



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 4, 2002

MEMORANDUM TO: Glenn M. Tracy, Chief
Reactor Safeguards, Radiation Safety,
and Emergency Preparedness Branch
Division of Inspection Program Management
Office of Nuclear Reactor Regulation

FROM: *for* Vonna L. Ordaz, Chief 
Reactor Safeguards Policy Section
Reactor Safeguards, Radiation Safety,
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Division of Inspection Program Management
Office of Nuclear Reactor Regulation

SUBJECT: SUMMARY OF THE MARCH 13, 2002, PUBLIC MEETING TO DISCUSS
DRAFT REVISIONS TO 10 CFR PART 26 (FITNESS-FOR-DUTY RULE)

On March 13, 2002, the NRC staff held a public meeting with representatives of the Nuclear Energy Institute (NEI) and members of the public. The purpose of this meeting was to discuss proposed changes to 10 CFR Part 26, the Fitness-for-Duty (FFD) Rule, and related matters, as outlined in the meeting agenda in Attachment 1.

NRC staff opened the meeting, provided an overview of the purpose of the meeting, and opened the discussion for comments on the staff's proposed approach to Subpart C (Attachment 2) and the most recent draft language for Subparts A (Attachment 3) and B (Attachment 4) of the draft rule. The major issues discussed included the following:

- Industry personnel present provided several alternatives to the staff's approach to Subpart C, and the staff agreed to revisit it.
- Industry personnel also suggested that the limitations on granting unescorted access, now included in Subpart C, be moved to Subpart D that addresses determinations of fitness and sanctions.
- Industry representatives agreed with the staff's proposals for a number of significant issues, such as allowing testing of off-site FFD program personnel at a DOT collection site and allowing qualified professionals other than the MRO to make fitness determinations.
- Industry representatives requested further clarification of the refresher training requirements with regard to challenge examinations versus classroom training and refresher training frequency.

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REV. 2 TO PROPOSED AGENDA FOR NRC PUBLIC MEETING
ON THE DRAFT FITNESS-FOR-DUTY RULE
(OWFN 14-B-6)

March 13, 2002

08:30-08:45 AM	Opening Remarks and Introductions (Vonna Ordaz)
08:45-09:00 AM	Overview (Garmon West) Action list from 2/20/02
09:00-09:15 AM	Update on Protocol for Sharing Draft Rule Language/Web Site (August Spector)
09:15-10:45 AM	Discuss Subpart C
10:45-11:00 AM	Break
11:00-12:00 PM	Discuss Subpart C
12:00-01:15 PM	Lunch
01:15-02:45 PM	Feedback From Stakeholders on Appendix A and Proposed FFD Rule Outline Feedback From Stakeholders on Subpart A - Administrative Provisions Feedback From Stakeholders on Subpart B - Program Elements
02:45-03:00 PM	Break
03:00-03:30 PM	Discuss Baseline Assumptions for Regulatory Analysis (Joseph Hauth)
03:30-04:30 PM	Discuss Topics to be Raised by Stakeholders
04:30-04:45 PM	Action Item Confirmation/Meeting Minutes Consensus/information Needs/Timeline (Garmon West)
04:45-5:00 PM	Closing Remarks (Vonna Ordaz)

Handouts:

Proposed FFD Rule Outline
Draft Rule Language for Subpart A
Draft Rule Language for Subpart B
Draft Rule Language for Subpart C
Baseline Assumptions for Regulatory Analysis

Subpart C - Gaining and Maintaining Authorization

§ 26.41 General provisions.

(a) Purpose. This subpart defines requirements for granting and maintaining unescorted access (UA) to protected areas in nuclear power plants, for granting and maintaining unescorted access authorization (UAA), and for the assignment to perform activities within the scope of this part, collectively referred to here as "authorization."

(b) Licensees seeking to grant UA pursuant to 10 CFR 73.56 to personnel covered without interruption by another FFD program that complies with this part may credit that program through verification that the individual is currently and will continue to be subject to the random testing and behavioral observation programs of either his or her employer or those of the host licensee.

(c) Self-disclosure. Before assigning any individual to activities within the scope of this part, except as described in §26.41(b), the licensee shall obtain a written statement from the individual.

- (1) The written statement must address whether the individual in the past 5 years has—
 - (i) violated a FFD policy and been removed from activities covered by this part;
 - (ii) used, sold, or possessed illegal drugs;
 - (iii) abused legal drugs;
 - (iv) subverted or attempted to subvert a drug or alcohol testing program;
 - (v) refused to take a drug or alcohol test;
 - (vi) been subject to a plan for substance abuse treatment (except for self-referral);

or

- (vii) had legal or employment action taken for alcohol or drug use.

(2) The written statement must also address the specific type, duration, and resolution of any such matter.

(3) If an individual was employed by a licensee authorized to possess or transport Category IA SSNM within the previous 5 years, power reactor licensees shall obtain a written statement appropriately tailored to the activities listed in § 26.3(e) of this part.

(d) Suitable inquiry. The accuracy of written statements provided by individuals seeking authorization shall be verified through a suitable inquiry.

(1) A suitable inquiry is a best-efforts verification of employment history for the past five years, or since the individual's eighteenth birthday, whichever is less, to determine if any potentially disqualifying FFD information exists. The suitable inquiry may be conducted concurrently with the background investigation required under 10 CFR 73.56 and the criminal history check required under 10 CFR 73.57. Potentially disqualifying FFD information obtained during the background investigation under 10 CFR 73.56 and 73.57 must be forwarded to FFD program personnel for use in making a medical and management determination of fitness.

(2) To meet the suitable inquiry requirements of this subpart, the identity of persons denied authorization or who were removed under the provisions of this part and the circumstances for the denial or removal, including test results, will be made available in response to a licensee's, contractor's or vendor's/C/V's inquiry supported by a signed release from signed by the individual being investigated that authorizes the disclosure of the information.

(2) In conducting a suitable inquiry, the licensee or C/V may use information received over the telephone if a record of the contents of the telephone call is made and retained, and information received by electronic means such as facsimile or e-mail if the document is retained.

§ 26.43 Initial assignment.

(a) Applicability. The requirements in this section apply to individuals who have either never been authorized by a licensee or who have not been authorized within the past 3 years.

(b) Before assigning an individual to activities within the scope of this part, the licensee shall--

(1) Obtain the written statement described under § 26.41(c) of this subpart and verify that no potentially disqualifying FFD information was disclosed;

(2) Complete a suitable inquiry on a best-efforts basis to verify the accuracy of the individual's written statement;

(3) Obtain the results of a pre-access test for drugs and alcohol and verify that test results are negative; and

(4) Ensure that initial FFD training is successfully completed.

§ 26.45 Updates.

(a) Applicability. This section defines requirements for updating authorization for individuals whose authorization has been interrupted for more than 365 days but less than 3 years.

(b) Before assigning an individual to activities within the scope of this part, the licensee shall--

(1) Obtain the written statement described under § 26.41(c) of this subpart and verify that no potentially disqualifying FFD information was disclosed;

(2) Complete a suitable inquiry on a best-efforts basis to verify the accuracy of the individual's written statement for the period since he or she was last authorized. The suitable inquiry must also verify that the previous period of authorization was terminated favorably, unless the individual was subject to a licensee-approved behavioral observation program throughout the period of interruption;

(3) Obtain the results of a pre-access test for drugs and alcohol and verify that test results are negative; and

(4) Ensure that the individual has met initial or refresher FFD training requirements, as appropriate.

§ 26.47 Reinstatements.

(a) Applicability. This section defines requirements for reinstating authorization for individuals whose authorization has been interrupted for 365 days or less.

(b) If the individual's authorization has been interrupted for 30 days or less, the individual may be reinstated under the following conditions:

(1) The written statement described under §26.41(c) of this subpart discloses no potentially disqualifying FFD information, and

(2) A suitable inquiry with previous licensees or C/Vs has verified no potentially disqualifying FFD information exists for the past 5 years and that previous periods of authorization were terminated under favorable conditions.

(c) If an individual's authorization has been interrupted for 60 days or less, the individual may be eligible for reinstatement under the following conditions:

(1) The written statement described under §26.41(c) of this subpart discloses no

potentially disqualifying FFD information;

(2) A suitable inquiry with previous licensees or C/Vs has verified no potentially disqualifying FFD information exists for the past 5 years and that the previous periods of authorization were terminated favorably;

(3) The individual was subject to a licensee-approved behavioral observation program that meets the requirements of this part throughout the interruption or was subject to a FFD program that meets the requirements of this part, including random testing, for 30 of the last 60 days. If the individual was not subject to a behavioral observation program throughout the interruption or to a FFD program that meets the requirements of this part for 30 of the last 60 days, then

(i) A suitable inquiry must be conducted to verify that no potentially disqualifying FFD information exists for the period of interruption;

(ii) Results of a test for alcohol must be known and be negative; and

(iii) A urine sample for drug testing must be collected and test results must be negative when known.

(d) If an individual's authorization has been interrupted for more than 60 days but not more than 365 days, the individual may be eligible for reinstatement under the following conditions:

(1) The written statement described under §26.41(c) of this subpart discloses no potentially disqualifying FFD information;

(2) A suitable inquiry with previous licensees or C/Vs has verified that no potentially disqualifying FFD information exists for the past 5 years and that the previous periods of authorization were terminated favorably;

(3) The individual was subject to a licensee-approved behavioral observation program that meets the requirements of this part throughout the interruption; and

(4) The individual was either subject to a FFD program that meets the requirements of this part, including random testing, throughout the interruption, or tested negative on a pre-access test for drugs and alcohol within the past 60 days, or tested negative on a test for alcohol and a urine sample was collected for drug testing. Results of the urine test for drugs must be negative when known.

(e) If an individual seeking reinstatement after an interruption of more than 60 days but less than 365 days was not subject to an approved behavioral observation program, a suitable inquiry must be conducted to verify that no potentially disqualifying FFD information exists for the period of interruption. If the individual was not subject to either behavioral observation or a random testing program during the period of interruption, then the results of a pre-access test for drugs and alcohol must be obtained and be negative prior to reinstatement.

(f) For all reinstatements, FFD training requirements must be met prior to assignment to perform activities within the scope of this part.

§ 26.49 Other circumstances.

(a) Applicability. This section defines requirements for granting authorization to individuals who do not meet the conditions defined in §§26.43, 26.45 and 26.47.

(b) Failure by an individual to list reasons for ~~removal~~ or revocation or denial of ~~unescorted access~~ authorization in the written statement or failure to authorize the release of information ~~is~~ are sufficient ~~cause~~ causes for denial of ~~unescorted access~~ authorization.

(c) Personnel having been denied authorization or removed from performing activities within the

scope of this part ~~at any nuclear power plant~~ for violations of a licensee's or C/V's ~~fitness-for-duty~~ FFD policy will not be assigned to perform activities within the scope of this part without the knowledge and consent of the licensee.

(d) No individual determined to have been involved in the sale, use, or possession of illegal drugs, while, as applicable, within a protected area of any nuclear power plant, within a facility that is licensed to possess or use SSNM, within an area containing irradiated nuclear fuel, or within a transporter's facility or vehicle, shall be assigned to perform activities within the scope of this part for a minimum of 5 years from the date of removal.

(e) No individual determined to have violated a licensee's FFD policy and removed from performing activities within the scope of this part shall be assigned to perform activities within the scope of this part for a minimum of 3 years from the date of removal.

(f) If the individual's written statement or the suitable inquiry indicate the existence of potentially disqualifying FFD information, the granting of authorization must be based upon a management and medical determination of fitness, except as described in paragraphs (g) and (h) below.

(g) If potentially disqualifying FFD information is disclosed in an individual's written statement, and the individual is subject to a plan for substance abuse treatment at the time the individual is being considered for authorization, and the suitable inquiry indicates that the individual's previous authorization was terminated favorably, a subsequent licensee who chooses to assign the individual to perform activities covered by this part shall continue any follow-up treatment and testing program that is required by this part or was required under other mandate, including, but not limited to treatment to avoid legal action.

(h) If a previous licensee determined that any required treatment and testing were completed successfully by the individual, and made a medical and management determination that the individual was fit for duty without the need for further follow-up at the time of termination, the granting licensee may accept the determination of the previous licensee.

§ 26.51 Maintaining Authorization.

(a) Individuals may maintain authorization for 5 years under the following conditions:

(1) The individual complies with the licensee's and/or C/V's FFD policies to which they are subject;

(2) The individual remains subject to a drug and alcohol testing program that complies with the requirements of this part or meets the pre-access testing requirements in § 26.47 for reinstatement;

(3) The individual remains subject to a licensee-approved behavioral observation program that complies with the requirements of this part; and

(4) The individual successfully completes required FFD training, on the schedule specified in §26.25 of this part.

(b) At nominal 5-year intervals, licensees and C/Vs who have implemented a licensee-approved FFD program must perform a suitable inquiry, including a criminal history check and a best-effort consultation with law enforcement authorities, to verify that no potentially disqualifying FFD information exists that was not reported by an individual maintaining authorization. This suitable inquiry must address the past 5 years. The suitable inquiries conducted for updates to and reinstatements of authorization in §§26.45 and 26.47 of this part cannot be substituted for this 5-year suitable inquiry.

Subpart A - Administrative Provisions

§26.1 Purpose.

This part prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness-for-duty (FFD) programs and procedures by the licensed nuclear power industry, and by licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM).

§§26.226.3 Scope and applicability.

(a) General. The regulations in this part apply to licensees authorized to operate a nuclear power reactor, to handle irradiated nuclear fuel at a decommissioning plant, to possess or use formula quantities of SSNM, or to transport formula quantities of SSNM. Each licensee shall implement a ~~fitness-for-duty~~ FFD program which complies with this part.

(b) Certain regulations in this part apply to licensees holding permits to construct a nuclear power plant. Each construction permit holder, with a plant under active construction, shall comply with §§ 26.X, 26.X... of this part; shall implement a chemical testing program; including random tests; and shall make provisions for employee assistance programs, imposition of sanctions, ~~appeals procedures~~ [due process protection]¹⁰⁰ an impartial and objective review process, the protection of information, and recordkeeping.

(~~dc~~) The regulations in this part apply to ~~the~~ a Corporation required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter only if the Corporation elects to engage in activities involving formula quantities of SSNM~~strategic special nuclear material~~. When applicable, the requirements apply only to the Corporation and personnel carrying out the activities specified in §§26.X ~~2(a)(1) through (5)~~.

(d) Certain regulations in this part apply to both current and future decommissioning plants (to be clarified as further information is gathered).

(e) The provisions of ~~the fitness-for-duty program~~ must this part apply to:

- (1) ~~a~~All persons granted unescorted access to nuclear power plant protected areas;
- (2) ~~to licensee, vendor, or contractor~~ All personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures; ;
- (3) ~~and to SSNM licensee and transporter~~ personnel who:
 - (~~i~~) Are granted unescorted access to Category IA Material;
 - (~~ii~~) Create or have access to procedures or records for safeguarding SSNM;
 - (~~iii~~) Make measurements of Category IA Material;
 - (~~iv~~) Transport or escort Category IA Material; or

¹⁰⁰ Response to stakeholder input on 2/20/02 to eliminate the term "appeal" from rule language. NRC staff determined that the intent is for "a review." The phrase, "impartial and objective review process," is taken from the Affirm rule language.

(5v) Guard Category IA Material:

[(4) All FFD program personnel involved in the day-to-day operations of the program and whose normal work location is within 20 miles of a licensee or C/V collection site; and

~~(4) FFD program personnel who routinely:~~

~~_____ (i) Can link test results with the person who was tested prior to determination of an FFD policy violation;~~

~~_____ (ii) Make medical or management determinations of fitness;~~

~~_____ (iii) Make removal or return-to-work decisions; or~~

~~_____ (iv) Are involved in the selection or notification of employees for testing or in the collection or onsite testing of specimens;~~

(5) All persons at decommissioning plants who:

(i) Are responsible for onsite fuel handling; or

(ii) Have unescorted access to areas containing irradiated fuel.

(f) Certain regulations in this part may not apply to licensee and C/V FFD program personnel whose normal work location is at a sufficient geographical distance from licensee or C/V fixed collection sites (more than 20 miles) to make drug and alcohol testing impractical. Random testing is required for all FFD program personnel who routinely can link test results with the person who was tested prior to determination of an FFD policy violation, make medical or management determinations of fitness, make removal or return-to-work decisions, or are involved in the selection or notification of employees for testing. However, for geographically distant FFD program personnel, licensees or C/Vs may arrange for the collection, testing and review services of a local hospital or other organization that meet the requirements of 49 CFR 40, "Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs" (65 FR 41944, August 9, 2001) rather than require FFD program personnel to travel to a licensee's or C/V's collection site. - [to be further clarified as multiple issues here are resolved, e.g., saliva and non-EBTs are allowed for the screening alcohol test at DOT collection sites, this still doesn't take care of the need for another MRO to review the MRO's test results,]¹⁰¹

[(g) The regulations in this part do not apply to hospital, EAP, or substance abuse treatment facility personnel, or to other professionals who may be called upon in unique circumstances to make medical determinations of fitness, to collect samples for drug and alcohol testing, or to

¹⁰¹ Response to stakeholder input at the 2/20/02 meeting regarding the logistical difficulties involved in testing FFD program personnel whose normal work location is at some distance from a licensee's or C/V's collection site. The NRC's intent is that FFD program personnel who are involved in the daily operations of the program and individuals who routinely provide services, as defined in (f) above, to the FFD program, such as an off-site MRO or an EAP staff member who provides input on return-to-duty determinations, be subject to random testing. However, in recognition of the logistical difficulties, the staff is considering the recommendation that these off-site personnel may be tested at a DOT collection site, rather than requiring them to travel to a licensee's or C/V's site for collection purposes. The NRC recognizes that differences exist between DOT and NRC drug and alcohol testing procedures, e.g., the use of saliva samples, but is confident that the DOT's procedures assure the integrity of the collection process and is willing to allow licensees and C/V's to use DOT collection sites in these special circumstances.

provide other FFD program services, but who are not routinely involved in providing services to a licensee's or C/V's FFD program.]¹⁰²

(bfh) The regulations in this part do not apply to NRC employees, to law enforcement personnel, or offsite emergency fire and medical response personnel while responding onsite, or SSNM transporters who are subject to U.S. Department of Transportation drug or alcohol fitness programs that require random testing for drugs and alcohol. ~~The regulations in this part also do not apply to spent fuel storage facility licensees or non-power reactor licensees who possess, use, or transport formula quantities of irradiated SSNM as these materials are exempt from the Category I physical protection requirements as set forth in 10 CFR 73.6.~~

(c) ~~Certain regulations in this part apply to licensees holding permits to construct a nuclear power plant. Each construction permit holder, with a plant under active construction, shall comply with §§§§26.10, 26.20, 26.23, 26.70, and 26.73 of this part; shall implement a chemical testing program, including random tests; and shall make provisions for employee assistance programs, imposition of sanctions, appeals procedures, the protection of information, and recordkeeping.~~

(d) ~~The regulations in this part apply to the Corporation required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter only if the Corporation elects to engage in activities involving formula quantities of strategic special nuclear material. When applicable, the requirements apply only to the Corporation and personnel carrying out the activities specified in §§26.2(a)(1) through (5).~~

§26.5 Definitions.

Aliquot means a portion of a specimen used for testing. It is taken as a sample representing the whole specimen.

~~[Behavioral observation means observation by supervisors and escorts of other personnel to detect behaviors or behavioral changes that, if left unattended, may lead to acts detrimental to public health and safety. Observers are trained in techniques to determine degradations in performance, signs of impairment, or changes in behavior that may indicate the need to evaluate an individual's fitness for duty.]¹⁰³~~

Blood Alcohol Concentration (BAC) means a measure for determining the mass of alcohol in a volume of blood[, as measured by an evidential-grade blood alcohol analysis device.]¹⁰⁴

Category IA Material means ~~strategic special nuclear material (SSNM)~~ directly useable in the

¹⁰² Response to 2/20/02 stakeholder input requesting clarifying language as to whether professionals and organizations that provide occasional services to an FFD program are subject to the rule. This exclusion clarifies the NRC's intent that these professionals and organizations are not subject to, for example, the random testing, behavioral observation or auditing requirements of this part.

¹⁰³ Moved to 26.27 in Subpart B.

¹⁰⁴ Response to 2/20/02 stakeholder input regarding the elimination of blood testing for alcohol.

manufacture of a nuclear explosive device, except if:

- (1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;
- (2) The total weight of 5 formula kilograms of SSNM plus its matrix (at least 50 kilograms) cannot be carried inconspicuously by one person; or
- (3) The quantity of SSNM (less than 0.05 formula kilogram) in each container requires protracted diversions in order to accumulate 5 formula kilograms.

~~[Chain of custody means procedures to account for the integrity of each specimen by tracking its handling and storage from the point of specimen collection to final disposition of the specimen.~~

~~Chain-of-custody form means the form used to document the maintenance of the chain of custody for specimens.]¹⁰⁵~~

Collection site means a place where individuals present themselves for the purpose of providing a specimen of their urine and/or breath to be analyzed for the presence of drugs or alcohol.

Collection site person means a person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the specimen(s) provided by those individuals.

Commission means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

Confirmatory test means a second analytical procedure to identify the presence of a specific drug or drug metabolite in a specimen. ~~which is independent of the initial screening test and which uses a different technique and chemical principle from that of the initial screening test in order to ensure reliability and accuracy.~~ The purpose of a confirmatory test is to ensure the reliability and accuracy of a screening test result. A confirmatory drug test is independent of the screening test, is based on a different chemical principle, and a different analysis technique is used. At this time, gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine. For determining BAC ~~blood alcohol levels~~, a "confirmatory test" means a second test using another evidential-grade [breath alcohol analysis device.]¹⁰⁶ ~~Further confirmation upon demand will be by gas chromatography analysis of blood.~~

Confirmed positive test means ~~the result of a confirmatory test that has established the presence of drugs, drug metabolites, or alcohol in a specimen at or above the cut-off level, and that has been deemed positive by the Medical Review Officer (MRO) after evaluation. A "confirmed positive test" for alcohol can also be obtained as a result of a confirmation of blood alcohol levels~~

¹⁰⁵ These definitions will be provided in Appendix A and are unnecessary here.

¹⁰⁶ Response to 2/20/02 stakeholder input requesting consistency with NTSA terminology.

~~with a second breath analysis without MRO evaluation.~~ a positive test result that has been determined to be a violation of FFD policy. For drugs other than alcohol, a confirmed positive test is determined by the Medical Review Officer (MRO) after evaluation. For alcohol, a confirmed positive test is determined without an MRO evaluation, based upon confirmatory test results at the following BACs:

- (1) 0.04 percent BAC at any time; or
- (2) 0.03 percent BAC or greater, if the individual has been in a work status for one or more hours; or
- (3) 0.02 percent BAC or greater, if the individual has been in a work status for two or more hours.

Contractor/vendor (C/V) means any company, or an individual not employed by a licensee, that is ~~with which the licensee has contracted for providing [work or services to be performed inside the protected area boundary, either by contract, purchase order, or verbal agreement, or other arrangement.]~~¹⁰⁷

~~Custody and control form means the form used to document the maintenance of the chain of custody for specimens.~~

Cut-off level means the value set for designating a test result as positive.

Employment action means a change to job responsibilities and/or removal from a job, or the ~~[voluntary or]~~¹⁰⁸ mandated implementation of a plan for substance abuse education and/or treatment in order to avoid a change in and/or removal from a job, in response to an employer's concern about the individual's fitness for duty.

~~[Escort means any person with responsibility for the supervision of an individual who does not have unescorted access authorization while that individual is in the protected area.]~~¹⁰⁹

Fuel handling means moving irradiated nuclear fuel to or in the spent fuel pool area or to dry storage casks.

~~*Follow-up testing* means chemical testing at unannounced intervals, to ensure that an employee is maintaining abstinence from the abuse of drugs or alcohol.~~

HHS-certified laboratory means a laboratory that is certified to perform urine drug testing under the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs, June 9, 1994 (59 FR 29908), and all future revisions thereto.

¹⁰⁷ Response to 2/20/02 stakeholder request to clarify the NRC's intent that there are no important differences between contractors and vendors that require separate definitions under this part.

¹⁰⁸ Correction to reaffirm NRC's intent that self-referrals to treatment for substance abuse are not to be considered as potentially disqualifying FFD information.

¹⁰⁹ Definition deleted because stakeholders and NRC staff are in alignment with the proposed new requirement to train all personnel covered by this part to the previous supervisor/escort level, so that definitions of supervisors and escorts would not be required.

Illegal drugs means those drugs included in Schedules I through V of the Controlled Substances Act (CSA), but not when used pursuant to in accordance with a valid prescription or when used as otherwise authorized by law.

~~*Initial or screening tests* means an immunoassay screen for drugs or drug metabolites to eliminate "negative" urine specimens from further consideration or the first breathalyzer test for alcohol. Initial screening may be performed at the licensee's testing facility; a second screen and confirmation testing for drugs or drug metabolites must be conducted by a HHS-certified laboratory.~~

Laboratory confirmed positive means the result of a confirmatory test that has established the presence of drugs, or drug metabolites, at a sufficient level to be an indication of prohibited drug use.

Legal action means a documented or corroborated formal action, taken by a recognized law enforcement authority, beyond the application of the standards of probable cause, such as, but not limited to, a record of arrests or convictions obtained from FBI criminal history record information,¹¹⁰ ~~[including the voluntary]~~¹¹¹ or the mandated implementation of a plan for substance abuse education and/or treatment in order to avoid a permanent record of an arrest or conviction, in response to:

- (1) the use, sale, or possession of illegal drugs,
- (2) the abuse of legal drugs, including alcohol, or
- (3) the refusal to take a drug or alcohol test.

Licensee's testing facility means a drug testing facility operated by a licensee or one of its C/Vs to perform onsite screening tests of urine specimens.

Limit of detection (LOD) means the lowest concentration of an analyte that an analytical procedure can reliably detect, which should be significantly lower than the established cut-off levels.

Medical determination of fitness means the process whereby it is determined whether there are indications that an individual may be in violation of the licensee's FFD policy or is may be otherwise unable to safely and competently perform duties. This determination of fitness is made by [an appropriately qualified, licensed or certified ~~the MRO, or another XX medical professional~~ who has the necessary clinical expertise to evaluate the specific fitness issues presented by the

¹¹⁰ Response to 2/20/02 stakeholder input to clarify the NRC's intent that undocumented or uncorroborated information should not be considered potentially disqualifying FFD information.

¹¹¹ See footnote 108 above.

individual,]¹¹² [~~under the direction of the MRO,~~]¹¹³ in accordance with standard clinical procedures.

Move the following out of the Definitions section, but add it to the section regarding Medical Determination of Fitness, 26.XX: A medical determination of fitness shall be made by a licensed or certified professional who is appropriately qualified and has the necessary clinical expertise, as verified by the licensee, to evaluate the specific fitness issues presented by the individual. For example:

(1) A substance abuse professional who meets the requirements of §26.XX of this part may determine the fitness of an individual who may have engaged in substance abuse[, but not the fitness of an individual who may have experienced mental illness, significant emotional stress, or other mental or physical conditions that may cause impairment but are unrelated to substance abuse;]

(2) A clinical psychologist may determine the fitness of an individual who may have experienced mental illness, significant emotional stress, and/or cognitive or psychological impairment from causes unrelated to substance abuse[, but not the fitness of an individual who may have a substance abuse problem, unless the psychologist has received specialized training in the diagnosis and treatment of substance abuse disorders];

(3) A psychiatrist may determine the fitness of an individual who is taking psychoactive medications in accordance with a valid prescription(s)[, but not the fitness of an individual who may have a substance abuse problem, unless the psychiatrist has received specialized training in the diagnosis and treatment of substance abuse disorders];

(4) A physician may determine the fitness of an individual who may be ill, injured, fatigued, taking medications in accordance with a valid prescription(s) and/or using over-the-counter medications[, but not the fitness of an individual who may have a substance abuse problem, unless the psychiatrist has received specialized training in the diagnosis and treatment of substance abuse disorders.]¹¹⁴

~~[(5) The MRO.]~~¹¹⁵

Medical Review Officer (MRO) means a licensed physician responsible for receiving laboratory

¹¹² This language recognizes that other professionals may be as qualified or more qualified to determine fitness as licensed physicians and that the qualifications required depend upon the type of problem being assessed.

¹¹³ This deletion reflects 2/20/02 stakeholder feedback that an MRO may not be qualified to make a medical determination of fitness.

¹¹⁴ These examples clarify the NRC's intent that only professionals who are qualified to make a specific assessment be used in the determination process.

¹¹⁵ See footnote 113 above.

results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

Potentially disqualifying FFD information means, in the context of a suitable inquiry in Section 26.XXX, information demonstrating that an individual has, during the past 5 years --

- (1) violated a FFD policy and been removed from activities covered by this part;
- (2) used, sold, or possessed illegal drugs;
- (3) abused legal drugs;
- (4) subverted or attempted to subvert a drug or alcohol testing program;
- (5) refused to take a drug or alcohol test;
- (6) been subjected to a plan for substance abuse treatment (except for self-referral); or
- (7) had legal or employment action taken for alcohol or drug use.

Pre-access test means tests for drugs and alcohol that were performed within 60 days before prior to the granting of unescorted access authorization or assignment to activities within the scope of this part. Any negative drug and alcohol test results meeting the standards of this part and performed within 60 days before granting unescorted access may serve as the pre-access test.

Presumptive positive screening test result means the result of a screening test for drugs and drug metabolites that indicates the presence of some drug or drug metabolite and that has the potential to be confirmed through gas chromatography/mass spectrometry testing by an HHS-certified laboratory as a laboratory confirmed positive test result, or the result of a screening test for alcohol indicating a BAC of 0.02 percent or higher.

Protected area has the same meaning as in §73.2(g) of this chapter, an area encompassed by physical barriers and to which access is controlled.

~~Random test means a system of unannounced drug testing administered in a statistically random manner to a group so that all persons within that group have an equal probability of selection.~~

Screening test means an immunoassay screen for drugs or drug metabolites that may be used to eliminate "negative" urine specimens from further consideration or the first breathalyzer test for alcohol.

~~Suitable inquiry means best-effort verification of employment history for the past five years, but in no case less than three years, obtained through contacts with previous employers to determine if a person was, in the past, tested positive for illegal drugs, subject to a plan for treating substance abuse, removed from, or made ineligible for activities within the scope of 10 CFR part 26, or denied unescorted access at any other nuclear power plant or other employment in accordance with a fitness-for-duty policy.~~

Strategic Special Nuclear Material (SSNM) has the same meaning as § 73.2(a), uranium-235

(contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium.

Substance abuse means the use, sale, or possession of illegal drugs or the abuse of legal drugs or other substances.

Subversion and subvert the testing process mean any act intended to avoid being tested or to bring about an inaccurate drug or alcohol test result for oneself or others at any stage of the testing process, including selection and notification of individuals for testing, specimen collection, specimen analysis, and test result reporting, and can include providing a surrogate urine specimen, diluting a specimen (in vivo or in vitro), and adding an adulterant to a specimen.

~~[Suitable inquiry means best effort verification of employment history for the past five years to determine if any potentially disqualifying FFD information exists.]¹¹⁶~~

~~[Supervisor means any person who has the authority or immediate oversight responsibilities to direct or control activities of any other person or persons within the protected area or has ongoing responsibility for the supervision of an individual with unescorted access while that individual is not in the protected area.]¹¹⁷~~

Transporter means a general licensee pursuant to 10 CFR 70.20a, who is authorized to possess formula quantities of SSNM as defined in 10 CFR 73.2 in the regular course of carriage for another or storage incident thereto, and includes the driver or operator of any conveyance, and the accompanying guards or escorts.

~~*Vendor* means any company or individual, not under contract to a licensee, providing services in protected areas.~~

§26.7 4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§26.9 6 Exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and

¹¹⁶ Moved to 26.41 in Subpart C.

¹¹⁷ See footnote 109 above.

are otherwise in the public interest. Any exemptions submitted under this part must meet the provisions of 10 CFR §50.12 or §70.14, as applicable.

§ 26.11 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part must be addressed to the NRC Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Copies of all communications must be sent to the appropriate regional office and resident inspector. Communications and reports may be delivered in person at the Commission's offices at 11555 Rockville Pike, One White Flint North, Rockville, Maryland, or at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD.

§26.13 ~~8~~ Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number ~~3150-0146~~ (update for proposed rule).

(b) The approved information collection requirements contained in this part appear in ~~§§§§ 26.20, 26.21, 26.22, 26.23, 26.24, 26.27, 26.29, 26.70, 26.71, 26.73, 26.80~~ and appendix A: insert when section numbers are determined.

~~§ 26.15 Future revisions.~~

~~Changes to this part that are necessary to conform to the Department of Health and Human Services "Mandatory Guidelines for Federal Workplace Drug Testing Programs," June 9, 1994, (59 FR 29908), and all future revisions thereto, do not require a backfit analysis pursuant to §50.109 of this chapter. Changes to this part that depart from the provisions of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," and all future revisions thereto, are subject to the provisions of §50.109.]¹¹⁸~~

¹¹⁸ The NRC staff concluded that recent changes to the NRC's backfit and regulatory analysis policy adequately address this issue.

Subpart B - Program Elements

§26.1021 General performance objectives.

Fitness-for-duty programs must:

- (a) Provide reasonable assurance that nuclear power plant personnel, transporter personnel, and personnel of licensees authorized to possess or use formula quantities of SSNM, and personnel who have unescorted access to irradiated fuel at decommissioning plants will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;
- (b) Provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of this part; and
- (c) Have a goal of achieving a drug-free workplace and a workplace free of illegal drugs and alcohol, and the effects of such substances.

§26.2023 Written policies and procedures.

(a) General. Each licensee subject to this part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this part. Each licensee shall retain a copy of the current written policy and procedures as a record until the Commission terminates each license for which the policy and procedures were developed and, if any portion of the policies and procedures are superseded, retain the superseded material for three years after each change. As a minimum, written policies and procedures must address fitness for duty through the following:

~~(a) An overall description of licensee policy on fitness for duty. The policy must address use of illegal drugs and abuse of legal drugs (e.g., alcohol, prescription and over-the-counter drugs). Written policy documents must be in sufficient detail to provide affected individuals with information on what is expected of them, and what consequences may result from lack of adherence to the policy. As a minimum, the written policy must prohibit the consumption of alcohol --~~

- ~~(1) Within an abstinence period of at least 5 hours preceding any scheduled working tour, and~~
- ~~(2) During the period of any working tour~~

(b) Policy. The licensee shall prepare a clear and concise FFD policy statement [and provide a

copy of the most current revision of this statement to all personnel subject to the policy.]²⁰⁰ This statement must be written in sufficient detail to provide affected individuals with information on what is expected of them and what consequences may result from lack of adherence to the policy. As a minimum, the written statement shall:

(1) [Describe the consequences of Prohibit]²⁰¹ the use of [and offsite involvement with]²⁰² illegal drugs, the abuse of legal drugs, [including alcohol,]²⁰³ and subversion of the testing process;

(2) Describe the consequences of refusals to provide a specimen for testing;

(3) Prohibit the consumption of alcohol, as a minimum:

(i) Within an abstinence period of at least 5 hours preceding any scheduled working tour, and

(ii) During the period of any working tour; [and

(iii) When scheduled to be available to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures.]²⁰⁴

(4) ~~Licensee policy should also~~ Address other factors that could affect fitness for duty such as mental stress, fatigue, ~~and~~ illness, and the use of prescription and over-the-counter medications that could cause impairment.

(5)(b) Provide a ~~A~~ description of programs ~~which~~ that are available to personnel desiring assistance in dealing with drug, alcohol, or other problems that could adversely affect the performance of activities within the scope of this part.

(6) Describe the consequences of violating the policy.

~~[(7) Be readily available to all persons subject to the policy.]²⁰⁵~~

²⁰⁰ The NRC intends that all individuals subject to a FFD policy in accordance with this part be provided with a copy of it to ensure they understand the requirements with which they must comply.

²⁰¹ Responds to 2/20/02 stakeholder and OGC comments that the NRC may not require licensees to prohibit the offsite use of illegal drugs.

²⁰² See footnote 201.

²⁰³ Clarifies the NRC's intent to include abuse of alcohol as a fitness concern.

²⁰⁴ Response to 2/20/02 stakeholder request for clarification of the NRC's intent with regard to individuals who are assigned to be available for call-in duty in the TSC or EOF.

²⁰⁵ Responds to 2/20/02 stakeholder comment regarding parallelism in the language in this paragraph. This requirement is discussed in footnote 200.

(c) Procedures. The licensee shall prepare written procedures that describe the methods to be used in implementing the FFD policy and the requirements of this part. The procedures shall:

(1) Describe the ~~Procedures,~~ methods and techniques to be ~~utilized,~~ used in testing for drugs and alcohol, including procedures for protecting ~~the employee,~~ the individual providing a specimen and the integrity of the specimen, and the quality controls used to ensure the test results are valid and attributable to the correct individual.

(2)~~(d) A description of;~~ Describe immediate and follow-on actions ~~which,~~ that will be taken, and the procedures to be ~~utilized,~~ used, in those cases where persons who are employed by licensees or C/Vs ~~employees, vendors, or contractors,~~ and are assigned to duties within the scope of this part are determined ~~to have been involved in the use, sale, or possession of illegal drugs; or to have consumed alcohol during the mandatory pre-work abstinence period, while on duty, or to excess prior to reporting to duty as demonstrated with a test that can be used to determine blood alcohol concentration;~~ to have—

- (i) Been involved in the use, sale or possession of illegal drugs;
- (ii) Consumed alcohol during the mandatory pre-work abstinence period, while on duty, or to excess prior to before reporting to duty, as demonstrated with a test that can be used to determine BAC blood alcohol concentration;
- (iii) Attempted to subvert the testing process by adulterating or diluting specimens (in vivo or in vitro), substituting specimens, or by any other means; or
- (iv) Refused to provide a specimen for analysis; or
- [(v) Had legal action taken on an alcohol-related charge.]²⁰⁶

(3)~~(e) A procedure that will~~ Describe the process to ensure that persons called in to perform an unscheduled working tour are fit to perform the anticipated tasks to be assigned. Consumption of alcohol during the abstinence period shall not by itself preclude a licensee from using individuals needed to respond to an emergency. As a minimum, ~~this procedure must --~~

- ~~(1) Require a statement to be made by a called-in person as to whether he or she has consumed alcohol within the length of time stated in the pre-duty abstinence policy;~~
 - ~~(2) If alcohol has been consumed within this period, require a determination of fitness for duty by breath analysis or other means; and (~~
 - ~~3) Require the establishment of controls and conditions under which a person who has been called-in can perform work, if necessary, although alcohol has been consumed.~~
- ~~Consumption of alcohol during the abstinence period shall not by itself preclude a licensee from using individuals needed to respond to an emergency.)~~

²⁰⁶ Clarifies the requirement that legal actions, such as the suspension of a driver's license, related to alcohol abuse must be reported to the licensee or C/V.

(i) The procedure must require a statement to be made by a called-in person as to whether he or she considers himself or herself fit to perform the anticipated tasks to be assigned and whether he or she has consumed alcohol within ~~the length of time stated in the pre-duty abstinence period stated in the policy;~~

(ii) If alcohol has been consumed within this period and the person is called in, the procedure must--

(A) Require a determination of fitness for duty by breath analysis or other means (collection of urine under § 26.XX is not required), and

(B) Require the establishment of controls and conditions under which a person who has been called-in can perform work, if necessary.

(iii) If the individual reports that he or she considers himself or herself unfit for duty for other reasons, including illness, fatigue, or other potentially impairing conditions, and the person is called in, the procedure must require the establishment of controls and conditions under which the individual can perform work, if necessary.

(4) Describe the process to be followed if an individual's behavior raises a concern regarding possible possession, use or sale of illegal drugs, possession of alcohol on-site, or impairment [of any kind]²⁰⁷ that may constitute a risk to the health and safety of the public.

~~(f) The Commission may at any time review the licensee's written policy and procedures to assure that they meet the performance objectives of this part.~~

~~§26. 2125~~ ~~Policy communications and awareness training~~ Training.

(a) Content of training for all personnel. Persons assigned to activities within the scope of this part shall be provided with appropriate training to ensure that they understand --

(1) ~~Licensee~~ The policy and procedures to which they are subject ~~including the methods that will be used to implement the policy;~~

(2) The personal and public health and safety hazards associated with abuse of illegal and legal drugs ~~and misuse of~~, including alcohol;

(3) The effects of prescription and over-the-counter drugs and dietary conditions on job performance and on chemical drug and alcohol test results, and the role of the MRO ~~Medical Review Officer;~~

~~[(4) Behavioral observation techniques for detecting degradation in performance;~~

²⁰⁷ Clarifies NRC intent that other potentially impairing conditions, such as fatigue, illness, emotional stress, or the use of legal drugs, must be addressed.

impairment, or changes in behavior, and procedures for responding to concerns;]²⁰⁸

(4) Employee assistance programs ~~provided by the licensee~~ available to the individuals; and

(5) What is expected of them and what consequences may result from lack of adherence to the policy;

~~§§26.22(b) Training of~~ Content of training for supervisors and escorts.

~~(a) (1) Managers and supervisors of individuals assigned to activities within the scope of this part must be provided appropriate training to ensure that they understand--~~

(6) Their role and responsibilities in implementing the program;

(7) The roles and responsibilities of others, such as the personnel, medical, and employee assistance program staffs;

(8) Techniques for recognizing drugs and indications of the use, sale, or possession of drugs;

(9) Behavioral observation techniques for detecting degradation in performance, impairment, or changes in ~~employee~~ behavior; and

(10) Procedures for initiating appropriate corrective action, to include referral to the person(s) designated by the licensee or C/V to receive fitness concerns, and to the employee assistance program.

~~(b) (2) Persons assigned to escort duties shall be provided appropriate training in techniques for recognizing drugs and indications of the use, sale, or possession of drugs, techniques for recognizing aberrant behavior, and the procedures for reporting problems to supervisory or security personnel.]²⁰⁹~~

(c) Training administration. Licensees shall ensure that individuals performing activities under this part, ~~supervisors, and escorts~~ are trained, as follows:

(1) Training for all personnel must be completed prior to an initial assignment of duties within the scope of this part. ~~and prior to the assignment of escort duties. Supervisors must be trained as soon as feasible after initial supervisory assignment, and in no case later than 30 days~~

²⁰⁸ Response to 2/20/02 stakeholder input that most licensees train all plant personnel covered by Part 26 to the supervisor level now, so the distinction between training for supervisors and escorts vs. all others is unnecessary.

²⁰⁹ See footnote 208.

following this assignment. ~~Training must be completed prior to assignment of duties within the scope of this part and within 3 months after initial supervisory assignment, as applicable.~~

(2) Refresher training must be completed on a nominal 12-month frequency, or more frequently where the need is indicated. A written or computer-based examination, given on a nominal 12-month frequency, may be used in lieu of refresher training. The examination must require mastery of the areas covered in paragraphs (a) or (b) of this section, as appropriate. Refresher training must be completed on a nominal 48-month frequency even if examinations are used to fulfill this requirement during the interim period.

[(3) Initial and the 48-month refresher training may be delivered using a variety of delivery methods, including a classroom setting, hard-copy materials such as workbooks, or electronic means, including computer-based training, distance learning, and audio-video presentations of the materials. Trainees may work independently as long as a qualified licensee or C/V employee is available to answer questions and monitors the training administration to verify that the individual has completed it.]²¹⁰

~~(3) Licensees may accept training of individuals who have been subject to a part 26 program and who have had initial or refresher training, or successfully passed an examination in lieu of refresher training, within the 12 months before assignment[, provided that training by the accepting licensee in the topics covered by paragraphs (a) (1), (5), and (6) of this section is completed before assignment to duties within the scope of this part.~~

~~(4) Licensees may accept training of supervisors who have had initial or refresher supervisory training, or successfully passed an examination in lieu of refresher training, within the 12 months before assignment, provided that training by the accepting licensee in the topics covered by paragraphs (b)(1)(i), (ii) and (v) of this section is completed before assignment to supervisory duties.]²¹¹~~

~~§§26.23 Contractors and vendors.~~

~~(a) All contractor and vendor personnel performing activities within the scope of this part for a licensee must be subject to either the licensee's program relating to fitness for duty, or to a program, formally reviewed and approved by the licensee, which meets the requirements of this part. Written agreements between licensees and contractors or vendors for activities within the scope of this part must be retained for the life of the contract and will clearly show that --~~

²¹⁰ This sentence was added to reflect 2/20/02 stakeholder feedback regarding the need to clarify the acceptability of using CBT and other training delivery methods than classroom training. The NRC's intent is that any training delivery methods are appropriate for initial training, as long as the individual receiving the training has the opportunity to ask questions about the material and the licensee/CV can assure that the individual has received the training. Providing an individual with a copy of the written policy statement and requiring him or her to "review and initial" it to document that s/he has read and understands it would not meet the intent of this paragraph.

²¹¹ See footnote 208.

~~(1) The contractor or vendor is responsible to the licensee for adhering to the licensee's fitness-for-duty policy, or maintaining and adhering to an effective fitness-for-duty program, which meets the standards of this part; and~~

~~(2) Personnel having been denied access or removed from activities within the scope of this part at any nuclear power plant for violations of a fitness-for-duty policy will not be assigned to work within the scope of this part without the knowledge and consent of the licensee.~~

~~(b) Each licensee subject to this part shall assure that contractors whose own fitness-for-duty programs are relied on by the licensee adhere to an effective program, which meets the requirements of this part, and shall conduct audits pursuant to §§26.80 for this purpose.)~~

§26.2425 [Chemical Drug]²¹² and alcohol testing.

(a) General. To provide a means to deter and detect substance abuse, the licensee shall implement ~~the following~~ ~~[-chemical drug and alcohol]~~ testing programs for persons subject to this part.

~~(1) Testing within 60 days prior to the initial granting of unescorted access to protected areas or assignment to activities within the scope of this part.~~

~~(2) Unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an equal probability of being selected and tested. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Random testing must be conducted at an annual rate equal to at least 50 percent of the workforce.~~

~~(3) Testing for cause, i.e., as soon as possible following any observed behavior indicating possible substance abuse, after accidents involving a failure in individual performance resulting in personal injury, in a radiation exposure or release of radioactivity in excess of regulatory limits, or actual or potential substantial degradations of the level of safety of the plant if there is reasonable suspicion that the worker's behavior contributed to the event, or after receiving credible information that an individual is abusing drugs or alcohol.~~

~~(4) Follow-up testing on an unannounced basis to verify continued abstention from the use of substances covered under this part.~~

(b) Testing for drugs and alcohol, at a minimum, must conform to the "Guidelines for Drug and Alcohol Testing Programs," issued by the Nuclear Regulatory Commission and appearing in

²¹² Conforming change to be consistent with terminology used in HHS and DOT Guidelines.

~~appendix A to this part, hereinafter referred to as the NRC.~~ [Conditions for testing. Licensees and C/Vs shall administer drug and alcohol tests under the following conditions:]²¹³

[(1) At least 60 days before the granting of UA or assignment to activities within the scope of this part, unless the individual meets the conditions for an exemption described in §§26.47 of this part;]²¹⁴

[(2) In response to any observed behavior or physical condition that creates a reasonable suspicion of possible substance abuse;

(3) As soon as practical after accidents involving a failure in individual performance that resulted in:

(i) a significant **personal injury**, such as an injury that requires medical treatment and results in lost work time, where there is a reasonable suspicion of possible substance abuse,

(ii) ~~in~~ a radiation exposure or release of radioactivity in excess of regulatory limits, or

(iii) actual or potential substantial degradations of the level of safety of the plant if there is reasonable suspicion that the ~~worker's behavior~~ individual's performance contributed to the event;

(4) After receiving credible information that an individual is abusing drugs or alcohol;

(5) When an individual's UA or UAA is reinstated and the individual is reassigned to activities within the scope of this part following a violation of the substance abuse provisions of the FFD policy; and

(6) On a statistically random, ~~and unpredictable,~~ and ~~manner~~ unannounced basis so that all persons in the population subject to testing have an equal probability of being selected and tested.]²¹⁵

(c) General requirements for conducting drug and alcohol testing.

(1) Licensees must, at a minimum, apply the cutoff levels published in the HHS Guidelines for screening and confirmatory testing. Licensees, at their discretion, may implement programs with more stringent standards (e.g., lower cutoff levels). ~~broader panel of drugs~~ [and shall inform the Commission of the deviation within 60 days of implementing such a change.]²¹⁶

²¹³ This description of the types of tests to be performed has been moved here from Subpart D (as per the outline for the draft rule) because the types of tests required under this part are program elements. Procedures for scheduling and conducting the tests are presented in other sections of the rule and in Appendix A.

²¹⁴ Rewritten to conform to the definition of pre-access testing and to note the exemptions described in Subpart C.

²¹⁵ These revisions reflect clarifications provided in the Affirm Rule and stakeholder input from 12/01, 1/02 & 2/02 public meetings.

²¹⁶ The staff determined that this reporting requirement is no longer necessary.

~~All requirements in this part still apply to persons who fail a more stringent standard, but do not test positive under the NRC Guidelines. Management actions must be the same with the more stringent standards as if the individual had failed the NRC standards.~~ If a licensee implements lower cutoff levels than those published in the HHS Guidelines and an individual is determined to have a confirmed positive test using the licensee's more stringent cutoff levels, the individual must be subject to all management actions and sanctions required by the licensee's policy and this part, as if the individual had a confirmed positive test result using the HHS Guidelines' cutoff levels.

(2) Licensees shall at a minimum, test for marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol. ~~test for all substances described in paragraph 2.1(a) of the NRC Guidelines.~~ In addition, licensees may consult with local law enforcement authorities, hospitals, and drug counseling services to determine whether other substances with abuse potential are being used in the geographical locale of the facility and the local workforce. When appropriate, other substances so identified may be added to the panel of substances for testing. Appropriate cutoff limits must be established by the licensee for these substances. [The licensee shall inform the Commission of the additional substances and the cutoff limits within 60 days of implementing such a change.]²¹⁷

~~(3)(1) Licensees may conduct initial screening tests of an aliquot before forwarding selected specimens to a laboratory certified by the Department of Health and Human Services (HHS);~~ All collected urine specimens must be forwarded to a laboratory certified by HHS, except that licensees may conduct screening tests of urine aliquots to determine which specimens are negative and need no further testing, provided the licensee's staff possesses the necessary training and skills for the tasks assigned, the staff's qualifications are documented, and adequate quality controls for the testing are implemented. ~~Quality control procedures for initial screening tests by a licensee's testing facility must include the processing of blind performance test specimens and the submission to the HHS-certified laboratory of a sampling of specimens initially tested as negative. Except for the purposes discussed below, access to the results of preliminary tests must be limited to the licensee's testing staff, the Medical Review Officer (MRO), the Fitness-for-Duty Program Manager, and the employee assistance program staff, when appropriate.~~

~~(2) No individual may be removed or temporarily suspended from unescorted access or be subjected to other administrative action based solely on an unconfirmed positive result from any drug test, other than for marijuana (THC) or cocaine, unless other evidence indicates that the individual is impaired or might otherwise pose a safety hazard. With respect to onsite initial screening tests for marijuana (THC) and cocaine, licensee management may be informed and licensees may temporarily suspend individuals from unescorted access or from normal duties or take lesser administrative actions against the individual based on an unconfirmed presumptive~~

²¹⁷ See footnote 211.

positive result provided the licensee complies with the following conditions:

(i) For the drug for which action will be taken, at least 85 percent of the specimens which were determined to be presumptively positive as a result of preliminary onsite screening tests during the last 6-month data reporting period submitted to the Commission under §§26.71(d) were subsequently reported as positive by the HHS-certified laboratory as the result of a GC/MS confirmatory test.

(ii) There is no loss of compensation or benefits to the tested person during the period of temporary administrative action.

(iii) Immediately upon receipt of a negative report from the HHS-certified laboratory, any matter which could link the individual to a temporary suspension is eliminated from the tested individual's personnel record or other records.

(iv) No disclosure of the temporary removal or suspension of, or other administrative action against, an individual whose test is not subsequently confirmed as positive by the MRO may be made in response to a suitable inquiry conducted under the provisions of §§26.27(a), a background investigation conducted under the provisions of §§73.56, or to any other inquiry or investigation. For the purpose of assuring that no records have been retained, access to the system of files and records must be provided to licensee personnel conducting appeal reviews, inquiries into an allegation, or audits under the provisions of §§26.80, or to an NRC inspector or other Federal officials. The tested individual must be provided a statement that the records in paragraph (d)(2)(iii) of this section have not been retained and must be informed in writing that the temporary removal or suspension or other administrative action that was taken will not be disclosed, and need not be disclosed by the individual, in response to requests for information concerning removals, suspensions, administrative actions or history of substance abuse.

(e) The Medical Review Officer's review of the test results must be completed and licensee management notified within 10 days of the initial presumptive positive screening test.

———(f)(4) ~~All testing of specimens for urine drug testing~~ All testing of urine specimens for drugs, except ~~onsite testing~~ screening tests performed by licensees under paragraph (d) above of this section, must be performed in a laboratory certified by ~~the U.S. Department of Health and Human Services~~ HHS for that purpose consistent with its standards and procedures for certification. Except for suspect specimens submitted for special processing (~~§ 2.7(d) of Appendix A to Part 26~~), all specimens sent to HHS-certified laboratories ~~shall~~ must be subject to ~~initial~~ screening analysis by the laboratory and all specimens screened as presumptively positive ~~shall~~ must be subject to ~~confirmation~~ confirmatory testing by gas chromatography/mass spectroscopy analysis by the laboratory. ~~Licensees shall submit blind performance test specimens to certified laboratories in accordance with the NRC Guidelines (appendix A).~~ Licensees shall ensure that all collected specimens are tested and that laboratories report results

for all specimens sent for testing, including blind performance test specimens.

——(5) Tests for alcohol must be administered by breath analysis using breath alcohol analysis devices meeting evidential standards described in **[Replace when resolved: § 2.7(p)(3) of Appendix A to part 26]**. ~~Tests for alcohol must be administered by breath analysis using breath alcohol analysis devices meeting evidential standards described in section 2.7(O)(3) of appendix A. A breath alcohol content indicating a blood alcohol concentration of 0.04 percent or greater must be a positive test result. The confirmatory test for alcohol shall be done with another breath measurement instrument. Should the person demand further confirmation, the test must be a gas chromatography analysis of blood.~~ If the screening test shows a BAC of 0.02 percent or greater, a confirmatory test for alcohol must be performed using another breath alcohol analysis device. A confirmatory test result for alcohol must be declared positive at the following BACs:

- (i) 0.04 percent BAC at any time; or
- (ii) 0.03 percent BAC or greater, if the individual has been in a work status for one or more hours (including any breaks for rest, lunch, dental/doctor appointments, etc.); or
- (iii) 0.02 percent BAC or greater, if the individual has been in a work status for two or more hours (including any breaks for rest, lunch, dental/doctor appointments, etc.)

(6) If an individual has a medical condition that makes collection of breath or urine specimens difficult or hazardous, the MRO, in consultation with the treating or personal physician, may authorize an alternative evaluation process, tailored to the individual case, for determining whether a violation of the fitness-for-duty policy has occurred, provided this process includes measures to prevent subversion and can achieve results comparable to those produced by urinalysis for illegal drugs and breath analysis for alcohol.

(7) Specimens collected under NRC regulations requiring compliance with this part may only be designated or approved for testing as described in this part and shall not be used to conduct any other analysis or test without the permission of the tested individual.

§26.27 Behavioral Observation

Licenseses must assure that individuals performing activities under this part are subject to ~~continuous~~ behavioral observation [by trained observers to detect possible possession, use or sales of illegal drugs, possession of alcohol on-site, or impairment that, if left unattended, may constitute a risk to the health and safety of the public.]²¹⁸ [Individuals assigned to perform activities within the scope of this part must report fitness concerns to the licensee or C/V personnel designated in the FFD policy as responsible for arranging for a medical determination

²¹⁸ Added to better describe the purposes of the behavioral observation program element.

of fitness.]²¹⁹ Question for staff and stakeholders: Is there any need to clarify that a fitness concern is a safety concern under the NRC's employee protection provisions? Is there a need for provisions for confidential reporting of fitness concerns, now that non-supervisory and non-management personnel will also be responsible for behavioral observation? for the reporting of fitness concerns and training in behavioral observation techniques must be developed and implemented for persons assigned to activities under this part, including supervisors and escorts.

~~§§26.2529~~ Employee assistance programs (EAP).

Each licensee subject to this part shall maintain an employee assistance program EAP to strengthen fitness-for-duty FFD programs by offering assessment, short-term counseling, referral services, and treatment monitoring to employees with problems that could adversely affect the performance of activities within the scope of this part. Employee assistance programs ~~should~~ must be designed to achieve early intervention and provide for confidential assistance. The ~~employee assistance program~~ EAP staff shall inform licensee management when a determination has been made that any individual's condition constitutes a hazard to himself or herself or others (including those who have self-referred).

~~§§26.27~~ Management actions and sanctions to be imposed.

~~(a)(1) The licensee shall obtain a written statement from the individual as to whether activities within the scope of this part were ever denied the individual before the initial --~~

~~(i) Granting of unescorted access to a nuclear power plant protected area;~~

~~(ii) Granting of unescorted access by a formula quantity SSNM licensee to Category IA Material;~~

~~(iii) Assignment to create or the initial granting of access to safeguards of procedures for SSNM;~~

~~(iv) Assignment to measure Category IA Material;~~

~~(v) Assignment to transport or escort Category IA Material;~~

~~(vi) Assignment to guard Category IA Material; or~~

~~(vii) Assignment to activities within the scope of this part to any person;~~

~~(2) The licensee, as applicable, shall complete a suitable inquiry on a best-efforts basis to~~

²¹⁹ Added to clarify the NRC's intent that individuals who observe behavior or a physical condition that gives rise to a fitness concern are obligated to take appropriate action, as defined in the FFD policy. Also a response to 2/20/02 stakeholder feedback.

determine if that person was, in the past --

- (i) Tested positive for drugs or use of alcohol that resulted in on-duty impairment;
 - (ii) Subject to a plan for treating substance abuse (except for self-referral for treatment);
 - (iii) Removed from activities within the scope of this part;
 - (iv) Denied unescorted access at any other nuclear power plant;
 - (v) Denied unescorted access to SSNM;
 - (vi) Removed from responsibilities to create or have access to safeguards records or procedures for SSNM;
 - (vii) Removed from responsibilities to measure SSNM;
 - (viii) Removed from the responsibilities of transporting or escorting SSNM; or
 - (ix) Removed from the responsibilities of guarding SSNM at any other facility in accordance with a fitness-for-duty policy.
- (3) If a record of the type described in paragraph (a)(2) of this section is established, the new assignment to activities within the scope of this part or granting of unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program, provided the restrictions of paragraph (b) of this section are observed. To meet this requirement, the identity of persons denied unescorted access or removed under the provisions of this part and the circumstances for the denial or removal, including test results, will be made available in response to a licensee's, contractor's or vendor's inquiry supported by a signed release from the individual.
- (4) Failure to list reasons for removal or revocation of unescorted access is sufficient cause for denial of unescorted access. Temporary access provisions are not affected by this part if the prospective worker passes a chemical test conducted according to the requirements of §§26.24(a)(1).
- (b) Each licensee subject to this part shall, as a minimum, take the following actions. Nothing herein shall prohibit the licensee from taking more stringent action.
- (1) Impaired workers, or those whose fitness may be questionable, shall be removed from activities within the scope of this part, and may be returned only after determined to be fit to safety and competently perform activities within the scope of this part.
 - (2) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs onsite, a confirmed positive test result must be presumed to be an indication of offsite drug use. The first confirmed positive test must, as a minimum, result in immediate removal from activities within

~~the scope of this part for at least 14 days and referral to the EAP for assessment and counseling during any suspension period. Plans for treatment, follow-up, and future employment must be developed, and any rehabilitation program deemed appropriate must be initiated during such suspension period. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this part must be obtained before permitting the individual to be returned to these activities. Any subsequent confirmed positive test must result in, as applicable --~~

~~(i) Removal from unescorted access to nuclear power plant protected areas;~~

~~(ii) Removal from unescorted access to Category IA Material;~~

~~(iii) Removal from responsibilities to create or have access to records or procedures for safeguarding SSNM;~~

~~(iv) Removal from responsibilities to measure Category IA Material;~~

~~(v) Removal from the responsibilities of transporting or escorting Category IA Material;~~

~~(vi) Removal from the responsibilities of guarding Category IA Material at any other licensee facility, and~~

~~(vii) Removal from activities within the scope of this part for a minimum of 3 years from the date of removal.~~

~~(3) Any individual determined to have been involved in the sale, use, or possession of illegal drugs, while, as applicable, within a protected area of any nuclear power plant, within a facility that is licensed to possess or use SSNM, or within a transporter's facility or vehicle, must be removed from activities within the scope of this part. The individual may not --~~

~~(i) Be granted unescorted access to nuclear power plant protected areas;~~

~~(ii) Be granted unescorted access to Category IA Material;~~

~~(iii) Be given responsibilities to create or have access to safeguards records or procedures for SSNM;~~

~~(iv) Be given responsibilities to measure Category IA Material;~~

~~(v) Be given responsibilities to transport or escort Category IA Material;~~

~~(vi) Be given responsibilities to guard Category IA Material; or~~

~~(vii) Be assigned to activities within the scope of this part for a minimum of 5 years from the date of removal.~~

~~(4) Persons removed for periods of three years or more under the provisions of paragraphs (b) (2) and (3) of this section for the illegal sale, use or possession of drugs and who would have been removed under the current standards of a hiring licensee, may be granted unescorted access and assigned duties within the scope of this part by a licensee subject to this part only when the hiring licensee receives satisfactory medical assurance that the person has abstained from drugs for at least three years. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this part must be obtained before permitting the individual to perform activities within the scope of this part. Any person granted unescorted access or whose access is reinstated under these provisions must be given unannounced follow-up tests at least once every month for four months and at least once every three months for the next two years and eight months after unescorted access is reinstated to verify continued abstinence from proscribed substances. Any confirmed use of drugs through this process or any other determination of subsequent involvement in the sale, use or possession of illegal substances must result in permanent denial of unescorted access.~~

~~(5) Paragraphs (b) (2), (3), and (4) of this section do not apply to alcohol, valid prescriptions, or over-the-counter drugs. Licensee sanctions for confirmed misuse of alcohol, valid prescription, and over-the-counter drugs shall be sufficient to deter abuse of legally obtainable substances as a substitute for abuse of proscribed drugs.~~

~~(c) Refusal to provide a specimen for testing and resignation prior to removal for violation of company fitness-for-duty policy concerning drugs must be recorded as removals for cause. These records must be retained for the purpose of meeting the requirements of §§26.27(a).~~

~~(d) If a licensee has a reasonable belief that an NRC employee may be under the influence of any substance, or otherwise unfit for duty, the licensee may not deny access but shall escort the individual. In any instance of this occurrence, the appropriate Regional Administrator must be notified immediately by telephone. During other than normal working hours, the NRC Operations Center must be notified.~~

§§26.2931 Protection of information.

(a) Each licensee subject to this part and any C/Vs upon which the licensee relies, ~~who~~ that collects personal information on an individual for the purpose of complying with this part, shall establish and maintain a system of files and procedures for the protection of the personal information. ~~This system must be maintained until the Commission terminates each license for which the system was developed.~~ Records shall be maintained and used with the highest regard for individual privacy.

(b) Licensees, ~~contractors, and vendors~~ and C/Vs shall not disclose the personal information collected and maintained to persons other than—

- (1) assigned MROs ~~Medical Review Officers~~;
- (2) other licensees, C/Vs, or their authorized representatives legitimately seeking the

information as required by this part for unescorted access decisions and who have obtained a release from current or prospective employees or ~~contractor~~ C/V personnel;

- (3) NRC representatives;
- (4) appropriate law enforcement officials under court order;
- (5) the subject individual or his or her representative, as designated in writing by the individual for specified FFD matters;
- (6) ~~or to those~~ licensee representatives who have a need to have access to the information in performing assigned duties, including management and medical determinations of fitness and audits of licensee, ~~s contractor's, and vendor's~~ or C/V FFD programs;
- (7) the presiding officer in a judicial or administrative proceeding initiated by the subject individual,
- (8) ~~to~~ persons deciding matters on review or appeal; and ~~to~~
- (9) other persons pursuant to court order.

(c) Upon receipt of a written request by the subject individual, the licensee, C/V or HHS-certified laboratory possessing such records shall promptly provide copies of all records pertaining to the determination of a violation of the licensee's FFD policy, including test results, MRO reviews, and management actions pertaining to the subject individual. Records relating to the results of any relevant laboratory certification review or revocation of certification proceeding must be obtained from the relevant laboratory and provided to the subject individual upon request.

(d) Licensee contracts with HHS-certified laboratories and procedures for the licensee's testing facility shall require that test records be maintained in confidence, except as provided in paragraphs (b) and (c) of this section.

(e) This section does not authorize the licensee, ~~contractor, or vendor~~ or C/V to withhold evidence of criminal conduct from law enforcement officials.

~~§26.2833~~ Appeals Due-Process-Protection Reviews.

Each licensee subject to this part, and each ~~contractor or vendor~~ C/V implementing an FFD ~~fitness-for-duty~~ program that is accepted by a licensee under the provisions of ~~§§26.23~~, shall establish a procedure for licensee and ~~contractor or vendor~~ C/V employees, and applicants for unescorted access, for the review of ~~to appeal a~~ ~~positive alcohol or drug~~ determination that the individual has violated the FFD policy. The procedure must provide notice to the individual of the grounds for the determination that the individual has violated the FFD policy, and must provide an opportunity to respond and to submit additional relevant information. The procedure must provide for an objective, ~~may be an~~ and impartial ~~internal management~~ review of the facts relating to the determination that the individual has violated the FFD policy. The review must be conducted by persons not associated with the administration of the FFD program, as described in § 26.2(a)(4), and may include internal management. If the review finds in favor of the individual

appeal is successful, the relevant records must be corrected. A licensee review procedure need not be provided to employees of ~~contractors or vendors~~ C/Vs when the ~~contractor or vendor~~ C/V is administering ~~its~~ a chemical drug and alcohol testing program for its applicants and employees. ~~own alcohol and drug testing~~

~~§26.80~~ 35 Audits and Corrective Action.

(a) General. Each licensee subject to this part ~~shall~~ is responsible for the continuing effectiveness of ~~audit the fitness-for-duty~~ the FFD program ~~nominally every 12 months~~, including licensee FFD program elements that are provided by C/Vs, the FFD programs of any C/Vs that are accepted by the licensee, and the programs of the HHS-certified laboratories relied upon by the licensee and its C/Vs. Each licensee shall ensure that audits of these programs are conducted and that corrective actions are taken to resolve any problems identified.

(b) FFD program. Each licensee subject to this part[, and C/Vs who implement FFD programs accepted by licensees,]²²⁰ shall completely audit the FFD program as needed but no less frequently than every 36 months. Licensees [and the C/Vs who implement FFD programs accepted by licensees] are responsible for determining the appropriate frequency, scope, and depth of additional auditing activities within the 3-year period based on review of program performance indicators such as the frequency, nature, and severity of discovered problems, testing errors, personnel or procedural changes, previous audit findings, and "lessons learned." [As soon as reasonably practicable, but not No]²²¹ later than 12 months after a significant change in FFD personnel, procedures, or equipment, licensees [and the C/Vs who implement FFD programs accepted by licensees] shall audit the particular program element(s) affected by that change to assure continued program effectiveness.

(c) C/Vs and HHS-certified laboratories. Licensee FFD program elements that are implemented by C/Vs, FFD services provided to the licensee by personnel who are off site or not under the direct daily supervision or observation of licensee personnel, C/V FFD programs relied upon by the licensee, and HHS-certified laboratories used by the licensee for drug testing and/or collection site services shall be audited nominally every 12 months. ~~In addition, audits must be conducted; nominally every 12 months, of those portions of fitness-for-duty programs implemented by contractors and vendors. Licensees may accept audits of contractors and vendors conducted by other licensees and need not re-audit the same contractor or vendor for the same period of time. Each sharing utility shall maintain a copy of the audit report, to include findings, recommendations and corrective actions. Licensees retain responsibility for the effectiveness of~~
~~contractor and vendor programs and the implementation of appropriate corrective action.~~

²²⁰ Response to stakeholder input at 2/20/02 public meeting indicating that licensees are requiring C/Vs who implement FFD programs that they accept require the C/Vs to conduct a self-audit annually in addition to the annual audits licensees perform of these C/V programs. This change is intended to clarify that the NRC does not require C/Vs to perform annual self-audits.

²²¹ Response to 2/20/02 stakeholder input that "as soon as reasonably practicable" is unclear.

(d) Licensee contracts with C/Vs and HHS-certified laboratories must reserve the right to audit the C/V or laboratory at any time, including at unannounced times, and to obtain all information and documentation reasonably relevant to the audits. Licensee contracts with C/Vs and HHS-certified laboratories must also provide the licensee with the ability to obtain copies of any documents, including reviews and inspections pertaining to a laboratory's certification by HHS, and any other data that may be needed to assure that the C/V or HHS-certified laboratory is performing its functions properly and that staff and procedures meet applicable requirements. In addition, before the award of a contract, the licensee shall carry out pre-award inspections and/or audits of the procedural aspects of the C/V's or HHS-laboratory's operations.

~~(bc)~~ Conduct of audits. Audits must focus on the effectiveness of the program and be conducted by individuals qualified in the subject(s) being audited, and independent of both ~~fitness-for-duty~~ FFD program management and personnel directly responsible for implementation of the ~~fitness-for-duty~~ FFD program.

(ef) Audit results. The result of the audits, along with recommendations, if any, must be documented and reported to senior corporate and site management. Each audit report must identify conditions adverse to the proper performance of the FFD program, the cause of the condition(s) and, when appropriate, recommend corrective actions. Management shall review the audit findings and take follow-up action, including re-audit of the deficient areas where indicated, to preclude, within reason, repetition of the condition. The resolution of the audit findings and corrective actions must be documented. ~~These documents must be retained for three years. NRC Guidelines require licensee audits of HHS-certified laboratories as described in appendix A.~~

(g) Sharing of audits. Licensees may jointly conduct audits, or accept audits of C/Vs and HHS-certified laboratories that were conducted by other licensees, when the services provided to the sharing licensees by the C/Vs and HHS-certified laboratories are the same. Licensees shall review audit records and reports to identify the areas covered by the shared or accepted audit, ~~and shall ensure that areas not covered are audited on the nominal 12-month frequency.~~ Sharing licensees need not re-audit the same C/V or HHS-certified laboratory for the same period of time, except to audit program elements and services used by the licensee that were not addressed in the shared audit. Annual licensee inspections and audits of HHS-certified laboratories need not duplicate areas inspected in the most recent HHS certification inspection, but only if the licensee reviews the HHS certification inspection records and reports to [ascertain the areas identify any areas in which the licensee uses services that were not addressed]²²² by the HHS certification inspection. Each sharing licensee shall maintain a copy of the shared audit and HHS certification inspection records and reports, to include findings, recommendations and corrective actions. If an HHS-certified laboratory loses its certification, in whole or in part, a licensee is permitted to immediately use an HHS-certified laboratory that has been audited by another NRC licensee having the same drug panel and cut-off levels within the previous 12 months. The licensee must

²²² Edited to clarify language and to correct a typographical error – omission of "not." If, for example, a licensee used an HHS lab to test for additional drugs, beyond the HHS panel, the licensee would need to audit testing of those additional drugs.

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ensure completion of an audit of any areas not audited by another licensee within 3 months of the change.

Table 1. Number of operating units and programs, not including decommissioned facilities

Item	Assumption	New Initial Estimate	NEI/Licensee Estimates	Basis
1. Reactors (n)	Operating Nuclear Reactors	103		NUREG-1350, Volume 13
2. FFD programs (n)	78 FFD programs	78		1999 FFD Program Performance Reports. NOTE: These numbers will be updated to 2000 when 2000 data are available.
3. Nuclear Reactor Personnel Covered by	Total number is double the randomly tested population at 50%			1999 FFD Program Performance Reports. NOTE: These numbers will be updated to 2000 when 2000 data are available.
Licensee Employees		77,384		
Long-Term Contractors		3,952		
Short-Term Contractors		27,578		
Total Testing Population		108,914		
4. Average Testing Population per Reactor Operating Unit	Total testing population divided by number of operating nuclear reactors	1,057		Note: Rule revision impacts will be calculated either at the operating nuclear reactor unit level or at the FFD program level, depending on where costs and savings are incurred. For instance, laboratory costs would most likely be incurred at the FFD program level and procedural and training costs at the reactor unit level.
5. Average Testing Population per FFD program	Total testing population divided by number of FFD programs	1,396		
6. Fuel Facilities	Fuel Facilities covered by Part 26	2		Nuclear Fuel Services, Erwin, TN; BWX Technologies, Lynchburg, VA. Source: NRC Staff
7. Fuel Facility personnel covered by the scope of the rule	NFS=300; BWXT = 811	1,111		Source: NRC staff
8. Fuel Facility FFD programs	1 per facility	2		Source: NRC staff
9. Average Testing Population per Fuel Facility FFD program	Total facilities divided by total number of personnel	556		
10. Average Testing Population per reactor/fuel facility	This measure is used for aggregate analysis at unit level	1,043		
11. Average Testing Population per FFD program	This measure is used for aggregate analysis at FFD program level	1,375		

Table 2. Wage Rates

Item	Assumption	New Initial Estimate	NEI/Licensee Estimates	Basis
1. Collection Site/Clerical Personnel	2002 Labor Cost/Hour	\$ 22.92		Source: Bureau of Labor Statistics (BLS), Table 1. National Wage Data, 2000. Occupational Category: Medical Assistants
2. Medical Review Officer (MRO)	2002 Labor Cost/Hour	\$ 103.64		Source: BLS, Table 1. National Wage Data, 2000. Occupational Category: Family and General Practitioners
3. MRO Clerical Staff	2002 Labor Cost/Hour	\$ 22.92		Source: BLS, Table 1. National Wage Data, 2000. Occupational Category: Medical Assistants
4. FFD Manager	2002 Labor Cost/Hour	\$ 65.56		BLS: Occupational Employment and Wages, 2000. "Table A. Employment and Wages by major occupational category." General category: Management
5. FFD Manager Clerical Staff	2002 Labor Cost/Hour	\$ 20.22		BLS: Occupational Employment and Wages, 2000. "Table A. Employment and Wages by major occupational category." General category: Healthcare Support
6. Licensee Manager or Designate	2002 Labor Cost/Hour	\$ 65.56		BLS: Occupational Employment and Wages, 2000. "Table A. Employment and Wages by major occupational category." General category: Management
7. Other Wage Rate Assumptions:				
Labor Cost	Labor Cost=Base Rate/Hour x 2.0 fringe benefit			Source: NUREG/CR-4627
FFD Program Staffing	Average program size (staffing)		4	NUMARC originally estimated that FFD programs range from two to seven positions (not including EAP personnel). For purposes of this analysis it is assumed that four people on average are in FFD programs
Average Utility Worker Wage Rate	Regulatory analysis estimated a 1995 utility worker wage rate of \$44.78 per hour.	\$ 44.78		Original estimate from NUREG/CR-4627. This is very dated information.

Table 3. Baseline Drug Testing Parameters (General)

Note: the following assumptions are general drug testing cost parameters. Specific costs will be addressed in each proposed subpart analysis.

Item	Assumption	New Initial Estimate	NEI/Licensee Estimates	Basis
1. Onsite Laboratories	(n)	?		Onsite and offsite testing requirements differ. Will need to compute different estimates depending on whether the FFD program has an onsite testing laboratory or sends specimens to an HHS laboratory.
2. Offsite Laboratories	(n)	?		
3. Initial Screening Costs	Cost	\$ 61.00		\$61 is the average cost of tests conducted by federal workplace programs. Source: SAMHSA. Recent staff review of testing costs among selected programs in the nuclear power industry found an average cost of \$43.62; however, the data are very hard to compare due to wide variations in testing practices and cost bases (e.g., collection site costs, employee labor costs, etc.). Need data from licensees describing the cost parameters and the total cost of testing per assay.
4. Confirmatory Testing Costs	Cost			Confirmatory testing may either be included in the costs of initial screening or it may be costed separately. Need data from licensees describing the cost parameters and the total cost of confirmatory testing if it is not included in the initial
5. Alcohol testing costs	Cost			Estimate should include collection site time to administer the test and the cost of the assay equipment (per assay).
6. Blind proficiency testing	Cost	\$ 65.00		Regulatory analysis, footnote 21. Similar to above, need to know if this is included in assay costs (per test) or if this is costed out separately for licensee FFD

Table 5. FFD Program Staff Costs

Position Title	Job Duties	Number of Positions	Base Rate/Hour (1988)	Labor Cost/Hour (1995)	Revised Base Rate/Hour (2002)	Revised Labor Cost/Hour (2002)
Collection Site/Clerical Personnel	d	2	\$ 12.35	33.39	\$ 11.46	\$ 22.92
Medical Review Officer (MRO)	a, b, c	1	\$ 35.00	94.64	\$ 51.82	\$ 103.64
MRO Clerical Staff	a	1	\$ 12.35	33.39	\$ 11.46	\$ 22.92
FFD Manager	a, b, c, d	1	\$ 26.15	70.71	\$ 32.78	\$ 65.56
FFD Manager Clerical Staf	a, c, d	1	\$ 12.35	33.39	\$ 10.11	\$ 20.22
Licensee Manager or Designate	b, c	1	\$ 26.15	70.71	\$ 32.78	\$ 65.56
Total/Average		7	\$ 19.53	\$ 52.80	\$ 23.12	\$ 46.25

FTE (2080 Hours)

Job Duties

a=Personnel who can link test results with the person who was tested, prior to determination of a FFD policy violation

b=Personnel who can make medical and management determinations of fitness.

c=Personnel making removal and return-to-work decisions.

d=Personnel involved in the selection and notification of employees for testing and in the collection of specimens.

Labor Cost=Base Rate/Hour x 2.0 fringe benefit (Source: NUREG/CR-4627)

NUMARC originally estimated that FFD programs range from two to seven positions (not including EAP personnel). For purposes of this analysis it is assumed that four people on average are in FFD programs.