

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

March 13, 1990

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-90-54 - PROPOSED REVISION OF 10 CFR
PART 55 TO REQUIRE COMPLIANCE WITH FITNESS-
FOR-DUTY PROGRAMS AND CONFORMING MODIFICATION
TO COMMISSION'S ENFORCEMENT POLICY

This is to advise you that the Commission (with all Commissioners agreeing) has approved the proposed rule subject to incorporating the attached editorial comments.

The Federal Register notice should be revised as noted, reviewed by the Regulatory Publications Branch, ADM, and returned for signature and publication.

(EDO) (SECY SUSPENSE: 4/9/90)

cc: Chairman Carr
Commissioner Roberts
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
OGC

NOTE: THIS SRM AND THE SUBJECT SECY PAPER WILL BE MADE PUBLICLY
AVAILABLE UPON PUBLICATION OF THE FEDERAL REGISTER NOTICE.

Agency: Nuclear Regulatory Commission.

Action: Proposed Rule.

Summary: The Nuclear Regulatory Commission proposes to amend its regulations so that the conditions and cutoff levels established pursuant to 10 CFR Part 26, "Fitness-for-Duty Programs," become applicable to licensed operators as a condition of their license. The proposed rule will 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, 10 CFR Part 26, 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.

On June 7, 1989, the Commission issued a new part to its regulations, Part 26, "Fitness-for-Duty Programs," requiring facility licensees authorized to operate nuclear power reactors to implement a Fitness-for-Duty Program that would provide reasonable assurance that nuclear power plant personnel are not under the influence of any prescription, over-the-counter or illegal substance that in any way would adversely affect their ability to safely perform their job duties.

The proposed revision to Part 55 will assure a safe operational environment for the performance of all licensed activities under that part 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 [insert date 60 days from date of Federal Register publication]. 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.

Addresses: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Services Branch. Hand deliver comments to Docketing and Services Branch, One White Flint North, 11555 Rockville Pike, Rockville, MD, between 8:15 a.m. and 5:00 p.m.

Examine comments received at: The NRC Public Document Room, 2120 L Street NW., Washington, DC.

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:

The Nuclear Regulatory Commission has issued its regulations 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 such 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 such operators. As pointed out in the supplementary information accompanying the promulgation of 10 CFR Part 26, (54 FR 24468), 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 individual does strongly suggest the likelihood of past, present, or future impairment affecting job activities. More specifically, the Commission stated that, who are not reliable and trustworthy, under the influence of any substance, or mentally or physically impaired in any way that adversely effects 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, 24493. 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 have 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. Such conditions may result in the individual operator's license begin modified, suspended, or revoked. The power reactor facility licensee is further required, under 10 CFR §26.20(a) of 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 such 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 can last for several hour or days. The proposed amendment to 10 CFR Part 55 will 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 to Part 55 will be applicable to both 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 will 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 questions 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 will 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 Appendix A, 10 CFR Part 26. 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 Part 26 a license condition for all part 55 licensees. Further, the proposed rule is not intended to apply enforcement sanctions against operations 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.

When the amended rule becomes effective, licensed operators will be subject to notice of violation, civil penalties or order for violation of this condition. Therefore, in addition to amending the regulations to establish the Part 55 licensee's obligations, the Commission intends to modify the NRC Enforcement Policy in conjunction with the final rulemaking. 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 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 Review

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.

Amending Subpart F to prohibit performance of licensed duties while under the influence of drugs or alcohol a manner which could adversely affect safe and competent performance of licensed duties will provide notice to licensed individuals of the gravity of violating these requirements and will provide assurance that nuclear facilities are being operated safely.

Amending Subpart G to provide explicit additional notice to licensed operators of the terms and conditions under which a license may be revoked, suspended or modified will describe circumstances in which enforcement action will be taken and the penalty for violating the conditions or cutoff levels contained in 10 CFR 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

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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 hereby certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

BACKFIT ANALYSTS

This proposed rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a nuclear reactor facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

List of Subjects in 10 CFR Part 55

Manpower training programs, Nuclear power plants and reactors, Penalty, Reporting and record-keeping 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: Sec. 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, 55.53(j), 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)).

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2. In §55.53, paragraph (j) is redesignated as paragraph (1) and new paragraphs (i) and (k) are added to read as follows:

55.53 Conditions of licenses.

* * * * *

(j) The licensee shall not consume 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 subsection, 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 Appendix A, Part 26, 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 on 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 o 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 section

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.

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Dated at Rockville, Maryland, this day of

For the Nuclear Regulatory Commission,

Samuel J. Chilk
Secretary of the Commission.