

Nuclear Regulatory Commission

§ 26.3

Each licensee shall implement a fitness-for-duty program which complies with this part. The provisions of the fitness-for-duty program must apply to all persons granted unescorted access to nuclear power plant protected areas, to licensee, vendor, or contractor 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, and to SSNM licensee and transporter personnel who:

(1) Are granted unescorted access to Category IA Material;

(2) Create or have access to procedures or records for safeguarding SSNM;

(3) Make measurements of Category IA Material;

(4) Transport or escort Category IA Material; or

(5) Guard Category IA Material.

(b) 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, including a holder of a combined license before the date that the Commission makes the finding under § 52.103(g) of this chapter, holders of manufacturing licenses under part 52, and persons authorized to conduct the activities under § 50.10(e)(3) of this chapter. Each licensee with a construction permit, a combined license before the Commission makes the finding under § 52.103(g) of this chapter, a manufacturing license, or person authorized to conduct the activities under § 50.10(e)(3) of this chapter, with a plant or reactor under

active construction or manufacture, shall—

(1) Comply with §§ 26.10, 26.20, 26.23, 26.70, and 26.73;

(2) Implement a chemical testing program, including random tests; and

(3) 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).

[58 FR 31469, June 3, 1993, as amended at 59 FR 48959, Sept. 23, 1994; 72 FR 49488, Aug. 28, 2007]

§ 26.3 Definitions.

Aliquot means a portion of a specimen used for testing.

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

Commission means the 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 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

§ 26.4

10 CFR Ch. I (1–1–08 Edition)

accuracy. For determining blood alcohol levels, a “confirmatory test” means a second test using another breath alcohol analysis device. 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 with a second breath analysis without MRO evaluation.

Contractor means any company or individual with which the licensee has contracted for work or service to be performed inside the protected area boundary, either by contract, purchase order, or verbal agreement.

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

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

Illegal drugs means those drugs included in Schedules I through V of the Controlled Substances Act (CSA), but not when used pursuant to 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.

Medical Review Officer means a licensed physician responsible for receiving laboratory 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.

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.

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.

Transporter means a general licensee pursuant to 10 CFR 70.20a, who is authorized to possess formula quantities of SSNM 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.

[54 FR 24494, June 7, 1989, as amended at 58 FR 31469, June 3, 1993]

§ 26.4 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.

§ 26.6 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 are otherwise in the public interest.