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# Fitness for Duty in the Nuclear Power Industry: Responses to Implementation Questions


**U.S. Nuclear Regulatory Commission**

**Office of Nuclear Reactor Regulation**

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# Fitness for Duty in the Nuclear Power Industry: Responses to Implementation Questions

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# ABSTRACT

The Nuclear Regulatory Commission published a rule (10 CFR Part 26) concerning fitness for duty of commercial nuclear power plant workers on June 7, 1989, in the *Federal Register* (54 FR 24468). This report responds to questions raised concerning the implementation of the rule during the Edison Electric Institute's "Fitness-for-Duty Rule Implementation Workshop," held between July 30 and August 2, 1989. It also responds to questions raised by licensees with the staff outside the workshop.

Publication of this report does not constitute a written interpretation of the meaning of the rule, as provided by 10 CFR 26.4. Only written interpretations by the General Counsel will be recognized to be binding upon the Commission.

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# FITNESS FOR DUTY IN THE NUCLEAR POWER INDUSTRY: RESPONSES TO IMPLEMENTATION QUESTIONS

## INTRODUCTION

This document answers questions raised by people in the nuclear power industry concerning the implementation of the Fitness-for-Duty Rule (10 CFR Part 26, 54 FR 24468) which were raised:

- during the Edison Electric Institute's "Fitness-for-Duty Rule Implementation Workshop," held July 30 through August 2, 1989, and
- during other contacts, such as telephone calls and visits, between the NRC staff and licensee personnel.

The questions have been classified into 11 categories. Taken as a whole, this document clarifies how the NRC staff views the Fitness-for-Duty Rule.

Publication of this report does not constitute a written interpretation of the meaning of the rule, as provided by 10 CFR 26.4. Only written interpretations by the General Counsel will be recognized as binding on the Commission.

Previous documents published by the NRC which could assist in the development and implementation of a fitness-for-duty program are:

- NUREG/CR-5227, "Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues," published September 1988, and Supplement 1, published May 1989.
- NUREG-1354, "Fitness for Duty in the Nuclear Power Industry: Responses to Public Comments," published May 1989.

## 1 SCOPE AND IMPLEMENTATION OF THE RULE

**1.1 What is the implementation date of the Fitness-for-Duty Rule?**

The correct implementation date is January 3, 1990. The correction was published in the *Federal Register* on August 11, 1989 (54 FR 33148).

**1.2 Must all provisions of the rule be met by the implementation date?**

Yes.

**1.3 Must personnel who have no responsibilities affecting reactor safety and are not normally assigned duties under the scope of the rule be covered by a licensee's fitness-for-duty (FFD) program simply because they report to the emergency operations facility (EOF) or technical support center (TSC)? Are emergency response personnel (e.g., clerical or news team) who report to the EOF/TSC and who are not required to be badged (i.e., do not need unescorted access to the protected area) subject to the rule? Are licensees required to include such nonessential EOF personnel, as couriers or fax personnel, in the random testing program?**

The provisions of the rule, 10 CFR 26.2(a), apply to individuals who are required by name or position in the licensee's emergency plans or procedures to report in person to a licensee's EOF or TSC when an emergency situation has been declared.

**1.4 If an organization has contracted to provide such support personnel, as guards or clerks to an EOF located off site, and the identities of the individuals are not known until the people are actually dispatched to the EOF, are these individuals subject to the rule? If a few licensee personnel from outside the "nuclear family" are selected at the last moment to provide support services at the EOF or TSC, are they subject to the rule?**

No. They are not subject to the rule because they were not identified individually by name or position to report in person to the EOF.

**1.5 Clarify the requirements applicable to State and local representatives who report to a licensee's EOF and TSC. In 10 CFR 26.2, it is stated that *all* persons reporting to a licensee's TSC or EOF are subject to the rule; however, in paragraph 4.2.5 of the Statment of Considerations (54 FR 24471) it is stated that if the EOF or TSC is outside the protected area and if the State and local representatives do not have responsibilities directly affecting reactor safety, they are not covered by the rule.**

10 CFR 26.2(a) states that the provisions of the FFD program must apply to *all* persons granted *unescorted* access to *protected* areas. Therefore, the first test for applicability is whether the EOF or TSC is located within a protected area and whether unescorted access is going to be granted to these persons. Under this test, State and local representatives could be covered. The next test for applicability is whether the person is a licensee, vendor, or contractor employee required to report in person to the EOF or TSC. The State and local representatives are not included under this test. The discussion contained in

paragraph 4.2.5 is intended to further clarify the intent of the rule.

**1.6 Are corporate officials who report to the EOF or TSC when an emergency has been declared or during an exercise, but who have no responsibilities that could directly affect safety, covered by the rule?**

If those officials are required to report in person to the EOF or TSC in accordance with a licensee's emergency plan and procedures, they are covered by the Fitness-for-Duty Rule.

**1.7 Are corporate officials who would report to the EOF or TSC required to abstain from alcohol at all times or during scheduled work hours, or does the abstention requirement apply at all when there is no anticipated response to the EOF or TSC?**

The abstention requirements of 10 CFR 26.20(a) pertain to working tours within the protected area or at the EOF or TSC. The rule does not require that corporate officials abstain from alcohol simply because they *may* be called to the EOF or TSC. Should they be called to the EOF or TSC, the procedural requirements of 10 CFR 26.20(e) apply. Similarly, other licensee employees and contractor and vendor employees (under 10 CFR 26.23) are not required by the rule to abstain from alcohol when they are not scheduled to work within the protected area or at the EOF or TSC.

**1.8 Must behavioral observation baseline data (such as psychological assessment and supervisory checklists) be obtained for those who do not have access now but will come under the EOF/TSC requirements of 10 CFR 26.2(a)?**

The rule does not require such action.

## 2 WRITTEN POLICIES AND PROCEDURES

**2.1 Define an "emergency" as used in 10 CFR 26.20(e)(3) with respect to the use of "called in" individuals who have consumed alcohol and whose blood alcohol content (BAC) is above 0.04 percent.**

"Emergency" would need to be determined on a case-by-case basis. The licensee should consider such factors as the significance of the event and the urgency for the call-in when deciding if an "emergency" exists.

**2.2 Is an employee subject to the abstinence requirements [10 CFR 26.20(a)(1)] while in an on-call status?**

The rule does not define "on call"; however, a licensee may determine that "on call" for such persons as duty officers equates to "on duty," that is, a working tour within the meaning of 10 CFR 26.20(a)(2).

## 3 TRAINING

**3.1 Must all training be completed by January 3, 1990?**

Yes.

**3.2 If certain portions of the training requirements were completed before the rule was published, need they be repeated?**

No. The training requirements are intended to ensure that everyone affected by the program, or responsible for any aspect of its implementation, understands the program and their personal role in its implementation. Furthermore, that understanding must be reinforced nominally each 12 months (see definition of "nominally" at 11.1). Therefore, training or portions thereof need not be repeated before January 3, 1990, unless more than 12 months, nominally, have elapsed since the previous training was completed.

**3.3 Must a contractor's supervisors be trained within three months of being initially assigned on site? Will the supervisor avoid the training if he/she transfers before the three-month period? Can such training be transferred between licensees?**

10 CFR 26.22 requires that all supervisory personnel, including contractors, be trained in supervisory aspects before being assigned to duties covered by the rule or within three months of initial appointment as a supervisor, which may have occurred before coming on site. The three-month period does not start anew each time a supervisor is transferred to another site. Before granting a contractor supervisor unescorted access, each licensee should ensure that the required training has been completed within the schedules specified in 10 CFR 26.22. A contractor supervisor who has no supervisory responsibilities while on site (example: planning or estimating a future job) need not be trained under the provisions of 10 CFR 26.22, but must be trained under 10 CFR 26.21.

Licensees may review and accept a contractor's program under 10 CFR 26.23, and may choose to reserve for themselves certain portions of the program, such as training. Credit for generic portions of the required training may be transferred from one licensee to another; site-specific training, such as company policy and procedures, is not transferable.

**3.4 Should FFD training be included in general employee training and supervisory training, or should the training stand alone?**

The licensee may choose any option that will result in each person adequately understanding the program and

his/her role in its implementation. As stated by several people who attended the Edison Electric Institute (EEI) workshop, by separating the FFD training from other training programs, the subject matter would have greater visibility, students could focus more sharply on the subject, and the students would retain more of the subject matter.

**3.5 Is testing required?**

No. However, licensees are expected to ensure that the training has achieved the desired results. This is usually achieved through testing.

**3.6 Are there three different types of training programs required for supervisors, other employees, and escorts?**

Yes.

**3.7 How does supervisor training differ from escort training?**

Since an escort has only a short-term relationship with the people being escorted, that training should emphasize the detection of obvious current signs of alcohol or drug use. In addition to that skill, the supervisor would be trained to look for long-term patterns, such as attendance and degradation in work performance. The differences are spelled out in 10 CFR 26.22.

**3.8 What will satisfy the requirements on training supervisors in drug awareness and behavioral observation?**

Any method that will ensure that the supervisory personnel understand the aspects of their responsibilities as described in 10 CFR 26.22.

**3.9 Who is a supervisor? Would the definition include a person designated as "team leader," "lead person," or "gang boss" for a few days? Who is the supervisor for a vendor on site for a few hours?**

Each licensee will make that determination for its own plant. The determination should be based upon such factors as who is responsible for the behavioral observation of the person, who is in charge of the work, and who is responsible for evaluating the performance of the work.

**3.10 Who would be responsible for observing the behavior of those persons whose supervisor is not on site? For example, who would be responsible for observing one or two vendor employees on site for a day or two and Institute of Nuclear Power Operations (INPO) personnel.**

The primary responsibility for such observation, particularly for monitoring long-term trends such as patterns of absenteeism, always lies with the supervisor of the organization to which the individual belongs. In the case of a few vendor employees on site for a brief period, whoever is responsible for supervising the completion of the work would be responsible for observing such behavior as intoxication. In the case of INPO personnel, the team leader should be responsible for the members of the INPO team.

## 4 ALCOHOL AND DRUG TESTING

**4.1 Do NRC's guidelines (Appendix A to 10 CFR Part 26) preempt the Department of Health and Human Services (HHS) guidelines?**

The NRC sees no conflict. The HHS guidelines apply to Federal agencies and to the testing laboratories. Appendix A to 10 CFR Part 26 applies to NRC licensees; the provisions of NRC's guidelines relating to the laboratories should be contained in a licensee's contracts with the testing laboratories.

**4.2 Can a licensee use a noncertified contract laboratory for preliminary screening?**

No. Section 4.1 of Appendix A to 10 CFR Part 26 requires that licensees use only HHS-certified laboratories except for initial screening tests at a licensee's facility.

**4.3 What should come first in a "for cause" test situation, referral to an employee assistance program (EAP) for assessment or a test?**

The rule does not specifically address this situation; however, a test would generally precede an assessment. The actions to be taken and their timing would depend upon the situation. For example:

- A person who appears to be impaired would, under normal circumstances, be examined by a physician as soon as possible and then would be tested. Enrollment in an EAP would follow.
- A person observed using illegal drugs may need to be tested a few times, each test to be administered a few hours after the previous test, to enable the drug(s) or metabolites to reach the urine. If the drug(s) can be confiscated, they, too, should be tested. Since 10 CFR 26.27(b)(3) expects the drug abuser to be immediately removed from activities within the scope of the rule for such acts, referral to the EAP may not apply.
- A person involved in an accident described in 10 CFR 26.24(a)(3) or alleged to be using alcohol or drugs should be tested as soon as possible. Referral to an EAP would probably depend on the results of the test.

**4.4 Will the NRC interpret postaccident testing requirements loosely or strictly?**

Whenever the NRC reviews a licensee's actions, the NRC will use reasonable interpretation of 10 CFR Part 26 to determine if the licensee acted prudently.

**4.5 Must results of preaccess tests conducted in accordance with 10 CFR 26.24(a)(1) be obtained before unescorted access is granted?**

Yes. A negative test result must be obtained before granting unescorted access unless the individual is excluded from the rule by 10 CFR 26.2(a) or has been previously tested under a program formally reviewed and approved by the licensee under the provisions of 10 CFR 26.23(a). The licensee does not need to administer preaccess tests to either NRC contractors or State personnel who are tested under NRC programs.

**4.6 What constitutes an acceptable approach to selecting persons for random testing? What is not acceptable?**

10 CFR 26.24(a)(2) permits the licensee to have discretion as to how the random selection is administered and only requires that a person completing a test is immediately eligible for another unannounced test. The "Medical Review Officer Manual," published by the HHS suggests that random sampling procedures should permit no "safe periods" for any employee: "Each work day should present each employee with a new opportunity of having to produce a sample, with the odds equal to all employees on each new day, regardless of samples previously produced by any of them."

Any scheme that would contain unfairness in the selection or that provides "safe periods" is not acceptable. For example, selecting people for random testing as they enter the facility would not be acceptable because not all people enter the facility the same number of times in a specific time frame. Some people would enter the facility several times each day, giving them opportunity for being selected each time they enter. Other persons might enter the facility only two or three times a year; the probabilities of their being selected would be remote. More importantly, these infrequent entrants would not be vulnerable to random testing during the period they did not enter the site and, therefore, the deterrent value of a random testing program would not exist for them.

**4.7 Must collection of a specimen be observed every time the circumstances constituting "reason to believe" [as described in 10 CFR Part 26, Appendix A, Section 2.4(f)] occur, such as when the specific gravity is low or upon return to work after rehabilitation? Or, may the collection personnel exercise discretion or judgment when determining whether or not they have a "reason to believe"? For example, would the individual who is taking a diuretic and consuming considerable quantities of liquids resulting in urine of low specific gravity need to be observed?**

The collection of a urine specimen must be observed whenever there is a reason to believe that an attempt may be made to alter or substitute the specimen. The rule provides examples of what would constitute grounds for "reason to believe." The medical staff is expected to exercise prudent judgment. The existence of a low specific gravity accompanied by a plausible explanation would not normally cause one to believe there is an attempt to alter or substitute. The prudent course of action is to observe the collection in questionable cases, and when a person returns to work after rehabilitation.

**4.8 Are witnessed urinations required during a rehabilitation program?**

Direct observation of the collection of specimens during a rehabilitation program was omitted from the rule, but may be deemed appropriate by licensees, either as a matter of policy or on an individual basis.

Direct observation is required for the test immediately before the employee returns to work, but is not required for followup testing after the employee has returned to work, unless the medical staff determines that such observation is appropriate.

**4.9 Must an immunoassay test be used, as is required by Section 2.7(e) of Appendix A to 10 CFR Part 26, for testing additional drugs added under the provisions of 10 CFR 26.24(c)?**

An immunoassay shall be used wherever appropriate. Should a licensee wish to add to its testing protocol a drug for which there is no immunoassay test, then the licensee should determine the best screening test by discussing the problem with its contract laboratory.

**4.10 Whenever there is a suspicion that a specimen had been adulterated or tampered with, must the observer be of the same gender as the employee producing the witnessed specimen?**

Yes, as required by Section 2.4(b) of Appendix A to 10 CFR Part 26.

**4.11 A few licensees have expressed an interest in requiring a blood test to confirm the results of breath analysis for alcohol or whenever a urine specimen cannot be obtained for drug testing. Would the NRC accept such proposals?**

10 CFR 26.24(g) requires that confirmatory tests be done with a second breath measurement instrument. The rule further specifies that further confirmation would be an analysis of blood drawn on demand by the individual being tested. The drawing of blood is judged to be invasive and there are other acceptable approaches. Although the rule

does not prohibit additional blood tests, it does not require such action.

**4.12 A licensee's policy requires that whenever a specimen is tested positive *(confirmed by GC/MS)*, a second specimen is collected and tested positive before both results were declared as a single confirmed positive test result. Is this acceptable?**

No. The practice of using the test results of a second specimen to determine if the results of the first test are indeed confirmed is not permitted. Because of the elapsed time between collections, this procedure would probably detect drug abuse only in addicts.

**4.13 Must all results of a batch (of specimens being tested) be reported together, as is required by Section 2.7(g) of Appendix A to 10 CFR Part 26, or can negative test results for preaccess tests be reported separately when positive results are awaiting final determination?**

The test results for all specimens submitted to a certified laboratory at the same time must be reported back to the Medical Review Officer at the same time. This language is also contained in Section 2.4(g) of the HHS guidelines and is intended to minimize administrative errors in the laboratory. Negative screening results of preaccess tests obtained by licensees before submitting presumed positive specimens to a certified laboratory may be reported immediately.

**4.14 A frequent complaint of testing laboratories is that they would lose their HHS certification if (1) they test for additional drugs or (2) use lower cutoff levels. Is there any truth to this claim?**

Subpart C of the HHS guidelines indicates that certified laboratories must clearly inform non-Federal clients of their procedures. That requirement indicates that HHS-certified laboratories can perform other work outside the scope of their certified work for Federal agency programs. This answer has been confirmed as correct by the National Institute on Drug Abuse (NIDA).

**4.15 Does the term "new drug testing program" in Section 2.8(e)(2) of Appendix A to 10 CFR Part 26 apply to laboratories that were under contract to the licensee before the rule was published?**

Yes. Licensees are expected to provide blind performance test specimens to ensure that the laboratory work is accurate. If such blind specimens were submitted in the quantities and time periods specified, covered the drugs and cutoff levels used after implementation of the rule, and the laboratory was certified by HHS during that time, then the licensee can take credit for completing the inital 90-day period of this quality assurance procedure. (See related discussion at item 10.5.6 of NUREG-1354, "Fitness for Duty in the Nuclear Power Industry: Responses to Public Comments.")

**4.16 Are there reasonable limits concerning which specimen couriers must meet the honesty and integrity standards of Section 2.3 of Appendix A to 10 CFR Part 26? Would the standards apply to contract couriers who may change daily and to Postal Service employees, Federal Express couriers, and pilots and crews of aircraft?**

The intent of the rule is to protect the integrity of the testing program. The more remote the possibility of a personal relationship existing between the person whose specimen is being processed for testing and any person doing the processing, the less likely that deliberate acts to subvert the integrity of the test would occur. Because specimens that are packaged and sealed for shipment are not secure, but provide some protection from tampering, the licensee should have reasonable assurance that couriers employed to pick up and deliver specimens meet normal expectations of honesty and integrity. The rule is not intended to cover couriers who work for the Postal Service and the Federal Express service, and pilots and crews of aircraft.

**4.17 Must licensees, under the provisions of Section 2.3 of Appendix A to 10 CFR Part 26, require that personnel employed at HHS-certified testing laboratories be included in background checks, psychological evaluations, and drug testing?**

No. The rule requires that licensees implement measures to ensure that persons administering the testing program, which includes personnel working at a licensee's testing facility, meet the highest standards for honesty and integrity. To ensure objectivity of testing personnel employed by the contract laboratory, licensees may include such requirements as a condition of the contract.

**4.18 Why must alcohol breath analysis equipment meet State standards, as required by Section 2.7(o)(3) of Appendix A to 10 CFR Part 26?**

Since the States have been developing and enforcing statutes for dealing with drunk driving, the inclusion of the "applicable State statutes" provision for testing equipment in the rule should result in a more credible test result.

**4.19 Many breath alcohol analysis devices are not capable of producing consistent results at extremely low BAC levels; i.e., 0.01 percent BAC or lower. Since Section 2.4(g)(18) of Appendix A to 10 CFR Part 26 requires that the results of two measurements be within 10 percent of the average of the two measurements, the results for extremely low BAC levels may not be valid tests. May licensees use these devices, and would the NRC accept the inconsistent results at the lower levels?**

Licensees may use any evidential-grade breath alcohol analysis device of a brand and model that conforms to National Highway Traffic Safety Administration standards and to any applicable State statutes [Section 2.7(o)(3) of Appendix A to 10 CFR Part 26]. The extremely low BAC levels are outside the scope and intent of the rule. Licensees should have performance data which establish that consistent results are being achieved when measuring BAC levels of interest.

**4.20 What vendors can provide "spiked" samples? Must they be certified by HHS to meet the requirements of Section 2.8(e)(1) of Appendix A to 10 CFR Part 26?**

HHS has no current plans to certify such vendors. For information, licensees should contact the National Institute on Drug Abuse at (301) 443–6780.

**4.21 Can licensees use specimens that have been tested negative for the 80–percent blank blind performance test samples that must be submitted under the provisions of Section 2.8(e)(3) of Appendix A to 10 CFR Part 26?**

The blank specimen must be certified to contain no drug. Specimens must not be used if they contain drugs below the cutoff levels, or any drugs that could cross-react and mimic the drugs for which the specimen is being tested. The propriety of a laboratory providing its clients with blind samples to test its proficiency could be questioned.

**4.22 What should be the licensee's response if the temporary absence of a licensed operator selected for random testing could cause a potential safety problem in the plant?**

The licensee may (1) wait until the seriousness of the situation has abated, (2) wait until the operator has been properly relieved by the next shift (or by another licensed operator), (3) collect the specimen in the rest room adjacent to the control room, or (4) defer the test until the next day (without informing the operator in question of the pending test).

## 5 MEDICAL REVIEW OFFICER

**5.1 Can a Physician's Assistant function as the Medical Review Officer?**

No. Section 2.9(b) of Appendix A to 10 CFR Part 26 requires that the Medical Review Officer (MRO) be a licensed physician who is knowlegeable about substance abuse disorders. This language is also contained in the HHS guidelines. A Physician's Assistant (PA) would not be able to perform as MRO unless the PA were also a licensed physician and had knowledge of substance abuse disorders.

**5.2 Under the appeals permitted under 10 CFR 26.28, who is qualified to review the MRO's determination?**

The rule permits an impartial internal management review. This could be an impartial individual manager or an impartial board of managers.

**5.3 When does the 10-day clock begin for the MRO when onsite prescreening is used? What if the MRO cannot contact the individual within the 10-day period?**

Section 2.4(e) of Appendix A to 10 CFR Part 26 requires that the MRO review be completed and licensee management notified within 10 days of the initial presumptive positive screening test. The 10-day reporting requirement would not be applicable if the person is not working within the protected area and is not available for interview by the MRO. The NRC expects that reasonable efforts to contact the individual at his/her residence would be taken. In such a case, any interviews and the MRO's determination should be completed as soon after the individual is available as is possible. (See related discussion at 5.13.) Of course, any individual who is impaired or whose fitness for duty may be questionable must be removed from unescorted access status under the provisions of 10 CFR 26 27(b)(1). If the sample is lost, the report to licensee management would be based on available information.

**5.4 With whom may the results of initial screening tests be shared?**

10 CFR 26.24(d) states that access to the results of a *preliminary* test must be limited to the licensee testing staff, the MRO, the Fitness-for-Duty Program Manager, and the employee assistance program staff, when appropriate. The results of the *initial* screening test at the certified laboratory may be provided to the MRO only after confirmatory tests and laboratory reviews have been completed [Section 2.7(g) of Appendix A to 10 CFR Part 26]. Negative results of initial screening tests and MRO-determined negative and confirmed positive results may be provided to management. Negative results of preaccess tests may be provided immediately.

**5.5 If a group of persons is being processed to be hired, can management be informed of negative results of *preemployment* screening tests if anyone in the group of applicants is presumptively positive? What if the tests are preaccess, random, or followup?**

10 CFR Part 26 does not cover preemployment testing by a licensee. Negative results of preaccess and followup tests may be reported immediately. Results of random tests must await completion of laboratory tests and MRO evaluation.

**5.6 May negative test results from the HHS-certified laboratory be provided directly to the Fitness-for-Duty Program Manager?**

Section 2.7(g) of Appendix A to 10 CFR Part 26 requires that the test results be reported to the licensee's MRO. This language is also contained in the HHS guidelines and is intended to protect the identity of those who may have tested positive but who have not yet been determined to be positive by the MRO.

**5.7 A licensee plans to have several MROs under contract. May test results from the HHS-certified laboratory be forwarded through the Fitness-for-Duty Program Manager?**

In view of the MRO's responsibilities to advise and assist management in the planning and oversight of the FFD program (see discussion at 5.8), this is not a preferred option. However, should a licensee choose this option, the proposed administrative routing through the Program Manager to the MRO would be acceptable, provided the test results are protected and not disclosed to the Program Manager until the MRO has completed the review.

**5.8 Must the MRO review *all* test results, negative as well as positive?**

No. The MRO's primary responsibility is to review and interpret positive test results obtained through the testing program [Section 2.9(b) of Appendix A to 10 CFR Part 26]. The MRO, however, does have a role in reviewing the performance of the licensee's screening facility and the HHS-certified laboratory and advising and assisting managment in the planning and oversight of the overall substance abuse program as described in the "Medical Review Officer Manual." In conjunction with these broad responsibilities, the MRO has the discretion to review negative test results, if such review is provided for in the licensee's program, to determine if there is a problem that needs to be addressed either with the employee or with the program itself.

**5.9 Can the MRO initiate any action if results are below the cutoff levels? That is, can the MRO recommend the suspension of an employee on the basis of an unconfirmed positive test result?**

Although the rule does not require such action, the MRO can take appropriate action based upon his/her judgment. Depending on the circumstances, the MRO may refer the individual to the EAP for review and counseling. If the individual, on the basis of evidence other than the test, is determined to present a hazard to himself/herself or to others, the individual may be referred to licensee management under the provisions of 10 CFR 26.25 and 26.27(b)(1).

**5.10 At what point is a test considered a confirmed positive?**

A test result is considered a confirmed positive when the MRO has completed his/her review and determined that the positive test result is verified as a confirmed positive. This would occur after the MRO has reviewed the laboratory report, provided the individual with an opportunity to discuss the test results, and completed any other matters deemed appropriate before the determination is made. This does not preclude the MRO from making an early determination on the basis of other information. On the other hand, if a logical or legitimate explanation is provided early in the testing process for the drug or drug metabolite being present in the urine specimen, then the MRO can determine that the test results are negative.

**5.11 Does the requirement to examine clinical evidence mean that there must be a face-to-face encounter between the MRO and the employee whose laboratory results indicate positive? Can an MRO be located some considerable distance from the site?**

The MRO can be located anywhere; licensees would need to evaluate the tradeoff. The question relates to the requirement stated in Section 2.9(d) in Appendix A to 10 CFR Part 26, which requires that the MRO determine whether there is clinical evidence of opiate abuse. To meet this requirement, the MRO would need to look for needle tracks, or behavioral and psychological signs of acute opiate intoxication or withdrawal. This process is explained in detail in the "Medical Review Officer Manual." Obviously, the MRO needs to be in the same room as the individual being examined. In some cases, the MRO could discuss the test results (not involving opiate abuse) by telephone with the individual, provided suitable precautions are taken to confirm identity and protect the information as required by 10 CFR 26.29(a) and (b).

**5.12 Can an MRO be someone from the testing laboratory?**

No. Using someone from the testing laboratory to serve as the MRO would constitute a conflict of interest because the MRO is expected to make judgments concerning the performance of the laboratory, and to request that the laboratory repeat tests in those cases in which scientific adequacy may be in question.

**5.13 Does the MRO have to discuss the test results with the individual before making the determination that the results are positive?**

No. Section 2.9(c) of Appendix A to 10 CFR Part 26 requires that the MRO shall give the individual an opportunity to discuss the test results. The individual may decline the MRO's offer to discuss the test results. If the individual is not available, any interviews should be completed as soon after the individual is available as is possible. (See related discussion at 5.3.)

**5.14 Since an MRO will give the individual an opportunity to discuss the test results before making a final decision under the provisions of 2.9(c) of Appendix A to 10 CFR Part 26, can management also be notified at that time so that the individual's access can be suspended?**

Section 2.9(c) of Appendix A to 10 CFR Part 26 requires that licensee management not be notified of positive test results until the MRO has determined that the laboratory test result has been verified as a confirmed positive. This language is also contained in Section 2.8(c) of the HHS guidelines. There was a lengthy discussion on this issue at the EEI workshop. A number of the workshop participants expressed strong opinions that an individual should be removed from safety-related responsibilities at the first indication that the individual has a substance abuse problem. Several participants also commented that psychoactive drugs, such as PCP and LSD, have no legitimate medical use and they carry a high potential for unpredictable psychosis and agitation; therefore, any person using those drugs clearly constitutes a serious potential hazard to safety. Such persons should be promptly removed, irrespective of what the NRC and the HHS guidelines state. These remarks have been repeated to the NRC staff several times in other forums. The Commission's decision to require that management have no access to unconfirmed test results was based upon establishing the proper balance between individual rights and the interests of public safety. That issue was addressed by HHS in the responses to the public comments on the HHS guidelines (53 FR 11974). In that *Federal Register* Notice, HHS suggested that the agency "develop a mechanism to expedite the review process or allow the MRO to require a review of the individual's general fitness to continue performing a specific function." The HHS response continues: "Circumventing the review system would abridge necessary protections for employees and could result in prejudging an individual employee's case." (See related discussions at 5.4, 5.15, 9.6, 9.8, and 9.9.)

**5.15 If an employee is arrested because he/she has illegal drugs in his/her possession, licensee's personnel policies dictate that the individual be terminated immediately, without waiting for a conviction. On the other hand, if the individual has a presumed positive test for drugs, then the licensee would have to wait several days (maybe a week or longer) until that information is confirmed before action can be taken. Do licensees have to live with this glaring inconsistency?**

In the case of a presumptive positive test, the rule expects that no action will be taken until the MRO has determined that the results are positive. This course of action was adopted as a prudent balance between individual rights and interest of public safety. The NRC makes no connection between the results of the urine test and current impairment, and assumes some users go undetected. The issue is the trustworthiness and the reliability of the employee. In the case in which the employee has been arrested, the licensee should look into the matter and then take action consistent with personnel policies which should cover that kind of event. Of course, a licensee or contractor employee exhibiting signs of impairment should immediately be removed from unescorted access status, irrespective of the status of testing. (See related discussion at 5.14.)

**5.16 Are the requirements of 2.7(g)(4) and (5) of Appendix A to 10 CFR Part 26 in conflict? Section 2.7(g)(4) permits the laboratory to transmit results to the MRO by various electronic means as long as the confidentiality of the information is protected. Section 2.7(g)(5) says that the laboratory shall forward the original chain-of-custody form, which shall have a copy of the test report attached.**

The NRC regards these as separate but compatible requirements. Section 2.7(g)(5) can be satisfied after (g)(4) has been accomplished. Section 2.7(g)(4) would provide the licensee with a rapid means of obtaining the information, and Section 2.7(g)(5) is the procedure for the official formal notification and contains evidence that would need to be retained for any legal proceeding.

**5.17 Does the MRO personally have to see the chain-of-custody form?**

Yes. Section 2.7(g)(5) of Appendix A to 10 CFR Part 26 requires that the laboratory send the original chain-of-custody form to the MRO. The MRO, in determining that any test result is positive, should assure himself/herself that all relevant evidence bearing on that case is obtained and protected so that the case can be properly dispositioned through any legal proceeding. However, a determination that a confirmed positive test has been made can be based on electronic transmittal of the test information.

**5.18 If the MRO decides to respond to an individual's request to have a specimen retested, does the specimen have to be tested by a different laboratory?**

No. Section 2.9(e) of Appendix A to 10 CFR Part 26 permits reanalysis at the same laboratory or at an alternate laboratory, as determined by the MRO.

**5.19 Must a split sample be examined at two different laboratories?**

Section 2.7(j) of Appendix A to 10 CFR Part 26 requires that the split sample, at the tested individual's request, be forwarded to an HHS-certified laboratory that did not test the aliquot (the original half of the specimen). On the other hand, if the MRO determines that the test result is

scientifically insufficient, the MRO may [under the provisions of Section 2.9(g) of Appendix A to 10 CFR Part 26] request reanalysis of the original sample. In that case, the MRO has the option of requesting reanalysis by the original laboratory or having a second laboratory analyze an aliquot.

## 6 CONTRACTOR/VENDOR PROGRAMS

**6.1 What requirements must be met so that there can be reciprocity among licensees with respect to contractors and vendors?**

Each licensee accepting a particular contractor or vendor program must review and approve that program under the provisions of 10 CFR 26.23(a). Licensees may accept an audit of the effective implementation of such program by another licensee under the provisions of 10 CFR 26.80.

**6.2 Can licensees accept other programs, such as those administered by other licensees, State and local governments, and the Department of Energy under the provisions of 10 CFR 26.23? Can a program that does not include alcohol testing be accepted?**

Licensees may review and approve any program that meets the overall intent of 10 CFR Part 26 and includes, as a minimum, employee awareness training and chemical testing, including random testing. A program that does not include alcohol testing would not meet the intent of the rule, and would not be acceptable.

**6.3 Can a licensee accept parts of a contractor or vendor program? For example, can a licensee collect specimens for testing of contractor employees under a contractor's program reviewed and approved by the licensee under the provisions of 10 CFR 26.23?**

Yes. The licensee can substitute, supplement, or duplicate any portion of a program that it deems appropriate for achieving the goals of the rule. For example, licensees could conduct preaccess and random testing for alcohol and drugs; the other portions of contractor, State and local, or Department of Energy programs could be conducted through the reviewed and approved program.

**6.4 Do contractors, even small ones such as grass cutters and building cleaners, have to have an employee assistance program?**

The contractor must have an EAP only if the licensee has reviewed and accepted the contractor's program under the provisions of 10 CFR 26.23. If the licensee does not accept the contractor's program, or if the contractor does not have a program (which is probably the usual situation with a small contractor), the contractor will come under the licensee's FFD program. If the contractor is being covered by the licensee's program, the licensee is not required to provide the contractor with an EAP.

**6.5 If a person who is participating in a contractor's EAP is sent to a licensee's site, how is that care continued and how is the individual's progress reported back to his employer to ensure that the person is continuing the treatment and receiving the counseling that is appropriate?**

That matter is left to the discretion of each licensee. It would be appropriate to address such situations in a provision of the contract. The contractor has an obligation under 10 CFR 26.23(a)(2) to notify the licensee of such a situation and the licensee must determine that the particular circumstances are acceptable. There are three obvious courses of action: (1) tell the contractor employee that he/she may not work at the site, (2) the contractor must find some kind of an EAP service that is available locally, or (3) agree to provide EAP services to support the contractor's program.

**6.6 How many licensees will not permit any contractors to return to the plant after the first positive test?**

A survey of the workshop audience indicated that, with only one or two exceptions, licensees would not permit a contractor to return to the plant after the first positive test.

**6.7 A contractor's program was reviewed and approved by a licensee. Must both the licensee and the contractor audit the contractor's program?**

Yes. 10 CFR 26.80 requires each licensee to audit its own program and those portions of programs implemented by contractors and vendors. For a contractor or vendor program to be acceptable under the provisions of 10 CFR 26.23, the contractor or vendor program must meet all aspects of the rule; therefore, the contractor or vendor must audit its own program.

## 7 INFREQUENT ACCESS

**7.1 Is preaccess testing required each time a contractor or vendor employee starts working at a site?**

If the contractor/vendor's program has been reviewed and accepted by more than one licensee under the provisions of 10 CFR 26.23, then any of the contractor/vendor's employees may transfer between such licensees' facilities without having to repeat the preaccess test, if all other provisions of the rule have been met. To illustrate: If a preaccess test was administered before unescorted access was initially granted at the first facility, and if the employee was continuously covered by both a behavioral observation program and a random testing program while he/she worked for and transferred between the two licensees, another preaccess test is not required when the

employee starts to work at a different site. [The NRC staff recognizes that in some cases (i.e., an employee may need to travel between job sites) a reasonably short period of time to accomplish such a transfer need not be included in the continuous coverage.]

Contractor employees who are not covered by a program reviewed and approved by a licensee under the provisions of 10 CFR 26.23 should be tested again before being granted unescorted access to a site. Any preaccess or random test conducted under a program covered by the rule at the previous site and completed within the last 60 days will satisfy 10 CFR 26.24(a)(1).

**7.2 May licensees accept another licensee's FFD program under a "reciprocity agreement" for persons who may need to visit another site?**

Yes. The "visitor" must be covered by the behavioral observation and random testing provisions of either or both of the licensee programs. (See related discussions at 6.1, 6.2, and 7.1.)

**7.3 What testing and access procedures are acceptable for such utility employees as maintenance personnel, who may need unescorted access to the nuclear facility, but are normally dispersed throughout the licensee's system and may not be working in a location at which they can be tested? Can the licensee suspend their access between onsite assignments pending preaccess testing on each return to the site without other administrative requirements, such as inquiries or training?**

The licensee has discretion as to how it wishes to administer the program in the case in question. The basic options are: (1) to retain the personnel in the FFD program which means that they be subjected to refresher training, random testing, and so forth, or (2) to remove them from the program and ensure that they have been tested within the previous 60 days each time they are returned to the program (this option would also require that the employee be subject to all provisions of the rule as a "new" employee, including training, upon his/her return). For individuals in remote locations who remain in the FFD program, the licensee has the option of having these people report to a temporary collection site or having them return to a permanently established collection site.

**7.4 Is a contractor's employee subject to preaccess screening at different sites, if the last screening took place within 60 days?**

No. Any preaccess or random test administered within the previous 60 days under a program meeting the requirements of 10 CFR Part 26 would satisfy the requirement. Also, if the contractor has an FFD program reviewed and accepted under the provisions of 10 CFR 26.23 by each of the affected licensees, the preaccess screening would apply only upon initial access under a program covered by the rule.

**7.5 Need suitable inquiries be conducted for (1) those who are not under an FFD program for an extended period; (2) contractors who are on site once a year, and (3) persons granted unescorted access to any nuclear site during the past year?**

Suitable inquiries conducted under 10 CFR Part 26 in the cited examples need not be conducted if the contractor employee is continuously covered by an FFD program in conformance with the rule.

**7.6 What are the testing requirements for individuals granted temporary unescorted access?**

Persons granted temporary unescorted access must meet all provisions of 10 CFR Part 26, including suitable inquiries conducted under 10 CFR 26.27(a), preaccess testing under 10 CFR 26.24(a)(1), inclusion in a random testing program under 10 CFR 26.24(a)(2), and training under 10 CFR 26.21.

## 8 EMPLOYEE ASSISTANCE PROGRAM

**8.1 What constitutes an effective FFD program? How do you measure an employee assistance program (EAP)?**

The Commission has tasked the NRC staff with closely monitoring the implementation of the rule and to consider the need for changes within 18 months following the implementation date. As part of that effort, the staff is examining the elements of an effective program and appropriate program performance indicators. Industry may wish to explore methods of measuring an EAP; this is not part of the NRC staff effort.

**8.2 Must licensee management and the NRC be notified when a person seeks help through the EAP (i.e., a self-referral) to solve a substance abuse problem and has drugs or alcohol in his system?**

Licensee management would not be notified unless the medical personnel in the EAP determined that the person constituted a hazard to himself or to others. As for reportability to the NRC, self-referrals are not reportable under 10 CFR 26.73. The Nuclear Management and Resources Council (NUMARC) did not include such information on its data collection form; however, the NRC may collect EAP performance data during inspections. (See answer to 8.6.)

**8.3 Does the requirement for supervisory procedures to initiate appropriate corrective action [10 CFR 26.22(a)(5)] include referral for voluntary assistance?**

No. Once a supervisor has confronted a troubled employee and referred the individual for assessment, the

protections afforded an employee who self-refers should not be provided to the individual who is referred by the supervisor.

**8.4 What followup is required for employees who turn themselves in (i.e., self-referral) for substance abuse?**

The nature, character, and frequency of the followup should be determined by the physician who is treating the patient.

**8.5 What is a "safety hazard" for purposes of reporting EAP self-referrals to management?**

Normally, on the basis of discussions with licensee management and with general knowledge of nuclear power plant demands, the person who is evaluating the self-referred patient makes that determination.

**8.6 How much documentation on EAPs should be available for NRC inspections?**

That matter is under study. At this point, the NRC would be interested in data concerning program utilization and measures for protecting confidentiality.

## 9 MANAGEMENT ACTIONS AND SANCTIONS

**9.1 Will the record of those employees who have tested positive before the rule was published be wiped clean on January 3, 1990, or will a past test failure count under the rule?**

After January 3, 1990, the next positive test would be considered the first positive test under the provisions of the rule. The NRC would certainly expect licensees to take action in accordance with the provisions of the rule, and the rule permits licensees to take more stringent action than specified in 10 CFR 26.27. Therefore, the rule is sufficiently flexible that the vast majority of licensees who indicated during the workshop that they would consider past test results as if they were under the rule would be able to do so. However, such actions would not be required.

**9.2 Please clarify the term "suitable inquiry" that is conducted over the previous 3- and 5-year time periods?**

The question relates to the definition of suitable inquiry which requires that licensees must, on a best-effort basis, determine whether there is a history of alcohol or drug problems over the previous 5 years, but in no case less than 3. Licensees must make a best effort to obtain the information. Should the licensee be unable to obtain the information, it must then consider whether or not to grant that person unescorted access. In certain situations, a licensee may not be able to get any information, particularly if an applicant is coming from a foreign country. In those cases, the licensee would have to determine what is appropriate and document its efforts to obtain the information. In all cases, licensees must make a best effort to determine whether the person is reliable and trustworthy and can be granted unescorted access.

**9.3 When a "suitable inquiry" is made to a licensee, what information should be disclosed?**

10 CFR 26.27(a) requires that the licensee determine if the applicant has ever been (1) tested positive for drugs, or ever used alcohol resulting in on-duty impairment, (2) treated for substance abuse except for self-referral that did not result in a report to management, (3) removed because of an FFD problem, and (4) denied unescorted access in accordance with a licensee's FFD policy. Obviously, to respond to such an inquiry, licensees should have a records system that contains such information (See 10 CFR 26.29 and 26.71.)

**9.4 What action should the licensee take if the licensee's legal department determines that disclosure of such information about the employee violates State law?**

The Statement of Considerations, Section 18.2.3 at 54 FR 24489 states that Federal law, that is, the Atomic Energy Act and codified rules issued under its authority, preempts State laws with regard to all matters pertaining to radiological safety of the operation of nuclear power reactors. Where the Fitness-for-Duty Rule imposes a requirement on the licensee related to safe operation of the reactor, the Fitness-for-Duty Rule preempts any conflicting State law.

**9.5 How should a licensee deal with persons who have had a confirmed positive test result at a plant that uses cutoff levels different from cutoff levels at the licensee's facility? For example, licensee A uses a standard of 100 nanograms and licensee B uses a standard of 20 nanograms per milliliter for the initial screening test for marijuana, with respective confirmatory cutoff levels of 20 and 4 nanograms, respectively.**

Under the provisions of 10 CFR 26.71(b), a confirmed positive test result (without the levels detected) is a transferable record to be provided in response to a suitable inquiry made under the provisions of 10 CFR 26.27(a). Furthermore, the suitable inquiry to determine if the person had "tested positive for drugs" would be limited to test results received and determined as a confirmed positive by the MRO.

**9.6 If a person can be removed for cause from the workplace, cannot a preliminary screening result, in combination with observation of unusual behavior, allow management to take action before a test result is confirmed by an MRO determination?**

The unusual behavior should constitute sufficient basis for temporary suspension of unescorted access and the conduct of a for-cause test. 10 CFR 26.24(d) and Sections 2.7(g) and 2.9(c) of Appendix A to 10 CFR Part 26 prohibit management from having access to presumptive positive preliminary screening or initial screening results. (See related discussion at 5.14, 9.8, and 9.9.)

**9.7 What is acceptable management and medical assurance of satisfactory rehabilitation?**

That is up to each licensee to determine. As the state of the art advances, several approaches may become available. Currently, licensees could set up a program to have these people periodically examined on an unannounced basis. Licensees also could employ a radioimmunoassay test of hair that consists of taking a few strands of hair, usually from the scalp. Since hair grows about 1 cm per month, the strands can be cut into lengths corresponding to specific periods of interest. For example, if a 6-cm sample is obtained it could be cut into six 1-cm sections, each representing approximately one month of drug-use history. The test results of several successive segments establishes the pattern of drug use during the period in question.

**9.8 If a preliminary screening test shows drug use, what can management know and do?**

Management may not be informed of any test result not reviewed and confirmed as positive by the MRO, as required by 10 CFR 26.24(d) and Sections 2.7(g) and 2.9(c) of Appendix A to 10 CFR Part 26. It follows that management may take no action, unless EAP personnel notify management that the individual's condition may present a hazard to himself/herself or others (see 10 CFR 26.25). (See related discussions at 5.4, 5.5, 5.9, and 5.14.)

**9.9 If management is informed of the results of a preliminary test, what enforcement action will the NRC take?**

The enforcement action will be based upon an evaluation of each case, and may be dependent on the actions taken by management in response to the preliminary information.

**9.10 What reasonable actions should be taken with known off-duty drug or alcohol abuse? What action should be taken for incidents that result in arrest?**

The rule does not cover offsite actions or events, however, the appropriate management actions are up to each licensee to determine. Actions similar to what the licensee would take had the event occurred on site could be considered. The rule did not cover such situations because it is believed that licensee personnel policies already address such matters as criminal acts committed off the job.

**9.11 Does an offsite drug arrest count as "one bite of the apple?"**

The rule does not address offsite drug arrests; however, the NRC assumes that a licensee's existing personnel policies deal with criminal acts, particularly felony convictions. If, in such a situation, an employee is retained by the licensee, the NRC would expect appropriate counseling and action. Should a subsequent drug-related incident occur, it would be prudent to remove the person from unescorted access. Such information should be passed on in response to a suitable inquiry.

**9.12 Is a self-referral to an EAP considered a first test failure?**

No. Since management is not normally notified if a person refers himself to the EAP, a positive test resulting from an initial assessment would not be considered a first test failure on the employee's personnel or medical records. Any determination of subsequent drug use while under treatment would be considered a positive test result reportable to management. (See related discussion at 8.2 and 8.3.)

**9.13 What action should the licensee take if the alcohol test results are under 0.04 percent BAC, especially with those tests that are taken later in the shift that would make you suspect that either the person came into work drunk or was consuming alcohol on the job?**

Each licensee should decide what actions are appropriate. If the time elapsed since start of work indicates that the individual's BAC was above 0.04 percent while on duty, the licensee should take appropriate action.

**9.14 What are effective deterrents for alcohol abuse if a licensee has a policy for alcohol that differs from its policy for other drugs?**

10 CFR 26.27(b)(5) requires that sanctions for confirmed misuse of alcohol be sufficient to deter abuse of legally obtainable substances as a substitute for abuse of proscribed drugs. What constitutes a sufficient deterrent is for each licensee to determine.

**9.15 What sanctions are appropriate for abuse of prescription and over-the-counter drugs?**

The licensee has discretion as to what action should be taken.

**9.16 What are acceptable sanctions for alcohol abuse and refusal to be tested?**

These sanctions are at the discretion of the licensee. The NRC would expect that a person refusing to be tested, at a

minimum, would not be granted unescorted access to the protected areas.

**9.17 Who will take the lead in developing a list of approved or risky over-the-counter and prescription drugs?**

The NRC expects that the industry will develop such a list. This issue was discussed in some detail in Chapter 3 of NUREG/CR-5227, Supplement 1.

## 10 REPORTING REQUIREMENTS

**10.1 What are the reporting requirements concerning persons whose BAC tests above 0.04 percent when they are called in and when they are on call?**

10 CFR 26.73 requires only that the licensee report such an event involving licensed operators or supervisory personnel determined to be unfit for scheduled work due to the consumption of alcohol. Therefore, if a licensed operator or supervisor is called in, the assumption is that he/she was not scheduled for work, and no report is required. If the licensee's policy considers "on call" as constituting scheduled work, then such persons being above 0.04 percent BAC would be reportable. (See related discussions at 2.2, 10.3, and 10.4.)

Furthermore, the NRC would expect licensees to exercise prudent judgment on whether or not unusual situations should be reported as a significant FFD event under the meaning of 10 CFR 26.73(a). *Note:* Significant FFD events are not limited to the examples contained in 10 CFR 26.73(a)(1) and (2).

**10.2 If a licensee tests other drugs or uses lower cutoff levels, what are the reporting requirements?**

The NRC would expect that if someone has violated the licensee's FFD program, the violation be reported in accordance with 10 CFR 26.73 when applicable, and included in the program performance data submitted to the Commission in accordance with 10 CFR 26.71(d). This includes other drugs and experiences with lower cutoff levels. To meet the requirement in 10 CFR 26.71(d) to include the results of tests using lower cutoff levels, the data should be provided so that the number of people identified at lower cutoff levels can be compared to the number that would have been identified at the cutoff levels established in the rule.

**10.3 If you call an employee to come to work who is not scheduled for work or is not on call and the individual says he/she has been drinking and tests 0.04 percent BAC or higher, is this reportable to the NRC?**

No. (See related discussion at 2.2, 10.1, and 10.4.)

**10.4 What are the reporting requirements if a person on call is tested positive for alcohol?**

10 CFR 26.73 requires reporting of acts by licensed operators or any supervisory personnel involving the use of alcohol within the protected area or resulting in unfitness for scheduled work. Therefore, if the person is not a licensed operator or supervisor, no report is required. Although the rule does not define "on call," a licensee may determine that "on call" is a "working tour" (see discussion at 2.2) which would make the example event reportable if it involved a licensed operator or supervisor. Licensees should exercise judgment in determining the appropriateness of reporting fitness matters beyond the minimum reporting requirements. For example, it may be prudent to report a situation involving a site manager whose BAC is less than 0.04 percent, but has alcohol on his breath, because this may come to the attention of the NRC and to the public through the news media.

**10.5 Are the reporting requirements of 10 CFR 26.73 effective now or on January 3, 1990?**

Since the effective date of the rule is July 7, 1989, licensees may now choose to report such FFD events under the provisions of 10 CFR 26.73 in lieu of 10 CFR 73.71. After January 3, 1990, licensees must report such events under the provisions of 10 CFR 26.73.

**10.6 Must the NRC be notified of FFD violations involving contractor/supervisory personnel?**

Yes. A report should be made under the provisions of 10 CFR 26.73(a)(2), irrespective of whether the violation took place under a licensee's program or under a contractor's program approved under the provisions of 10 CFR 26.23. A licensee need not report data that were previously reported by another licensee.

**10.7 Should finding alcohol or drugs within the protected area (no person in possession) be reported? If the answer is yes, should the report be made under 10 CFR 73.71 or 10 CFR 26.73?**

Yes. Possession would be inferred and would be required to be reported as a significant FFD event under the meaning of 10 CFR 26.73(a). *Note:* Significant FFD events are not limited to the examples contained in 10 CFR 26.73(a)(1) and (2).

**10.8 Should the attempted introduction of alcohol or drugs into a protected area be reported? What if the person is a visitor?**

That would depend upon the circumstances. Should the individual be a licensed operator or supervisor, a report should be made to the NRC; a summary entry in the semiannual report would be appropriate for most other instances.

**10.9 On the NUMARC data collection sheet, do all contractors do their own data reporting, or does the utility consolidate?**

There is no requirement for a contractor to send the data to the NRC. The responsibility is placed on the licensee. There is room on the NUMARC data collection form for reporting such data. The licensee, in its contract, should require that such information be provided. How this is accomplished is left to each licensee.

**10.10 Could the licensee ask contractors to submit the data collection form to the licensee?**

Yes. The licensee could require the contractor to do that. Licensees need not report contractor data that has been reported previously by another licensee.

## 11 MISCELLANEOUS

**11.1 What is meant by "nominal," as used in 10 CFR 26.21(b), 26.22(b), and 26.80(a). Is it a one-month slack? Can it be plus or minus three months?**

The term "nominal" is used to provide the licensee reasonable latitude. Plus or minus three months would be consistent with the 25-percent maximum allowable extension of a specified interval as described in Specification 4.0.2 of the Standard Technical Specifications. This would be acceptable provided it is not used repeatedly as an operational convenience to extend the training interval beyond the specified time.

**11.2 Will there be a new systematic assessment of licensee performance (SALP) functional topic to evaluate a licensee's FFD area?**

NRC policy permits the regions to add topics to the SALP as they may deem necessary. There is now no initiative to add FFD as a new SALP functional area. The current guidance includes FFD as one of several activities under the functional area of security.

**11.3 Can licensees accept HHS audits of the certified testing labratories?**

No. HHS audits are limited to those aspects of laboratory programs certified for Federal agency testing programs.

**11.4 Can licensees accept contractor audits of HHS-certified laboratories if the contractor has a program reviewed and approved by the licensee?**

Yes.

**11.5 Can licensee A accept licensee B's audit of a testing laboratory if licensee B uses less stringent cutoff levels or tests for additional drugs?**

Licensee A may accept those portions of licensee B's audit of program elements that have standards that are used by both licensees. Both licensees would need to audit those program elements that do not use similar standards.

**11.6 Some licensees have truck drivers, tugboat operators, and other employees who must be covered under both Department of Transportation and NRC rules. Where the rules conflict, particularly if a licensee wishes to use lower cutoff levels, test for additional drugs, or use split samples, what rule must be met?**

Licensees must satisfy NRC requirements.

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The Nuclear Regulatory Commission published a rule (10 CFR Part 26) concerning fitness for duty of commercial nuclear power plant workers on June 7, 1989, in the *Federal Register* (54 FR 24468). This report responds to questions raised concerning the implementation of the rule during the Edison Electric Institute's "Fitness-for-Duty Rule Implementation Workshop," held between July 30 and August 2, 1989. It also responds to questions raised by licensees with the staff outside the workshop.

Publication of this report does not constitute a written interpretation of the meaning of the rule, as provided by 10 CFR 26.4. Only written interpretations by the General Counsel will be recognized to be binding upon the Commission.

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# FITNESS FOR DUTY IN THE NUCLEAR POWER INDUSTRY: RESPONSES TO IMPLEMENTATION QUESTIONS

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