



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

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Ms. Patricia G. Norry
Director, Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Ms. Norry:

We have completed our review of your request for approval of the many reporting and recordkeeping requirements needed to implement the Nuclear Regulatory Commission's "Insider Safeguards Rules" (amendments to 10 CFR Parts 50 and 73, proposed August 1, 1984, 49 FR 30726-30739). The following are our public comments submitted to you in accordance with 5 CFR 1320.13(c).

While OMB supports the implementation of NRC's efforts to ensure the trustworthiness and suitability of persons granted unescorted access to protected areas and vital islands at nuclear power plants, we find that the psychological assessment and behavioral observation aspects of this proposed system do not meet criteria for approval under the Paperwork Reduction Act.

In the enclosed October 30, 1981 letter to Chairman Palladino, approving the recordkeeping and reporting requirements in 10 CFR 50, we outlined the Paperwork Reduction Act criteria of practical utility and burden reduction. We stated that NRC should be collecting, or requiring licensees to retain, only that level of detail of information needed; and NRC should be precisely defining information collections and recordkeeping requirements, based on likely periods of actual use and inspection.

Our first problem relates to the practical utility of the proposed psychological assessment. It is to be used to predict whether the licensee's employees or contractor personnel have "a potential for committing acts that are inimical to the public health and safety or present a danger to life or property" (49 FR 30733). To be useful, the psychological assessment has to have a validated history of success at predicting the characteristics sought to be identified.¹

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1 The proposed rule neither specifies the psychological assessment tests to be used, nor defines the psychological characteristics to be identified, nor explains how any identified characteristics are to be weighed in determining employee trustworthiness.

DS10 add: K Jangochon, 113055
Hedrick S. Blumenthal, 88155
Robert L. Janner, 9604 MNOR

Acknowledged by card.....JUL - 5 1985

As Chairman Palladino asked, when the Commission was discussing the proposed rule on October 4, 1983:

"But has psychological testing been used for the purposes that we are trying to use it right now, and does it have any history of success?" (Transcript, p. 55)

NRC staff responded, "We were unable to validate any data base that this test was used for the purpose that we would try to adapt it to."² An expert at the National Institute of Mental Health wrote us recently that, "It must be recognized that the MMPI (the Minnesota Multiphasic Personality Inventory), or any other personality measure that might be used, has questionable predictive value for behavior of concern to the NRC." (Enclosed September 7, 1984 NIMH memorandum by Lyle Bivens, p. 1.) The collection and retention of unvalidated data appears to lack practical utility.³

Our second problem relates to the burdens that would be imposed by using the proposed psychological assessment for the purposes stated in the proposed rule. To the extent the data collections and recordkeeping requirements are unvalidated, the regulation would impose an undue burden. In addition, the NRC analysis appears to understate the burdens to be imposed. The Value/Impact Statement prepared for the rule (SECY-83-311A, September 15, 1983, Attachment 3) suggests the psychological

²Quote at page 55. As Chairman Palladino stated later in the Commission meeting:

"I just am quite significantly concerned about the psychological testing in that I am not confident what it can do and what it can't do." (Transcript, p. 81)

³The NRC Background Information on this proposed rule (SECY-84-72, February 9, 1984, Enclosure B, p. 2) repeated this concern, "potential inconsistencies in test interpretation, and inability to always predict future behavior from the test results." We understand, moreover, that the American Psychological Association requires through its Ethical Principles of Psychologists (American Psychologist, June 1981, pp. 633-638) that member psychologists exercise caution in using personality assessment devices beyond their designated purposes (clinical/diagnostic applications). Although the Association does not specifically ban the use of the devices for screening purposes, it does emphasize that the results of personality measurement tests may be deficient in both validity and reliability when the tests are applied in this manner.

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assessments would cost for each licensee only \$26,000 to 105,000 in the first year. Yet we understand it is industry practice to hire employees, and then conduct any background and psychological checks; however, during this time employees would not have unescorted access to the restricted areas. To the extent this is so, the cost estimates fail to include the cost of idle employees, awaiting access to the work site, and the cost of escorts who would have to be constantly with the uncleared personnel.

Our third problem relates to the nature of the continual behavioral observation program. As Chairman Palladino stated:

"I am very concerned about the behavioral observation. I just do not feel comfortable working in an organization where it is mandated that people look at me daily to see if my behavior has so changed that I worry about whether I am doing the job right." (Transcript, p. 81)

It certainly makes sense for industry management to oversee its employees. ANSI Standard 3.3, the industry's voluntary guideline, suggests the need for continued observation of employees by supervisory personnel. The September 1983 draft regulatory guide for this proposed rule repeats this by suggesting that "each licensee should develop a behavior observation training program for supervisors" (SECY-83-311A, September 15, 1983, Attachment 2 to Enclosure A, p. 25).

To use federal regulation to prescribe in lengthy detail how industry should conduct this management oversight, however, may not be administratively practical or efficient. For example, to have supervisors, presumably not trained psychologists, evaluate whether an employee is "preoccupied with death or suddenly religious" or "acts naive or innocent" (49 FR 30730) may be imposing an unworkable data collection and record retention likely to lead to inconsistent results.⁴ As the NIMH expert put it, "I do not believe that the extensive guidelines for shift supervisors can be fairly and adequately applied." (Bivens, p. 1)

We realize there is a need to balance carefully the potential problems with security assessment procedures against the serious nature of the dangers these procedures are seeking to avert. Nonetheless, we suggest the NRC reconsider both the scope and detail proposed by the "Insider Safeguards Rules." We have no

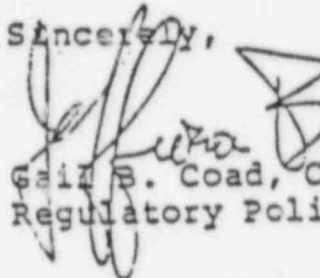
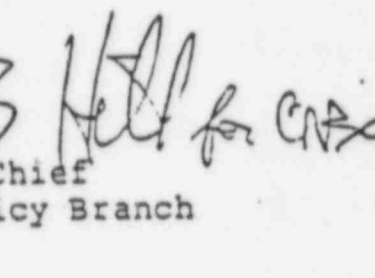
4As stated in the Ethical Principles of Psychologists, "Psychologists do not encourage or promote the use of psychological assessment techniques by inappropriately trained or otherwise unqualified persons through teaching, sponsorship, or supervision." (p. 637)

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objection to nuclear licensees collecting and evaluating objective facts and past history to determine the trustworthiness of employees and contractor personnel. The collection and retention of highly subjective, unvalidated psychological evaluations, however, in part by untrained personnel, may only lead to inconsistencies in employee relations, an unfair violation of privacy, and unjustified administrative burden.

Before we could approve the information collections and recordkeeping requirements needed to implement these aspects of the "Insider Safeguards Rules," we need to receive far more detailed justification, both in terms of practical utility and burden reduction. If you have any questions, please contact me or the NRC Desk Officer, Jefferson Hill (395-7340).

Sincerely,

  for Coad
Gail B. Coad, Chief
Regulatory Policy Branch

Enclosures



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 30, 1981

Honorable Nunzio J. Palladino
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Palladino:

On August 5, the Nuclear Regulatory Commission (NRC) submitted 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities, for our review under the Paperwork Reduction Act. Shortly thereafter, Vice President Bush identified nuclear licensing as one specific area in which reporting and paperwork burdens placed on the public could be reduced. Just recently, President Reagan stressed the need to improve the nuclear regulatory and licensing process.

In seeking OMB approval of the recordkeeping and reporting requirements authorized by Part 50, NRC has made a significant effort to avoid duplication and reduce burden on respondents. NRC has published a comprehensive revision to Regulatory Guide 10.1, "Compilation of Reporting Requirements," that will reduce the required number of copies for most reports to three or fewer, and a Standard Review Plan, simplifying and consolidating the criteria NRC staff will use in reviewing applications to construct or operate nuclear power plants.

NRC has just created the Generic Requirements Review Committee to integrate and control the issuance of new (as well as back-fitting) regulatory requirements, and requests for information from licensees. I understand NRC has efforts planned to reduce the number of amendments required for changes to technical specifications, to limit certain kinds of reporting to important safety items, and to permit facilities to submit information in a master microform, instead of multiple hard copies.

Because we believe NRC has been taking significant steps to resolve information collection problems, we are approving the NRC request to continue to use the information collections authorized by Part 50. This approval expires April 30, 1982, and should be identified by use of OMB No. 3150-0011. However, this approval is conditional on certain efforts to reduce these burdens.

For OMB to grant further approval of the recordkeeping and reporting requirements authorized by Part 50, NRC's needs and the practical utility of the data must be balanced more effectively against the burdens and costs involved. We fully appreciate that

NRC resolution of the numerous safety and other regulatory issues involved in Part 50 requires access to considerable amounts of information from licensees, contractors, operators, and others who would be engaged in nuclear activities. At the same time, NRC needs to improve its information collection activities to meet these needs.

Assuring the practical utility of the information for NRC will help minimize burden on licensees and applicants. This means NRC should be collecting only such data as it can use: seeking only that level of detail needed; having it submitted no sooner than the likely time of actual use; and precisely defining record-keeping requirements and retention periods, based on likely periods of actual inspection and use. Once the data is obtained, NRC should be actually using it, following up promptly and conclusively with the respondent, as necessary.

As the Commission recently pointed out to NRC staff, however, formal NRC staff communications with licensees (bulletins, generic letters, circulars, notices, rule changes, NUREGs, and Regulatory Guides) have not been subject to central NRC review and coordination. Licensees and representatives of industry have complained that this lack of central coordination and control has resulted in duplicative and burdensome recordkeeping and reporting requirements--the submission of the same data both monthly and annually, the submission of aggregate data and the raw data itself, the submission of highly detailed data that is never reviewed. Most of this is subject to OMB review authority and approval under the Paperwork Reduction Act.

To work with you further in this effort to control paperwork, we request submission to us, by January 15, 1982, of a detailed work plan to implement needed improvements. The work plan should include projects, staff, organization, planned target dates, and a schedule for reporting progress and accomplishments to us.

As a matter of OMB reports clearance, NRC should assure that notices, bulletins, and other documents calling for recordkeeping and reporting be made available and submitted for OMB review. OMB approval of the use of the information collections set forth in 10 CFR Part 50 does not include approval of the recordkeeping and reporting requirements called for by any other NRC communications implementing Part 50 unless OMB has so agreed.

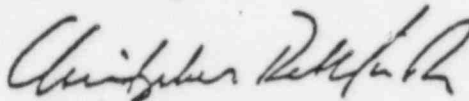
To permit the public and OMB to review the total impact involved in related information collections, NRC should attempt to review such collections simultaneously rather than one after another. To try to solve specific public complaints concerning information collection, NRC staff should be encouraged to continue to work with the Nuclear Record Management Association, and equivalent groups, to the extent they can be of assistance.

As a matter of NRC central control, we urge you to have the Generic Requirements Review Committee (GRRRC) assure that any recordkeeping or reports called for by regulatory requirements

have practical utility for the NRC, and do not duplicate others in place. To help do this, it appears that NRC also needs to adopt a more systematic methodology for evaluating the burden, timing and methods of implementation of an information collection--including a review of whether recordkeeping or reporting is the best means of implementation--and the appropriate degree of formality and detail to be imposed.

We look forward to continuing to work with you and your staff on this important effort.

Sincerely,



Christopher DeMuth
Administrator for Information
and Regulatory Affairs

September 12, 1984

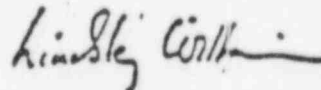
NOTE TO JEFF HILL:

Larry Silver, M.D., Acting Director of the National Institute of Mental Health, asked that my Office coordinate the response of your note to him of September 5 about the Nuclear Regulatory Commission's proposed rulemaking on access authorization programs.

We have shared your note and proposed rulemaking with the experts in the National Institute of Mental Health. Their observations have been reviewed by myself and Dr. Silver and are attached for your information and consideration.

As to your question of whether the Nuclear Regulatory Commission consulted with the National Institute of Mental Health prior to the development of your proposed rule, to the best of our knowledge no such contact was established.

Should you wish further information, please do not hesitate to give me a call at 443-3175.



Lindsley Williams
Director
Office of Policy Development,
Planning, and Evaluation

Attachments

Memorandum

Date • September 12, 1984

From Deputy Chief *ESV for TL*
Center for Studies of Antisocial and Violent Behavior

Subject OMB Request for Review of NRC Proposed Rule of Access Authorization

To Director, OPDPE

Here are the quick comments that you requested. They were developed mainly by my colleague, Dr. James Breiling, whose training is in psychology.

Dr. Bivens has already prepared a response to the OMB request that addresses the scientific concerns quite nicely. As he states, the MMPI and the other proposed assessment measures have limited predictive value. As he points out, there are serious and quite possibly unresolvable problems involved in trying to estimate the probabilities of Type 1 and Type 11 errors.

It needs also to be borne in mind that the NRC's concerns with respect to establishing adequate controls for unescorted access to nuclear facilities are analogous to security concerns of the nation's military and intelligence agencies which also have responsibilities in the nuclear area. Consequently, if it has not done so already, OMB should seek additional comments on the NRC proposed rule from security offices and personnel psychologists in selected other government agencies and components thereof (e.g., Strategic Air Command, Navy nuclear submarine command, Army missile commands).

Consultation with military and intelligence agencies seems particularly important in view of the fact that the value of background checks declines with the age of the checks in question. Thus, while we would agree with Dr. Bivens that good background check procedures can be initially superior to psychological assessment, there may well be need for some other procedure for monitoring employee reliability on an ongoing basis. It may be questioned whether mere on-the-job observation is likely to be sufficient for this purpose.

The consultation with other agencies should also include examination of how these agencies have balanced the problems with assessment procedures (e.g., intrusiveness, erroneous assessments) against the seriousness of the dangers these measures seek to avert.

Memorandum

Date September 7, 1984
From Deputy Director, DERP

Subject QMB Request for Review of NRC Proposed Rule on Access Authorization

To Acting Director, NIMH
Thru: Director, OPDPE

To my knowledge, the NRC did not consult with NIMH in developing the proposed psychological assessment and behavioral observation sections of the proposed rule. The psychological assessment procedures, consisting of a written "personality" test and a clinical interview for persons showing "inconclusive" or "abnormal" test results, could provide some useful information about the emotional stability of persons given access to a nuclear power plant operating environment. However, the proposed procedures do not specify which written tests will be used. The most useful one would probably be the Minnesota Multiphasic Personality Inventory (MMPI), which provides a series of scales rating a variety of personality characteristics and which has a capability to detect deliberate "faking" or distortion by the test-taker. Norms have been established for this test, and it would be feasible to interview persons who score outside of these norms on selected scales. If the proposed rule is adopted, the written portion of the psychological assessment should be standardized so that all screeners use the same test.

It must be recognized that the MMPI, or any other personality measure that might be used, has questionable predictive value for behaviors of concern to NRC. In fact, personality testing would be unlikely to add significantly to information obtained in a thorough background check. In view of the violation of privacy issues raised by mandatory personality testing, the NRC may want to reconsider this proposal.

With regard to the continued behavioral observation program, I do not believe that the extensive guidelines for shift supervisors can be fairly and adequately applied. Nor do these guidelines contribute anything beyond what a competent supervisor would observe in his or her daily contact with employees. I would much prefer to see a program whereby supervisors are given periodic training in identifying employee health and mental health problems, including drug and alcohol abuse. The aura created by a "continuous behavioral observation" program can only be detrimental to staff morale, and such a program is no more likely to identify behaviors detrimental to plant or public safety than an active plant safety program coupled with informed and competent supervision.

In the proposed rule, the Commission identifies 11 specific questions for public response. All of them relate to the psychological assessment or behavioral observation procedures proposed. Data to respond to many of them can only come from the nuclear power industry itself (e.g., to what extent are the proposed procedures already being used?). Many of the questions address issues for which there is inadequate data to provide an objective answer. For example, question 5 asks:

"What specific characteristics are identified by a clinical psychological assessment that relate directly or indirectly to reducing the risk of radiological sabotage? What percentage of false positives and false negatives (Type I and Type II errors) can be expected from using the NRC proposed psychological assessment procedure? Are more effective procedures available and practical?"

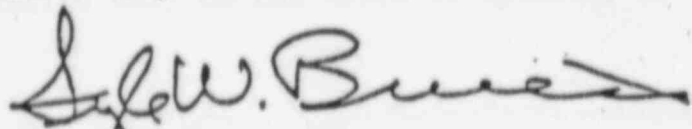
Although a clinical psychological assessment might identify hostile attitudes or an active psychosis that would pose a safety threat, it is also likely not to. There is no data on which to base a statement regarding the probability of Type I or Type II errors.

Question 6 asks:

"Can the use of psychological assessment in the commercial nuclear industry be justified solely on the basis of reducing the risk of radiological sabotage? Is there any evidence which would help quantify the extent, if any, of risk reduction supplied by psychological assessment, background investigations, and behavioral reliability programs?"

To my knowledge, there is no way to objectively answer this question. The relative risk reduction produced by psychological screening, background information checks, or behavioral observation is impossible to assess, given the current state of knowledge in the psychological and behavioral assessment field. My own opinion is that the best predictor of future behavior is past behavior, so I would suggest that background check procedures would be superior to the psychological assessment or behavioral observation procedures proposed.

In summary, I do not believe that the proposed procedures will add anything in the way of predicting behaviors that pose a public safety hazard. The ethical and morale issues raised by implementing the programs far outweigh their potential usefulness. Finally, many of the specific questions posed by the Commission are simply unanswerable, and implementation of this complex and burdensome program could be justified only on the basis of opinion, not objective fact.


Lyle W. Bivens, Ph.D.