

Subpart D: Management Actions and Sanctions to be Imposed

26.73 Applicability

This section of the final rule imposes no incremental cost and affords no saving because it merely states that the requirements in Subpart D apply to the: (1) licensees and other entities identified in § 26.3(a) and (b) for the categories of individuals specified in § 26.4(a) through (d); (2) licensees and other entities specified in § 26.3(c) for the categories of individuals in § 26.4(e), and, at the licensee's or entity's discretion, for the categories of individuals identified in § 26.4(f); (3) entities in § 26.3(d) to the extent that a licensee or other entity relies on the C/V to meet the requirements of this Subpart, and; (4) individuals specified in § 26.4(h) and (j), as appropriate.

26.75 Sanctions

Paragraph 26.75(a)

This paragraph of the final rule imposes no incremental cost and affords no saving because it merely introduces the subsequent provisions regarding minimum sanctions required in the event of violations of the drug and alcohol provisions of an FFD policy, which are similar to those required by paragraph 26.27(b) of the former rule.

Paragraph 26.75(b)

Licensees may realize incremental savings as a result of this paragraph, which requires licensees to deny authorization permanently to individuals who refuse to be tested or have engaged, or attempted to engage, in subversion of the testing process. This is a new requirement that was not addressed in the former rule. Requiring permanent denial of authorization may prevent, currently and in the future, disputes which require lengthy discussion or questioning of the grounds for denial in such instances. This analysis does not quantify any associated savings, however, because neither refusals nor subversion attempts are common, and data are not available to support a meaningful estimate.

Paragraph 26.75(c)

This paragraph of the final rule revises paragraph 26.27(b)(3) of the former rule to require licensees and other entities to deny authorization for a period of at least 5-years if an employee is determined to have been involved in the sale, use, or possession of illegal drugs or the consumption of alcohol within a protected area of any nuclear power plant, within a facility that is licensed to possess or use formula quantities of SSNM, within a transporter's facility or vehicle, or while performing activities that require the individual to be subject to this part. Although the addition of the consumption of alcohol to this requirement represents a new requirement, no incremental cost or savings is anticipated to result because it is assumed that licensees already impose similar sanctions under their current policies.

Paragraph 26.75(d)

This paragraph of the final rule revises the requirements located in paragraph 26.27(c) of the former rule to require licensees and other entities to deny authorization for a period of at least 5 years if an employee resigns or withdraws his application for authorization in anticipation of having their authorization terminated unfavorably as a result of a violation of the drug and alcohol provisions of the FFD policy. Although this is a new requirement, no incremental saving is estimated, even though future authorizing licensees or other entities may realize some savings by avoiding initial processing of these individuals.

Paragraph 26.75(e)

This paragraph revises the requirement located in subparagraph 26.27(b)(2) of the former rule by requiring the presumption that alcohol consumption (in addition to drug use) occurred off-site unless evidence suggests otherwise. Although the addition of the consumption of alcohol to this requirement represents a new requirement, no incremental cost or savings is anticipated to result because it is assumed that licensees already impose similar sanctions under their current policies.

Paragraph 26.75(f)

This paragraph of the final rule revises requirements contained in subparagraph 26.27(b)(5) of the former rule. The former rule stated that current licensee sanctions for confirmed misuse of alcohol, valid prescription drugs, and over-the-counter drugs must be sufficient to deter such abuse, and therefore it does not apply certain management actions to such misuse specified in this section. The final rule removes confirmed alcohol use from this category and specifically applies the management actions in 26.75(e) to such abuse. Although this is a new requirement, the final paragraph imposes no incremental cost and affords no saving, however, because it is not a significant change to licensee and other entity policy and because there is no incremental cost or saving associated with 26.75(e).

Paragraph 26.75(g)

This paragraph of the final rule requires licensees and other entities to permanently deny authorization to any individual who violates the drug and alcohol provisions of FFD policy after already having a denial of authorization of at least 5 years under paragraphs 26.75(c)–(f). Under the former rule, only a second positive test result, or sale, use, or possession of drugs while on duty could result in a permanent denial of authorization. Although this new requirement may result in additional permanent denials of authorization that will require additional record-keeping activities in conjunction with paragraph 26.713(c), no incremental costs are expected to result because licensees already store records of such violations under § 26.71 of the former rule and the incremental activities associated with recording the violation as a permanent denial is anticipated to be negligible. Additionally, the longer 40-year retention period [specified in § 26.713(c)], as compared to the 5-year period under the former rule, is not expected to result in incremental costs because the most substantial costs associated with retaining the records (filing, removal) do not change as a result of this final paragraph.

Paragraph 26.75(h)

This paragraph of the final rule imposes no incremental cost and affords no saving because it merely renumbers and revises paragraph 26.24(d)(2) of the former rule. The revisions add terminology to be consistent with the rest of the rule, as well as references to validity testing.

Paragraph 26.75(i)

This paragraph of the final rule imposes no incremental cost and affords no saving because it merely renumbers and revises paragraph 26.24(d)(2) of the former rule. The revisions add terminology to be consistent with the rest of the rule, as well as references to validity testing.

26.77 Management Actions Regarding Possible Impairment

Paragraph 26.77(a)

This paragraph of the final rule imposes no incremental cost and affords no saving because it merely states the purpose of the section, which is to describe management actions that licensees and other entities must take when an individual who is subject to this part shows indications of not being fit to safely and competently perform activities within the scope of this part.

Paragraph 26.77(b)

This paragraph of the final rule imposes no incremental costs and affords no savings because it merely requires licensees and other entities to take immediate action with drug and alcohol testing if an employee exhibits an indication of possible impairment while performing activities within the scope of this part, as already required under paragraph 26.27(b)(1) of the former rule. The revised paragraph does, however, add provisions allowing licensees and other entities the option of conducting only an alcohol test (but not a drug test) when the evidence of possible impairment is the smell of alcohol. The analysis has not quantified any incremental savings from this provision. Additionally, the provision requires that observed behaviors or physical conditions suggesting impairment solely from fatigue shall result in a fatigue assessment in accordance with § 26.211 rather than a determination of fitness. Additional costs associated with the fatigue assessment are calculated under § 26.211 of this analysis.

Paragraph 26.77(c)

This paragraph of the final rule imposes no incremental cost and affords no saving because it merely renumbers paragraph 26.27(d) of the former rule, which stated that licensees must provide escorted access to NRC employees or contractors when there are indications of questionable fitness to perform activities within the scope of this part.