

Subpart K: FFD Program for Construction

26.401 General

Paragraph 26.401(a)

This paragraph of the final rule states that the following entities may establish, implement and maintain an FFD program that meets the requirements of Subpart K to apply to any individual constructing safety- or security-related SSCs at the location where the nuclear power plant will be constructed and operated:

- A combined license holder (under 10 CFR Part 52) before the Commission has made the finding under Section 52.103(g);
- A combined license applicant (under part 52 of this chapter) who has been issued a limited work authorization under § 50.10(e), if the limited work authorization authorizes the applicant to install the foundations, including the placement of concrete, for safety- and security-related structures, systems, and components (SSCs) under the limited work authorization;
- A construction permit holder (under 10 CFR Part 50);
- A construction permit applicant (under 10 CFR Part 50) who has been issued a limited work authorization under § 50.10(e), if the limited work authorization authorizes the applicant to install the foundations, including the placement of concrete, for safety- and security-related SSCs under the limited work authorization; and
- An early site permit holder who has been issued a limited work authorization under § 50.10(e), if the limited work authorization authorizes the early site permit holder to install the foundations, including the placement of concrete, for safety- and security-related SSCs under the limited work authorization

This paragraph also states that if the licensees and other entities identified above do not elect to implement an FFD program that meets the requirements of Subpart K, then they must subject the individuals referenced above to an FFD program that meets the requirements of Subparts A through H, N and O. This section of the final rule imposes no incremental cost and affords no saving because it provides licensees with the flexibility to implement a more comprehensive FFD program. This enhanced flexibility is a voluntary provision. Although an FFD program that includes the requirements of Subparts A through H, N and O is generally considered more burdensome relative to the requirements of Subpart K, this may not be true for all licensees and other entities. For example, it is possible that the more comprehensive program could be less burdensome for some licensees where construction is co-located with an operating reactor. This analysis assumes that new reactor construction will be co-located with existing reactor sites and that the licensees operating the reactors will be the same as those undertaking the construction activities at the co-located site.

Paragraph 26.401(b)

This paragraph of the final rule requires entities who intend to implement an FFD program under

Subpart K to submit a description of the FFD program and its implementation as part of the license, permit, or limited work authorization application. This is a new requirement that imposes incremental costs on licensees and other entities. The NRC anticipates that the description of the FFD program and its implementation will be very closely related to the written policy and procedures that the licensee and other entity must develop (as required by the former and final rule). This analysis does not quantify the incremental costs because they are assumed to be insignificant.

Paragraph 26.401(c)

This paragraph of the final rule states that the following entities may subject individuals that perform construction activities at the location where the nuclear power plant will be constructed and operated to an FFD program that meets all of the requirements of Part 26, or to FFD program elements that meet all of the applicable requirements of Part 26:

- A combined license holder (under 10 CFR Part 52) before the Commission has made the finding under Section 52.103(g);
- A combined license applicant (under part 52 of this chapter) who has been issued a limited work authorization under § 50.10(e), if the limited work authorization authorizes the applicant to install the foundations, including the placement of concrete, for safety- and security-related structures, systems, and components (SSCs) under the limited work authorization;
- A construction permit holder (under 10 CFR Part 50);
- A construction permit applicant (under 10 CFR Part 50) who has been issued a limited work authorization under § 50.10(e), if the limited work authorization authorizes the applicant to install the foundations, including the placement of concrete, for safety- and security-related SSCs under the limited work authorization; and
- An early site permit holder who has been issued a limited work authorization under § 50.10(e), if the limited work authorization authorizes the early site permit holder to install the foundations, including the placement of concrete, for safety- and security-related SSCs under the limited work authorization

This section of the final rule imposes no incremental cost and affords no saving because it provides licensees with the flexibility to implement a more comprehensive FFD program. This enhanced flexibility is a voluntary provision. Although an FFD program that includes all of the requirements of Part 26 is generally considered more burdensome relative to the requirements of Subpart K, this may not be true for all licensees and other entities. For example, it is possible that the more comprehensive program could be less burdensome for some licensees where construction is co-located with an operating reactor. This analysis assumes that any anticipated new reactor construction will be co-located with existing reactor sites and that the licensees operating the reactors will be the same as those undertaking the construction activities at the co-located site.

26.403 Written Policy and Procedures

This section of the final rule requires licensees and other entities who implement an FFD program under Subpart K to develop, implement, and maintain written procedures that address FFD program elements. The section also requires licensees and other entities to provide a clear, concise, written FFD policy statement to individuals who are subject to the program. These requirements are required under § 26.20 of the former rule, with a few minor exceptions. Specifically, licensees and other entities must include additional information in their written procedures, such as the immediate and followup actions that will be taken in cases where individuals are involved in the use, sale, or possession of illegal drugs; consume alcohol to excess before or while constructing safety- or security-related SSCs; attempt to subvert the testing process by adulterating or diluting specimens, substituting specimens, or by any other means; refuse to provide a specimen for analysis; and have legal action taken relating to drug or alcohol use. In addition, the written procedures must include the process to be followed if an individual's behavior raises a concern regarding (1) the possible use, sale, or possession of illegal drugs on or off site, (2) the possible use or possession of alcohol while constructing safety- or security-related SSCs, or (3) impairment from any cause which in any way could adversely affect the individual's ability to safely and competently perform his or her duties. This analysis does not calculate this cost because the NRC believes that the incremental burden of including these provisions within the set of procedures that already must be developed under the former rule is not significant.

26.405 Drug and Alcohol Testing

This section of the final rule establishes the drug and alcohol testing procedures that licensees and other entities who implement an FFD program under Subpart K must follow. Paragraph 26.2(c) of the former rule required licensees and other entities to "implement a chemical testing program, including random tests." The final rule differs from the former rule in two ways. First, the final rule provides licensees and other entities with the option to implement a fitness monitoring program (as described under paragraph 26.406 of the final rule) in place of a random testing program for individuals who perform construction activities. This analysis assumes that any anticipated new reactor construction will be co-located with existing reactor sites and that the licensees operating the reactors will be the same as those undertaking the construction activities at the co-located site. Therefore, if these licensees and other entities implement an FFD program under Subpart K and choose to randomly test individuals for drugs and alcohol under this paragraph, then it is likely the testing will be conducted in close conjunction with the random testing already being conducted for the FFD program at the co-located operating reactor site. For this reason, the NRC believes that any additional cost to test the individuals at the construction site simultaneously with the testing already being conducted is insignificant relative to the overall costs of the current random testing program. Consequently, the analysis does not calculate incremental costs for this requirement of the final rule.

Second, the final rule also includes more detail regarding the types of testing, other than random testing, that licensees and other entities must conduct, the types of drugs that FFD programs must test for, testing procedures to protect donor's privacy, urine testing that must be conducted by HHS-certified laboratories, and required MRO reviews. The NRC believes that the added detail merely clarifies the testing requirements in the former rule because licensees would have

implemented these details even in the absence of the rule revisions. Therefore, this section of the final rule does not impose any incremental costs on licensees or other entities.

26.406 Fitness Monitoring

This section of the final rule allows licensees and other entities, at their option, to subject individuals specified in paragraph 26.4(f) to a fitness monitoring program, rather than a random testing program for drugs and alcohol (as required under paragraph 26.405 of the final rule). This section requires licensees and other entities choosing to use this option to establish procedures for fitness monitors to follow, train the monitors to implement the program, and ensure that the fitness of individuals is monitored effectively while the individuals are constructing safety- and security-related SSCs. To achieve this objective, licensees and other entities must consider the number and placement of monitors required, the necessary ratio of monitors to individuals, and the frequency with which the individuals must be monitored while constructing each safety- or security-related SSC. The final rule also requires licensees and other entities to establish procedures that monitors must follow in response to the indications of possible use, sale, or possession of illegal drugs, use or possession of alcohol on site or while on duty, and impairment from any cause that if left unattended may result in a risk to public health and safety or the common defense and security.

The requirements in this section provide flexibility to licensees and other entities relative to the requirements in Section 26.2(c) of the former rule, which required licensees and other entities to “implement a chemical testing program, including random tests.” This analysis assumes that licensees and other entities will implement a fitness monitoring program only if it is less expensive to do so than to implement a random testing program. Therefore, the analysis does not calculate incremental costs for this requirement.

26.407 Behavioral Observation

This paragraph of the final rule requires licensees and other entities to ensure that individuals specified in § 26.4(f) are subject to behavioral observation if they are not subject to fitness monitoring. Licensees and other entities must subject these individuals to behavioral observation while these individuals are constructing safety- or security-related SSCs. Under the former rule, licensees were required during construction to comply with Section 26.10(b) to “provide reasonable measures for the early detection of persons who are not fit to perform” their duties. The NRC believes that licensees would have complied with this former rule requirement by implementing a behavioral observation program that is very similar to the one now required under Section 26.407. Therefore, this requirement does not impose any incremental cost on licensees or other entities.

26.409 Sanctions

This section of the final rule requires licensees and other entities who implement an FFD program under Subpart K to establish sanctions for FFD policy violations. In Section 26.2(c) of the former rule, FFD programs were required to include the “imposition of sanctions.” The final

rule includes additional detail regarding minimum sanctions; individuals who violate FFD policy at least must be prohibited from being assigned to construct safety- or security-related SSCs unless or until the licensee or other entity determines that the individual's condition or behavior does not pose a potential risk to public health and safety or the common defense and security. The NRC believes that the added detail merely clarifies the sanction requirements in the former rule because licensees would have implemented these details even in the absence of the rule revisions. Therefore, this section of the final rule does not impose any incremental costs on licensees or other entities.

26.411 Protection of Information

This section of the final rule requires licensees and other entities who implement an FFD program under Subpart K to establish and maintain files and procedures to protect personal information. The section also requires licensees and other entities to obtain a signed consent that authorizes the disclosure of the personal information before licensees or other entities disclose the information. Section 26.2(c) of the former rule required FFD programs to make provisions for "the protection of information." The NRC believes that the added detail merely clarifies protection of information requirements in the former rule because licensees would have implemented these details even in the absence of the rule revisions. Therefore, this section of the final rule does not impose any incremental costs on licensees or other entities.

26.413 Review Process

This section of the final rule requires licensees and other entities who implement an FFD program under Subpart K to establish and implement review procedures (including an objective and impartial review of the facts) in cases where individuals have violated FFD policy. Section 26.2(c) of the former rule required FFD programs to make provisions for "appeals procedures." The NRC believes that the added detail merely clarifies the review process requirements in the former rule because licensees would have implemented these details even in the absence of the rule revisions. Therefore, this section of the final rule does not impose any incremental costs on licensees or other entities.

26.415 Audits

This section of the final rule requires licensees and other entities who implement an FFD program under Subpart K to conduct audits to ensure the continuing effectiveness of their FFD programs, including FFD program elements provided by C/Vs and the FFD programs of C/Vs that are accepted by the licensee and other entity. The final rule specifies that the audits occur at a frequency that assures the continuing effectiveness of the program and that corrective actions are taken to resolve any problems identified. The final rule language allows joint audits, and licensees and other entities may accept audits of C/Vs that are conducted by others. Under the final rule, licensees and other entities do not need to audit HHS-certified laboratories.

This analysis 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 the audits for construction sites will be conducted as part of the audits already being conducted for the FFD program at the co-located operating reactor site. The NRC believes that any additional cost to include the construction site's FFD program within the scope of the audits already being conducted is insignificant relative to the overall costs of the program audit. Therefore, this analysis does not calculate incremental costs for this section of the final rule.

26.417 Recordkeeping and Reporting

Paragraph 26.417(a)

This paragraph of the final rule requires licensees and other entities who implement an FFD program under Subpart K to ensure that records pertaining to the administration of the program (which may be stored and archived electronically) are maintained so that they are available for NRC inspection purposes and for any legal proceedings. Section 26.2(c) of the former rule required that licensees and other entities make provisions for "recordkeeping." The NRC believes that the added detail in the final rule merely clarifies the recordkeeping requirements in the former rule because licensees would have implemented these details even in the absence of the rule revisions. Therefore, this section of the final rule does not impose any incremental costs on licensees or other entities.

Paragraph 26.417(b)

This paragraph of the final rule identifies specific reporting requirements.

Subparagraph 26.417(b)(1)

This subparagraph of the final rule requires licensees and other entities who implement an FFD program under Subpart K to report to the NRC Operations Center within 24 hours any discoveries of intentional acts that cast doubt on the integrity of the FFD program and any programmatic failure, degradation, or discovered vulnerability of the FFD program. Section 26.73(a) of the former rule required licensees and other entities to "inform the Commission of significant fitness-for-duty events," including the following:

- The sale, use, or possession of illegal drugs within the protected area; and,
- Any instances where a person licensed under 10 CFR part 55 to operate a power reactor or a supervisor –
 - (1) sells, uses, or possesses a controlled substance,
 - (2) receives a confirmed positive test result,
 - (3) uses alcohol within the protected area, or
 - (4) receives a determination of unfitness for scheduled work due to the consumption of alcohol.

The NRC believes that the detail in the final rule restates the reporting requirements in the former rule. Therefore, this section of the final rule does not impose any incremental costs on

licensees or other entities.

Subparagraph 26.417(b)(2)

This subparagraph of the final rule requires licensees and other entities who implement an FFD program under Subpart K to submit annual program performance reports to the NRC. This analysis 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 the annual program performance reports for construction sites will be compiled as part of the annual program performance report already being compiled for the FFD program at the co-located operating reactor site. The NRC believes that any additional cost to include the construction site's FFD program within the scope of the annual program performance report already being compiled is insignificant relative to the overall costs of the annual program performance report. Therefore, this analysis does not calculate incremental costs for this subparagraph of the final rule.

26.419 Suitability and Fitness Evaluations

This section of the final rule requires licensees and other entities who implement an FFD program under Subpart K to develop, implement, and maintain procedures for evaluating whether to assign individuals to construct safety- and security-related SSCs. The procedures must provide reasonable assurance that the individuals “are fit to safely and competently perform their duties, and are trustworthy and reliable as demonstrated by the avoidance of substance abuse.” This final rule language restates and clarifies the former rule language. Specifically, former Section 26.2(c) required licensees to conform with former paragraph 26.10(a), which stated that the FFD program “provide reasonable assurance that [personnel] will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties.” Therefore, this section of the final rule imposes no incremental cost on licensees or other entities.