

April 24, 2001

Mr. Loren L. Bush, Jr.
7716 Falstaff Ct.
McLean, VA 22102

Dear Loren Bush:

I am responding to your letter of April 2, 2001, to Chairman Meserve of the Nuclear Regulatory Commission, in which you expressed your concern that a public health and safety issue could be caused by the deletion of a current requirement in Title 10, of the Code of Federal Regulations (CFR), Part 26, Fitness-For-Duty (FFD) Programs (i.e., §26.10(c)). Section 26.10(c) currently reads as follows: "Have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances."

The proposed final rule deletes the general performance objective in Section 26.10(c) that programs must "have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances" for two reasons. First, this performance objective is redundant to existing performance objectives (a) and (b) of the current rule, (which remain unchanged in the proposed final rule). These two performance objectives more directly relate to the Commission's regulatory purview, (i.e., assuring that workers are not impaired due to drugs and alcohol while performing their duties). Second, the term, "drug free" workplace in the deleted performance objective is ambiguous. Taken literally, a "drug-free" workplace could not be a valid NRC regulatory objective, since there are valid reasons for workers using over-the-counter and prescription drugs in the workplace, whereas there is no valid reason for workers using alcohol or illegal drugs in the workplace. The reasons for deleting Section 26.10(c) are provided in the Statements of Consideration and in Attachment F to SECY-00-0159.

NRC believes it would be inappropriate to handle your request to restore the language of 10 CFR 26.10(c) as a petition for rulemaking under the provisions of 10 CFR 2.802, because the proposed final rule has not yet been published. However, the staff is planning to meet with stakeholders in order to assess whether the proposed final rule should be withdrawn for further modification. The NRC will consider your concern about the deletion of the language in Section 26.10(c) as a comment on the proposed final rule, along with other comments that may be raised in a May 8, 2001, public meeting with stakeholders at NRC headquarters. If the Commission decides to proceed with deletion of the language in Section 26.10(c), the Commission's response to the issues raised in your letter will be included in the statement of consideration for the final rule, which will be published in the Federal Register.

L. L. Bush, Jr.

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Thank you for your insights on this matter relative to the proposed final rule. Please do not hesitate to contact Messrs. Garmon West (301-415-1044) or Brad Baxter (301-415-1088) of my staff regarding this issue.

Sincerely,

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

L. L. Bush, Jr.

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Thank you for your insights on this matter relative to the proposed final rule. Please do not hesitate to contact Messrs. Garmon West (301-415-1044) or Brad Baxter (301-415-1088) of my staff regarding this issue.

Sincerely,

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

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