

DOCKET NUMBER  
PROPOSED RULE **PR 26**

**(55 FR 35648)**

DOCKETED  
USNRC

'92 DEC -7 P5:18

[7590-01]

OFFICE OF REGISTRATION  
AND CERTIFICATION

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 26

RIN 3150-AD61

Fitness-for-Duty Programs: NRC Partial

Withdrawal of NRC Information Collection Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Status of information collection requirements.

SUMMARY: The Commission has obtained OMB approval for the information collection requirements contained in § 26.24(d)(2)(iv) and partial approval of the information collection requirements contained in § 26.71(d) of the final rule entitled, "Fitness-for-Duty Programs" (August 26, 1991; 56 FR 41922). The Commission is withdrawing the remaining portion of § 26.71(d) because there is no compelling need for the additional data at this time.

EFFECTIVE DATE: The information collection requirements in § 26.24(d)(2)(iv) and in revised 26.71(d) become effective (30 days after the date of publication of this notice).

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*Date on 11/25/92  
at 57FR 55443  
DSI*

FOR FURTHER INFORMATION CONTACT: Eugene W. McPeak, Reactor Safeguards Branch, Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504-3210.

SUPPLEMENTARY INFORMATION:

On August 26, 1991 (56 FR 41922), the Nuclear Regulatory Commission (NRC) amended the regulations that clarified the NRC's intent concerning the unacceptability of taking action against an individual that is based solely on the preliminary results of a drug screening test and to permit, under certain conditions, employment actions, up to and including the action of temporary removal of an individual from unescorted access or from normal duties, based on an unconfirmed positive result from an initial screening test for marijuana or cocaine. This rule became effective on September 25, 1991, except for the information collection requirements contained in §§ 26.24(d)(2)(iv) and 26.71(d).

On December 31, 1991, the NRC submitted a request for OMB review of the information collection requirements. By a Federal Register Notice published on January 14, 1992 (57 FR 1497) NRC requested public comments on the record keeping and reporting requirements. Following receipt of a comment, OMB, in a letter dated May 26, 1992, which was amended on July 20, 1992, approved the information collection requirements contained in § 26.24(d)(2)(iv). These requirements concern assurances to the individual that no records have been retained which could link the individual to a temporary suspension should the test results be negative.

Section 26.24(d)(2)(iv), therefore, remains unchanged and becomes an effective rule 30 days after publication of this notice.

OMB, however, at the same time limited its approval of the additional information collection contained in § 26.71(d). These provisions required the reporting of test results by process stage and management actions on appeals and temporary suspensions. OMB approved application of these requirements only to those licensees who choose to exercise the option of temporarily removing an individual as permitted by § 26.24(d)(2).

In disapproving the additional information collection contained in § 26.71(d), OMB indicated that the NRC failed to demonstrate a compelling need for the data for those licensees not making temporary suspensions based on onsite presumptive positive test results for marijuana and for cocaine. OMB also indicated that the reporting requirements would not have sufficient practical utility to counterbalance the burden they would impose on the regulated community. OMB found it unreasonable for the NRC to request that licensees collect, analyze, and submit data to the agency for the purpose of building an agency database to possibly help address future regulatory problems. OMB indicated that the NRC should collect data when necessary to evaluate a specific regulatory action, not future concerns. OMB noted that the raw data was already available to the NRC, and that if the NRC had a compelling need for the data, it could conduct the necessary analysis using the raw data. OMB suggested that if at some future point additional data was necessary to evaluate specific regulatory actions, the NRC may submit information collection requests as needed. After reconsideration of the

matter, the NRC has decided that it does not have a compelling need for the data at this time.

As described above, the revision to 10 CFR 26.71(d) is the result of an OMB determination under the Paperwork Reduction Act, following receipt of public comment. "Implementation of the revision, which clarifies a limit on the effective scope of provisions in § 26.71(d), is important to the NRC's assurance of compliance with 10 CFR Part 26." Accordingly, the Commission for good cause finds that additional public comment is unnecessary, and is publishing the revised 10 CFR 26.71(d) as a final rule, effective 30 days after publication of this notice.

#### 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)(3)(ii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

#### Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150-0146.

The rule withdraws certain reporting requirements contained in § 26.71(d) that were disapproved during OMB review of the information collection requirements contained in the final rule, "Fitness-for-Duty Programs," issued August 26, 1991 (56 FR 41922). The reduction in public reporting burden resulting from this rule is estimated to average 17.5 hours per response, per affected licensee, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for further reducing reporting burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0146), Office of Management and Budget, Washington, DC 20503.

List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

For 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 amendment to 10 CFR Part 26.

PART 26 - FITNESS-FOR-DUTY PROGRAMS

1. The authority citation for Part 26 continues to read, in part, as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).\*\*\*

2. In § 26.71 paragraph (d) is revised to read as follows:

§ 26.71 Recordkeeping requirements.

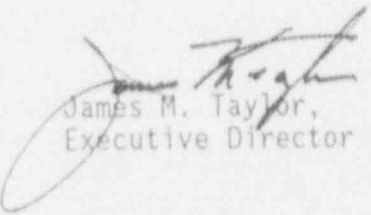
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(d) Collect and compile fitness-for-duty program performance data on a standard form and submit this data to the Commission within 60 days of the end of each 6-month reporting period (January-June and July-December). The data for each site (corporate and other support staff locations may be separately consolidated) must include: random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for

other drugs; workforce populations tested; numbers of tests and results by population, and type of test (i.e., pre-access, random, for-cause, etc.); substances identified; summary of management actions; and a list of events reported. The data must be analyzed and appropriate actions taken to correct program weaknesses. The data and analysis must be retained for three years. Any licensee choosing to temporarily suspend individuals under the provisions of § 26.24(d) must report test results by process stage (i.e., onsite screening, laboratory screening, confirmatory tests, and MRO determinations) and the number of temporary suspensions or other administrative actions taken against individuals based on onsite unconfirmed screening positives for marijuana (THC) and for cocaine.

Dated at Rockville, Maryland, this 6<sup>th</sup> day of November 1992.

For the Nuclear Regulatory Commission.

  
James M. Taylor,  
Executive Director for Operations