

DOCKET NUMBER
 PROPOSED RULE **PR 26**
(67 FR 07093)

DOCKETED
 USNRC

4

May 28, 2002 (4:33PM)

OFFICE OF SECRETARY
 RULEMAKINGS AND
 ADJUDICATIONS STAFF

§26.40 Management actions and sanctions to be imposed.–

§ 26.41 Suitable Inquiry

- (a)(1) Before assigning an individual to activities within the scope of this part, the licensee shall obtain a written statement from the individual as to whether he or she has in the past 5 years or subsequent to the last date granted unescorted access authorization in accordance with § 73.56, whichever is shorter:
- (i) Used, sold, or possessed any illegal drugs, or had a legal or employment action taken against him or her for alcohol or drug use;
 - (ii) Been determined to have violated an FFD policy, or as a result of action taken in accordance with an FFD policy been denied assignment to activities within the scope of this part or has been subject to a plan for treating substance abuse (except for self-referral for treatment); or
 - (iii) Has as a result of action taken in accordance with an FFD policy been removed from activities within the scope of this part.
- (2) The statement made under paragraph (a)(1) of this section must include the individual's declaration as to the specific type, duration, and resolution of any such matter.
- (3) The licensee shall complete a suitable inquiry on a best-efforts basis to verify the accuracy of the individual's written statement made under paragraphs (a) (1) and (a) (2) of this section.
- (4) To meet the suitable inquiry 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, or C/V's inquiry supported by a release signed by the individual being investigated that authorizes the disclosure of the information.

§ 26.43 Potentially Disqualifying Information

If potentially disqualifying information is developed as a result of the suitable inquiry, or the administration of a licensee fitness-for-duty program, the assignment to activities within the scope of this part or granting of unescorted access must be based upon a determination of fitness in accordance with § 26.47. The restrictions of Section 26.45 must be observed.

§ 26.45 Activity Restrictions

- (a) Failure by an individual to list reasons for removal or revocation of unescorted access or failure to authorize the release of information is sufficient cause for denial of unescorted access.
- (b) If the individual has violated a licensee's FFD policy, the individual must meet the updated access authorization requirements of 10 CFR § 73.56 prior to initial return to activities within the scope of this Part.
- (c) Any act or attempted act to subvert the testing process, including refusal to provide a specimen for testing, is a violation of the licensee's FFD policy and must result in revocation of authorization to perform activities under this part for a minimum of 3 years. Any act or attempted act to subvert the testing process, or resignation before removal

Template = SECY-067

SECY-02

for violation of company policy concerning drugs and alcohol must be recorded and provided in response to a suitable inquiry. The specific cause for a removal, e.g., that a laboratory confirmed positive test result was obtained and that the individual resigned before an MRO review, must also be provided in response to a suitable inquiry. A record of these actions must be retained consistent with this part following any denial of activities within the scope of this Part.

- (d) If a licensee has a reasonable belief that an NRC employee or NRC contractor 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.
- (e) Each licensee subject to this part shall, at a minimum, ensure the activity restrictions as contained in paragraphs (1) through (6) herein are met; and a determination of fitness has been obtained, the impairing or questionable conditions resolved, and the individual is determined to be fit to safely and competently perform activities within this part prior to a return to duty. The requirements of this paragraph do not prohibit the licensee from taking more stringent action.
 - (1) Personnel, including applicants, who are impaired, those whose fitness may be questionable and those determined to have violated a licensee's FFD policy must be immediately denied unescorted access or otherwise removed from activities within the scope of this part.-
 - (2) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs or use of alcohol on site, the following must be presumed to be an indication of offsite drug or alcohol use in violation of the company FFD policy:
 - (i) A laboratory-confirmed positive test result that is verified by the MRO as a policy violation; or
 - (ii) A confirmatory breath test for alcohol that indicates the individual had a BAC that violated the standards established in § 26.26(e) during any scheduled working tour.
 - (3) The first violation of the FFD policy involving a confirmed positive drug or alcohol determination must, at a minimum, result in immediate denial from activities within this Part for at least 14 days. An observed, pre-access test under § 26.26(g) must be conducted before the individual may be returned to duty. Any subsequent violation of FFD policy, including during an assessment or treatment period, must immediately result in revocation of authorization to perform activities under this part for a minimum of 3 years from the date of removal.
 - (4) Any individual determined to have been involved in the sale, use, or possession of illegal drugs, or the use of alcohol while 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 immediately have his or her authorization to perform activities within the scope of this part denied for a minimum of 5 years.-
 - (5) Any further violation of FFD policy must immediately result in permanent revocation of authorization to perform activities under this part.
 - (6) Paragraphs (3), (4), (5), and (6) of this section do not apply to the misuse of valid prescription and over-the-counter drugs. Licensee sanctions for confirmed misuse of valid prescription and over-the-counter drugs must be sufficient to deter abuse of legally obtainable substances.-

§ 26.47 Determination of Fitness

- (a) As required in this part, a determination of fitness must, as a minimum, include a review by authorized FFD program personnel of the following information to determine whether an individual is fit to safely and competently perform assigned duties:
 - (1) The potentially disqualifying information or circumstances involved in an individual's removal from duty to determine activity restrictions in accordance with this part.
 - (2) The recommendation provided by the MRO or other licensed or certified professional in accordance with standard procedures.
- (d) Follow-up testing program—Where potentially disqualifying information has been identified, professional clinical consideration must be given to determine whether a follow-up testing plan is recommended for the individual. Follow-up testing is conducted on a periodic, unannounced and unpredictable basis to verify continued abstention from the use of substances for the period determined by the clinician not to exceed three years.
 - (1) If the restoration of UA is subsequent to an access denial or suspension for violation of an FFD policy, an appropriate follow-up program is mandatory.
 - (2) When an individual in a follow-up program is transferred/reinstated at another company, the program as established must continue with program accountability assumed at the new site.
- (c) Persons denied these activities for periods of 3 years or more under the provisions of this part and who would have been denied UA, may be granted unescorted access and assigned duties within the scope of this part when the licensee receives satisfactory program management assurance that the person has abstained from the use of illegal drugs and the abuse of legal drugs for at least 3 years. An observed pre-access test must be conducted before the individual may be assigned duties and follow-up testing must be conducted to verify continued abstinence from the abuse of substances.

R.E. Enkeboll
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington, DC 20006