

Review of 10 CFR Part 26  
June, 2004 Draft  
July 2, 2004(Rev 2)

**Generic Issues**

1. New term "other entities"—need to look for unintended consequences for licensee approved C/V. For example could be read to require EAP by background screeners.
  - a. Need to add somewhere (26.3(d)?) in Subpart A that applies to a licensee approved C/V to the extent that the licensee relies on the C/V program.
2. Positive vs confirmed non-negative—looks like a few traps left here.
  - a. This area needs discussion. Although there does not appear to be any issue with intent of the rule, it seems that language is slightly different.
  - b. May need to add a definition of a confirmed non-negative test result.
3. Verification of non-negative test results—can we find a better term to say it is bad?
  - a. It appears that what we are trying to say is that the MRO reviews and confirms that a FFD violation has occurred. It is not a QA check on the labs process.
4. Determination of fitness—The rule has been changed to require the SAE to make a determination in virtually every case where there is FFD PDI. This is too restrictive. The reviewing official should have increased flexibility to decide when this is required and the MRO should be allowed to make the determination as well.
  - a. Only place with flexibility is in the case of new PDI for an individual with UA!
  - b. Need to discuss what the overall objective should be. Need to get the reviewing official and MRO back into the loop.

**Subpart A:**

1. BAC—"estimates"—this is a regulation—need to fix BAC is... as measured by evidential-grade etc.
2. Confirmed positive test results—two issues,
  - a. no longer seems to be the term used in the rule "confirmed non-negative.
  - b. The MRO does not validate the results by personal observation or etc. as we see in QA programs for validate. It looks like he is the one that confirms that it is a confirmed non-negative.

3. Nominal—need to accept the definition used in the rest of the security and other programs. Has problems as written. Replace (1) and (2) with “The next scheduled date shall be no later than the current scheduled date plus the frequency.”

#### Subpart B:

1. Developed matrix policies, procedures, and training. Need to discuss what 26.27.(b)(1)(ii) means and relation to (i) and (ii).
2. 26.25.(c)—Still written in a manner that makes it hard to use. Becoming more concerned about ability of small programs to use this rule. Need to allow “turn key, DOT” operation for some covered by this. (not a power reactor licensee issue)
3. 26.25.(d)—This is still a problem for an applicant—See this as a major issue and should be deleted. If you read the policy you will find that an applicant is not subject to any of the provisions until a preaccess test is done or the individual is maintained in a random program. Also training element is missing.
4. 26.26.(b)—applied again—needs to be after at licensee facility. Delete “including individuals who have applied of authorization under this part.” It would start on drug testing—when they are subject to this part.
5. 26.26.(c).(3)—This is an old issue, but need to make sure this can be applied without telling an individual they can never have a drink—plant manager would respond to any emergency, for example.
6. 26.31.(b).(1).(i)—What do you do if a direct collection is required? This may be OK as long as the “no coworker issue” does not apply in a direct collection.
7. 26.31.(b).(1).(II)—Requires 5 year update of the psychological—The current rule requires this every 3 years—Need to discuss whether being in the FFD program is now adequate and eliminate this requirement. Would propose placing in a UAA status plus random drug testing IAW applicable regs. and orders would be an acceptable approach.
8. 26.31.(c).(3).(i)—The industry has been concerned that this will be very difficult to apply and require a lot of extra testing. The staff keeps expanding this section with every edition.
9. 26.39.(c)—is the “by more than one individual” a problem?
10. 26.41.(g)—obtain the same services needs to be deleted. Issue needs to be that the audit covers the services used by the licensee. As written (1) and (2) make no sense—there can be no differences.

#### Subpart C:

1. This section has been reorganized, with many of the comments of FFD paper 14 included—In general the flow of this section appears to be good.
2. 26.55.(a)—need to look at terminated favorably closely. Change to “...whose authorization has been interrupted for a period of 3 years or more or whose last period of authorization was terminated unfavorably.”
3. 26.59.(a).(2)—Why 29 days instead of 30?—Leave at 30. Every new number generates more flaps. It is clear from other sections that must be completed before the start of the 31<sup>st</sup> day.
4. 26.61.(b).(3)—may need to change this to terminated favorably.—Yes put favorable back in. Will need the extra data for 26.69 if terminated unfavorably.
5. 26.61.(d)—edit, needs “other” in two places.
6. 26.69—Flow map of this section made. Can simplify (b) and (d), leave (c) alone since a 5 year denial requires more information than in the initial, and make (d)(2) a new section since maintaining and granting do not cross well.
7. 26.69.(d).(1).(iii) allow the reviewing official to decide if a determination of fitness is needed as in (2)(ii) below it.
8. 26.69.(b).(7)—No one likes this change. Would prefer to stay with the 1 per months for 4 months and quarterly for 2 yr 8 months. Lots of work here—2% rate is a new concept, number of tests per month better—what if do not have 15 in 3 years because of periods in which did not have access—How do transient workers ever get out of the program? Also need to discuss the transient worker situation.

#### Subpart D:

1. 26.75.(h)—Not sure what this section is trying to say with all the new words—It does not have clarity at this point. Part of the generic discussion at the front of this paper.
2. 26.77.(a)—Expanded scope of the new works—what will that mean? Some one needs to explain why the words were changed and what the added intent includes.
3. 26.77.(b)—Why does this section keep getting longer, yet seems to say no more than Dec 2002 version.
4. 26.77.(c)—New—looks like a problem. Need more data on accuracy of devices at 0.00 level. Is there any MRO that would ever remove an individual from duty for a 0.01. Is there data to prove that there are observable symptoms?

#### Subpart E:

1. 26.87.(b)—does this solve the privacy issue for alcohol testing?
2. 26.91.(a)—what do we mean by “only if there are instructions for its use in this part” –I don’t see any device specific instructions. I think we are trying to say that the device must be useable without rewriting any of the steps—for example a display of the unique number at the right time in the test.
3. 26.109.(a).(3) seems to duplicate the words in (1) above.
4. 26.109.(b).(2) seem to be in conflict with (c) below—can do one or the other but not both.

#### Subpart F

1. Not yet reviewed in detail

#### Subpart G

1. 26.163(b)—Confirmatory drug testing—is this a unique NRC requirement? No cross reference.
2. 26.167(b)—What is the intent of calibrator and controls requirement—no cross reference.
3. 26.167(d)(3)—Why specify additional samples and controls—no cross reference.

#### Subpart H

4. 26.183.(a) Note that the MRO and later the SAE have 2 not 3 years to meet requirements—is this a problem?
5. 26.183.(c).(4) and (5) and .(d)—This is written as if the MRO and his staff are subcontracted. What will happen when they are licensee employees? The concept can be better captured if the focus is on independence and not on who works for.
6. 26.185 I am still having problems with the verification issue and what is, or is not an FFD violation. The language drifts a little for A to C to D to H.
7. 26.185.(d)—Lots of admin junk here—can this process be simplified?
8. 26.185.(j).(3)—what is a violation—can be read two ways.
9. 26.187.(g)—Even more restrictions added to the SAE—what problems will this generate?
10. 26.189.(a).(1)—may changed to shall—means that the SAE is only on who can do fitness evaluation—need to change back to may.
11. 26.189.(b).(4)—Dec 2002 language carried forward required a determination of fitness any time there is FFD PDI—It seems that the reviewing official can disposition some of these historical issues. Need to review this issue

Subpart I

1. Comments will be developed Tuesday July 6.

Subpart J

1. 26.213(a)—need to get the added term “following termination” out or we will be keeping records forever. This was a major step forward in 2002, which has slipped backwards.

Subpart K

1. No comments.