

## **Subpart A: Administrative Provisions**

### **26.1 Purpose**

This section of the final rule imposes no cost and affords no saving because it merely simplifies and amends § 26.1 of the former rule by removing certain references and provisions that are addressed elsewhere in the rule.

### **26.3 Scope**

Paragraph 26.3 reorganizes and amends § 26.2 of the former rule, as discussed below.

#### **Paragraphs 26.3(a) - (c)**

These paragraphs of the final rule impose no incremental cost and afford no saving because they merely clarify those licensees who are subject to the rule as already stated in paragraphs 26.2(a) and (c) of the former rule.

#### **Paragraph 26.3(d)**

This paragraph of the final rule imposes no cost and affords no saving because it states that the regulations in this part also apply to contractor vendors (C/Vs) who implement FFD programs or program elements to the extent that the licensees and other entities specified in paragraphs 26.3(a) - (c) rely on those C/V FFD programs or program elements to meet the requirements of this part. C/Vs are already subject to the requirements of the former rule as stated in § 26.23 of the former rule.

#### **Paragraph 26.3(e)**

This paragraph of the final rule imposes no incremental cost and affords no saving because it restates requirements contained in paragraph 26.2(b) of the former rule that stipulated that the regulations of this part do not apply to those licensees who possess, use, or transport formula quantities of irradiated SSNM.

### **26.4 FFD Program Applicability to Categories of Individuals**

#### **Paragraph 26.4(a)**

This paragraph specifies those individuals who are subject to an FFD program that meets all of the requirements of 10 CFR Part 26, except Subpart K. This paragraph of the final rule imposes no incremental cost and affords no saving because it merely restates part of paragraph 26.2(a) of the former rule.

#### **Paragraphs 26.4(b) - (c)**

These paragraphs specify those individuals who are subject to an FFD program that meets all of the requirements of 10 CFR Part 26, except §§ 26.205 through 26.209 and Subpart K. This paragraph of the final rule imposes no incremental cost and affords no saving because it merely restates part of paragraph 26.2(a) of the former rule.

#### **Paragraph 26.4(d)**

This paragraph specifies those individuals who are subject to an FFD program that meets all of the requirements of 10 CFR Part 26, except Subparts I and K. This paragraph of the final rule imposes no incremental cost and affords no saving because it merely restates part of paragraph 26.2(a) of the former rule.

#### **Paragraph 26.4(e)**

Paragraph 26.4(e) of the final rule clarifies the FFD requirements for any individual whose duties for the licensees and other entities in § 26.3(c) require him or her to perform the following activities when construction activities begin at the location where the nuclear power plant will be constructed and operated: (1) serve as a security officer under NRC requirements; (2) perform quality assurance activities, as specified in Appendix B to part 50; (3) monitor the fitness of individuals specified in paragraph 26.4(f), as designated under section 26.406; (4) determine that inspections, tests, and analyses, or parts thereof, required under part 52 have been successfully completed; (5) supervise or manage the construction of safety- or security-related structures, systems, and components (SSCs); or (6) direct or implement the access authorization program including the access authorization duties specified in subparagraphs 26.4(e)(6)(i)-(vii). Specifically, these individuals must be subject to an FFD program that meets all of the requirements of 10 CFR Part 26, except Subparts I and K. This paragraph imposes additional requirements relative to paragraph 26.2(c) of the former rule. This analysis, however, assumes that new reactor construction will be co-located with existing reactor sites. The licensees operating the reactors will be the same as those undertaking the construction activities at the co-located site. The analysis assumes that licensees and other entities will include the individuals identified above as part of the FFD program at the co-located operating reactor site. The NRC believes that any additional cost to include these individuals within the scope of the FFD program already being conducted is insignificant relative to the overall costs of the FFD program. Therefore, this analysis does not calculate incremental costs for this requirement of the final rule.

#### **Paragraph 26.4(f)**

Paragraph 26.4(f) of the final rule clarifies the FFD requirements for any individual who is constructing or directing the construction of safety- or security-related SSCs. Specifically, these individuals must be subject to an FFD program that meets the requirements of Subpart K, unless the licensee or other entity subjects these individuals to an FFD program that meets all of the requirements of this part, except Subparts I and K. This final paragraph imposes no incremental cost and affords no saving because it clarifies paragraph 26.2(c) of the former rule.

**Paragraph 26.4(g)**

Paragraph 26.4(g) clarifies that FFD program personnel shall be subject to the provisions and policies of the FFD program. Although the language of the former rule did not explicitly state that FFD program personnel were subject to the former rule, this was the Commission’s intent. Further, FFD program personnel were required to meet the highest standards for honesty and integrity to ensure that the program yielded valid results that were not being subverted (as addressed by Appendix A Section 2.3 of the former rule). Consequently, the revised subparagraph imposes no incremental cost and affords no saving.

*Sensitivity Analysis - Industry Practices*

Most licensees already subject FFD program personnel to drug and alcohol testing, as well as behavioral observation programs in order to meet the requirements of the former rule. Until recently, however, some licensee practices were inconsistent with the NRC staff’s interpretation of the requirements and did not subject their medical review officers (MROs) to the provisions and policies of the FFD program. These licensees will incur additional one-time and annual costs to cover their MROs under their FFD programs in compliance with final regulation. The *one-time cost per program* results from the sum of the following costs:<sup>1</sup>

- One-time cost per program to subject their MROs to pre-access drug and alcohol testing to comply with the final regulation is calculated as follows:

$$NUM_{MROs} \times COST_{Test} \times PER_{Compliance}$$

- One-time cost per program to pay for MRO travel to a licensee collection facility to comply with the final regulation is calculated as follows:

$$NUM_{MROs} \times HOURS_{Travel} \times WAGE_{MRO} \times PER_{Compliance}$$

- One-time cost per program to conduct FFD training and to administer the comprehensive examination on their MROs to comply with final regulation is calculated as follows:

$$NUM_{MROs} \times HOURS_{Training} \times WAGE_{MRO} \times PER_{Compliance}$$

<b>Parameter</b>	<b>Description</b>
$COST_{Test}$	Drug and alcohol testing cost per test (as described in Appendix 2, Exhibit A2-13)
$HOURS_{Training}$	Length of FFD program training for MROs (as described in assumptions below)
$HOURS_{Travel}$	Hours of MRO travel, waiting, and specimen collection time

<sup>1</sup> The analysis assumes that licensees already test and appropriately train in-house FFD program personnel as required under Appendix A Section 2.3 of the former rule. The analysis also assumes that 25 percent of licensees will each need to address two contracted MROs under their testing and training programs in order to comply with this paragraph.

Parameter	Description
	(as described in assumptions below)
NUM <sub>MROs</sub>	Number of MROs per program (as described in assumptions below)
PER <sub>Compliance</sub>	Percentage multiplier to spread compliance costs across all programs (as described in assumptions below)
WAGE <sub>MRO</sub>	MRO wage rate (as described in Appendix 2, Exhibit A2-11)

*Assumptions:*

- Number of MROs per program: 2.
- Length of FFD program training for MROs: 2 hours.
- Hours of MRO travel, waiting, and specimen collection time, on average, under the former rule: 6 hours.
- Given their small number, the MROs will be added to existing training sessions and will not require incremental costs of providing additional training sessions.
- The per-unit cost of a pre-access drug and alcohol test for an MRO working for a licensee with *onsite testing facilities* includes the following factors:
  - (1) collection of drug and alcohol specimens (labor of the collector only and collection materials)
  - (2) onsite licensee testing costs per urine specimen for drugs and validity
  - (3) labor of FFD manager to process paperwork for negative test results.
- The per-unit cost of a pre-access drug and alcohol test for an MRO working for a licensee with *offsite testing facilities* includes the following factors:
  - (1) collection of drug and alcohol specimens (labor of the collector only and collection materials);
  - (2) HHS-certified laboratory costs per urine specimen for drugs and validity
  - (3) labor of FFD manager to process paperwork for negative test results.
- No positive drug or alcohol test results are anticipated for the MRO.
- Licensees have estimated that 25 percent of licensees may not interpret the former regulation to require inclusion of the MRO under the FFD program. Because the analysis cannot identify which facilities were interpreting the former rule correctly and which were not, the analysis assumes that each program will incur the incremental cost of 25 percent of the activity (PER<sub>Compliance</sub>).

Annual costs will arise from adding MROs to the random drug and alcohol testing program. The *annual cost per program* results from the sum of the following costs:

- Annual cost per program to administer a random drug and alcohol testing program for FFD program personnel to comply with the final regulation are calculated as follows:

$$NUM_{MROs} \times PER_{Random} \times COST_{Test} \times PER_{Compliance}$$

- Annual cost per program to pay for MROs selected for random drug and alcohol testing to travel to the specimen collection facility and provide a specimen to comply with the final regulation are calculated as follows:

$$NUM_{MROs} \times PER_{Random} \times HOURS_{Travel} \times WAGE_{MRO} \times PER_{Compliance}$$

Parameter	Description
$COST_{Test}$	Drug and alcohol testing cost per test (as described in Appendix 2, Exhibit A2-13)
$HOURS_{Travel}$	Hours of MRO travel, waiting, and specimen collection time (as described in assumptions below)
$NUM_{MROs}$	Number of MROs per program (as described in assumptions below)
$PER_{Compliance}$	Percentage multiplier to spread compliance costs across all programs (as described in assumptions below)
$PER_{Random}$	Percentage tested by a random drug and alcohol testing program per year (as described in assumptions below)
$WAGE_{MRO}$	MRO wage rate (as described in Appendix 2, Exhibit A2-11)

*Assumptions:*

- Number of MROs per program: 2.
- Percentage tested by a random drug and alcohol testing program: 50%.
- Hours of MRO travel, waiting, and specimen collection time, on average, under the former rule: 6 hours.
- The per-unit cost of a random drug and alcohol test for an MRO working for a licensee with onsite testing facilities includes the following factors:
  - collection of drug and alcohol specimens (labor of the collector only and collection materials)
  - onsite licensee testing costs per urine specimen for drugs and validity
  - labor of FFD manager to process paperwork for negative test results.
- The per-unit cost of a random drug and alcohol test for an MRO working for a licensee with offsite testing facilities includes the following factors:
  - collection of drug and alcohol specimens (labor of the collector only and collection materials)
  - HHS-certified laboratory costs per urine specimen for drugs and validity

- (3) labor of FFD manager to process paperwork for negative test results.
- No positive drug or alcohol test results are anticipated for the MRO.
- Licensees have estimated that 25 percent of licensees did not interpret the former regulation to require inclusion of the MRO under the FFD program. Because the analysis cannot identify which facilities were interpreting the former rule correctly and which were not, the analysis assumes that each program will incur the incremental cost of 25 percent of the activity.

**Paragraph 26.4(h)**

This paragraph of the final rule adds a provision specifying that individuals who have applied for authorization to have the types of access or perform the activities described in paragraphs 26.4(a)-(g) must be subject to the applicable requirements of this part and provided with the applicable protections of this part. The incremental costs and savings from this final paragraph are calculated in their respective sections.

**Paragraph 26.4(i)**

This paragraph [including subparagraphs (i)(1)-(i)(4)] specifies the individuals who are not subject to an FFD program.

***Subparagraph 26.4(i)(1)***

This subparagraph of the final rule imposes no incremental cost and affords no saving because it merely states that persons who are not employed by, nor routinely provide services for, a licensee or other entity, but who may be called on to provide an FFD program service are not covered under the final rule. Some licensees have indicated that their auditors have insisted that local hospitals, treatment facilities, or other facilities providing infrequent FFD program services must be audited annually. Nevertheless, this analysis calculates no savings because the prevalence of such auditing practices is unknown.

***Subparagraph 26.4(i)(2)***

This subparagraph of the final rule imposes no incremental cost and affords no saving because it merely restates requirements contained in paragraph 26.2(b) of the former rule, which stated that NRC employees, law enforcement personnel, and offsite emergency fire and medical response personnel responding onsite are not subject to the final rule.

***Subparagraph 26.4(i)(3)***

This subparagraph of the final rule imposes no incremental cost and affords no saving because it merely restates requirements contained in paragraph 26.2(b) of the former rule. The final subparagraph states that strategic special nuclear material (SSNM) transporter personnel who are

subject to U.S. Department of Transportation drug and alcohol fitness programs that require random testing for drugs and alcohol are not subject to the FFD program.

#### ***Subparagraph 26.4(i)(4)***

This subparagraph of the final rule imposes no incremental cost and affords no saving because it merely states that FFD program personnel of a program that is regulated by another Federal agency or State on which a licensee or other entity relies to meet the requirements of this part are not subject to the FFD program, if the FFD program personnel are not employed by the licensee or other entity and their normal workplace is not at the licensee's or other entity's facility. This analysis calculates no saving because the prevalence of such personnel is unknown.

#### **Paragraph 26.4(j)**

This paragraph is a new requirement that allows licensee's FFD programs to exclude individuals who are covered by another program that is regulated by a Federal or State agency, provided that the program meets the general performance objectives of the FFD rule, as well as the requirements under subparagraphs 26.4(j)(1)–(5). Licensees need only subject these individuals to those elements of the FFD program that are not included in the other program. This revision reduces the burden on some individuals who are currently subject to Federal and State programs with requirements that duplicate those of Part 26. This revision will yield annual savings by eliminating the duplication of pre-access testing, training (non-supervisory level training under the former rule), and comprehensive examinations (including retesting and remedial training for those who fail the comprehensive examinations) for applicants for initial authorization. Savings from being able to forego the suitable inquiry are not calculated because licensees would still be required to verify that the other program provides adequate coverage and complies with the requirements in this part. The provision also will yield an annual savings by eliminating duplicate random drug and alcohol testing coverage for existing employees. Under the final rule, cutoff levels for drugs and drug metabolites are harmonized with other Federal drug testing programs (per §§ 26.131 and 26.163), which also increases the likelihood that other programs will be acceptable.

The annual saving per program results from the sum of the following savings:

- The *annual saving per program* from bypassing pre-access drug and alcohol testing for the percentage of applicants covered by an acceptable program is calculated as follows:<sup>2</sup>
- Pre-access drug and alcohol tests need not be performed at *facilities with onsite testing laboratories* for the percentage of applicants who are covered by an acceptable program. The associated savings are estimated as follows:

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<sup>2</sup> These incremental savings will vary for programs depending on whether the program has onsite testing capabilities or utilizes an offsite HHS-certified testing laboratory.

$$NUM_{Applicants} \times PER_{Covered} \times COST_{Onsite} \times NUM_{Units}$$

- Pre-access drug and alcohol tests need not be performed at *facilities with offsite testing laboratories* for the percentage of applicants who are covered by an acceptable program. The associated savings are estimated as follows:

$$NUM_{Applicants} \times PER_{Covered} \times COST_{Offsite} \times NUM_{Units}$$

- The *annual saving per program* from bypassing the training and examination requirements for the percentage of applicants covered by an acceptable program is calculated as follows:

$$NUM_{Applicants} \times PER_{Covered} \times (HOURS_{Non-Supervisory} + HOURS_{Exam}) \times WAGE_{Worker} \times NUM_{Units}$$

- The *annual saving per program* from requiring fewer contracted trainer hours to conduct trainings and examinations on the percentage of applicants who is covered by acceptable program are calculated as follows:

$$NUM_{Sessions} \times (HOURS_{Non-Supervisory} + HOURS_{Exam} + HOURS_{Preparation}) \times WAGE_{Trainer} \times NUM_{Units}$$

- The *annual saving per program* from not conducting remedial training and reexamining the percentage of applicants who are covered by an acceptable program and fail the comprehensive examination is calculated as follows:

$$PER_{Failing} \times [(NUM_{Applicants} \times PER_{Covered}) \times (HOURS_{Remedial Training} + HOURS_{Exam}) \times WAGE_{Worker}] \times NUM_{Units}$$

- The *annual saving per program* from requiring fewer contracted trainer hours to conduct remedial training and reexamining those applicants covered by an acceptable program that fail the comprehensive examination is calculated as follows:

$$[NUM_{Sessions} \times (HOURS_{Remedial} + HOURS_{Exam}) \times WAGE_{Trainer}] \times PER_{Failing} \times NUM_{Units}$$

- The *annual saving per program* from not subjecting existing employees who are covered by another acceptable program to a duplicative random drug and alcohol testing program is calculated as follows.

$$(NUM_{Employees} \times PER_{Covered}) \times (COST_{Test} \times PER_{Random}) \times NUM_{Units}$$

Parameter	Description
COST <sub>Offsite</sub>	Drug and alcohol testing cost at facilities with offsite testing laboratories per test



<b>Parameter</b>	<b>Description</b>
	(as described in assumptions below and in Appendix 2, Exhibit A2-13)
$COST_{\text{Onsite}}$	Drug and alcohol testing cost at facilities with onsite testing laboratories per test (as described in assumptions below and in Appendix 2, Exhibit A2-13)
$HOURS_{\text{Exam}}$	Length of comprehensive examination (as described in assumptions below)
$HOURS_{\text{Non-Supervisory}}$	Length of non-supervisory-level training (as described in assumptions below)
$HOURS_{\text{Preparation}}$	Hours of preparation and examination grading per session (as described in assumptions below)
$HOURS_{\text{Remedial}}$	Length of remedial non-supervisory-level training (as described in Appendix 2, Exhibit A2-3)
$NUM_{\text{Applicants}}$	Annual number of applicants for initial authorization per unit who are covered by any other Federal or State program (as described in assumptions below)
$NUM_{\text{Employees}}$	Number of existing employees covered by any other Federal or State program (described in assumption below)
$NUM_{\text{Units}}$	Number of units per program (as described in Appendix 2, Exhibit A2-14)
$NUM_{\text{Sessions}}$	Annual number of training and examination sessions (as described in assumptions below)
$PER_{\text{Covered}}$	Percentage of Federal or State programs qualifying under subparagraph 26.25(c)(1) per year (as described in assumptions below)
$PER_{\text{Failing}}$	Percentage failing comprehensive examination (as described in assumptions below)
$PER_{\text{Random}}$	Percentage tested by a random drug and alcohol testing program per year (as described in assumptions below)
$WAGE_{\text{Trainer}}$	Trainer wage rate (as described in Appendix 2, Exhibit A2-11)
$WAGE_{\text{Worker}}$	Facility worker wage rate (as described in Appendix 2, Exhibit A2-11)

*Assumptions:*

- Annual number of applicants for initial authorization per unit covered by any other Federal or State Program: 10.
- Percentage of Federal or State Programs qualifying under subparagraph 26.4(j)(1): 50%.
- Length of non-supervisory-level training: 2 hours.
- Length of comprehensive examination: 0.5 hours.
- Percentage failing comprehensive examination: 10%.
- Percentage tested by random drug and alcohol testing program per year: 50%.
- Number of training sessions assumes 20 workers per session.

- Hours of preparation and examination grading: 2 hours.
- Number of existing employees covered by any other Federal or State program: 40.
- All affected personnel take non-supervisory-level training under the former rule.<sup>3</sup>
- The per-unit cost of an onsite pre-access and random drug and alcohol test includes the following factors:
  - (1) travel time of the worker
  - (2) collection of drug and alcohol specimens (labor of the collector and the worker, as well as collection materials)
  - (3) onsite licensee testing costs per urine specimen for drugs
  - (4) labor of FFD manager to process paperwork for negative test results
- The per-unit cost of an offsite pre-access and random drug and alcohol test includes the following factors:
  - (1) travel time of the worker
  - (2) collection of drug and alcohol specimens (labor of the collector and the worker, as well as collection materials)
  - (3) HHS-certified laboratory costs per urine specimen for drugs
  - (4) labor of FFD manager to process paperwork for negative test results.
- Individuals whose pre-access drug and alcohol tests yield positive results will be eliminated from the hiring process.

## 26.5 Definitions

This section of the final rule re-states, clarifies, and adds definitions that are used throughout the entire final FFD rule. A number of these added and revised definitions will require licensees and C/Vs to modify or update their interpretation of current FFD policy, thereby resulting in incremental costs or savings. These costs and savings, however, are discussed in relevant sections of this analysis. The section adds a number of definitions, including those listed below, which are addressed later in this analysis within the context of the requirements that reference them.

- acute fatigue
- alertness
- best effort
- circadian variation in alertness and performance
- cumulative fatigue

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<sup>3</sup> This assumption has been made to simplify the above calculation for MROs. Elsewhere the analysis assumes that 85 percent of personnel are being trained at the non-supervisory-level under the former rule, and that the remaining 15 percent are being trained at the supervisory-level.

- directing
- fatigue
- formula quantity
- increase in threat condition
- other entity
- validity screening test

## **26.7 Interpretations**

This section of the final rule imposes no incremental cost and affords no saving because it merely restates § 26.4 of the former rule and provides that interpretation of the meaning of the regulations requires a written interpretation by the General Counsel in order to be recognized as binding upon the Commission.

## **26.8 Information Collection Requirements: OMB Approval**

This section of the final rule [including paragraphs 26.8(a) and (b)] imposes no incremental cost and affords no saving because it merely renumbers and amends § 26.8 of the former rule to reference the revised recordkeeping requirements of the final rule. The information collection requirements and their associated costs are discussed in subsequent sections.

## **26.9 Specific Exemptions**

This section of the final rule imposes no incremental cost and affords no saving because it merely restates § 26.6 of the former rule and provides that the NRC may (in instances authorized by law and deemed not to endanger life, property, or the public interest) grant exemptions from the requirements of Part 26.

## **26.11 Communications**

This section provides consistency with other 10 CFR parts and states that all communications, applications, and reports concerning the regulations in this part must be sent to a specified NRC address. The section will, however, add a requirement that copies of all communications to the NRC be sent to the appropriate regional office and resident inspector. No incremental costs arise from this requirement, however, as the additional cost to send the additional copies electronically is negligible.