley

DOCKET NUMBER
PETITION RULE PRM 55
(55 FR 14288)

[7590-01]

DOCKETED
USNRC

'91 JUL -8 P5:37

NUCLEAR REGULATORY COMMISSION

10 CFR PARTS 2 and 55

RIN 3150-AD55

Operators' Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to specify that the conditions and cutoff levels established pursuant to the Commission's Fitness-for-Duty Programs are applicable to licensed operators as conditions of their licenses. The final rule provides a basis for taking enforcement actions against licensed operators (1) who use drugs or alcohol in a manner that would exceed the cutoff levels contained in the fitness-for-duty rule, (2) who are determined by a facility medical review officer (MRO) to be under the influence of any prescription or over-the-counter drug that could adversely affect his or her ability to safely and competently perform licensed duties, or (3) who sell, use, or possess illegal drugs. The final rule will ensure a safe operational environment for the performance of all licensed activities by providing a clear understanding to licensed operators of the severity of violating requirements governing drug and alcohol use and substance abuse.

Pub. 7/15/91
Vol. 56
pp. 32066

EFFECTIVE DATE: (30 days after publication in the Federal Register)

FOR FURTHER INFORMATION CONTACT: Robert M. Gallo, Chief, Operator Licensing Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-1031.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1989 (54 FR 24468), the NRC issued a new 10 CFR Part 26, entitled "Fitness-for-Duty Programs," to require licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program. The general objective of this program is to provide reasonable assurance that nuclear power plant personnel will perform their tasks in a reliable and trustworthy manner, and not under the influence of any prescription, over-the-counter, or illegal substance that in any way adversely affects their ability to safely and competently perform their duties. A fitness-for-duty program, developed under the requirements of this rule, is intended to create a work environment that is free of drugs and alcohol and the effects of the use of these substances.

On April 17, 1990 (55 FR 14288), the NRC published in the Federal Register proposed amendments to 10 CFR Part 55 to specify that the conditions and cutoff levels established in 10 CFR Part 26, "Fitness-for-Duty Programs," are applicable to licensed operators as a condition of their licenses. These amendments also provide a basis for taking enforcement action against licensed operators who violate 10 CFR Part 26. The proposed rule also described

contemplated changes to the NRC enforcement policy. The comment period ended on July 2, 1990.

The Commission is adding specific conditions to operator licenses issued under 10 CFR Part 55 to make fitness-for-duty requirements directly applicable to licensed operators. As pointed out in the supplementary information accompanying the promulgation of 10 CFR Part 26, the scientific evidence shows conclusively that significant decrements in cognitive and physical performance result from the use of illicit drugs as well as from the use and misuse of prescription and over-the-counter drugs. Given the addictive and impairing nature of certain drugs, even though the presence of drug metabolites does not necessarily relate directly to a current impaired state, the presence of drug metabolites in an individual's system strongly suggests the likelihood of past, present, or future impairment affecting job activities. More specifically, the Commission stated, "Individuals who are not reliable and trustworthy, under the influence of any substance, or mentally or physically impaired in any way that adversely affects their ability to safely and competently perform their duties, shall not be licensed or permitted to perform responsible health and safety functions." (See 54 FR 24468, June 7, 1989.) Although there is an underlying assumption that operators will abide by the licensees' policies and procedures, any involvement with illegal drugs, whether on site or off site, indicates that the operator cannot be relied upon to obey the law and therefore may not scrupulously follow rigorous procedural requirements with the integrity required to ensure public health and safety in the nuclear power industry.

The Commission believes strongly that licensed operators are a critical factor in ensuring the safe operation of the facility and consequently considers unimpaired job performance by each licensed operator or senior

operator vital in ensuring safe facility operation. The NRC routinely denies Part 55 license applications or imposes conditions upon operator and senior operator licenses if the applicant's medical condition and general health do not meet the minimum standards required for the safe performance of assigned job duties. Further, under § 55.25, if an operator develops, during the term of his or her license, a physical or mental condition that causes the operator to fail to meet the requirements for medical fitness, the facility licensee is required to notify the NRC. Any such condition may result in the operator's license being modified, suspended, or revoked.

The power reactor facility licensee is further required under § 26.20(a) to have written policies and procedures that address fitness-for-duty requirements on abuse of prescription and over-the-counter drugs and on other factors such as mental stress, fatigue, and illness that could affect fitness for duty. The Commission expects each licensed operator or senior operator at these facilities to follow the licensee's written policies and procedures concerning the use and reporting requirements for prescription and over-the-counter drugs and other factors that the facility has determined could affect fitness for duty.

The use of alcohol and drugs can directly impair job performance. Other causes of impairment include use of prescription and over-the-counter medications, emotional and mental stress, fatigue, illness, and physical and psychological impairments. The effects of alcohol, which is a drug, are well known and documented and, therefore, are not repeated here. Drugs such as marijuana, sedatives, hallucinogens, and high doses of stimulants could adversely affect an employee's ability to correctly judge situations and make decisions (NUREG/CR-3196, "Drug and Alcohol Abuse: The Bases for Employee

Assistance Programs in the Nuclear Industry," available from the National Technical Information Service). The greatest impairment occurs shortly after use or abuse, and the negative short-term effects on human performance (including subtle or marginal impairments that are difficult for a supervisor to detect) can last for several hours or days. The amendment to 10 CFR Part 55 will establish a condition of an operator's license that will prohibit conduct of licensed duties while under the influence of alcohol or any prescription, over-the-counter, or illegal substance that would adversely affect performance of licensed duties as described by the facility's fitness-for-duty program. The amendment will be applicable to licensed operators of power and non-power reactors. This rulemaking is not intended to apply the provisions of 10 CFR Part 26 to non-power facility licensees, but to make it clear to all licensed operators (power and non-power) through conditions of their licenses that the use of drugs or alcohol in any manner that could adversely affect performance of licensed duties would subject them to enforcement action.¹

As explained in the Commission's enforcement policy (see 53 FR 40027; October 13, 1988), the Commission may take enforcement action if the conduct of an individual places in question the NRC's reasonable assurance that licensed activities will be conducted properly. The Commission may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, enforcement action may be taken

¹ It should be noted that discussion of fitness-for-duty programs of Part 50 licensees is only applicable for power reactor licensees.

regarding matters that raise issues of trustworthiness, reliability, use of sound judgment, integrity, competence, fitness for duty, or other matters that may not necessarily be a violation of specific Commission requirements.

The Commission is amending § 55.53 to establish as a condition of an operator's license a provision precluding performance of licensed duties while under the influence of drugs or alcohol in any manner that could adversely affect performance. The Commission further amends § 55.61 to provide explicit additional notice of the terms and conditions under which an operator's license may be revoked, suspended, or modified. In addition, confirmed positive test results and failures to participate in drug and alcohol testing programs will be considered in making decisions concerning renewal of a Part 55 license. These provisions will apply to any fitness-for-duty program established by a facility licensee, whether or not required by Commission regulations, including programs that establish cutoff levels below those set by 10 CFR Part 26, Appendix A. The Commission notes, however, that it has the discretion to forgo enforcement action against a licensed operator if the facility licensee established cutoff levels that are so low as to be unreasonable in terms of the uncertainties of testing. The Commission has reserved the right to review facility licensee programs against the performance objectives of 10 CFR Part 26, which require reasonable detection measures. The revised rule will not impose the provisions of 10 CFR Part 26 on non-power facility licensees. It is revised to make compliance with the cutoff levels and the policy and procedures regarding the use of legal and illegal drugs established pursuant to 10 CFR Part 26 a license condition for all holders of a 10 CFR Part 55 license.

Part 26 requires that facility licensees provide appropriate training to licensed operators, among others, to ensure that they understand the effect of prescription and over-the-counter drugs and dietary conditions on job performance and on chemical test results. The training also should include information about the roles of supervisors and the medical review officer in reporting an operator's current use of over-the-counter drugs or prescription drugs that may impair his or her performance. Licensed operators are required to follow their facility's policies and procedures regarding fitness-for-duty requirements.

Licensed operators will be subject to notices of violation, civil penalties, or orders for violation of their facility licensee's fitness-for-duty requirements. Therefore, in addition to amending the regulations to establish the 10 CFR Part 55 licensed operators' obligations, the Commission is modifying the NRC enforcement policy (Appendix C to 10 CFR Part 2) in conjunction with the final rulemaking as described below.

In cases involving a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a notice of violation or a civil penalty to a licensed operator, or an order to suspend, modify or revoke the license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a notice of violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to three years the second time an individual exceeds those cutoff levels.

If there are less than three years remaining in the term of the individual license, the NRC may consider not renewing the individual license or not issuing a new license until the three-year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time an individual exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is subject to license suspension, revocation, or denial.

To assist in determining the severity levels of potential violations, 10 CFR Part 2, Appendix C, Supplement I, is modified to provide a Severity Level I example of a licensed operator or senior operator involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and subsequently receiving a confirmed positive test for drugs or alcohol, two Severity Level II examples of (1) a licensed operator involved in the sale, use, or possession of illegal drugs or the consumption of alcoholic beverages within the protected area, or (2) a licensed operator or senior operator involved in procedural errors and subsequently receiving a confirmed positive test for drugs or alcohol, and a Severity Level III example of a licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation.

Summary of Public Comments

Letters of comment were received from 39 respondents. One commenter wrote two letters, which brought the total number of responses to 40. Thirty-one of

the commenters wrote that the rule is unnecessary because the regulations already exist to ensure that the reactor operators adhere to 10 CFR Part 26. The Commission agrees that the necessary regulations exist to have licensed power reactor operators comply with the provisions of Part 26. However, the Commission realizes that the licensed operator is one of the main components and possibly the most critical component of continued safe reactor operation. Therefore, it wants to emphasize to and clearly inform the operators that as conditions of their licenses they must comply with their facility's fitness-for-duty program. The Commission also wants to clarify the term "use" versus "consumption" of alcohol in protected reactor areas. The rule has been rewritten to indicate that the "use of alcohol" means consumption of alcoholic beverages. The rule does not prohibit the use of alcohol within the protected areas for other than ingestion, such as application to the body. The use of medicine that contains alcohol is allowed within the parameters of the facility's fitness-for-duty program. However, use of over-the-counter or prescription drugs containing alcohol must be within the prescribed limitations and in compliance with the facility's fitness-for-duty program. Further, as 10 CFR Part 26 does not apply to non-power reactor licensees, the Commission wishes to make it clear to licensed operators at these facilities that the use of drugs or alcohol in any manner that could adversely affect performance of licensed duties would subject them to enforcement action.

Twenty-eight of the commenters wrote that this rule singles out licensed operators for special treatment to the detriment of their morale. The Commission has considered the issue of morale and believes that most licensed operators already take their personal fitness for duty quite seriously. If

there are any negative impacts on licensed operator morale these effects are expected to be short-lived as the vast majority of licensed operators will be unaffected. This rule may, in fact, increase operator confidence that their peers are fit for duty. This rule stresses to licensed operators that because of their critical role in the safe operation of their reactors, they must be singled out for special treatment to stress that their continuous unimpaired job performance is a highly necessary component of the overall safe operation of the reactors. The rule also stresses to licensed operators that their licenses are a privilege and not a right, and that refusal to participate in facility fitness-for-duty requirements can lead to enforcement action and/or licensing action. There has been no change to the rulemaking because of these comments.

Twenty commenters stated that it is an unnecessary burden that the proposed rule requires medical personnel to be available 24 hours a day to make judgments about prescription and over-the-counter drugs. Medical personnel are not required by Part 26 or Part 55 to be on duty 24 hours a day for prescription and over-the-counter drug evaluation. The intent of the rule is that licensed operators follow the facility fitness-for-duty program for supervisory notification of fitness-for-duty concerns about the use of legal drugs. The rulemaking has been clarified to more fully explain this intent.

There were two questions about the basis for the rulemaking -- (1) What is the basis or need for the rule change? (2) Is it an industry wide problem? These questions were discussed above under the need for the rule (regulations already exist). The Commission can have nothing but a zero tolerance level for drug and alcohol use or abuse because of the critical nature of the industry. Therefore, the Commission deemed it necessary to stress compliance with facility

fitness-for-duty programs as a condition of licensure. There is no change to the rulemaking as a result of these comments.

There was one question about the reporting of legal drugs. A licensed operator asked how operators who do not report medicinal use of drugs will be treated. Licensed operators are required to follow the fitness-for-duty program procedures and policies developed by their facility.

Two comments were specific to licensed operators at test and research reactor facilities. One was that formal drug testing programs should not be required for non-power facilities. These programs are not required by Part 26 or Part 55; however, if a fitness-for-duty program has been established at a non-power facility, licensed operators are required to participate. The second comment, regarding over-the-counter and prescription medication, was that medical review officers do not exist at non-power facilities. That statement is true; there are no requirements in either Part 26 or Part 55 that they do. No change to the rulemaking was required as a direct result of these comments. However, as a result of the previous comment regarding medical personnel availability, the rule was changed to clearly include supervisory notification when medical officers are not available.

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)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement 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 approval number 3150-0018.

Regulatory Analysis

The regulations in 10 CFR Part 55 establish procedures and criteria for the issuance of licenses to operators and senior operators of utilization facilities licensed pursuant to the Atomic Energy Act of 1954, as amended, or Section 202 of the Energy Reorganization Act of 1974, as amended, and 10 CFR Part 50. These established procedures provide the terms and conditions upon which the Commission will issue, modify, maintain, and renew operator and senior operator licenses.

Subpart F of Part 55, under § 55.53, "Conditions of Licenses," sets forth the requirements and conditions for the maintenance of operator and senior operator licenses.

This rule serves to emphasize to the holders of operator and senior operator licenses the conditions they are required to comply with under 10 CFR Part 26, "Fitness-for-Duty Programs." A regulatory analysis has been prepared for the final rule resulting in the promulgation of Part 26 and is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. This analysis examines the costs and benefits of the alternatives considered by the Commission for compliance with the conditions and cutoff levels. The Commission previously requested public comment on the regulatory analysis

as part of the rulemaking proceeding that resulted in the adoption of Part 26.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic effect on a substantial number of small entities. Many applicants or holders of operator licenses fall within the definition of small businesses found in Section 34 of the Small Business Act (15 U.S.C. 632) or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121 or the NRC's size standards published December 9, 1985 (50 FR 50241). However, the rule will only serve to provide notice to licensed individuals of the conditions under which they are expected to perform their licensed duties.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Parts 2 and 55

Part 2 - Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

Part 55 - Criminal penalty, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out 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 Part 2 and 10 CFR Part 55.

PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83

Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579 as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Appendix C to 10 CFR Part 2 is amended by --
 - a. Adding an undesignated paragraph at the end of Section V. E.,
 - b. Adding paragraph (8) to Section VIII, and
 - c. Adding paragraph A. 5., B. 3., B. 4 ., and C. 9 to Supplement I to read as follows:

Appendix C - General Statement of Policy and Procedure for NRC
Enforcement Actions

* * * * *

V. Enforcement Actions

* * * * *

E. Enforcement Actions Involving Individuals

* * * * *

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a notice of violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify or revoke the license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a notice of violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to three years the second time a licensed operator exceeds those cutoff levels. In the event there are less than three years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license

the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is subject to license suspension, revocation, or denial.

* * * * *

VIII. Responsibilities

* * * * *

(8) Any proposed enforcement action involving a civil penalty to a licensed operator.

* * * * *

Supplement I - Severity Categories

Reactor Operations

A. Severity I * * *

5. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. Severity II * * *

3. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area.

4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

C. Severity III * * *

9. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation.

* * * * *

PART 55 - OPERATORS' LICENSES

3. The authority citation for Part 55 continues to read as follows:

AUTHORITY: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97-425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 55.3, 55.21, 55.49, and 55.53 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 55.9, 55.23, 55.25, and 55.53(f) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 55.53, paragraph (j) is redesignated as paragraph (l) and new paragraphs (j) and (k) are added to read as follows:

§ 55.53 Conditions of licenses.

* * * * *

(j) The licensee shall not consume or ingest alcoholic beverages within the protected area of power reactors, or the controlled access area of non-power reactors. The licensee shall not use, possess, or sell any illegal drugs. The licensee shall not perform activities authorized by a license issued under this part while under the influence of alcohol or any prescription, over-the-counter, or illegal substance that could adversely affect his or her ability to safely and competently perform his or her licensed duties. For the purpose of this paragraph, with respect to alcoholic beverages and drugs, the term "under the influence" means the licensee exceeded, as evidenced by a

confirmed positive test, the lower of the cutoff levels for drugs or alcohol contained in 10 CFR Part 26, Appendix A, of this chapter, or as established by the facility licensee. The term "under the influence" also means the licensee could be mentally or physically impaired as a result of substance use including prescription and over-the-counter drugs, as determined under the provisions, policies, and procedures established by the facility licensee for its fitness-for-duty program, in such a manner as to adversely affect his or her ability to safely and competently perform licensed duties.

(k) Each licensee at power reactors shall participate in the drug and alcohol testing programs established pursuant to 10 CFR Part 26. Each licensee at non-power reactors shall participate in any drug and alcohol testing program that may be established for that non-power facility.

* * * * *

5. In § 55.61, a new paragraph (b)(5) is added to read as follows:

§ 55.61 Modification and revocation of licenses.

* * * * *

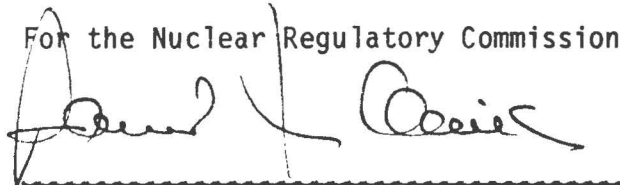
(b) * * *

(5) For the sale, use or possession of illegal drugs, or refusal to participate in the facility drug and alcohol testing program, or a confirmed positive test for drugs, drug metabolites, or alcohol in

violation of the conditions and cutoff levels established by § 55.53(j) or the consumption of alcoholic beverages within the protected area of power reactors or the controlled access area of non-power reactors, or a determination of unfitness for scheduled work as a result of the consumption of alcoholic beverages.

Dated at Rockville, Maryland, this 5th day of July, 1991.

For the Nuclear Regulatory Commission,

A handwritten signature in dark ink, appearing to read "Samuel J. Chilk", written over a horizontal line.

Samuel J. Chilk,
Secretary of the Commission.

4601 North Fairfax Drive
Suite 1001
Arlington, VA 22203



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EMPLOYEE ASSISTANCE PROFESSIONALS ASSOCIATION, INC.
(formerly ALMACA, Inc.)

91 JAN 25 11:10

DOCKET NUMBER
PROPOSED RULE PR 55

(55 FR 14288)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

40

COMMENTS

TO

UNITED STATES NUCLEAR REGULATORY COMMISSION
OFFICE OF THE SECRETARY

10 CFR PART 55

RIN 3150-AD 55

OPERATORS' LICENSES
PROPOSED RULE

JULY 2, 1990

PRESENTED BY

THOMAS J. DELANEY, JR., CEAP
EXECUTIVE DIRECTOR

President, Thomas J. Pasco, CEAP, UAW-General Motors Human Resources Center—Auburn Hills, Michigan
Vice President (Operations), Tamara Cagney, CEAP, Health Matters—Pleasanton, California
Vice President (Administration), Donald W. Magruder, CEAP, Anheuser-Busch Companies, Inc.—St. Louis, Missouri
Secretary, Marcia E. Nagle, CEAP, Longview Associates, Inc.—Mount Kisco, New York
Treasurer, Pat Patrick, Union Pacific Railroad Co.—Houston, Texas
Immediate Past President, Gary Atkins, CEAP, Lockheed Missile and Space Company—Sunnyvale, California
Staff: Executive Director, Thomas J. Delaney, Jr., CEAP/Associate Director, Judith O. Evans

Acknowledged by card FEB 04 1991

TO: DOCKETING + SERVICES BRANCH

NRR/LOLB

FROM: NEAL HUNEMULLER

OPERATOR LICENSING BRANCH

PLEASE DOCKET THIS AS COMMENT NUMBER

40 TO PR55
(55 FR 14288) •

Thank you,
Neal Hunemuller
x23173

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July 2, 1990

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Docketing and Services Branch

Re: Operators' Licenses

Dear Mr. Secretary:

The Employee Assistance Professionals Association (formerly known as ALMACA, hereafter referred to as EAPA) is the non-profit, international professional membership association, representing individuals and organizations in the Employee Assistance Program (EAP) profession. EAPA was created in 1972 and presently has over 6300 members and 72 chapters. It is governed by a voluntary Board of Directors with a staff and office in Arlington, Virginia. The current President is Dr. Thomas Pasco, CEAP, of UAW-General Motors Employee Assistance Program.

The association's membership represents most of the cumulative industry efforts to address workplace mis-use and abuse of alcohol and other drugs. As the spokesperson for these respective members, I would like to comment on the Nuclear Regulatory Commission's Proposed Rule. Specifically, the rulemaking proposes to amend 10 CFR Part 55, licensed operator requirements.

It is the opinion of EAPA that this regulatory initiative clearly attempts to confront concerns about public health and safety, and I commend the Commission for taking a proactive stance concerning substance use and abuse in the workplace. It is the experience of EAPA members that alcohol and other drug problems, which exist in all American industries, are best dealt with by implementing a comprehensive employee assistance program. It is in this context that EAP professionals can best confront and rehabilitate valued employees with job performance problems, and simultaneously protect public health and safety interests.

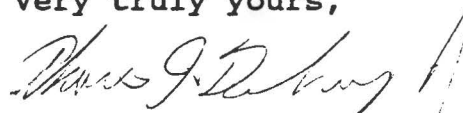
We have found that EAP professionals have extensive experience and success assisting individuals with personal problems, and recommend the Commission include the following elements, which are enclosed, within their procedures: EAPA Program Standards and Core Technology, which include constructive confrontation and progressive discipline techniques. These policies are in addition to licensee fitness-for-duty programs, return-to-work and medical review policies.

We have found that concern for job security motivates many individuals with personal problems, to contact the EAP for assistance in resolving these problems. The EAP professional is an expert in performing alcohol, drug and other related assessments, and in making effective referrals within the community. The EAP professional can also provide comprehensive case management services and will track the individual through the entire rehabilitation process, including re-integration into the workplace. Through these and other activities such as supervisory training and employee education about the use and abuse of drugs and alcohol, the EAP is well equipped to intervene on behalf of the workplace before an employee's personal problems escalate out of control.

We urge the Commission to use this model in developing a mechanism for the procedures identified to adopt this proposed rule. By working with EAPA and nuclear power licensees in the future, the Commission could develop practical guidelines that would provide consistency of reporting requirements among licensees. In addition to these guidelines, nuclear industry EAP professionals have commented that a comprehensive evaluation mechanism for reported operators would be more equitable. This mechanism would also provide these professionals with the power to reinforce existing Commission and licensee policies, and promote the development of effective return-to-work policies and rehabilitation programs.

We appreciate the opportunity to publicly respond to the content of the proposed rule. If you have any questions pertaining to these comments please contact Thomas J. Delaney, Jr., Executive Director, EAPA (522-6272).

Very truly yours,



Thomas J. Delaney, Jr., CEAP
Executive Director

Enclosures

- 1) EAPA Core Technologies
- 2) EAPA Draft: Program Standards
- 3) EAPA Continuum of Services

39

BOSTON EDISON
Pilgrim Nuclear Power Station
Rocky Hill Road
Plymouth, Massachusetts 02360

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Ralph G. Bird
Senior Vice President — Nuclear

OFFICE OF SECRETARY
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BEC0 90-089
July 11, 1990

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

BOSTON EDISON COMPANY COMMENTS ON PROPOSED RULE -
OPERATORS' LICENSES, 10CFR55, MODIFICATION FOR
FITNESS-FOR-DUTY, 55FR14288, DATED APRIL 17, 1990

Reference: NUMARC Letter to Mr. S. J. Chilk, Secretary, USNRC,
dated July 2, 1990

Dear Mr. Chilk:

Boston Edison Company endorses the nuclear power industry comments and positions offered to the NRC by the referenced Nuclear Management and Resources Council, Inc. (NUMARC) letter on the subject Proposed Rule. These comments have been formulated by NUMARC with Boston Edison's participation.

R. G. Bird
for R. G. Bird

WGL/jmm/4507

cc: Mr. R. Eaton, Project Manager
Division of Reactor Projects - I/II
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U. S. Nuclear Regulatory Commission
Region I
475 Allendale Road
King of Prussia, PA 19406

Senior NRC Resident Inspector
Pilgrim Nuclear Power Station

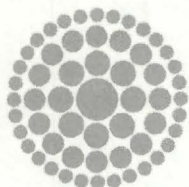
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**Florida
Power**
CORPORATION

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)

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'90 JUL 19 A10:51

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July 13, 1990
LFM90-0062

Samuel J. Chilk
Secretary, U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Docketing and Services Branch

SUBJECT: Proposed Amendment to 10 CFR Part 55, "Operator's
License" (55 FR 14288)

Dear Mr. Chilk:

On April 17, 1990, the Nuclear Regulatory Commission (NRC) published in the Federal Register, a proposed amendment of 10 CFR Part 55 to specifically require licensed operator compliance with Fitness-For-Duty (FFD) programs and to promulgate a conforming modification to the NRC's enforcement policy.

The proposed regulation purportedly contains no new requirements for Part 55 licensees; but merely clarifies that certain requirements which they are required to comply with under Part 26 are to be included in their licenses and that their violation of those requirements could subject them to individual enforcement action by the NRC. However, existing regulations, 10CFR55.61(b)(3) & (4), clearly state that licenses can be revoked, suspended, or modified, in whole or in part, "(3) For willful violation of, or failure to observe any of the terms and conditions of the Act, or the license, or any rule, regulation, or order of the Commission, or (4) For any conduct determined to be a hazard to safe operation of the facility". Thus, existing regulations clearly provide the basis for enforcement actions against licensed operators for violation of the fitness-for-duty rule. Therefore, the proposed amendment is not necessary for enforcement action.

Acknowledged by card.....**FEB 01 1991**

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July 13, 1990
LFM90-0062
Page 2

The proposed amendment would also have the following adverse consequences:

- a. It would decrease the probability that a licensed operator with a drug or alcohol problem will seek assistance from the employee assistance programs;
- b. The proposed amendment would require that licensed operators be treated differently from other personnel with unescorted access to the Protected Area. Thus, it challenges the licensed operator's trustworthiness without any justification. This would have a negative impact on the morale of this professional group;
- c. It appears to place more stringent requirements on operators regarding alcohol than specified by Part 26.

Florida Power Corporation, therefore, strongly opposes the proposed rulemaking.

Sincerely,



P. M. Beard, Jr.
Senior Vice President
Nuclear Operations

PMB/GMF/kdh

xc: Rick Enkeboll (NUMARC)

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July 6, 1990

'90 JUL 11 P3:13



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Donald F. Schnell
Senior Vice President
Nuclear

Mr. Samuel J. Chilk
Secretary, U.S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, DC 20555

Dear Mr. Chilk:

ULNRC - 2242

CALLAWAY PLANT
DOCKET NUMBER 50-483
PROPOSED RULE - OPERATORS' LICENSES,
10CFR55, MODIFICATION FOR FITNESS - FOR - DUTY
Reference: Federal Register Vol. 55, page 14288

These comments are submitted by Union Electric in response to the request of the U.S. Nuclear Regulatory Commission ("NRC") for comments on the proposed rule "Operators' Licenses Modification for Fitness-for-Duty" (55 - Fed. Reg. 14288 - April 17, 1990).

Union Electric fully supports the NRC's interest in setting high standards of health and fitness-for-duty for licensed operators and strongly supports the position that unimpaired job performance by all employees allowed within the protected area of a commercial nuclear power plant is vital in assuring safe facility operation. This proposed rule, however, is unnecessary and singles out licensed operators from other nuclear power plant personnel for no justifiable purpose.

The background section of the Federal Register notice states that the purpose of amending the current regulation is to "...provide a basis for taking enforcement actions against licensed operators..." in regard to fitness-for-duty. However, the current regulation, § 55.61

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(b)(3) & (4), clearly states that licenses can be revoked, suspended, or modified, in whole or in part, "(3) For willful violation of, or failure to observe any of the terms and conditions of the Act, or the license, or of any rule, regulation, or order of the Commission, or (4) For any conduct determined by the Commission to be a hazard to safe operation of the facility" (emphasis added). Existing regulations thus provide the basis for enforcement actions against licensed operators for violation of the fitness-for-duty rule making this proposed rule unnecessary.

The language in 10 CFR Part 26 was constructed to make the fitness-for-duty rule equally applicable to all personnel with unescorted access to the protected area. There are inconsistencies in policy and intent between the proposed revision to Part 55 and the requirements of Part 26, the result of which would be to place more stringent restrictions on licensed operators. This proposed rule is thus a challenge to the licensed operators' trustworthiness without any justification and may have a negative impact on the morale of this highly professional group at a time when the industry is striving to enhance the professionalism of all personnel.

The industry, through the Institute of Nuclear Power Operations (INPO) developed Principles for Enhancing Professionalism of Nuclear Personnel¹ which addresses a number of aspects of personnel development, education, and experience. A paragraph from this document reads:

"Management practices and policies convey an attitude of trust and an approach that is supportive of teamwork at all levels. These practices and policies recognize and expect

¹Provided to NRC under cover of a letter from Zack T. Pate to former Chairman Zech, May 25, 1989.

professionalism from all personnel. Policies that spell out expectations and standards of performance are well established and documented. These policies are clearly communicated and are well understood by all personnel and are routinely reinforced in training and in the daily conduct of business" (emphasis added).

The industry is striving to develop an atmosphere of trust that supports professionalism for all personnel in positions that are responsible for safe operation of a commercial nuclear power reactor. There is no basis to single out licensed operators to be treated any differently from other plant personnel with unescorted access; to do so may undermine the trust and professionalism we are striving to develop.

The proposed rule also would require the reporting of prescription or over-the-counter drugs which could possibly cause physical or mental impairment. Each utility has a program to manage such drugs as required by the current fitness-for-duty rule (10 CFR 26.20). Supervisors are trained in behavioral observation, a program that has proven to be sufficient to detect impairment. Because different people react differently to the same medication, supervisors will continue to be the first line of defense, after the individual in question, in making judgments about impairment. To require that medical personnel be available to make those judgments, around the clock, would create an unnecessary burden for utilities.

Because 10 CFR Part 26 does not currently apply to individuals at non-power reactor facilities, the NRC has apparently included the operators at those facilities in the proposed modification to Part 55. It is difficult to understand the logic for combining operators at non-power facilities with licensed power facility operators for more stringent FFD requirements when it was not considered important to have them covered under Part 26. If the

non-power operators need to be covered in this regard, it should be done by modifications to Part 26 or in a regulation separate from the power reactor requirements.

In summary, the current regulations provide the basis for enforcement actions against licensed operators and for fitness-for-duty requirements for all employees with unescorted access to a commercial nuclear power plant. Therefore, this proposed rule is unnecessary. Further, it may adversely affect the morale of licensed operators, which is a matter of great importance to the industry and to the Commission.

We appreciate the opportunity to comment on the proposed rule, and would be pleased to discuss our comments further with appropriate NRC personnel.

Very truly yours,

A handwritten signature in cursive script, reading "Donald F. Schnell". The signature is written in dark ink and is positioned above the printed name.

Donald F. Schnell

WEK/dvd

cc: Gerald Charnoff, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N. Street, N.W.
Washington, D.C. 20037

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bcc: D. Shafer/A160.761
/QA Record (CA-758)

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GEORGE C. CREEL
VICE PRESIDENT
NUCLEAR ENERGY
(301) 260-4455

June 29, 1990

U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Document Control Desk

SUBJECT: Calvert Cliffs Nuclear Power Plant
Unit Nos. 1 & 2; Docket Nos. 50-317 & 50-318
Proposed Rule - Operators' Licenses 10 CFR Part 55

Gentlemen:

Baltimore Gas and Electric (BG&E) Company fully supports the setting of high standards for licensed operators in the area of fitness for duty. We are aware of concerns that the proposed rule would single out licensed operators and treat them differently from other nuclear power plant personnel. We can also sympathize with the argument that the proposed rule is a challenge to the licensed operators' trustworthiness, in addition to that challenge posed to all nuclear power plant personnel by 10 CFR Part 26.

However, we strongly believe that different treatment of the licensed operator can be adequately justified given the broad range of responsibilities BG&E places on them. Both BG&E and the public depend on our plant personnel, in fact, all of our employees, to make timely, informed judgments and take appropriate action. As a public utility, we fully understand our obligations to the public. In our quest to maintain their trust in our operations, we elected to require our employees to hold themselves to high standards prior to the promulgation of any Federal Regulations regarding fitness for duty.

We support the principle of strict accountability of fitness for duty for all our employees, but we question whether the proposed rulemaking is needed in view of the specific provisions currently contained in 10 CFR Part 55.

Should you have any further questions regarding this matter, we will be pleased to discuss them with you.

Very truly yours,

GCC/JMO/dlm

FEB 12 1991
Acknowledged by card

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T. T. Martin, NRC
L. E. Nicholson, NRC
R. I. McLean, DNR

NORTHEAST UTILITIES



THE CONNECTICUT LIGHT AND POWER COMPANY
WESTERN MASSACHUSETTS ELECTRIC COMPANY
HOLYOKE WATER POWER COMPANY
NORTHEAST UTILITIES SERVICE COMPANY
NORTHEAST NUCLEAR ENERGY COMPANY

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(55 FR 14288)

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July 2, 1990
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DOCKETING & SERVICE
BRANCH

Docket Nos. 50-213
50-245
50-336
50-423
B13567

Re: 10CFR55

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attn: Docketing and Service Branch

Dear Mr. Chilk:


Proposed Rule--Operators' Licenses 10CFR Part 55
Modification for Fitness for Duty
55 Fed. Reg. 14288
Request for Comments

Northeast Nuclear Energy Company (NNECO) and Connecticut Yankee Atomic Power Company (CYAPCO) on behalf of Millstone Unit Nos. 1, 2, and 3 and the Haddam Neck Plant, respectively, reviewed the position taken by the rule on Operators' Licenses 10CFR Part 55--Modification for Fitness for Duty. NNECO and CYAPCO agree with and endorse the NUMARC position. We understand the letter containing the NUMARC position will be transmitted to you in early July 1990.

We believe that the present Fitness for Duty Rule (10CFR Part 26) was appropriately constructed to apply to all personnel with unescorted access to the protected area. Also, we agree with NUMARC that the proposed rule is a challenge to the licensed operators' trustworthiness without any justification and would have a negative impact on the morale of this dedicated, highly professional group.

Very truly yours,

NORTHEAST NUCLEAR ENERGY COMPANY
CONNECTICUT YANKEE ATOMIC POWER COMPANY


E. J. Mroczka
Senior Vice President

8E:59 2- JUL 02

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Mr. Samuel J. Chilk
B13567/Page 2
July 2, 1990

cc: T. T. Martin, Region I Administrator
A. B. Wang, NRC Project Manager, Haddam Neck Plant
J. T. Shedlosky, Senior Resident Inspector, Haddam Neck Plant
M. L. Boyle, NRC Project Manager, Millstone Unit No. 1
G. S. Vissing, NRC Project Manager, Millstone Unit No. 2
D. H. Jaffe, NRC Project Manager, Millstone Unit No. 3
W. J. Raymond, Senior Resident Inspector, Millstone Unit Nos. 1, 2, and 3

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

TRTR

NATIONAL ORGANIZATION OF
TEST, RESEARCH, AND TRAINING REACTORS

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34

Executive Committee

A. Francis DiMeglio, Chairman
Director, R. I. Atomic Energy Commission
Rhode Island Nuclear Science Center
South Ferry Road
Narragansett, Rhode Island 02882-1197
Ph (401) 789-9391 FAX (401) 782-4201

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Tawfik M. Raby, National Institute of Standards and Technology
Marcus H. Voth, Pennsylvania State University

July 2, 1990

Secretary

Attn: Docketing and Service Branch
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Subject: Proposed Rule: 10 CFR 55; RIN 3150-AD55; Operator's Licenses

Gentlemen:

This transmittal concerns the proposed changes to 10 CFR 55 relating to "fitness-for-duty." The comments contained herein are submitted in my capacity as Chairman of TRTR. They were prepared by a committee of TRTR chaired by John Bernard, Chairman-elect, after extensive discussions with the TRTR community. These comments have also been approved by the executive committee of TRTR.

The National Organization of Test, Research, and Training Reactors wishes to be recorded as firmly supporting the intent of the proposed changes to 10 CFR Part 55. TRTR facilities have always attempted (and we believe succeeded) in excluding people with impaired judgment from operating our facilities. The medical aspects of the "fitness-for-duty" rule are basically followed by TRTR members. However, having stated our strong support for the objective of the proposed rule change, it must also be noted that we have a number of strong, important, concerns regarding the process by which a rule drafted primarily for power reactors will be applied to non-power reactors. In addition, we wish to point out that a committee of TRTR is currently examining the issue of a separate enforcement policy for non-power reactors and that it might be best for this rule, as it applies to non-power reactors, to be held in abeyance until the committee completes its report. This committee was formed at the suggestion of the U. S. Nuclear Regulatory Commission.

Specific comments concerning the proposed change to 10 CFR Part 55 are listed below. These comments are based on the following assumptions as to the application of the proposed rule to non-power reactors.

- i. The proposed rule applies only to the period an individual actually performs licensed activities and would not apply to other times.

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- ii. Treatment for chronic dependence on alcohol or other substance (off-duty) would not result in any enforcement action.
- iii. Legitimate use of prescription or over-the-counter drugs, both long or short-term, is permitted. The rule applies only to abuse that results in impaired performance or judgment.
- iv. Non-reporting of use of legitimate drugs is not in itself a violation or grounds for any enforcement action. The criterion should be that such use could adversely affect the individual's ability to safely and competently perform licensed duties.
- v. There would be no violation or enforcement action if an individual who becomes ill while on duty for any reason is removed or removes himself or herself from license activities prior to any adverse effect on performance. Such occurrences could be a cold that got worse, sudden headache, a reaction to medication, or reaction to the prior consumption of alcohol that was within allowable limits.
- vi. There is no intention either to apply 10 CFR 26 or to impose a testing program on the non-power reactor community.

SPECIFIC COMMENTS

- (a) Abuse of Alcohol/Drugs: We feel that the wording of the proposed rule is adequate in regard to the abuse of alcohol or drugs. The criteria established for determining abuse are sufficiently specific and methods (such as tables giving blood alcohol level vs. body weight and number of drinks) are available for determining compliance with these criteria.
- (b) Use of Prescription and Over-the-Counter Drugs: We feel that the wording of the proposed rule is vague on this issue so as to cause possible problems of interpretation. Specifically, in the middle of the 2nd column on page 14289 of the proposed rule, it states "the proposed rule is not intended to apply enforcement sanctions against operators or senior operators for their proper use of legal over-the-counter prescription drugs, but to require the reporting of such drug use or medical conditions requiring the use of drugs to the facility licensee in order, for a medical review officer to determine the operators fitness for duty." Our concerns are as follows:

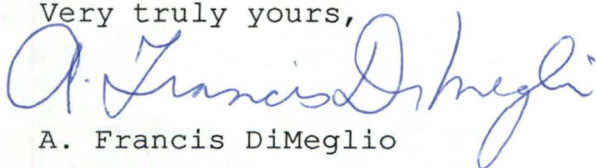
- i. The above wording which provides for the legitimate use of prescription and over-the-counter drugs (e.g. cold remedies) is not repeated in the proposed revision to the wording of the Enforcement Policy.
 - ii. For TRTR facilities, the above wording is vague because it refers to a "Medical Review Officer." TRTR facilities have no such officers. It is suggested that the wording be revised to state that for TRTR facilities, judgments concerning the fitness-for duty of personnel using prescribed or over-the-counter drugs can be made by the facility managers or supervisors. Wide latitude is needed in this area. For example, an operator who becomes ill during his or her shift should not be subject to a fitness-for-duty violation. Neither should a person with a minor cold or similar condition. Also, where is the line drawn on reporting usage? Is use of aspirin or a cold tablet to be reported?
- (c) Criteria for Fitness for Duty: ANSI Standard ANS-15.4, Part 7 defines medical criteria. If these are met, then an individual should be considered "fit-for-duty." This is the standard currently in use for biennial medical examinations of licensed personnel at non-power reactor facilities.
- (d) Medical Review Officers: As noted above, TRTR facilities do not have medical review officers. Operators requiring physical exams are directed either to affiliated medical departments if at a university or to their own private physicians. Accordingly, we are opposed to the inclusion of the term "medical review officer" in the proposed rule as it applies to TRTR facilities. This is extremely important because it is virtually impossible for TRTR facilities to meet this part of the rule.
- (e) Availability of Treatment Programs: It is worth noting that while TRTR facilities do not have "medical review officers," most do have university or government-sponsored in-house programs designed to deal with and assist individuals who have substance abuse or other problems. These programs have been in effect for years and in many cases decades. Their intent is to return the individual to full productivity while removing him or her from major responsibilities during recovery. These programs are intentionally designed to help rather than to penalize. Participation is voluntary. We feel that someone who requests assistance from such a program should not be subject to penalties such as described in the proposed rule. To do otherwise would be counterproductive

with many university and government policies and might therefore result in much needless litigation. More importantly, it will inhibit affected individuals from coming forward and seeking help.

- (f) Criteria for Enforcement: The proposed rule should contain provisions for verifying that an abuse of "fitness-for-duty" standards has occurred. Such decisions should not, for example, be the judgment of a single inspector. Even the charge of having violated "fitness-for-duty" could clearly jeopardize an individual's career. Absolute proof should be established prior to any action.
- (g) TRTR Committee: A special committee of TRTR members is currently preparing a separate appropriate enforcement policy for non-power reactors which TRTR plans to submit to NRC for consideration. "Fitness-for-duty" will be included. This committee was established in the summer of 1989 following discussions with the U. S. Nuclear Regulatory Commission's staff. It would be appropriate to delay implementation of the proposed rule to non-power reactors until this committee completes its report. There should be a separate section to the proposed rule for TRTR facilities because the consequences of an impaired action at such a facility are insignificant to the public. This was demonstrated in the recent study of TRTR facilities performed for the NRC by LANL.
- (h) Minimum Regulation: The proposed rule and associated enforcement policy do not distinguish between power and non-power reactors. We therefore question whether they are in fact the minimum regulations to be imposed on non-power reactors as required by law.

In summary, we wish to reiterate that TRTR fully supports the intent of the proposed rule and that TRTR members have always acted to exclude those with impaired judgments. Moreover, we will continue to do so. We appreciate the opportunity to comment on this proposed rule.

Very truly yours,



A. Francis DiMeglio

cc: Document Control Desk

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'90 JUL -6 P3:53

John C. Brons
Executive Vice President
Nuclear Generation

July 2, 1990
IPN-90-035
JPN-90-050

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

Attn: Docketing and Servicing Branch

Subject: **Indian Point 3 Nuclear Power Plant**
Docket No. 50-286
James A. FitzPatrick Nuclear Power Plant
Docket No. 50-333
Fitness-for-Duty Requirements for Licensed Operators

Reference: 1. NRC Notice of Proposed Rulemaking, 55 FR 14288, dated April 17, 1990.

Dear Sir:

The New York Power Authority has reviewed and evaluated the referenced notice of proposed rulemaking. The proposed revisions to the NRC's regulations specify that the conditions and cutoff levels established by licensee's Fitness-for-Duty programs are applicable to licensed operators as a condition of their license. This letter provides the Authority's comments on the proposed rule.

The Nuclear Management and Resources Council (NUMARC) has reviewed the proposed rule and believes the rule is unnecessary. The Authority, a member of NUMARC, endorses the NUMARC position. The Authority's specific comments are provided below.

The Federal Register notice states that the intent of the rule is to "...provide a basis for taking enforcement actions against licensed operators..." with respect to fitness-for-duty. The Authority fully supports the NRC's position that high standards of fitness-for-duty for all personnel with access to the protected areas of commercial nuclear power plants are vital in assuring the safe operation of these facilities. The Authority believes that existing regulations (10 CFR 55.61(b)(3) and (4)) provide the basis for enforcement actions against licensed operators for violations of the Fitness-for-Duty rule. Therefore, the proposed rule is unnecessary.

The language of the Fitness-for-Duty rule (10 CFR 26) makes the rule applicable to all personnel with unescorted access to the protected areas of nuclear power plants. The proposed rule would place more stringent restrictions on licensed operators. This proposed rule appears to challenge the operators' professionalism, at a time when the industry is striving to enhance the

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professionalism of all personnel. This challenge can only serve to undermine the morale of this highly professional group of employees. By placing restrictions on licensed operators that are more stringent than those already in 10 CFR 26, the rule would also seem to question the effectiveness of 10 CFR 26 in regulating the fitness-for-duty of non-licensed personnel.

In summary, the current regulations provide adequate basis for enforcement actions against licensed operators, making the proposed rule unnecessary. Should you or your staff have any questions regarding this matter, please contact Mr. P. Kokolakis or Mr. J. Ellmers of my staff.

Very truly yours,


John C. Brons
Executive Vice President
Nuclear Generation

cc: U.S. Nuclear Regulatory Commission
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King of Prussia, PA 19406

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Mr. J. D. Neighbors, Sr. Project Manager
Project Directorate I-1
Division of Reactor Projects-I/II
U.S. Nuclear Regulatory Commission
Mail Stop 14B2
Washington, D.C. 20555

Mr. D. E. LaBarge
Project Directorate I-1
Division of Reactor Projects-I/II
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Arizona Public Service Company

P.O. BOX 53999 • PHOENIX, ARIZONA 85072-3999

WILLIAM F. CONWAY
EXECUTIVE VICE PRESIDENT
NUCLEAR

161-03307-WFC/GAM
June 29, 1990

'90 JUL -6 P3:51

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Docket Nos. STN 528/529/530

Mr. Samuel Chilk
Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Services Branch

Dear Mr. Chilk:

Subject: Palo Verde Nuclear Generating Station (PVNGS)
Units 1, 2 & 3
Proposed Rule - Operators' Licenses
Modification for Fitness-for-Duty
55 Fed. Reg. 14288
Request for Comments
File: 90-056-026

These comments are submitted by Arizona Public Service Company (APS) in response to the request of the U. S. Nuclear Regulatory Commission (NRC) for comments on the proposed rule "Operators' Licenses Modification for Fitness-for-Duty" (55 Fed. Reg. 14288 - April 17, 1990).

APS is fully committed to maintaining a work environment which is free of drugs and alcohol and the effects of these substances. To that end, a rigid fitness-for-duty program which meets or exceeds the requirements of the 10 CFR part 26 Fitness-for-Duty program has been implemented at the Palo Verde Nuclear Generating Station (PVNGS). This program applies to all personnel granted unescorted access to protected areas, including licensed operators, to ensure that PVNGS is operated and maintained by individuals who are able to safely and competently perform their duties. The proposed rule is unnecessary, and singles out licensed operators from other nuclear power plant personnel for no justifiable purpose.

APS is striving to develop an atmosphere of trust that supports professionalism for all personnel in positions that are responsible for safe operations of PVNGS. There is no basis to single out licensed operators to be treated any differently from other plant personnel with unescorted access; to do so may undermine the trust and professionalism we are striving to develop.

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Mr. Samuel Chilk
Secretary
U.S. Nuclear Regulatory Commission
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161-03307-WFC/GAM
June 29, 1990

APS endorses the comments which are being submitted by the Nuclear Management and Resources Council (NUMARC) in response to this proposed rule. The current regulations provide the basis for enforcement actions against licensed operators and for fitness-for-duty requirements for all employees with unescorted access to PVNGS. Therefore, this proposed rule is unnecessary. Further, it may adversely affect the morale of licensed operators, which is a matter of great importance to APS and to the Commission.

APS appreciates the opportunity to comment on the proposed rule. If there are any questions or comments regarding this submittal, please contact R. A. Bernier of my staff at (602) 340-4295.

Sincerely,



WFC/GAM/rw

cc: D. H. Coe
J. B. Martin
T. L. Chan
S. R. Peterson
A. C. Gehr
A. H. Gutterman
T. E. Tipton

WASHINGTON PUBLIC POWER SUPPLY SYSTEM

P.O. Box 968 • 3000 George Washington Way • Richland, Washington 99352

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July 3, 1990
Docket No. 50-397
G02-90- 117

Mr. Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Mr. Chilk:

Subject: **COMMENTS ON PROPOSED RULE - OPERATORS LICENSES
FITNESS-FOR-DUTY**

On April 17, 1990, the NRC published (55 Fed. Reg. 14288) a proposed rule which, if enacted, would amend its regulations to make Fitness-for-Duty programs a condition of an individual license.

As a Licensee of the NRC and the owner/operator of a Commercial Nuclear Power Plant, the Washington Public Power Supply System is a strong advocate of maintaining a safe work place and assuring that all persons in our employ are fit for duty. We have instituted a Fitness-for-Duty program in compliance with 10CFR26 which applies to those licensed individuals (for whom the proposed rule would apply) as well as all others who are granted unescorted access to our licensed power plant.

The proposed rule is redundant to 10CFR26 and the current conditions that apply to licensed operators. Therefore, the proposed rule is unnecessary and should be eliminated from further considerations.

The proposed rule would apply only to licensed reactor operators. However, the conditions of 10CFR26 apply to all persons granted unescorted access, which includes licensed operators. The proposed rule purports to "assure a safe operational environment...by providing a clear understanding to licensed operators of the severity of violating requirements governing drug and alcohol use and of the impact of substance abuse". It is difficult to understand why the commission feels this proposed rule is necessary when 10CFR26 clearly states that:

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JULY 3, 1990

COMMENTS ON PROPOSED RULE - OPERATORS LICENSE, FITNESS-FOR-DUTY

PAGE TWO

- "...The written policy must prohibit the consumption of alcohol -
 1. Within an abstinence period of at least five (5) hours preceding any working tour, and,
 2. during the period of any working tour. (10CFR26.20)
- "Persons assigned to activities within the scope of this Part shall be provided with appropriate training to assure they understand -
 5. What is expected of them and what consequences may result from lack of adherence to the policy". (10CFR26.21)

Additionally, 10CFR55.53 (Conditions of Licenses) states that:

- "Each license contains and is subject to the following conditions whether stated in the license or not:
 - d) The license is subject to, and the licensee shall observe, all applicable rules, regulations, and orders of the Commission."

Licensed reactor operators fully understand the important role they play in safe operation of a nuclear power plant. By singling them out for this special regulation when they are already covered by the conditions of 10CFR26, the commission seems to be casting a shadow of doubt on the integrity of licensed operators. Such a vote of no confidence may make it even more difficult for licensees to acquire and maintain a qualified pool of licensed operators.

In 1984, the NRC issued a program plan to "review the effectiveness of LWR Regulatory Requirements in Limiting Risk." The results of that study pointed out numerous examples of regulations which made no contribution to risk reduction - some of which may have even added risk. The proposed 10CFR55 modifications certainly fit the category of unnecessary regulations which provide no added value.

MR. SAMUEL J. CHILK

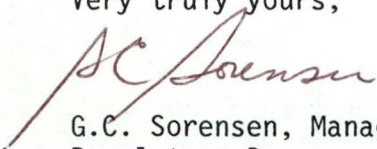
JULY 3, 1990

COMMENTS ON PROPOSED RULE - OPERATORS LICENSE, FITNESS-FOR-DUTY

PAGE THREE

We encourage the commission to halt any further work on the proposed rule and apply its resources to areas that will provide some benefit to the NRC and the regulated industry.

Very truly yours,



G.C. Sorensen, Manager
Regulatory Programs (MD-280)

cc: NS Reynolds - Bishop, Cook, Purcell & Reynolds
DL Williams - BPA
TE Tipton - NUMARC

GCS:lrn



DOCKET NUMBER
PROPOSED RULE PR 55
South Carolina Electric & Gas Company
P.O. Box 88
Jenkinsville, SC 29065
(803) 345-4040
(55 FR 14288)
Ollie S. Bradham
Vice President
Nuclear Operations

30

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Mr. Samuel J. Chilk
Secretary, U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Subject: Virgil C. Summer Nuclear Station
License No. NPF-12
Docket No. 50/395
Comments on Proposed Rule on Licensed
Operator Fitness-for-Duty

Dear Mr. Chilk:

South Carolina Electric & Gas Company (SCE&G) has reviewed the proposed rule, "Operators' Licenses 10CFR Part 55 Modification for Fitness-For-Duty" (55 FR 14288, April 17, 1990), and provides the following comments. SCE&G concurs with the comments provided by NUMARC that conclude the NRC proposed rule is unnecessary and singles out licensed operators for no justifiable purpose. SCE&G believes that the existing regulations (10CFR55 and 10CFR26) allow for NRC enforcement action against licensed operators for violation of the fitness-for-duty rule.

Some additional concerns/questions about the proposed rule are provided in the attachment. If you have any questions, please contact April Rice at (803) 345-4232.

Very truly yours,

O. S. Bradham

ARR/OSB:lcd
Attachment

c: O. W. Dixon, Jr./T. C. Nichols, Jr.
E. C. Roberts
R. V. Tanner
J. J. Hayes, Jr.
General Managers
C. A. Price
G. F. Gibson
D. L. Arthur
NSRC
NPCF
RTS (PR 900005)
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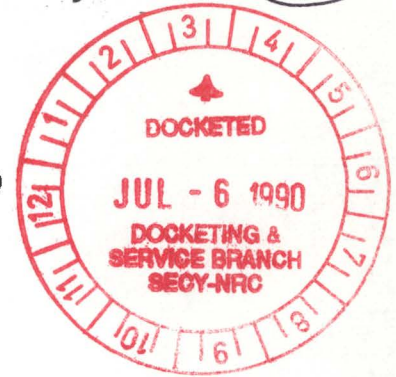
1. If the purpose of the rule change is to "establish a new condition of an operator's license which will prohibit conduct of licensed duties while under the influence of alcohol or any prescription, over-the-counter or illegal substance which would adversely affect performance of licensed duties" in order to "subject them to enforcement action" then the NRC should simply state in 10CFR55 that any violation of 10CFR26 requirements (by a licensed operator) would subject them to special enforcement regarding their license (there is no need to reiterate or add to the requirements of 10CFR26).
2. What is the basis or need for the rule change? Is there any indication of an industry-wide problem/trend that requires this change?
3. SCE&G believes that the requirements of 10CFR26 and supervisory observation and assessment of physical and/or emotional stability are sufficient to prevent the use of drugs/medicine from becoming a unique licensed operator problem.
4. How will operators who do not report medicine use be treated? Will a special program such as having a percentage of the crew tested prior to going on shift be required? If so, what method of testing should be used and what range of prescription and over-the-counter medicines should be tested?



Commonwealth Edison
1400 Opus Place
Downers Grove, Illinois 60515

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)

29



July 2, 1990

Mr. Samuel J. Chilk
Secretary
Docketing and Service Branch
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Subject: Proposed Rule Imposing Fitness-For-Duty Requirements
As A Condition of an Operator's Licenses
(Federal Register Vol. 55 No. 74 - April 17, 1990)

Dear Mr. Chilk:

This provides Commonwealth Edison Company's (CECo) comments on the Nuclear Regulatory Commission's proposed rule that would make Fitness-For-Duty (FFD) requirements directly applicable to licensed operators as a condition of their license. CECo advocates, as demonstrated through our aggressive Fitness-For-Duty program, maintaining unimpaired job performance by all our employees and promoting a healthy and safe operational environment. This proposed rule is unnecessary and singles out licensed operators from other personnel for more stringent FFD requirements without proper justification.

Promulgating this rule would single out licensed operators for different treatment under the proposed regulation. This has the potential to affect adversely operator morale and impair the effort to promote enhanced professionalism in all employees. There is no basis to single out licensed operators to be treated differently from other nuclear plant personnel.

The stated objective of the proposed rule was to provide a basis for taking enforcement actions against licensed operators who: 1) use drugs or alcohol in a manner that would exceed cut off levels contained in the Fitness-For-Duty Rule, 2) are under the influence of any prescription or over the counter drug which could adversely affect the ability to perform licensed duties safely, or 3) sells, use or possess illegal drugs. However, the NRC can already enforce Fitness-For-Duty requirements on licensed operators under the current Part 55 regulations. This regulation provides the authority to take enforcement action where an individual's conduct places in question the NRC's reasonable assurance that licensed activities will be conducted properly.

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July 2, 1990

Additionally, the proposed rule would require reporting of prescription or over-the-counter drugs which could adversely effect an operators performance. As part of our FFD program, supervisors are trained in behavioral observation to detect aberrant and impaired behavior. Because each individual responds uniquely to doses of different substances, the determination of "under-the-influence" would be nearly impossible to make a priori. Therefore, supervisors should continue to be the first line of defense after the individual in question, in making judgements about physical or mental impairment. We believe that this is consistent with the trust and responsibility inherently placed with licensed operators. If the NRC adopts the proposed rule, it should reevaluate the estimated costs of the proposed changes. The new rule would significantly expand the activities of the Medical Review Officers by requiring the review of an operators' use of legal and prescribed substances.

Commonwealth Edison believes that the current regulations already provide the basis for enforcement actions against licensed operators and for Fitness-For-Duty requirements for all employees with unescorted access to nuclear power plants. If it is the NRC's intent to establish a standard regarding an operators' use of legal and prescription drugs, additional guidance on the substances of interest and specific requirements for cut-off concentrations should be provided.

Commonwealth Edison appreciates the opportunity to provide these comments on this proposed rule.

Sincerely,

FOR Robert Segner
T.J. Kovach
Nuclear Licensing Manager

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DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)
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June 28, 1990

C300-90-733

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Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Dear Mr. Chilk:

Subject: Proposed Rule - Operators' Licenses 10 CFR Part 55
Modification for Fitness-For-Duty
(55 Federal Register 14288)

We have reviewed the subject proposed rule, which appeared in Federal Register on April 17, 1989, concerning fitness-for-duty for licensed operators. GPU Nuclear shares the NRC's interest in providing reasonable assurance that all nuclear power plant personnel, including licensed operators, perform their tasks reliably, with trust, in an environment free of drugs and alcohol and the effects of these substances.

GPU Nuclear believes, however, that regulations already exist (e.g., 10 CFR Part 26, 10 CFR Part 55) to maintain adequate assurance by providing bases for enforcement actions against licensed operators and for fitness-for-duty requirements for all employees with unescorted access to a commercial nuclear power plant. It should be noted that each facility licensee authorized to operate a nuclear power reactor is currently required by 10 CFR § 26.73(2) to report to the Commission "[a]ny acts by any person licensed under 10 CFR Part 55 to operate a power reactor". This assures the Commission is properly informed in order for it to consider what action, if any, may be proper under the current provisions of 10 CFR § 55.61 regarding modification and revocation of licenses. We, therefore, believe that the proposed rule which singles out licensed operators from other nuclear plant personnel is not only unnecessary but also could adversely affect the morale of the licensed operators.

Based on the above, we fully endorse the letter sent to you on July 2, 1990 by Nuclear Management and Resources Council (NUMARC) which transmitted the industry comments on the subject matter.

Very truly yours,

J. L. Sullivan, Jr.
Director, Licensing & Regulatory Affairs

JLS/YN/crb

Acknowledged by card FEB 12 1991

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Alabama Power Company
40 Inverness Center Parkway
Post Office Box 1295
Birmingham, Alabama 35201
Telephone 205 868-5581

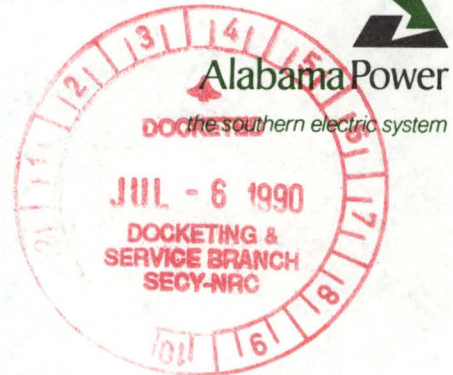
W. G. Hairston, III
Senior Vice President
Nuclear Operations

DOCKET NUMBER PR 55
PROPOSED RULE
(55 FR 14288)

27

June 29, 1990

Docket Nos. 50-348
50-364



Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTN: Docketing and Service Branch

Comments on Proposed Rule
"Operators' Licenses Modification for Fitness-for-Duty"
(55 Federal Register 14288 of April 17, 1990)

Dear Mr. Chilk:

Alabama Power Company has reviewed the proposed rule 10 CFR 55, "Operators' Licenses Modification for Fitness-for-Duty," published in the Federal Register on April 17, 1990. In accordance with the request for comments, Alabama Power Company hereby is in total agreement with the NUMARC comments which are to be provided to the NRC.

Should you have any questions, please advise.

Respectfully submitted,


W. G. Hairston, III

WGH, III/JMG:kdc

cc: Mr. S. D. Ebnetter
Mr. S. T. Hoffman
Mr. G. F. Maxwell

542

FEB 12 1991

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DOCKET NUMBER
PROPOSED RULE **PR 55**

(55 FR 14288)

26

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USNRC

Iowa Electric Light and Power Company
July 2, 1990

'90 JUL -6 P3:43

NG-90-1562

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Mr. Samuel J. Chilk, Secretary
U. S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, D.C. 20555

Re: Duane Arnold Energy Center
Subject: Proposed Rule - Operators' Licenses 10 CFR Part 55
Modification for Fitness-for-Duty 55 Fed. Reg.
14288 Request for Comments
Reference: Letter from J. F. Colvin (NUMARC) to S. J. Chilk (NRC)
dated July 2, 1990
File: A-100

Dear Mr. Chilk:

The following comments are submitted by Iowa Electric Light & Power Company (IELP) in response to the U. S. Nuclear Regulatory Commission (NRC) request for comments on the proposed rule "Operators' Licenses" (55 Fed. Reg. 14288 - April 17, 1990).

IELP agrees with the comments filed by the Nuclear Management and Resources Council (NUMARC) on the proposed rule. NUMARC concluded that current regulations, which establish fitness-for-duty requirements for all persons with unescorted access to commercial nuclear power plants, provide a sufficient basis for enforcement actions against licensed operators. No reason has been identified which would support distinguishing licensed operators from other persons with unescorted access. The proposed rule is unnecessary and, furthermore, it could adversely affect the morale of licensed operators because it challenges their trustworthiness without justification.

The information obtained from Drug and Alcohol testing (pre-employment, random, and for-cause) in accordance with the DAEC's fitness-for-duty requirements indicate that the percentage of positive results for operators is essentially no different than for any other individuals tested. The percentage of positive results for all individuals tested is low.

We acknowledge that the DAEC random testing experience covers a short period of time (January 3, 1990 - present). However, it, along with our pre-employment and for-cause results, confirms our conclusion that additional regulation directed toward operators is unnecessary and will not provide any additional benefits. It also demonstrates that DAEC operators honor the trust that is placed in them and are prepared to discharge the responsibilities placed upon them.

Acknowledged by card FEB 12 1991

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Mr. Samuel J. Chilk
July 2, 1990
NG-90-1562
Page 2

IELP therefore concludes that the existing fitness-for-duty regulation is adequate and that additional regulation, applicable to licensed operators in particular, is unnecessary.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Daniel L. Mineck".

Daniel L. Mineck
Manager, Nuclear Division

DLM/DJM/pjv+

cc: D. Mienke
R. McGaughy
L. Root
L. Liu

YANKEE ATOMIC ELECTRIC COMPANY (55 FR 14288) Telephone (508) 779-6711
TWX 710-380-7619



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USNRC

25

580 Main Street, Bolton, Massachusetts 01740-1398

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June 29, 1990
SPS 90-110
FYC 90-012

Secretary
United States Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Services Branch

Subject: Proposed Rule on Fitness-For-Duty Requirements For
Licensed Operators (55FR14288)

Dear Mr. Chilk:

Yankee Atomic Electric Company (YAEC) appreciates the opportunity to comment on the subject proposed rule. YAEC owns and operates a nuclear power plant in Rowe, Massachusetts. Our Nuclear Services Division (NSD) also provides engineering and licensing services for other nuclear power plants in the Northeast, including Vermont Yankee, Maine Yankee and Seabrook.

The Nuclear Management and Resources Council (NUMARC) has submitted comments on the Fitness-For-Duty Requirements for Licensed Operators. YAEC who is a member of NUMARC supports those comments.

YAEC vigorously opposes this rulemaking. It is unwarranted. There is no objective evidence presented that these measures are necessary for licensed operators. It is duplicative to provisions for sanctions that already exist in Part 55 of the Commission's regulations. Finally, it implies that licensed operators, for some unexplained reason, bear particular watching beyond that already mandated for all nuclear plant workers. This implied indictment of this unique cadre of highly trained and motivated individuals is most unfortunate.

The current 10CFR is inordinately complex and convoluted. Even in the handbook version, it runs to 1200 pages. This proposal serves merely to exacerbate this tendency. The proposed rule purports to "...provide a basis for taking enforcement actions against licensed operators..." who are in violation of the Fitness-For-Duty rule. Yet 10CFR55.71 [at 71 (a) (3), (b) (3), and (c)] provides amply for sanctions in response to misdeeds of this nature.

FEB 12 1991

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June 29, 1990
Page 2

Even further, 10CFR26.21 (Policy Communications and Awareness Training) is designed to ensure that all persons granted unescorted access to protected areas understand the bases, workings and ramifications of the Fitness-For-Duty rule. Refresher training is also mandatory. Random testing requirements are an ever present reminder of the seriousness of the issue. There is an acute awareness and understanding of the Fitness-for-Duty rule for all persons granted unescorted access and this includes the intended victim of this proposed rule.

We urge the NRC not to adopt the proposed rule. It will only serve to undermine the morale of licensed operators. It is also contrary to the Commission's stated objectives of streamlining regulations to improve regulatory effectiveness and is not founded on any apparent need.

Very truly yours,

A handwritten signature in dark ink, appearing to read "D. W. Edwards", with a stylized flourish at the end.

Donald W. Edwards
Director, Industry Affairs

DWE/cmd

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)
TENNESSEE VALLEY AUTHORITY

24

CHATTANOOGA, TENNESSEE 37401
USNRC

5N 157B Lookout Place

JUN 29 1990 **90 JUL -5 P5:15**

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Mr. Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
ATTN: Docketing and Service Branch
Washington, D.C. 20555

Dear Sir:

NRC NOTICE OF PROPOSED RULEMAKING, 10 CFR PART 55, OPERATORS' LICENSES

TVA has reviewed and is pleased to comment on the notice of proposed rulemaking posted in the April 17, 1990, Federal Register (55 FR 14288-14290) regarding fitness-for-duty requirements for licensed operators.

TVA believes that rulemaking on this subject is unnecessary and fully endorses the comments of NUMARC on this proposed rule.

We appreciate the opportunity to comment on this notice of a proposed rule.

Very truly yours,

TENNESSEE VALLEY AUTHORITY

R. H. Shell
for E. G. Wallace, Manager
Nuclear Licensing and
Regulatory Affairs

cc: Mr. Kenneth E. Perkins, Jr.
Chief, Operator Licensing Branch
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FEB 12 1991
Acknowledged by card

21 29 2- JUL 02

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Georgia Power Company
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Mailing Address:
40 Inverness Center Parkway
Post Office Box 1295
Birmingham, Alabama 35201
Telephone 205 868-5581

W. G. Hairston, III
Senior Vice President
Nuclear Operations

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)

(23)

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the southern electric system

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June 29, 1990

Docket Nos. 50-321 50-424
50-366 50-425

HL-1169
ELV-01839

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTN: Docketing and Service Branch

Comments on Proposed Rule
"Operators' Licenses Modification for Fitness-for-Duty"
(55 Federal Register 14288 of April 17, 1990)

Dear Mr. Chilk:

Georgia Power Company has reviewed the proposed rule 10 CFR 55, "Operators' Licenses Modification for Fitness-for-Duty," published in the Federal Register on April 17, 1990. In accordance with the request for comments, Georgia Power Company hereby is in total agreement with the NUMARC comments which are to be provided to the NRC.

Should you have any questions, please advise.

Respectfully submitted,

W. G. Hairston, III

W. G. Hairston, III

WGH, III/JMG:kdc

542

Acknowledged by card FEB 12 1991

11-2-11 02

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Mr. Samuel J. Chilk
Page 2

cc: Georgia Power Company

Mr. J. T. Beckham, Jr., Vice President - Nuclear, Plant Hatch
Mr. C. K. McCoy, Vice President, Nuclear, Plant Vogtle
Mr. G. Bockhold, Jr., General Manager - Plant Vogtle
Mr. H. C. Nix, General Manager - Plant Hatch
NORMS

U. S. Nuclear Regulatory Commission, Washington, DC
Mr. L. P. Crocker, Licensing Project Manager - Hatch
Mr. T. A. Reed, Licensing Project Manager - Vogtle

U. S. Nuclear Regulatory Commission, Region II
Mr. S. D. Ebnetter, Regional Administrator
Mr. J. E. Menning, Senior Resident Inspector - Hatch
Mr. B. R. Bonser, Senior Resident Inspector, Operations - Vogtle

Duke Power Company
P.O. Box 33198
Charlotte, N.C. 28242

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)

DOCKETED
USNRC

HAL B. Tucker
Vice President
Nuclear Production
(704)373-4531

22



DUKE POWER

'90 JUL -5 P5:04

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June 28, 1990

The Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
ATTENTION: Docketing and Service Branch

Subject: U.S. Nuclear Regulatory Commission
Federal Register Notice - 55FR14288
Operator's Licenses

Dear Sir:

In the Federal Register (55FR14288) dated April 17, 1990 the Nuclear Regulatory Commission published for comment a proposed rule to amend its regulations specifying that the conditions and cutoff levels established pursuant to the Commission's "Fitness-for-Duty Programs," are applicable to licensed operators as a condition of their license. The proposed rule would provide a basis for taking enforcement actions against licensed operators who use drugs or alcohol in a manner that would exceed the cutoff levels contained in the Fitness-for-Duty rule, who are under the influence of any prescription or over-the-counter drug which could adversely affect his or her ability to safely and competently perform licensed duties, or who sell, use, or possess illegal drugs.

Duke Power Company participated with NUMARC in the development of industry comments on this proposed rule. Duke concurs with NUMARC comments submitted to the NRC. However, Duke would like to submit the following comments.

- 1) We feel our current Fitness-for-Duty requirements are adequate for all personnel and to segregate licensed operators to a higher standard is unwarranted. The current requirements of 10CFR55 are worded such that a Fitness-for-Duty violation could result in a license being revoked, suspended, or modified, in whole or part. Since this basis for enforcement action already exists, this proposed rule is unnecessary and could adversely affect the morale of licensed operators.

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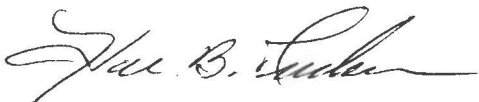
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Secretary of the Commission
June 28, 1990
Page Two

- 2) The review by a Medical Review Officer of any prescription or over-the-counter drugs taken by licensed operators prior to assuming licensed duties would be extremely burdensome to the Licensee to implement. It would mean having to provide a Medical Review Officer on site round the clock seven days a week. Currently, we have procedures that require employees to tell their Supervisor when they are taking prescription or over-the-counter medication. Since Supervisors interact and observe their employees on a day to day basis, we feel they are in a better position to judge if an employee is impaired.

We appreciate the opportunity to comment on the proposed rule and would be pleased to discuss our comments further with appropriate NRC personnel.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Hal B. Tucker".

Hal B. Tucker

JAR:jar

System Council U-2

International Brotherhood Electrical Workers

Jurisdiction
PUBLIC SERVICE ELECTRIC
AND GAS COMPANY, N. J.

Office: 7 Centre Drive — Suite No. 4 — Jamesburg, N.J. 08831

Phone: (609) 395-8785

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- 2060 - 2178

June 29, 1990

Secretary, U.S. NRC
Washington, D. C. 20555

Gentlemen:

The NRC has opened for public comment proposed changes to the Fitness For Duty Rule pertaining to Operators.

10 CFR part 26 was established to provide for the safe operation of Nuclear Power Plants. Its implementation was opposed by the vast majority of unions representing members at Nuclear Generating Stations.

It is my understanding that the NRC anticipated a substantial amount of "positives" when Random Drug testing was implemented. That has not occurred at Salem and Hope Creek Generating Stations operated by Public Service Electric and Gas Company.

All workers have patiently complied with the numerous changes made to our working conditions over the past years.

However, when a proposal is made that would revoke, modify or change an operating license status, one move too many has been made.

Someone has to take into account that the robots that are referred to in this proposal are not robots at all. These people live in the most rigorous environment possible. Not taking into account these people deal with pressures in and out of work and sometime may falter. We don't feel the NRS should take away their rights as humans.

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All human beings whether from Congress, the NRC or licensed Operators should be afforded the rights given everyone else, part of which includes rehabilitation and an opportunity to get back on track.

It is our belief that the current guidelines of 10 CFR part 26 are sufficient and the proposed statement of "not reliable and trustworthy" is not valid when dealing with people.

Sincerely,

A handwritten signature in cursive script that reads "John Gerrity".

John Gerrity
Business Representative
System Council U-2 IBEW

JG/kwj



UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)

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USNRC

20

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(301) 975-6210

FTS 879-6210

FAX (301) 921-9847
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June 30, 1990

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

ATTN: Docketing and Service Branch

Subject: Proposed Rule: 10 CFR 55; RIN 3150-AD55;
Operators' Licenses

Gentlemen:

The National Institute of Standards and Technology wishes to endorse the comments submitted by the National Organization of Test, Research and Training Reactors (TRTR). NIST has always required of its reactor operators the highest standards of conduct and performance. Ever since initial reactor startup, our operators have conducted themselves in an exemplary manner. The only area unclear in the rule is the proper use of prescription or over-the-counter medication, especially in the treatment of minor ailments such as headaches or colds. The rule should make it clear that this is permitted without qualification and without reference to Medical Review Officers that do not exist at research reactor facilities.

Sincerely,

J. Michael Rowe
Chief, Reactor Radiation Division

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Acknowledged by card

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Power Company
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(55 FR 14288)

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INDIANA
MICHIGAN
POWER

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AEP:NRC:0508L

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Proposed Rule - Operators' Licenses 10 CFR Part 55
Modification for Fitness-for-Duty
55 Fed. Reg. 14288

Attention: Docket and Service Branch

July 2, 1990

Dear Mr. Chilk:

In response to the proposed rule "Operators' Licenses Modification for Fitness-for-Duty" (55 Fed. Reg. 14288 - April 17, 1990), American Electric Power Service Corporation and Indiana Michigan Power Company fully support the NRC's interest in setting high standards of health and fitness for duty for all employees allowed within the protected area of commercial nuclear power plants. Unimpaired job performance is vital in assuring safe facility operation. This proposed rule, however, is unnecessary and singles out licensed operators from other nuclear power plant personnel for no justifiable purpose.

In particular, the proposed rule would require that licensed operators be treated differently than other personnel covered under 10 CFR Part 26. The inconsistencies between the existing language in Part 26 and the proposed revision to Part 55 would in effect place more stringent restrictions on licensed operators. We believe this challenges the licensed operators' trustworthiness without any justification and it will have negative impact on the morale of this highly professional group.

10 CFR Part 26 also provides the basis for enforcement actions for all personnel with unescorted access to commercial nuclear power plants. The need for an additional regulation to allow such action is therefore unnecessary.

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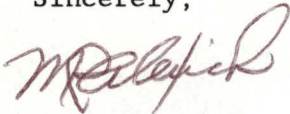
Mr. Samuel J. Chilk

-2-

AEP:NRC:0508L

We appreciate the opportunity to comment on the proposed rule and would be pleased to discuss our position with appropriate NRC personnel.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. P. Alexich", is written over the typed name.

M. P. Alexich
Vice President

edg

cc: D. H. Williams, Jr.
A. A. Blind - Bridgman
G. Charnoff
NRC Resident Inspector - Bridgman
A. B. Davis - NRC Region III



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L-90-242
JUNE 29 1990

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Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Nuclear Regulatory Commission; Proposed Rule - 10 CFR Part 55,
Operators' Licenses; 55 FR 14288(April 17, 1990); Request for
Comments

Dear Mr. Chilk:

On April 17, 1990, the Nuclear Regulatory Commission (NRC) published for public comment a proposal to amend its regulations specifying that the conditions and cutoff levels established pursuant to the Commission's "Fitness-For-Duty Programs", are applicable to licensed operators as a condition of their license. These comments are submitted on behalf of the Florida Power & Light Company (FPL).

FPL is an investor-owned utility serving over three (3) million customers in the State of Florida. FPL is a licensed operator of two nuclear power plant units in Dade County, Florida and two units in St. Lucie County, Florida.

On June 7, 1989 (54 FR 24468) the NRC issued a new 10 CFR Part 26 rule entitled Fitness-for-Duty Program to require licensees authorized to construct or operate nuclear power reactors to implement a Fitness-for-Duty program. The performance objective of this program is to provide reasonable assurance that nuclear power plant personnel will perform their tasks in a reliable and trustworthy manner, and not under the influence of any prescription, over-the-counter or illegal substance which in any way adversely affects their ability to safely and competently perform their duties. FPL is firmly committed to an uncompromising Fitness-for-Duty program and believes that the program at FPL aggressively supports the performance objective of the Fitness-for-Duty regulation. FPL believes that the proposed rule is unnecessary and unjustifiably singles out licensed operators from all other nuclear plant personnel with unescorted access to the plants.

The current Fitness-For-Duty rule applies with equal force to all persons granted unescorted access to protected areas. The rule also applies to all personnel, whether employed by the licensee or one of its vendors or contractors, who report to a licensee's Technical Support Center or Emergency Operations Facility in

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accordance with licensee emergency plans and procedures. The proposed rule would require that licensed operators be treated differently than all other persons whose performance is governed by FPL's Fitness-for-Duty program. The proposed rule imposes more stringent requirements on the licensed operators, but the NRC offers no [persuasive or compelling] evidence to justify the different treatment of licensed operators. FPL management has great respect for and trust in the Turkey Point and St. Lucie licensed operators and sees no reason for licensed operators to be treated any differently from other plant personnel with respect to the FPL Fitness-for-Duty program.

The Nuclear Management and Resources Council, Inc. (NUMARC) has offered comments on the subject proposed rule. FPL supports these comments and particularly endorses the following NUMARC comment:

The background section of the Federal Register notice states that the purpose of amending the current regulation is to "...provide a basis for taking enforcement actions against licensed operators..." in regard to fitness-for-duty. However, the current regulation, § 55.61(b)(3) & (4), clearly states that licenses can be revoked, suspended, or modified, in whole or in part, "(3) For willful violation of, or failure to observe any of the terms and conditions of the Act, or the license, or of any rule, regulation, or order of the Commission, or (4) For any conduct determined by the Commission to be a hazard to safe operation of the facility" (emphasis added).

Existing regulations thus provide the basis for enforcement actions against licensed operators for violation of the fitness-for-duty rule making this proposed rule unnecessary.

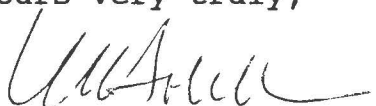
The proposed rule also would require the operators to report their use of prescription or over-the-counter drugs which could possibly cause physical or mental impairment to the licensee's medical review officer. Under FPL's program, all FPL personnel taking prescribed medication must consult with their physicians to determine whether the drug may have an adverse effect on performance. FPL personnel taking over-the-counter (OTC) medication must be aware of any adverse effects it may have on their performance as defined on the manufacturer's label. If prescribed or OTC medication being taken may have an adverse effect on performance, the individual must notify his/her supervisor immediately upon reporting to work. Failure to inform supervision of taking prescription or OTC medication which may have an adverse effect on performance can result in disciplinary action up to and including discharge for Company employees and denial of access to the nuclear plant sites for contractor employees. In light of the

Fitness-For-Duty program safeguards outlined above and in the absence of any evidence that licensed operators are of such special concern that justify more stringent treatment, FPL believes that the rule requiring the operators to report the use of prescription drugs or OTC medications to the licensee's medical review officer is unnecessary.

In summary, FPL believes that 1) the current FPL Fitness-For-Duty program adopted pursuant to 10 CFR Part 26 aggressively supports the performance objective of the Fitness-For-Duty regulation and is applied equally to all persons granted unescorted access and, 2) current regulations provide the basis for enforcement actions against licensed operators for violations of Fitness-for-Duty requirements. Therefore, the proposed rule is unnecessary.

FPL appreciates the opportunity to comment on the proposed rule. We would welcome the opportunity to discuss our comments and concerns with the NRC staff.

Yours very truly,


W.H. Bohlke
Vice President
Nuclear Engineering and Licensing

DOCKETED
USNRC

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

1776 Eye Street, N.W. • Suite 300 • Washington, DC 20006-2496
(202) 872-1280

90 JUL -2 P6:46

July 2, 1990
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Joe F. Colvin
Executive Vice President &
Chief Operating Officer

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Re: Proposed Rule - Operators' Licenses 10 CFR Part 55
Modification for Fitness-for-Duty
55 Fed. Reg. 14288
Request for Comments

Dear Mr. Chilk:

These comments are submitted by the Nuclear Management and Resources Council, Inc. ("NUMARC") in response to the request of the U.S. Nuclear Regulatory Commission ("NRC") for comments on the proposed rule "Operators' Licenses Modification for Fitness-for-Duty" (55 Fed. Reg. 14288 - April 17, 1990).

NUMARC is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and on the regulatory aspects of generic operational and technical issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect-engineering firms and all of the major nuclear steam supply system vendors.

NUMARC fully supports the NRC's interest in setting high standards of health and fitness-for-duty for licensed operators and strongly supports the position that unimpaired job performance by all employees allowed within the protected area of a commercial nuclear power plant is vital in assuring safe facility operation. This proposed rule, however, is unnecessary and singles out licensed operators from other nuclear power plant personnel for no justifiable purpose.

The background section of the Federal Register notice states that the purpose of amending the current regulation is to "...provide a basis for taking enforcement actions against licensed operators..." in regard to fitness-for-duty. However, the current regulation, § 55.61(b)(3) & (4), clearly states that licenses can be revoked, suspended, or modified, in whole

FEB 12 1991

Acknowledged by card

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or in part, "(3) For willful violation of, or failure to observe any of the terms and conditions of the Act, or the license, or of any rule, regulation, or order of the Commission, or (4) For any conduct determined by the Commission to be a hazard to safe operation of the facility" (emphasis added). Existing regulations thus provide the basis for enforcement actions against licensed operators for violation of the fitness-for-duty rule making this proposed rule unnecessary.

The language in 10 CFR Part 26 was constructed to make the fitness-for-duty rule equally applicable to all personnel with unescorted access to the protected area. There are inconsistencies in policy and intent between the proposed revision to Part 55 and the requirements of Part 26, the result of which would be to place more stringent restrictions on licensed operators. This proposed rule is thus a challenge to the licensed operators' trustworthiness without any justification and may have a negative impact on the morale of this highly professional group at a time when the industry is striving to enhance the professionalism of all personnel.

The industry, through the Institute of Nuclear Power Operations (INPO) developed Principles for Enhancing Professionalism of Nuclear Personnel¹ which addresses a number of aspects of personnel development, education, and experience. A paragraph from this document reads:

"Management practices and policies convey an attitude of trust and an approach that is supportive of teamwork at all levels. These practices and policies recognize and expect professionalism from all personnel. Policies that spell out expectations and standards of performance are well established and documented. These policies are clearly communicated and are well understood by all personnel and are routinely reinforced in training and in the daily conduct of business" (emphasis added).

The industry is striving to develop an atmosphere of trust that supports professionalism for all personnel in positions that are responsible for safe operation of a commercial nuclear power reactor. There is no basis to single out licensed operators to be treated any differently from other plant personnel with unescorted access; to do so may undermine the trust and professionalism we are striving to develop.

The proposed rule also would require the reporting of prescription or over-the-counter drugs which could possibly cause physical or mental impairment. Each utility has a program to manage such drugs as required by the current fitness-for-duty rule (10 CFR 26.20). Supervisors are trained in behavioral observation, a program that has proven to be sufficient to detect

¹ Provided to NRC under cover of a letter from Zack T. Pate to former Chairman Zech, May 25, 1989.

Secretary
July 2, 1990
Page 3


impairment. Because different people react differently to the same medication, supervisors will continue to be the first line of defense, after the individual in question, in making judgments about impairment. To require that medical personnel be available to make those judgments, around the clock, would create an unnecessary burden for utilities.

Because 10 CFR Part 26 does not currently apply to individuals at non-power reactor facilities, the NRC has apparently included the operators at those facilities in the proposed modification to Part 55. It is difficult to understand the logic for combining operators at non-power facilities with licensed power facility operators for more stringent FFD requirements when it was not considered important to have them covered under Part 26. If the non-power operators need to be covered in this regard, it should be done by modifications to Part 26 or in a regulation separate from the power reactor requirements.

In summary, the current regulations provide the basis for enforcement actions against licensed operators and for fitness-for-duty requirements for all employees with unescorted access to a commercial nuclear power plant. Therefore, this proposed rule is unnecessary. Further, it may adversely affect the morale of licensed operators, which is a matter of great importance to the industry and to the Commission.

We appreciate the opportunity to comment on the proposed rule and would be pleased to discuss our comments further with appropriate NRC personnel.

Sincerely,


Joe F. Colvin

JFC/REE:plg

DOCKET NUMBER
PROPOSED RULE PR 55

(55 FR 14288)

PHILADELPHIA ELECTRIC COMPANY

NUCLEAR GROUP HEADQUARTERS

955-65 CHESTERBROOK BLVD.

WAYNE, PA 19087-5691

(215) 640-6000

90 JUL -2 P6:45

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BRANCH

June 27, 1990

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Docketing and Service Branch

Subject: Comments Concerning the Nuclear Regulatory Commission's
Proposed Rule 10 CFR 55, "Operators' Licenses"
(55 FR 14288, dated April 17, 1990)

Dear Mr. Chilk:

This letter is being submitted in response to the Nuclear Regulatory Commission's (NRC's) request for comments regarding the Proposed Rule 10 CFR 55, "Operators' Licenses," published in the Federal Register (55 FR 14288, dated April 17, 1990).

The Philadelphia Electric Company (PECo) appreciates the opportunity to comment on this proposed rule. This proposed rule would impose existing fitness-for-duty requirements and sanctions specifically on licensed operators. PECO does not agree that this proposed rule is needed, and recommends that the NRC reconsider promulgation of a final rule. We consider that the current regulations (10 CFR 26) mandate adequate fitness-for-duty requirements and sanctions for all employees, including licensed operators, with unescorted access to a nuclear power plant facility. Also, the existing regulations in 10 CFR 55, "Operators' Licenses," clearly state the NRC's authority to impose sanctions on licensed operators for willful violation of any rule or regulation. Imposing fitness-for-duty requirements on licensed operators could adversely affect their morale, and may also inhibit the drug dependency self identification process.

FEB 12 1991

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PECo fully supports the Nuclear Management and Resources Council's (NUMARC's) position and comments regarding this proposed rule.

If you have any questions, please do not hesitate to contact us.

Sincerely yours,

G. A. Hunger, Jr.

G. A. Hunger, Jr.

Manager

Licensing Section

Nuclear Engineering and Services



**Entergy
Operations**

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)

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USNRC

Entergy Operations, Inc.
P.O. Box 31995
Jackson, MS 39286-1995
Tel 601-984-9696

15

William Cavanaugh, III
President and
Chief Executive Officer

'90 JUL -2 P6:20

OFFICE OF SECRETARY
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BRANCH

June 29, 1990

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Subject: Proposed Rule Amendment,
Operators' Licenses
10CFR Part 55 Modification
for Fitness-for-Duty
55 Federal Register 14288

AECM90-0202

Dear Mr. Chilk:

Entergy Operations, the licensee for Arkansas Nuclear One, Grand Gulf Nuclear Station and Waterford Steam Electric Station, Unit 3, has reviewed the subject proposed rule amendment, and are pleased to provide the following general comments. We have also participated in the development and review of the comments provided by the Nuclear Management and Resources Council (NUMARC) and fully support their submittal.

Entergy Operations believes in setting and achieving high standards of health and fitness-for-duty of all employees as this requisite is vital in assuring safe facility operation. The proposed rule amendment however is unnecessary and unjustifiably focuses on licensed operators.

The NRC states in the Federal Register that the purpose of amending the current regulations is to provide a basis for taking enforcement against licensed operators. However, 10CFR Part 26 and 10CFR Part 55 currently provide adequate regulation regarding fitness-for-duty programs and licensed operators.

The NRC has not provided any basis to establish that licensed operators as a group represent a heightened risk due to substance abuse or health impairment. In addition, although the tasks performed by operators are critically important, other tasks performed by other groups, for example, maintenance and security personnel, are equally important. Therefore, there is no justifiable need to single out licensed operators.

FEB 12 1991

NRCLTRS/JEXFLR-4

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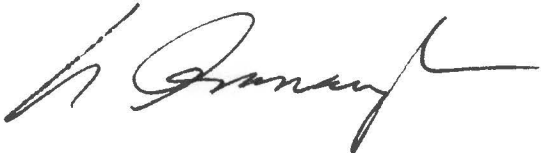
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Proposed Rule Amendment, Operators' Licenses
10CFR Part 55 Modification for
Fitness-for-Duty
55 Federal Register 14288
June 29, 1990
Page 2

We have tremendous pride in the experience, capabilities, and professionalism demonstrated by licensed operators at Entergy Operations facilities. We believe that high standards of conduct will continue to be best achieved and maintained by Licensee initiatives and programs that address integrity and excellence and not by regulations that emphasize punitive measures.

We appreciate the opportunity to comment on this matter.

Sincerely,



WC/sep
cc:

S. D. Ebnetter, NRC Region II
R. D. Martin, NRC Region IV
D. L. Wigginton, NRC-NRR
T. W. Alexion, NRC-NRR
C. Poslusny, NRC-NRR
L. L. Kintner, NRC-NRR
NRC Resident Inspectors Office (Waterford-3)
NRC Resident Inspectors Office (GGNS)
NRC Resident Inspectors Office (ANO)

Proposed Rule Amendment, Operators' Licenses
10CFR Part 55 Modification for
Fitness-for-Duty
55 Federal Register 14288
June 29, 1990
Page 3

bcc: D. C. Hintz
R. P. Barkhurst
N. S. Carns
W. T. Cottle
T. H. Cloninger
J. G. Dewease
R. J. Landy
G. W. Muench
R. F. Burski
J. G. Cesare
J. J. Fisicaro
M. J. Meisner
R. B. McGehee
N. S. Reynolds
W. A. Cross
E. L. Blake
W. M. Stevenson
G. A. Ellis
R. W. Lailheugue
H. L. Thomas
C. R. Hutchinson
E. C. Ewing
J. F. Colvin (NUMARC)
Records Center (Waterford-3)
Administrative Support (Waterford-3)
Licensing Library (Waterford-3)
Site Licensing Support File (Waterford-3)
File (RPTS) (GGNS)
File (LCTS) (GGNS)
File (NL) (GGNS)
File (Central) (GGNS)
Document Control Center (DCC) (ANO)
File (Central) [3]

Mark G. Cassells
31 Mountaingate Dr.
Frederick, MD 21701

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)

14

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Secretary
U.S. Nuclear Regulatory Commission
Washington D.C. 20555
Attn.: Docketing and Services Branch

'90 JUL -2 P6:18

In response to your call for comments regarding 55 FR 14288, April 17, 1990.

OFFICE OF SECRETARY
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BRANCH

"The proposed rule would assure a safe operational environment by providing a clear understanding of the severity of violating requirements governing drug and alcohol use and of the impact of substance abuse."¹

I have some questions regarding the wording of the above quote before I proceed further into the FR. Specific wording I know to be of great importance to the Commission, so I will start with a few of my questions brought up in the opening lines of the proposed rule.

1. I notice that the word *assure* is used rather than *ensure*. Is this a concession on the part of the Commission that there is no practicable way to *make certain*² a safe operational environment, and that the best we can accomplish is a *sure feeling*³ about it?

2. Is the Commission implying that a clear understanding is best obtained through the use of random testing? Perhaps operators are unable to grasp the higher concepts of Shall, Should, and May⁴ (not) in a more abstract form, and need a simple motivator such as fear.

"Individuals who are not reliable and trustworthy, under the influence of any substance, or mentally or physically impaired in any way that adversely affects their ability to safely and competently perform their duties, shall not be licensed or permitted to perform responsible health and safety functions."⁵

3. The Federal Register (FR) piece is evidently trying to wield the Fitness-for-Duty rule in particular against operators of all nuclear facilities. In part 26 of the Code of Federal Regulations (CFR), under scope, it states that the Fit-for-Duty rule applies only to power reactors. Even in the latest Federal Register it says,

"This proposed rule serves to notify the 10 CFR part 55 operator and senior operator of the conditions they are required to comply with under part 26, Fitness-for Duty Program."⁶

But then, in a masterful stroke of blind-siding, the Commission applies it to non-power reactors in the proposed changes to part 55.53 (j) and (k) and 55.61(b)(5)⁷. At a hearing in 1989 at the Crown Plaza hotel in Rockville Maryland, when specifically asked whether the Fitness-for-Duty program would apply to non-power reactors, the NRC gave assurances (good feelings) that before it was made to apply there would be another hearing. As there has been no such hearing, at least not public, and the Fitness-for-Duty rule is now being applied to non-power reactors, what

¹ Summary - 55 Federal Register 14288, April 17, 1990

² Webster's II, New Riverside University Dictionary, Houghton Mifflin Company, 1984

³ IBID

⁴ As defined in 10 CFR (Something the operators shall be familiar with.)

⁵ 54 Federal Register 24488, June 7, 1989

⁶ 55 Federal Register 14289, April 17, 1990

⁷ 55 Federal Register 14290, April 17, 1990

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does this imply regarding "Individuals who are not reliable and trustworthy...?" Note the above quote says "Individuals...", not "Operators...", however, the Commission uses it to discuss only operators in the background portion of the proposed rule.

4. Why is the NRC exempt from Fit-for Duty requirements? The reference to the Fitness-for-Duty rule is to 10 CFR part 26 which applies to all personnel with access to the Technical Support Center and/or Emergency Operations Facility at Nuclear Power Facilities, with the exceptions of law enforcement, emergency fire and medical, and the notable exception of any NRC personnel.⁸ These NRC personnel are people with unescorted access to the spaces mentioned above, in a non-emergency mode (e.g. fire, ambulance).

5. "Under the influence of any substance..." can mean a great deal. That phrase does not, even in context require impairment of physical or mental facilities. Is it possible to be under the influence of Nicotine or Caffeine? Can withdrawal from these drugs impair abilities, physical and/or mental?

6. Are "Health and Safety functions" only performed by operators? The Health Physics, Maintenance, Instrumentation, and others, by implication, have no relevant impact upon health and safety. Do the engineers who design the safety systems of the plant have to be "fit for duty" as a condition for maintaining their licenses?

7. According to part 26, if there is reason to believe that an NRC staff member is under the influence of something, or is impaired in some fashion, they are to be escorted, and their supervisor is to be contacted. Why can't the operators be given the same courtesy?

8. What justification does the Commission offer to indicate that small university reactors, often having to fight for funding, can afford to implement the cost of such programs so blithely dismissed under the misleading header, Regulatory Flexibility Certification?⁹ That is the part of the FR where the Commission declares that their outrageous policy won't have a significant economic impact upon anyone it applies to. This rule change may not have a significant impact on power reactors which were already under part 26, set up for it, and who's budget consisted of more than a shoestring.

9. Even though the part 26 requires the individual be removed from their position for 5 years for selling, and 3 years upon a second use violation,¹⁰ with no hope of gaining employment in the industry during that interim, the NRC in its wisdom or duplicity wishes to change the part 55.53(j)¹¹ to remove the persons license. What good is a license that can't be used? Why is the NRC wasting the monies and resources of an already strapped industry?

Please understand, I believe that the intent of the Fitness For Duty rule is laudable. I think that the means regulated for the implementation of those intents is regrettable, and that the further compounding of that insult compelled by this Federal Registrar 14288, April 1990, pours salt in the wound needlessly. What ever became of innocence until proven otherwise? The whole of the Part 26 and this Federal Registrar flies in the face of the Bill of Rights and individual human dignity, and, by your own words, probably without cause. Is there no way that public hysteria can be acknowledged as such without knuckling under and treading on the spirit and rights of the people who make up that public?

Cordially;



⁸ 10 Code of Federal Regulations 26.2(a)

⁹ 55 Federal Register 14290, April 17, 1990

¹⁰ 10 Code of Federal Regulations 26.26 (b)

¹¹ 55 Federal Register 14289, April 17, 1990

June 20, 1990

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'90 JUL -2 P6:18

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Docketing and Services Branch

OFFICE OF SECRETARY
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BRANCH

Dear Sirs:

I am writing in response to your request for written comments concerning the proposed rule that would incorporate the fitness-for-duty requirements into operator licenses.

If the proposed rule's intent is to provide a basis for the Commission to take enforcement action against licensed operators for fitness-for-duty violations, then the proposed rule is unnecessary. The current regulation §55.61(b)(3) & (4) already provides a basis for taking enforcement actions against licensed operators for violation of any rule or regulation of the Commission (i.e. 10 CFR Part 26).

10 CFR Part 26 was written to make fitness-for-duty equally applicable to all personnel with unescorted access to the protected area. The way the proposed rule is written it would place more stringent requirements on licensed operators. Singling out licensed operators for more stringent treatment without justifiable reason is not only unnecessary, but would be detrimental to their morale. As a Reactor Operator (RO) at SONGS I am quite familiar with the effects of morale problems. I have seen how problems with morale at SONGS have resulted in chronic licensed operator retention problems. The accelerated hiring of replacements in order to keep up with attrition has seen our experience level plummet. I know that we (SONGS) are not alone in our problems with retaining licensed operators, other nuclear facilities throughout the country are in a similar predicament. Implementing the proposed rule can only exacerbate the problem.

The Commission states that the purpose for implementing the proposed rule is to "...assure a safe operational environment for the performance of all licensed activities by providing a clear understanding to licensed operators of the severity of violating requirements governing drug and alcohol use and of the impact of substance abuse." As an RO, and a professional, I am very aware of the gravity of violating the fitness-for-duty requirements. I do not think that there is an NRC licensed operator that is not aware of 10 CFR Part 26 requirements or of the severity of violating those requirements. Implementing the proposed rule can only prove detrimental to the morale of licensed operators and that in turn will be counter productive to the Commission's goal of "assuring a safe operational environment".

20 JUL -5 18:18

Secretary
U. S. Nuclear Regulatory Commission
Washington DC 20555
Pocketing and Services Branch

for-duty requirements into a-erator licenses.

1. e. 10 CFR Part 26.
operators for violation of any rule or regulation of the Commission provides a basis for taking enforcement actions against licensees unnecessarily. The current regulation 25.61(b)(3) & (4) already for fitness-for-duty violations, then the proposed rule is Commission to take enforcement action against licensed operators. If the proposed rule's intent is to provide a basis for the

only exacerbate the problem. We (SONGS) are not alone in our problems with retaining up with attrition has seen our experience-level plummet. I know problems. The accelerated hiring of replacements in order to keep SONGS have resulted in chronic licensed operator retention effects of morale problems. I have seen how problems with morale as As a Responder Operator (RO) at SONGS I am quite familiar with the is not only unnecessary, but would be detrimental to their morale. operators for more stringent treatment without justifiable reason attendant requirements on licensed operators. Striding out licensed areas. The way the proposed rule is written it would place more applicable to all personnel with unescorted access to the protected 10 CFR Part 20 was written to make fitness-for-duty equally

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In summary the proposed rule is unnecessary and can only adversely impact the safe operation of nuclear power facilities by negatively affecting the morale of licensed operators.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel Dominguez", is written over a light-colored rectangular background.

Daniel Dominguez
Reactor Operator
SONGS 2/3

Robert W. Fellingham, Jr.
517 W. Craymer
Palacios, TX 77465

June 25, 1990



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

Attention: Docketing and Service Branch

Dear Sirs:

The proposed new rule under 10CFR Part 55 is redundant, unnecessary and an affront to all licensed operators. Under the new 10CFR55.53(j), in addition to those other requirements under 10CFR Part 26, you would now propose to fine and sanction the individual license. I submit this is redundant since under the programs established by 10CFR Part 26 for fitness for duty a licensed operator who is found to exceed the limits established during random testing or 'for cause' testing will lose his job and therefore, his livelihood. How is an individual supposed to pay your fine?

I submit that this new rule is unnecessary since by our license, we are required to operate the facility in accordance with all conditions of the facility license and all applicable federal regulations which includes the provisions of 10CFR Part 26. Therefore, legally you already have the means to fine and sanction licensed operators individually.

This new proposed rulemaking is an affront to all licensed operators because it provides an increased level of stress for an already stressful job.

I submit that this new rule is a waste of time and money which would be better spent trying to streamline your licensing procedures for new plants and reviving the U.S. Nuclear Industry. I could even suggest that this waste of taxpayers money may, in fact, be a means to justify jobs that are in reality no longer required.

Gentlemen, heaping regulation upon regulation to cover the same thing is not the answer. You would be doing everyone including yourselves a favor by combining and streamline your regulations to make them more clear to everyone.

Sincerely,

Robert W. Fellingham, Jr.
South Texas Project

PBF\
cc: K. J. Christiansen

FEB 12 1991

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(55 FR 14288) June 24, 1990

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Jensen Beach, FL 34957

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'90 JUN 27 P6:20

Secretary
Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Dear Sir,

I wish to make some comments on the proposed rule for Operators Licenses as written in the Federal Register, Volume 55, No. 74, April 17, 1990, pages 14288 through 14290.

I have been in the commercial nuclear industry for the past 10 years and have held an Operating License for seven and a half years, the last five and a half of which I have held a Senior Operating License. Prior to entering the commercial nuclear industry I spent six years in the U.S. Navy, four and a half of which were spent in the nuclear submarine service.

I am somewhat confused as to why the NRC wishes to make this proposed rule as part of an operators license. The NRC already has all the necessary rules in place to assure a persons fitness for duty. The company I work for has a very strict fitness for duty program as required by the NRC. If a person shows positive results from a drug test or blows a .04 during a blood alcohol test then that person is fired. I don't know of a better deterrent than that to make sure someone is fit for duty.

If an individual is going to take a chance and do illegal drugs or drink before work with the type of fitness for duty rule that we have, then do you really believe that some words on an operating license that are supposed to act as a deterrent will be complied with? I don't think so.

As for legal over the counter and prescription drugs, there are rules already in place concerning their use as well.

As a Control Room Supervisor with an SRO I take great pride in my job and I fully understand my responsibilities that go along with it. It bothers me to think that the NRC has so little regard or respect for licensed operators that they believe this rule is necessary. And why single out licensed operators? Granted we are on the "front line", but there are many other individuals who work at a nuclear plant whose fitness for duty is just as important as licensed operators.

I do not believe that this proposed rule for Operators Licenses will result in anything constructive. If anything it will only result in a lower morale among current licensed operators and a drop in new licensed applicates.

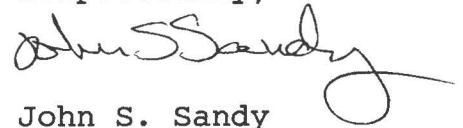
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This rule should not be adopted since it simply is not necessary.

Respectfully,

A handwritten signature in cursive script, appearing to read "John S. Sandy". The signature is written in dark ink and is positioned to the right of the typed name.

John S. Sandy
SOP-20302-2

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)

10

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90 JUN 26 P4:53
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BRANCH

June 18 , 1990
RBG- 33086
File Code No. G9.23.1

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

Gentlemen:

Gulf States Utilities (GSU) is pleased to comment on the Commission's proposed rule regarding the fitness-for-duty requirements for licensed operators (55FR14288 dated 4/17/90).

GSU supports the NRC's position in setting high industry standards for implementing fitness-for-duty programs to ensure unimpaired job performance of licensed operators and safe facility operation. However, the nuclear industry is already making a concerted effort to enhance the professionalism and trustworthiness in this field. The promulgation of this rule may have an adverse impact on the morale of this movement and potentially drive some very qualified operators out of the nuclear operating profession.

GSU feels that current NRC regulation (10 CFR part 26) is adequate for ensuring that the fitness-for-duty rule is maintained for all personnel with unescorted access to the protected area, and that the proposed rule is unnecessary. GSU appreciates the opportunity to comment on this proposed rule.

Sincerely,

W. H. Odell
Manager-Oversight
River Bend Nuclear Group

rm/wah/LLD/KCH/pg
TFP/LAE/LLD/KCH/pg

Acknowledged by card
FEB 12 1991

15 JUL 90

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The Light company

Houston Lighting & Power

DOCKET NUMBER
PROPOSED RULE **PR** 55

(55 FR 14288)

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9

South Texas Project Electric Generating Station P. O. Box 289 Wadsworth, Texas 77483

90 JUN 21 P1:17

June 15, 1990
OFFICE OF SECRETARY
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ST-HL-AE-3476
File No.: G03.15
10CFR50.55

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

Attention: Docketing and Service Branch

Houston Lighting & Power Company (HL&P) submits the following comments on a proposed rule regarding 10CFR55.53 and 10CFR55.61. Paragraphs 10CFR55.53(j) and (k) and paragraph 10CFR55.61(b)(5) specify that the conditions and cutoff levels established pursuant to the Commission's "Fitness for-Duty Programs" are applicable to licensed operators as a condition of their license.

HL&P disagrees with the proposed rule as currently written. Paragraph 10CFR55.53(j) would require:

With respect to prescription and over-the-counter drugs, the term "under the influence" means the licensee could be mentally or physically impaired, as determined by a medical review officer, in such a manner as to adversely affect his or her ability to safely and competently perform licensed duties.

This may be interpreted as requiring licensed operators to consult with the medical review officer every time they took prescription or over-the-counter medication. Under this interpretation, failure to consult, even though there is no impairment, would be a violation. If this requirement is to be kept, HL&P recommends that the wording be revised to cover only use of those prescription and over-the-counter drugs that could result in mental or physical impairment under normal circumstances.

As a general comment, compliance with the requirements of 10CFR26 is sufficient to preclude licensed operators from performing their jobs while not fit-for-duty. Incorporation of the new paragraphs in 10CFR55.53 does not provide any additional protection of the public while at the same time adds the responsibility of reporting to the medical review officer use of all prescription or over-the-counter medication. The proposed rule unfairly singles out licensed operators for restrictions on their conduct that are more severe than those applied to other nuclear power plant employees. NRC monitoring of implementation of a licensee's fitness-for-duty program will ensure that the program is strong enough to satisfy the requirements of 10CFR26.

A1/036.N14

A Subsidiary of Houston Industries Incorporated

Acknowledged by card

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Houston Lighting & Power Company
South Texas Project Electric Generating Station

ST-HL-AE-3476
File No.: G03.15
10CFR50.55

If there are any questions, please contact Mr. P. L. Walker at (512) 972-8392 or myself at (512) 972-8530.



M. A. McBurnett
Manager,
Nuclear Licensing

PLW/nl

cc: D. P. Hall
S. L. Rosen
G. E. Vaughn
W. H. Kinsey
A. W. Harrison
P. L. Walker
J. M. Gutierrez (Newman-Holtzinger)
Licensing Library
STP RMS

Larry T. Lindstrom
11798 Blue Bonnett Court
Monrovia, MD 21770

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USNRC

June 15, 1990

'90 JUN 18 P5:32

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

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BRANCH

Subject: Proposed Changes to 10CFR55

In response to the request for comments on the proposed changes to 10CFR55 now under consideration by the Commission, I would like to submit the following comments.

As an NRC licensed Senior Operator, I am deeply disturbed by the proposed rules. In our society today, there is evidence that drug abuse is a concern. But there is no evidence that this argument extends into the nuclear community! In fact, research conducted for the Commission as a basis for the policy changes and presented in the report "Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues" (NUREG/CR-5227) clearly demonstrates the opposite.

The proposed rule is designed to "protect the general public" by providing a drug-free workplace at all nuclear facilities. Yet no evidence is provided that a drug-free environment does not already exist. According to the report, "Meaningful Studies of substance abuse in the workplace are scarce, especially as they pertain to the nuclear industry.". Furthermore, the report states that as of 1986 only 4% of the entire U. S. Navy had tested positive for illicit drug abuse. This statistic includes all Naval forces, not just the "Nuclear Navy" from which nuclear facilities acquire their Operations Staffs. It can be expected that the frequency of drug abuse among just this group would be far less than the 4% overall results. More currently, NBC News reported during the week of June 7, 1990 that drug abuse in the U. S. Navy had again fallen to an all-time low of 2%. Statistics quoted by the NRC Staff report indicated that future results can be expected to increase, contrary to the facts.

Nor, is protection of the general public substantially enhanced by requiring that any minority of an industry be held accountable for drug abuse within America's society. Safety of a nuclear facility relies upon the abilities of thousands of personnel, most of which precede the duties of the Reactor Operator. Engineers, contractors, equipment manufacturers, safety analysts, NRC Staffs, and many others are involved. The most sober Reactor Operator cannot protect the public with faulty equipment or system design. Yet, only Reactor Operators will be subjected to the proposed penalties.

If the rule, as proposed, is enforced, the results could well be contrary to the desired goals. Reactor Operators who must take over-the-counter medications for relief of

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minor ailments and allergies could refuse to work, requiring already fatigued Reactor Operators to continue to operate the facility under overtime conditions with an obvious decrease in safety.

In summary, I feel that this proposed rule would have deleterious and detrimental effects upon the nuclear industry as a whole, and upon the highly-skilled Reactor Operators who have made it the safest of all industries. The report upon which the rule is based demonstrates, within itself, that drug testing is unnecessary, unreliable, and therefore, ill-advised; that a clear majority of business communities, including the nuclear industry, which were examined by the report had previously recognized that a drug problem exists in society (which could affect the nuclear industry) and have taken steps to curtail any problem.

If I may be allowed to editorialize, this proposed rule continues to enforce my perception that the NRC is a self-serving entity bent upon empire-building *ad perpetuum*. However, continued attacks against the intelligence and integrity of licensed Reactor Operators must be stopped. We have proven ourselves, time and again, to be the best trained and most knowledgable workers of any industry.

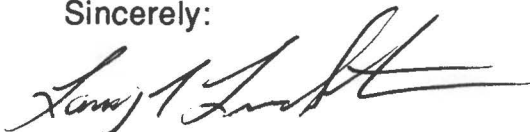
It is widely known that drug abuse has been a facet of the American society (in varying degrees) since the 1950's. Beat-niks, hippies, flower-children, yuppies, and other sub-cultures have come and gone without, any evidence what-so-ever of, impacting the nuclear community or compromising the safety of the Public. Yet now, when evidence does indicate that the level of social drug abuse has abated, the Commission determines that a fitness-for-duty policy and penalties are necessary.

It is insulting and demoralizing when, supposedly intelligent, NRC Commissioners dictate that we, the nuclear community, condescend to untimely, unnecessary, and ill-conceived policies such as this under the guise of "protecting the Public". Nor, does holding the nuclear industry hostage with obvious pogroms replace the need for timely, competent policies. This safety-nazi mentality has strangled our country's nuclear energy program for too long.

In the purview of public opinion, this untimely attempt at domination cannot be labeled as leadership, nor viewed as "protecting the Public". It is merely a continued belittlement of the Reactor Operator and an unnecessary exercising of dictatorial authority.

The Commissioners and their Staffs well deserve a less desirable group to operate what is left of this country's dying civilian nuclear power industry.

Sincerely:

A handwritten signature in dark ink, appearing to read "Larry T. Lindstrom", with a stylized, flowing script.

Larry T. Lindstrom

EDISON DRIVE • AUGUSTA, MAINE 04330 • (207) 622-4868

'90 MAY 17 A11:54

May 11, 1990
MN-90-50

CDF-90-41
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Secretary
UNITED STATES NUCLEAR REGULATORY COMMISSION
Washington, DC 20555

Attention: Docketing and Services Branch

Subject: Proposed Modification to 10 CFR Part 55, Fitness For Duty, FR 14288

Gentlepersons:

Maine Yankee has reviewed the proposed rule adding Fitness For Duty requirements to Operator Licenses and finds the proposed rule to be duplicative and unnecessary, and proposing this rule creates an impression that nuclear power plant operators have a "special" drug problem. Therefore, Maine Yankee encourages the commission to reject this proposed rule. Our reasoning for these findings is outlined below.

The proposed rule is unnecessary.

Maine Yankee is in full compliance with the new Fitness For Duty Program, 10 CFR Part 26, for all its employees, including operators. As a matter of fact, Maine Yankee established drug testing for its employees before it was required by law.

Maine Yankee believes that, since licensed operators are already adequately covered by an NRC required Fitness For Duty program, having yet another rule imposing the same requirements is duplicative and unnecessary.

Licensed Operators do not need special attention.

The tone of both the Federal Register announcement and the proposed rule suggests that licensed operators may need special attention. In fact, wording of one sentence is particularly disturbing in that it can be read in such a way as to suggest that the Commission suspects that operators may not be law abiding:

"Because there is an underlying assumption that operators will abide by the licensee's policies and procedures, any involvement with illegal drugs, whether on site or off, tends to show that the operator cannot be relied upon to obey the requirements of the law and indicates that the individual may not scrupulously follow rigorous procedural requirements with the integrity required in the nuclear power industry to assure public health and safety." FR 14288

FEB 12 1991

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Maine Yankee

UNITED STATES NUCLEAR REGULATORY COMMISSION
Attention: Docketing and Services Branch

Page 2
MN-90-50

Maine Yankee's experience shows this implication to be false. No licensed Maine Yankee operator has ever failed a drug screening test. In fact, Maine Yankee operators are committed to operating the plant safely and maintaining a safe working environment.

Maine Yankee, and the rest of the industry, have made great strides in the last several years implementing policies and programs to promote professionalism among operators. The implication of this proposed rule, that operators need special attention relative to fitness for duty, sends all of the wrong messages relative to professionalism and will do irreparable harm to these programs.

For the above reasons, Maine Yankee urges the Commission to reject the proposed rule. Please contact me should you have further questions on this.

Very truly yours,



C. D. Frizzle
President

JHA:SJJ

c: Mr. Eric J. Leeds
Mr. Cornelius F. Holden

'90 JUN 18 P5:37

5/29/90

Honorable Commissioners

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BRANCH

I agree totally with everything you say that operators shall not be allowed to operate while under the influence of alcohol and other illegal drugs. However I can see nothing in the proposed rule that changes the consequences of the present Fitness for Duty violations.

I would like to comment on four Items in the Supplementary Information: Background.

Paragraph 2

Proposing to add specific conditions to operators licenses issued under 10 CFR 55 to make Fitness - for - Duty requirements directly applicable to those operators.

Response 1

In your enforcement policy you state you may issue an order to suspend, modify, or revoke the license. How is this any worse then having my plant access removed, which essentially makes me unemployed. This seems to make Fitness for Duty pretty directly applicable to licensed operators. The enforcement action should be equal for all nuclear workers. This does not mean singling out one group for extra enforcement just because they hold an Operator license.

Paragraph 4

This rule making is intended to make it clear to all licensed operators through a condition of their license that use of drugs or alcohol in any manner which could adversely affect performance of licensed duties would subject them to enforcement action.

Response 2

Licensed Operators are already subject to enforcement action. If I receive a confirmed positive test during random drug testing, or when suspected of drug use, my unrestricted access is removed, and once again I'm unemployed. It sounds more like an advertizing, or marketing problem if your intent is to make it clear that a illegal drug user will not be allowed to operate a nuclear power plant. I can not speak for other facilities, but at Point Beach Nuclear Plant, management has made it very clear what there position on illegal drug use is.

Paragraph 5

Enforcement maybe taken regarding issues of trustworthiness, reliability, sound judgment, integrity, competence, Fitness for Duty, or other matters that may not necessarily be violation of specific Commission requirements.

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Response 3

The issues of trustworthiness, reliability, and integrity, are monitored on a continuing basis. I feel that this facility has demonstrated that they will take action if any are compromised. Sound judgment, and competence, are tested on an annual basis through license requal exams. The catch all phrase at the end of the sentence seems to give the commission a blank check to apply enforcement actions when ever they feel the intent of the rule is met. The phrase is just too vague.

Paragraph 6

Rule is not intended to apply enforcement sanctions against operators for their proper use of legal over the counter prescription drugs, but to require the reporting of such drug use, or medical condition requiring the use of drugs, to the facility licensee.

Response 4

The reporting of legal prescription drug use is required already. If not reported, it can be conceived as falsifying documents. It is also reported on the biannual physicals, which can be reviewed any time. They are also written down if you are randomly selected for drug testing.

The rule seems to single out one group of workers for extra enforcement, simply because they hold a license. However the rule does nothing that's not already being done. This rule would simply add more paperwork with no real benefit. I therefore oppose its enactment.

Sincerely,

Richard Varga

Richard Varga
Reactor Operator

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Response 3

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Sincerely,



Richard Varga
Reactor Operator

LOCAL UNION 2150, IBEW

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

6227 W. Greenfield Avenue

West Allis, Wisconsin 53214

414-774-1190

FAX 414-774-1619

715-423-3200

RICHARD C. DARLING

Business Manager

'90 JUN 18 P5:35

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

May 16, 1990

Secretary
U.S. Nuclear Regulatory Commission
ATTN: Docketing & Services Branch
Washington, D.C. 20005

Dear Sir or Madam;

The purpose of this letter is to comment on the April 17, 1990 proposed rule change to 10CFR Part 55, and the modification of the Commissions Enforcement Policy.

I view this proposed rule change as unnecessary and repetitive of 10CFR Part 26 which was promulgated by the NRC around January 1, 1990.

Licensees authorized to operate a nuclear power plant are subject to compliance with 10CFR Part 26 and the following provisions of this rule would be a repeat to what has been proposed in 10CFR Part 55.

1. General Performance Objectives 26.10 (a), (b), and (c).
2. Program Elements and Procedures 26.20 (a) (1) (2), (b), (c), (d), (e).
3. Management actions and sanctions to be imposed 26.27 (a), (b), (1) (2) (3) (4).

Under the 10CFR Part 26, 26.70 the Commission maintains the right to inspect and scrutinize licensee policies to insure compliance.

The Fitness for Duty Policy requires removal of unescorted access to a varying degree depending on the number of times the employee tested positive. The removal of unescorted access is virtually the same as that sought after in the proposed change to the Commissions Enforcement Policy. Removal of unescorted access should be considered just as severe a consequence to an operator as would be revocation of his license.

Can the Commission really justify the change to 10CFR Part 55 when there is already an effective policy in place? Operators can very well view promulgation of such a rule as unjustified harassment.

Therefore, I request that the Commission consider any change to 10CFR Part 55 or to the Commissions Enforcement Policy as unnecessary, and recognize the fact that the Fitness for Duty Policy already provides the necessary components to assure a safe operational environment for the performance of all licensed activities.

Respectfully submitted,

Daniel Sherman

Daniel Sherman
Business Representative
Local Union 2150, IBEW

sf/oepiu/local 9

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FEB 12 1991



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Larry T. Lindstrom
11798 Blue Bonnett Court
Monrovia, MD. 21770

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June 16, 1990 **JUN 18 P5:31**

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


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Subject: Proposed changes to 10CFR55

Dear Mr. Secretary,
The proposed changes to 10CFR55 raise several concerns.

1. Does the research conducted for the Commission as presented in NUREG/CR-5227 (FITNESS FOR DUTY IN THE NUCLEAR INDUSTRY: A REVIEW OF TECHNICAL ISSUES) form the bases for the regulations 10CFR26, and subsequently, proposed changes to 10CFR55?
2. There is no evidence provided in that report to confirm the presumption that therapeutic doses of, otherwise legal, over-the-counter (OTC) medications exceed debilitating levels in the average individual. Reference is made to a Moore¹ report which investigated abuses of OTC medications and to a Blum² report on abusable drugs. Should legal uses of OTC medications subject Reactor Operators, exclusively, to penalties?
3. Does "under the influence" encompass caffeine and nicotine from coffee and cigarettes? Studies have proven that withdrawal from these substances can be more debilitating than many of those used in OTC medications and of specific concern to the Commission.
4. Why are licensed Operators of non-power facilities included in the proposed changes without "another Public hearing", contrary to promises made by the NRC to that community?
5. Why has the NRC exempted itself from the regulations of 10CFR26? Are other federal nuclear facilities (i. e. Dept. of Energy, Dept. of Commerce, and AFRRI reactors) also exempt due to compliance with fitness for duty policies of those agencies?

Sincerely:



Larry T. Lindstrom

¹ Moore, D. F. (1983) Substance abuse: pharmacologic, developmental, and clinical perspectives (pp. 102-109). New York: John Wiley and Sons.

² Blum, B. (1984) Handbook of abusable drugs. New York: Gardner Press, Inc.

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(55FR14288)

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3
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DEPARTMENT OF NUCLEAR ENGINEERING
& ENGINEERING PHYSICS

April 27, 1990

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Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Docketing and Services Branch

University of Virginia
Reactor Facility
Charlottesville, VA 22903-2442
804-924-7136 FAX 804-982-2634

Re: Proposed Fitness-for-Duty Rule

Gentlemen:

We are submitting our comments regarding the proposed "Fitness-for-Duty Program" NRC rulemaking in our capacity as managers of the University of Virginia Reactor Facility. We will address the proposed rule only from the viewpoint of its applicability and suitability to non-power research reactors (NPR'S), especially those located in an academic environment, such as ours.

The good intentions that motivate the Commission to propose this rule are appreciated. We share the ideal that all illegal and/or unwarranted drug use/abuse be eliminated, worldwide. Nevertheless, the rule should not be adopted as currently worded because the requirement for fitness-for-duty programs at non-power reactors is both unnecessary and onerous.

We are aware that the NRC staff believes that subtle or marginal impairment, due to drug or alcohol use, is difficult for supervisors to detect and, therefore, that drug testing is a necessity. We strongly disagree with this viewpoint as it concerns NPR's. Research reactor staff tend to be small, numbering less than about a dozen operators. Due to the research purpose of the reactors, staff members are well-educated, conscientious and disciplined individuals; and because of small staff size, managers and operators have very close working relationships. In such a setting, it is near impossible for an employee's eventual alcohol or drug abuse problem not to be quickly perceived by management and colleagues, even in the absence of medical tests.

In the event that drug abuse would be discovered at a NPR, management can and would withdraw an employee from duty and notify the regulatory authorities. Such situations should be handled as a matter of common-sense and internal policy, and overprescriptive additional federal regulation is not warranted. To our knowledge, drug abuse involving on-duty non-power reactor operators has never been documented. Temporary disabilities due to medication for illnesses are currently handled as a matter of internal policy. The operators self-report and are temporarily reassigned to non-safety related work.

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(page 2, cont.)

Contrary to NRC opinion, the development and maintenance of a fitness-for-duty program by a small staff is much too onerous! This is especially so when seen against the backdrop of the many additional regulatory requirements which have been imposed on NPR's by the NRC in recent years. The program would add yet another layer of training, testing, evaluation and documentation. Additional NRC compliance inspections would ensue.

Research reactor staff already are hard-pressed, after performing surveillance, maintenance, repairs, training, requalification, audits, reviews, documentation etc... to find time to devise and setup experiments, and operate the reactor. University administrations are chaffing at the high cost of maintaining research reactors in operation. Additional regulatory requirements will make the situation unbearable. Compared to power reactors, there is no possibility for university operators to pass on the added cost of regulation to their customers base, since the product "sold" is "research", not energy.

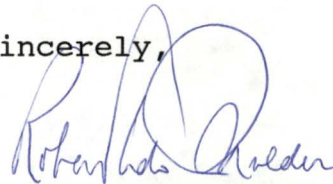
In its deliberations, consideration should be given by the Commission to the special nature of academic institutions. It is doubtful that a unit of our state supported University could unilaterally establish its own particular alcohol and drug testing program. Specifically, we at NPR's would be very troubled by the implementation aspects of the proposed rule, especially as regards the establishment of cutoff (threshold) levels for very many substances, and on what actions or perceptions to base a requirement for an employee to be tested. (It should be realized that the medical review officers required by the proposed rule are not available at research reactors!) The implantation of such programs is a sensitive issue requiring careful consideration of employees' constitutional and institutional rights. Drug testing program constitutionality appeals to the U.S. Supreme Court are certainly going to be made. It would be wise to hold this rule in abeyance until a high court ruling is made.

The popularity of drug testing proposals does not rest with federal agencies alone. It is recognized that given the present national determination to eliminate drug abuse, a drug testing program could be eventually be proposed and adopted for Va. state institutions. If and when, such a program would be university-wide and have the necessary political and material support to be successfully adopted by us. Again, such an eventuality also would dispense with the proposed rule.


(page 3, cont.)

The aspects of the proposed rule that we object to are related to the requirement for drug testing programs to be enacted at NPR's. Other sections of the proposed rule are acceptable. We do not oppose the Commission in its wish to add specific conditions to operator licenses and to make drug-free requirements directly applicable to reactor operators. We also believe that it is appropriate for operators to be made aware of their responsibility to pro-actively notify reactor management of drug impairment and prescription use. However, a formal drug testing program should not be required at NPR's. Therefore, we strongly urge that the last sentence in §55.53(k) be dropped.

Sincerely,



Robert U. Mulder, Director
U.Va. Reactor Facility



J. Preston Farrar
Reactor Administrator



Paul E. Benneche
Reactor Supervisor

OCAW

Oil, Chemical & Atomic Workers
International Union, AFL-CIO

DOCKET NUMBER
PROPOSED RULE PR 55



(55 FR 14288)

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Anthony Mazzocchi, Secretary-Treasurer
L. Calvin Moore, Vice President
Robert E. Wages, Vice President
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303/987-2229
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Facsimile: 303/987-1967

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90 JUN 11 P2:24

Legal Department

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John McKendree
General Counsel
Velveta Golightly-Howell
Trial & EEO Counsel
Kathleen A. Hostetler
Staff Attorney

June 8, 1990

Secretary
U.S. Nuclear Regulatory Commission
Attn: Docketing and Service Branch
Washington, D.C. 20555

Re: Proposed Rule: Operator's Licenses,
10 C.F.R. Part 55

Dear Sir:

Oil, Chemical and Atomic Workers International Union ("OCAWIU"), appreciates this opportunity to comment on the Nuclear Regulatory Commission's advance notice of proposed rule making which appeared on page 14288 of the Tuesday, April 17, 1990, FEDERAL REGISTER.

By this rule, the Commission proposes to amend 10 C.F.R. Part 55 by specifying that the conditions and cutoff levels established pursuant to the Commission's Fitness for Duty Programs, 10 C.F.R. Part 26, are applicable to licensed operators as a condition of their license. Mr. Dean Alexander, Assistant to the President, submitted comments on behalf of OCAWIU to the Commission's advance notice of proposed rule making for Part 26 on the 18th of November, 1988. Because the Commission proposes to apply Part 26 to licensed operators as a condition of their license, 10 C.F.R. Part 55, OCAWIU believes it is necessary to reiterate its comments below.

For over 70 years, OCAWIU has represented approximately 110,000 workers in oil, chemical and atomic industries located in all fifty states. Of specific interest, OCAWIU represents workers in nuclear power plants in Tennessee, Washington, Ohio, Idaho, New York, Kentucky, New Jersey and Pennsylvania. It is the policy of the Oil, Chemical and Atomic Workers International Union to secure the natural right of its members and workers it represents to the full enjoyment of the wealth created by their labor and to protect such labor's asset value to the employee and the employer from unreasonable, improper or unlawful intrusion by the employer and others.



FEB 12 1991

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Secretary
U.S. Nuclear Regulatory Commission
June 8, 1990
Page 2

It is the objective of OCAWIU to establish and maintain collective bargaining for the benefit of workers and, in pursuance of such objectives to ensure just working conditions of employees conducive to safety, good health and full enjoyment of life. In furtherance of these objectives, it is the policy of the International Union to ensure that employees are secure in their persons, houses, papers and effects against unreasonable searches and seizures at the workplace without reasonable cause being demonstrated for intrusion into such rights. Additionally, the International Union is vigilant in its protection of workers' rights against unwarranted employer intrusion into the employee's lives away from the workplace, and maintenance of each worker's individual right of privacy, unless it can be demonstrated by clear, objective evidence that any such worker's conduct impairs the worker's job performance.

The OCAWIU is proud of its heritage of being the foremost proponent of safety and health in the workplace. Accordingly, OCAWIU submits the following comments based upon the principle of ensuring the protection of employee health and safety on the job site, for your consideration.

The OCAWIU does not condone employee possession, use or trafficking in illegal drugs at the workplace or on company premises and acknowledges that employee use, possession or trafficking in controlled substances or other illegal drugs subjects employees to disciplinary action. This statement of general principles shall not be construed to mean that employees who use, possess or traffic in controlled substances or illegal drugs at the workplace or on company premises lose their status of being entitled to administration of discipline with due process in the administration of discipline, application of principles of progressive discipline and shall not be interpreted in a manner so as to deny such employee the right to reasonable rehabilitation and medical services prior to termination.

The OCAWIU does not believe it is the responsibility, obligation or right of an employer or a union to attempt to utilize the workplace or employment tenure as a tool to control or interfere with employee actions away from the workplace where there is no job or task impairment at the workplace by such conduct.

The problem of drug abuse facing modern American society as it impacts upon the jurisdiction of OCAWIU can best be resolved through the process of collective bargaining. The following minimum requirements must be ensured in any reasonable program

relating to controlled substances or illegal drugs:

1. The protection of safety and health at the workplace, the right of privacy, medical confidentiality and protection of employees from the interference with non-job related conduct is the foundation of any reasonable abuse program.

2. A reasonable program must recognize that a drug testing program is a condition of employment and, therefore, is a mandatory subject of bargaining between the employer and the Union together with any proposed changes in the future. There can be no unilateral mid-contract changes in any employer program without notice to and bargaining with the Union upon demand.

3. OCAWIU continues to be unalterably opposed to any form of random testing of employees in a program. The basis for testing any employee must be on a reasonable, objective, "probable cause" evidence based upon job performance. When the employer believes an individual should be tested, the proper steward or other appropriate Union representative shall be present to assist the employee at all times.

4. Programs that attempt to dictate what employees do on their own time, away from the job, are not acceptable--unless such activities affect an employee's job performance.

5. Any test conducted must meet basic standards, i.e. the circumstances surrounding the taking of the sample must be reasonably designed to protect the principles discussed in this policy. The sample should be properly maintained to ensure the chain of custody and the avoidance of tampering or mislabeling.

6. The qualifications of the testing laboratories must meet criteria established by mutual agreement of the parties.

Additionally, the Union or the employee must have the right, upon request or demand, to have a separate test made of the divided sample at a laboratory of equal qualifications.

7. Medical confidentiality must be maintained at each and every stage of employee involvement including being expressly set forth in any forms designed for employee consent for urine and other samples and all authorizations for release of medical information must be limited strictly to health care professionals. This protection of medical confidentiality includes protection from disclosure to other medical health professionals of diseases or medication. Employees should not be required to divulge a complete list of all drugs which they are taking or diseases which they may have until the drug test is positive. At that point in time, the employee shall be given the opportunity to notify company health care professionals (and establish with independent corroborative evidence) of the medication the employee was taking which may have affected the results of the test.

8. Screening or testing programs must be "coupled" with an EAP program to offer employees rehabilitation at the employer's expense. Employees should have the option of electing an EAP of their own choice if it is a certified program. Rehabilitation, when accepted by an employee, shall replace discipline.

9. At each and every stage of the program, employees or the Union shall be accorded those rights of Union representation, access to the grievance procedure and, if required, arbitration.

10. Trace levels of a drug should not result in application of the drug program. The determination of whether or not the program is to be applied to an employee after objective

evidence demonstrates probable cause should be the level of toxicity as set forth below. No employee should be subjected to any aspects of the program because of the use of medication for legitimate reasons.

11. The OCAWIU believes that the following levels of toxicity are reasonable and should be utilized as minimum guidelines:

Amphetamines (dextro-amphetamines, methamphetamine and phentermine): Between 3 and 10 micrograms per mil

Barbiturates (secobarbital, amobarbital, butabarbital, pentobarbital, phenobarbital): Between 20 and 60 micrograms per mil

Benzodiazepines (diazepam, desmethyldiazepam, chlordiazepoxide, oxazepam): Between 10 to 30 micrograms per mil

Benzoylecgonine:
Between 6 and 60 micrograms per mil

Cannabinoids:
Between 100 and 150 nanograms per mil

Methadone:
3 to 10 micrograms per mil

Methaqualone:
50 Micrograms per mil

Opiates:
Morphine: 3 micrograms per mil

Codeine: 10 micrograms per mil
Phencyclidine: between 0.6 and 6 micrograms per mil

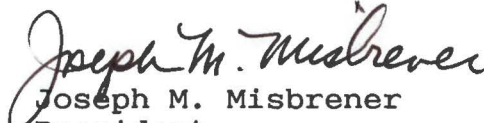
12. The program must, of course, ensure that in the administration of discipline principles of due process, progressive discipline and fairness in the administration of discipline applies at every stage. At the heart of the program should be the mutual objective of the

Secretary
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employer and the Union to ensure that employees are secure in their persons and effects against unreasonable searches and seizures at the workplace without reasonable cause being demonstrated for intrusion into employees' lives away from the workplace and the maintenance for each employee of his or her individual right of privacy unless it can be demonstrated by clear and objective evidence that worker's conduct of alleged drug use or possession or trafficking impairs the worker's job performance.

To the extent that the Commission's proposed rules for licensed operators comport with the above requirements, OCAWIU has no objection to their enactment. OCAWIU appreciates this opportunity to respond.

Very truly yours,


Joseph M. Misbrener
President

KAH:sdv
cc: Dean Alexander, Assistant to the President

DOCKET NUMBER
PROPOSED RULE **PR 55**

DOCKETED
USNRC

(55 FR 14288)

①

'90 MAY 24 P1:57

May 20, 1990

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

5801 Sunset Blvd.
Ft. Pierce, FL 34982

Secretary
Docketing and Services Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Sir:

I wish to make comments on the proposed rule, as written in the Federal Register, April 17, 1990, Volume 55, pages 14288 through 14290, concerning Operator's Licenses.

My experience in the nuclear power industry includes six years in the Naval Submarine Service and nine years at commercial facilities. I have held a license for six and one-half years, five of which a senior operator's license.

This proposed rule causes me great distress for several reasons, and I am not sure what the NRC hopes to gain from it. The NRC has successfully implemented its fitness for duty policy, a policy that I very much favor and support. However; I get the impression that the NRC is not satisfied, and won't be satisfied, until some blood is spilled by the firing or resignation of a certain number of licensed operators throughout the country.

If enacted as written, this rule will result in many licensed operators forced to give up their licenses, and deny many more capable individuals the privilege of obtaining a license in the future.

Has the commission considered that at any given moment, any licensed operator could be "...under the influence of any prescription or over-the-counter drug which could adversely affect his or her ability to safely and competently perform licensed duties..." or "... use of drugs or alcohol in any manner which could adversely affect performance of licensed duties..." simply because he may have a common cold?

The commission writes of enforcement actions. When is this to be determined? Does the commission wait until after something has gone wrong, then make their determination that an operator was under the influence of prescription or over-the-counter drugs which may have affected performance?

JAN 25 1991

Acknowledged by card.....

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What specifically does the commission mean by "under the influence", "could adversely affect", and "in any manner"? The wording of this proposed rule is nebulous enough that what may be acceptable for one occasion is not for another, search for the cause of plant malfunction will include substance testing and subsequent enforcement action even though the use of drugs may be unrelated to the incident, and denial of license or renewal can become very subjective and non-uniform in its application throughout the country.

How are "influential" drugs to be determined? Will the commission include all drugs, or does that become subjective also? Will some drugs be acceptable solely because they are commonplace in society? Two drugs that specifically come to mind are caffeine and nicotine. It certainly can not be denied that many individuals are under the influence and addicted to these two drugs. If denied the use of these drugs many individuals simply can not function, and their performance is adversely affected. I am sure there are employees of the NRC who had a hand in drafting this proposed rule that are addicted to these two drugs. Yet, an individual who suffers from a common ailment may be subject to enforcement actions or denial of licensing simply because he used a prescription or over-the-counter drug that has equal or less severe side effects as caffeine or nicotine withdrawal symptoms.

This proposed rule goes far beyond whatever was intended, or should have been intended, by the fitness for duty rule. This rule will strip many people of their livelihood simply because they suffer from common ailments such as diabetes, arthritis, hay fever, allergies, hypertension, peptic ulcers, etc., etc.

I am convinced that until the NRC begins to relax some of its suffocating restraints and discontinues its propensity for expanding the boundaries of existing regulations, the United States has built its last commercial nuclear reactor.

Respectfully,



Robert F. Czachor
SOP 20289-2

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NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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PR-55 (55FR14288)

NRC FORM 41
(7-87)

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

We have received your 5/20/90 correspondence regarding the Federal Register Notice referred to on the reverse side. Please be advised that your comment has been placed in the official docket, & is being considered by the Commission in reaching a decision on this matter. We regret that inadvertently your correspondence was not acknowledged earlier.

Thank you for your interest.

Docketing & Service Branch
Office of the Secretary
of the Commission

mailed
11/25/91 E.J.J.

DOCKET NUMBER
PROPOSED RULE **PR 55**
(55 FR 14288)

DOCKETED
USNRC

[7590-01]

'90 APR 13 P6:37

NUCLEAR REGULATORY COMMISSION
10 CFR PART 55
RIN 3150-AD 55
Operators' Licenses

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations specifying that the conditions and cutoff levels established pursuant to the Commission's "Fitness-for-Duty Programs," are applicable to licensed operators as a condition of their license. The proposed rule would provide a basis for taking enforcement actions against licensed operators who use drugs or alcohol in a manner that would exceed the cutoff levels contained in the Fitness-for-Duty rule, who are under the influence of any prescription or over-the-counter drug which could adversely affect his or her ability to safely and competently perform licensed duties, or who sell, use, or possess illegal drugs.

The proposed rule would assure a safe operational environment for the performance of all licensed activities by providing a clear understanding to licensed operators of the severity of violating requirements governing drug and alcohol use and of the impact of substance abuse.

DATES: The comment period expires July 2, 1990.

Comments received after this date will be considered if it is practicable to do so, but assurance of consideration can be given only for comments filed on or before that date.

pub. 4/17/90

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Services Branch. Deliver comments to Docketing and Services Branch, One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:45 am and 4:15 pm Federal Workdays. Examine comments received at: The NRC Public Document Room, 2120 L Street NW. Lower Level, Washington, DC. 20555.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Perkins, Jr., Chief, Operator Licensing Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-1031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 7, 1989 (54 FR 24468) the Nuclear Regulatory Commission issued a new 10 CFR Part 26 entitled Fitness-for-Duty Program to require licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program. The general objective of this program is to provide reasonable assurance that nuclear power plant personnel will perform their tasks in a reliable and trustworthy manner, and not under the influence of any prescription, over-the-counter or illegal substance which in any way adversely affects their ability to safely and competently perform their duties. A fitness-for-duty program developed under the requirements of this rule is

intended to create a work environment which is free of drugs and alcohol and the effects of these substances.

The Commission is now proposing to add specific conditions to operator licenses issued under 10 CFR Part 55 to make fitness-for-duty requirements directly applicable to these operators. As pointed out in the supplementary information accompanying the promulgation of 10 CFR Part 26, the scientific evidence is conclusive that significant decrements in cognitive and physical task performance result from intoxication due to illicit drug abuse, as well as the use and misuse of prescription and over-the-counter drugs. Given the addictive and impairing nature of certain drugs, while recognizing that the presence of drug metabolites does not necessarily relate directly to a current impaired state, the presence of drugs in an individual's system does strongly suggest the likelihood of past, present, or future impairment affecting job activities. More specifically, the Commission stated that "Individuals who are not reliable and trustworthy, under the influence of any substance, or mentally or physically impaired in any way that adversely affects their ability to safely and competently perform their duties, shall not be licensed or permitted to perform responsible health and safety functions." (See 54 FR 24468, June 7, 1989). Because there is an underlying assumption that operators will abide by the licensee's policies and procedures, any involvement with illegal drugs, whether on site or off site, tends to show that the operator cannot be relied upon to obey the requirements of the law and indicates that the individual may not scrupulously follow rigorous procedural requirements with the integrity required in the nuclear power industry to assure public health and safety.

The Commission considers unimpaired job performance by each licensed Operator or Senior Operator vital in assuring safe facility operation. The NRC routinely denies Part 55 license applications or conditions operator and senior operator licenses if the applicant or licensee's medical condition or general health does not meet the minimum standards required for the safe performance of assigned job duties. Further, under 10 CFR §55.25 if an operator develops, during the term of his or her license, a physical or mental condition that causes the operator to fail to meet the requirements for medical fitness, the facility licensee is required to notify the NRC. These conditions may result in the individual operator's license being modified, suspended, or revoked. The power reactor facility licensee is further required, under §26.20(a) to have written policies and procedures that address fitness-for-duty requirements for abuse of prescription and over-the-counter drugs and other factors that could affect fitness-for-duty such as mental stress, fatigue and illness.

To be consistent with this proposed rule, the Commission expects that these policies and procedures will require the Part 55 licensee to report the use of these drugs for evaluation by the medical review officer.

The use of alcohol and drugs can directly impair job performance. Other causes of impairment include use of prescription and over-the-counter medications, emotional and mental stress, fatigue, illness, and physical and psychological impairments. The effects of alcohol, which is a drug, are well known and

documented and, therefore, are not repeated here. Drugs such as marijuana, sedatives, hallucinogens, and high doses of stimulants could adversely affect an employee's ability to correctly judge situations and make decisions (NUREG/CR-3196, "Drug and Alcohol Abuse: The Bases for Employee Assistance Programs in the Nuclear Industry," available from the National Technical Information Service). The greatest impairment occurs shortly after use or abuse, and the negative short-term effects on human performance (including subtle or marginal impairments that are difficult for a supervisor to detect) can last for several hours or days. The proposed amendment to 10 CFR Part 55 would establish a new condition of an operator's license which will prohibit conduct of licensed duties while under the influence of alcohol or any prescription, over-the-counter or illegal substance which would adversely affect performance of licensed duties. The proposed amendment would be applicable to both power and non-power reactor licensed operators. This rulemaking is not intended to apply the provisions of 10 CFR Part 26 to non-power facility licensees, but to make it clear to all licensed reactor operators (power and non-power) through a condition of their license that use of drugs or alcohol in any manner which could adversely affect performance of licensed duties would subject them to enforcement action.

As explained in the Commission's Enforcement Policy (see 53 FR 40027, October 13, 1988), the Commission may take enforcement action where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The Commission may take

enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, enforcement action may be taken regarding matters that raise issues of trustworthiness, reliability, use of sound judgment, integrity, competence, fitness-for-duty, or other matters that may not necessarily be a violation of specific Commission requirements.

The Commission proposes to amend Subpart F of 10 CFR Part 55 to establish as a condition of an operator's license a provision precluding performance of licensed duties while under the influence of drugs or alcohol in any manner which could adversely affect performance. The Commission further proposes to amend Subpart G of 10 CFR Part 55 to provide explicit additional notice of the terms and conditions under which a license may be revoked, suspended or modified. In addition, positive test results and failures to participate in drug and alcohol testing programs may be considered in making decisions concerning renewal of a Part 55 license. These provisions would apply to any Fitness-for-Duty program established by a facility licensee, whether or not required by Commission regulations, including programs which establish cutoff levels below those set by 10 CFR Part 26, Appendix A requirements. The Commission notes, however, that it has the discretion to forego enforcement action against a licensed operator if the facility licensee established cutoff levels that are so low as to be unreasonable in terms of the uncertainties of testing. The Commission has reserved the right to review facility licensee programs against the performance objectives of 10 CFR Part 26, which requires reasonable detection measures. The proposed rule is not intended to impose

the provisions of 10 CFR Part 26 (Fitness-for-Duty) on non-power facility licensees, but is to make compliance with the cutoff levels and the policy and procedures regarding the use of legal drugs established pursuant to 10 CFR Part 26 a license condition for all 10 CFR Part 55 licensees. Further, the proposed rule is not intended to apply enforcement sanctions against operators or senior operators for their proper use of legal over-the-counter or prescription drugs, but to require the reporting of such drug use, or medical conditions requiring the use of drugs, to the facility licensee in order for a medical review officer to determine the operator's fitness-for-duty.

If the proposed rule is adopted as a final rule and becomes effective, licensed operators will be subject to notices of violation, civil penalties or orders for violation of this condition. Therefore, in addition to amending the regulations to establish the 10 CFR Part 55 licensee's obligations, the Commission intends to modify the NRC Enforcement Policy in conjunction with the final rule-making. It is the Commission's intention to modify the Enforcement Policy as follows:

In cases involving a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a notice of violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify or revoke the license. These actions may be taken the first time an individual who fails a drug or alcohol test, i.e., exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's

cutoff levels if lower. In addition, the NRC will, at a minimum, issue an order to suspend the Part 55 license for up to 3 years the second time the individual exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual license, NRC may consider not renewing the individual license or issuance of a new license until the 3 year period is completed. The NRC will issue an order to revoke the Part 55 license the third time an individual exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug may be subject to license suspension, revocation, or denial.

To assist in determining the severity levels of potential violations, Supplement I would be modified to provide an example at Severity Level I of a licensed operator performing duties while unfit and an example at Severity Level III of a licensed operator's initial failure of a drug or alcohol test.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The regulations in 10 CFR Part 55 establish procedures and criteria for the issuance of licenses to Operators and Senior Operators of utilization facilities licensed pursuant to the Atomic Energy Act of 1954, as amended, or Section 202 of the Energy Reorganization Act of 1974, as amended, and 10 CFR Part 50. These established procedures provide for the terms and conditions upon which the Commission will issue, modify, maintain, and renew Operator and Senior Operator licenses.

Subpart F of Part 55, under §55.53 ("Conditions of Licenses"), sets forth the requirements and conditions for the maintenance of Operator and Senior Operator licenses.

This proposed rule only serves to notify the 10 CFR Part 55 operator and senior operator of the conditions they are required to comply with under Part 26, Fitness-for-Duty Program. A regulatory analysis for compliance with the conditions

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 55

Criminal penalty, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements

For the reasons set out 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. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 55.

PART 55 - OPERATORS' LICENSES

1. The authority citation for Part 55 is revised to read as follows:

AUTHORITY: Secs. 107, 161, 182, 68 Stat. 939, 948 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201,

and cut-off levels, that examines the costs and benefits of the alternatives considered by the Commission, has been prepared for the final rule resulting in the promulgation of Part 26 and is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C. The Commission had previously requested public comment on the regulatory analysis as part of the rulemaking proceeding that resulted in the adoption of Part 26.

Regulatory Flexibility Certification

The proposed rule will not have a significant economic impact upon a substantial number of small entities. Many operator license applicants or operator licensees fall within the definition of small businesses found in Section 34 of the Small Business Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121, or the NRC's size standards published December 9, 1985 (50 FR 50241). The proposed rule will only serve to provide notice to licensed individuals of the conditions under which they are expected to perform their licensed duties.

Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45 and 55.59 also issued under sec. 306, Pub. L. 97-425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 55.3, 55.21, 55.49 and 55.53 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 55.9, 55.23, 55.25, and 55.53(f) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In §55.53, paragraph (j) is redesignated as paragraph (l) and new paragraphs (j) and (k) are added to read as follows:

§55.53 Conditions of licenses.

* * * * *

- (j) The licensee shall not consume or ingest alcohol within the protected area of power reactors, or the controlled access area of non-power reactors. The licensee shall not use, possess, or

sell any illegal drugs. The licensee shall not perform activities authorized by a license issued under this part while under the influence of alcohol or any prescription, over-the-counter or illegal substance which could adversely affect his or her ability to safely and competently perform his or her licensed duties. For the purpose of this paragraph, with respect to alcohol and illegal drugs, the term "under the influence" means the licensee exceeded the lower of the cutoff levels for drugs or alcohol contained in 10 CFR Part 26, Appendix A, of this chapter, or as established by the facility licensee. With respect to prescription and over-the-counter drugs, the term "under the influence" means the licensee could be mentally or physically impaired, as determined by a medical review officer, in such a manner as to adversely affect his or her ability to safely and competently perform licensed duties.

- (k) The licensee at power reactors shall participate in the drug and alcohol testing programs established pursuant to 10 CFR Part 26. The licensee at non-power reactors shall participate in any drug and alcohol testing program that may be established for that non-power facility.

* * * * *

3. In §55.61, a new paragraph (b)(5) is added to read as follows:

§55.61 Modification and revocation of licenses.


* * * * *

(b) * * *

(5) For the sale, use or possession of illegal drugs, or refusal to participate in the facility drug and alcohol testing program, or a confirmed positive test for drugs, drug metabolites or alcohol in violation of the conditions and cutoff levels established by §55.53 (j) of this part, or use of alcohol within the protected area of power reactors or the controlled access area of non-power reactors, or a determination of unfitness for scheduled work due to the consumption of alcohol.

Dated at Rockville, Maryland, this 11th day of April, 1990.

For the Nuclear Regulatory Commission,



Samuel J. Chilk,

Secretary of the Commission.