PROPOSED RULE PR 26
(61FR21105)

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USNRC

Arizona Public Service

PALO VERDE NUCLEAR GENERATING STATION
P.O. BOX 52034 PHOENIX, ARIZONA 85072-2034

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August 7, 1996

WILLIAM L. STEWART
EXECUTIVE VICE PRESIDENT
NUCLEAR

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

U. S. Nuclear Regulatory Commission
Attention: Mr. John C. Hoyle, Secretary
Docketing and Service Branch
Washington, DC 20555-0001

Dear Mr. Hoyle:

**Subject: Palo Verde Nuclear Generating Station (PVNGS)**
**Units 1, 2, and 3**
**Docket Nos. STN 50-528/529/530**
**Notice of Proposed Rulemaking -- Modifications to Fitness-For-Duty Program Requirements,**
**(61 Fed. Reg. 21105 -- May 9, 1996)**

On May 9, 1996, the Nuclear Regulatory Commission (NRC) issued a Notice of Opportunity for Public Comment on proposed changes to 10 CFR Part 26, Fitness for Duty Program Requirements. This letter is in response to the NRC's notice.

Arizona Public Service Company (APS) appreciates the opportunity to review and to comment on this proposed rulemaking. APS believes that there are a number of improvements that should be made in the Fitness For Duty rule. Those improvements are appropriate in order to take advantage of the lessons the industry has learned, to adjust the NRC rules, as appropriate, to make them consistent with other federal rules, and to better apply resources that will meet the intent of Fitness-for-Duty. The NRC has proposed many excellent changes which should be implemented. Nevertheless, there are some changes that have been proposed which are questioned as to whether they will provide needed or important information consistent with the resources needed to implement them. Overall however, the proposed changes to the rule provide for very good improvements related to the administration of this very important program.

APS has participated in the industry effort to provide collated industry comments conducted by the Nuclear Energy Institute (NEI). We have provided suggestions, and reviewed draft comments assembled by NEI. APS generally endorses the comments that are being sent to the NRC by NEI.

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The NEI comments are quite detailed and provide a great deal of supporting information. APS believes that it is important to emphasize the points noted in enclosures 1 and 2 of this letter.

Sincerely,

W. L. Stewart

WLS/AKK/ACR/MFM/dpr

Enclosures (2)

1. APS Response to NRC Questions On the Proposed FFD Rule Amendments.
2. APS Specific Comments On the Proposed FFD Rule Amendments.

cc: H. M. Fontecilla
T. E. Tipton - NEI

ENCLOSURE 1

APS RESPONSES TO NRC QUESTIONS
ON THE PROPOSED FFD RULE AMENDMENTS

APS Responses to NRC Questions
On the Proposed FFD Rule Amendments

1. Regarding the proposal that licensees should be required to collect, analyze, and submit additional types of information to the NRC, specifically: the number and nature of grievances, arbitration proceedings, and lawsuits stemming from FFD related issues; information related to licensees' EAP programs including types of services provided, whether such services are provided by licensee or contractor personnel, employee-to-counselor ratios, the number of personnel who are admitted to EAP programs by self-referral and by supervisory referral, the reported and diagnosed problems, and overall results of EAP programs; and what problems MROs are having interpreting test results and making judgments as to whether fitness-for-duty policy violations have occurred.

**Comment:**

**APS believes that establishing a system to collect, analyze and report the above proposed data would be costly, and little value to the FFD Program would be realized. APS has an EAP Counselor available onsite. In addition, APS has developed a network of counselors throughout the community to ensure that employees will feel comfortable with self-referral. Attempting to collect data from counselors would be extremely burdensome and costly. As a result of regulated drug and alcohol testing programs, expertise among MROs has evolved. Professional resources are readily available to them, should they require assistance in interpreting results and making judgments.**

**APS believes that this proposed amendment is in conflict with the current rule and confidentiality. EAP has been a successful component of 10CFR Part 26. Currently, section 26.25 clearly supports confidentiality to promote early interventions. The proposed changes are potentially threatening, perceived or actual, to the confidentiality of EAPs. Tracking these data would not increase the overall protection of the public, nor does it serve as a deterrent to drug and alcohol use.**

2. Should testing to determine specimen validity be required before performing the screening test for drugs? Also, comment on three potential revisions to detect evidence of adulteration or dilution.

Comment:

APS recognized the problems with "suspect" specimens at the onset of the program in 1990, and APS believes efforts to prevent and deter "suspect" specimens have been successful. Efforts were successful because the rule permitted flexibility in allowing utilities to develop and experiment with different strategies. Therefore, APS sees no benefit in requiring specimen validity. Specific gravity and pH are checked during collection. Specimens registering a specific gravity below 1.005 are automatically sent to the HHS laboratory. A second specimen is also collected and if the specific gravity continues to fall below 1.005 both specimens are forwarded to the HHS laboratory. The 1.005 is more stringent than stipulated by the rule. Specimens falling out of the set criteria for pH are handled in the same manner. During the screening process onsite, APS technicians are required to examine specimens for anything unusual, e.g., failure to freeze. If the specimen appears suspicious in any way, the specimen is sent to the HHS laboratory. Individuals registering specimens which do not meet the HHS laboratory criteria for creatinine (less than 20mg/dL), pH (4.6-8) and specific gravity (1.003-1.030) are required to undergo for-cause Testing. The individual is notified by the leader who escorts the individual to the FFD facility. Collection is done under observation. Creatinine testing onsite is highly technical, costly and unnecessary.

The above methods have been effective and are not costly. APS does not advocate testing at lower cut-off levels or level of detection. HHS laboratories would be forced to increase cost to customers to enable them to profit from testing at varying lower levels. Testing at levels of detection would range between $125 to $275 per specimen, a significant increase in cost per specimen. Based upon an average of 40 "suspect" specimens a year, an increase between $5,000 to $11,000 could be realized. Also, testing at levels of detection may potentially increase legal challenges. The flexibility to test at lower levels or levels of detection could be beneficial, but APS does not believe this should be a requirement.

ENCLOSURE 2

APS SPECIFIC COMMENTS
ON THE PROPOSED FFD RULE AMENDMENTS

APS Specific Comments
On the proposed FFD Rule Amendments

1. 26.3:

"Medical determination of fitness means the process whereby a licensed physician, who may be the MRO, qualified to make such determination examines and interviews an individual and reviews any appropriate and relevant medical records, in accordance with standard clinical procedures, in order to determine whether there are indications that the individual may be in violation of the licensee's FFD policy or is otherwise unable to safely and competently perform duties. The qualifications for making the determination are related to the fitness issues presented by the patient."

**Comment:**

**As written, this proposal is restrictive and prescriptive. Licensed physician/MRO should be replaced with Health Care Professional. Regulating requirements relating to patient referral may prohibit the licensee's ability to direct the patient to the appropriate health care professional. In addition, this proposed amendment expands the MRO's role and involves the MRO in administrative and management decision making. Not only is the proposal restrictive, but an increase in cost for the expanded MRO services would result.**

2. 26.24 (a) (3):

"(I) For-cause drug and alcohol testing must be conducted:"

"(A) Following any observed behavior or physical condition that creates a reasonable suspicion of possible substance abuse including attempts to subvert the testing process."

"(ii) The individual's unescorted access status must be suspended until pronounced fit for duty based on a medical determination of fitness. If the test is based on suspected use of alcohol and the breath analysis is negative, the individual, may be returned to duty pending results of urinalysis for drugs."

Comment:

**APS believes clarification of this proposal is needed. Clarification should be provided as to whether or not negative tests require medical determination. The ability to possess unescorted access status shouid be determined by the individual's behavior if the alcohol test is negative. Leaders are trained in Continual Behavior Observation (CBO) and are expected to determine if an individual is fit for duty. APS leaders are encouraged to, and do, seek advice and assistance from EAP, FFD and/or medical personnel anytime for-cause testing is done based on suspected use of alcohol. APS has not had any adverse experiences in this area. Requiring medical determination would not be beneficial.**

3. 26.24(e):

"The period of time allowed between the notification of the individual and the actual collection of a specimen must be kept at a minimum consistent with operational constraints. Whenever practicable, the individual should not be allowed the time or opportunity to obtain materials or take any action that would subvert the testing process or the test results."

Comment:

**Since the implementation of 10 CFR Part 26, APS has used a 2 hour notification time. The two hour notification time allows the selected individual's supervisor flexibility to schedule individuals for testing without significantly impacting work schedules. A shorter notification time will not prevent subversion or dilution of specimens. At APS, individuals have produced diluted specimens following a 15 minute notification period. Because of Arizona's desert environment, employees are encouraged to consume large amounts of water. Detection of diluted or adulterated specimens is most effective during the collection process. A two hour notification time is reasonable. A more stringent notification time would have a significant impact on work schedules.**

4. 26.27 (b) (1):

"Personnel, including applicants, who are impaired, those whose fitness may be questionable, and those determined to have violated the licensee's fitness-for-duty policy shall be immediately denied unescorted

access or otherwise removed from activities within the scope of this part. These persons may be assigned to or returned to their duties only after impairing or questionable conditions are resolved and the individual is determined to be fit to safely and competently perform activities within the scope of this part by an appropriate manager and a licensed physician qualified to make the medical determination of fitness."

**Comment:**

**APS believes that "an appropriate manager and a licensed physician qualified to make the medical determination of fitness" should be deleted. The licensee should be permitted to make this determination. All persons who have been impaired or whose fitness for duty may have been questionable are evaluated in accordance with the nature of the problem. The determination may not require a licensed physician evaluation but may need an evaluation by another health care professional . The licensee should have the flexibility to determine how this is to be accomplished so that the proper effort is made to ensure the individual is fit to safely and competently perform as required.**

5. 26.24 (h) and Section 2.9 (h) of Appendix A:

"A confirmatory test result showing a breath alcohol content indicating a BAC between 0.02 percent and 0.04 percent must be forwarded to the MRO for evaluation as described in Section 2.9 (h) of Appendix A to Part 26."

"Breath alcohol content indicating a blood alcohol concentration between 0.02 percent and 0.04 percent must be reported to the MRO for review and evaluation. The MRO shall determine whether it is appropriate to extrapolate back in time to estimate the highest BAC that the worker had while on duty with the assumption that no alcohol was consumed while on duty. In these cases, the MRO will calculate a range of possible peak BACs that could have existed while the worker was on duty and make a determination whether the result is a confirmed positive test for alcohol. A similar extrapolation process must be conducted for the results of an analysis of a blood specimen for alcohol, as provided by 26.24 (h)."

**Comment:**

**APS believes that back extrapolation should be deleted for several reasons. Even though, back extrapolation is accepted in some disciplines, it lacks scientific credibility. Medical input strongly**

suggests that there are too many variable factors to be considered, which have not been scientifically researched, to trust the accuracy of the extrapolation process. This would be unfair to individuals and has a strong potential for legal challenges.

The DOT Drug and Alcohol Program does not require extrapolation, but requires removing an individual from safety sensitive work for a period of 24 hours upon an alcohol test level in the 0.02 percent BAC to 0.039 percent BAC range. The individual is also referred to EAP for evaluation. Adopting this position would be a fairer approach and would promote consistency among the programs.