



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

June 18, 2003

MEMORANDUM TO: Theodore R. Quay, Chief
Equipment and Human Performance Branch
Division of Inspection Program Management
Office of Nuclear Reactor Regulation
/RA/

FROM: David C. Trimble, Chief
Operator Licensing and Human Performance Section
Equipment and Human Performance Branch
Division of Inspection Program Management
Office of Nuclear Reactor Regulation

SUBJECT: SUMMARY OF THE APRIL 24, 2003, PUBLIC MEETING TO DISCUSS
THE DEVELOPMENT OF A PROPOSED WORKER FATIGUE RULE

On April 24, 2003, the staff held a public meeting regarding the development of a proposed rule concerning worker fatigue at nuclear power plants. The rulemaking has been proposed as an amendment to 10 CFR 26, "Fitness for Duty Programs." The meeting participants (see Attachment 1) included representatives from the power reactor licensee community, the Nuclear Energy Institute (NEI), the Professional Reactor Operator Society, and the International Brotherhood of Electrical Workers (IBEW). The meeting agenda is provided as Attachment 2.

The focus of the meeting was a discussion of process charts (Attachment 3) describing staff expectations for licensee response to (1) worker declarations of being unfit for duty because of fatigue, (2) observations of worker fatigue, (3) significant events or injuries which may involve worker fatigue, and (4) requests to exceed the proposed work hour thresholds of the draft rule. The staff presented the process charts for the purpose of facilitating a common understanding of staff expectations and development of the draft language for the proposed rule. As background, the staff provided stakeholders a paper (Attachment 4) summarizing the objectives of the fatigue assessment process and stakeholder questions and concerns raised at the April 3, 2003 stakeholder meeting. The staff also presented draft proposed rule language for group work hour controls (Attachment 5). A synopsis of stakeholder comments on the process charts is provided in Attachment 6.

In addition to the staff presentations, PROS provided a paper (Attachment 7) addressing work scheduling controls as described in 26.30 of Revision 3 of the draft rule language. PROS proposed (1) to clarify the concept of an "on-going operational evolution" as used in the definition of "directing," (2) deleting the language that allows exceptions from the requirement for a 10-hour break, and (3) that a senior level manager approve deviations from the work hour requirements based on input from the shift manager. The staff noted that the phrase "on-going operational evolution" can perhaps be replaced rather than further defined. Regarding exceptions from the 10-hour break, the staff noted that the exception applies to crew, rather than individual, shift or schedule changes and is therefore not likely to be used frequently. In

response to the PROS comment concerning the appropriate management personnel for authorizing deviations, the staff noted that it will review the recommendation as it develops criteria for personnel that can authorize work hour deviations.

The industry task force provided five white papers (Attachment 8) which address matters of particular interest to the industry stakeholders. The topics of these white papers are:

1. group work hour controls,
2. the definition of "directing" as used in §26.30(a) of the draft rule text,
3. granting work hour deviations,
4. the documentation to be required for a deviation as described in §26.30(b)(4) of the draft rule text, and
5. the definition of "self declaration" as used in §26.32 of the draft rule text.

In response to the proposed white paper concerning group work hour controls the staff noted that the recommendations to revise the requirement to a "reasonable assurance" standard, to revise the language from "alertness and performance" to "fitness for duty," and to revise the averaging period from 6 weeks to quarterly had all been adopted in the draft text.

In response to the proposed white paper definition of "directing" the staff noted that the proposed inclusion of the phrase "real-time" does not appear to be necessary given that the definition currently includes the concept of face-to-face interaction. The staff agreed to consider inclusion of a phrase that would limit directing to the person responsible for task completion.

In response to the white paper concerning the granting of work hour deviations, the staff agreed to develop criteria for personnel that can authorize work hour deviations. The staff noted that the proposal to reduce the criteria for authorizing a work hour deviation to "reasonable assurance public health and safety will not be negatively affected" did not appear workable given the current number of hours allowed by the work hours, the uncertainty in predicting worker alertness during the deviation period, and the limitations of compensatory measures for completely addressing potential degradations in worker performance. As a consequence the proposed benefit of providing management discretion appeared to be outweighed by the substantial potential for abuse.

In response to the white paper concerning the documentation necessary for work hour deviations, the staff reiterated their concern that documentation limited to signatures certifying that a fatigue assessment was completed would not support independent evaluation of the fitness-for-duty determination. Finally, in response to the white paper concerning "self declaration" of being unfit for duty, the staff agreed to consider the proposal to limit the definition of "self-declarations" as a communication between the worker and his/her supervisor and to limit the concept to instances in which there is disagreement between the worker and supervisor concerning the worker's fitness for duty. Contrary to the definition in the white paper, the staff proposed, as described in the self-declaration process chart, that any worker subject to Part 26 may self-declare that they are not fit for duty.

T. R. Quay

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The staff closed the meeting with a commitment to schedule the next stakeholder meeting during the last two weeks of May 2003.

Attachments: As stated

T. R. Quay

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OFFICIAL RECORD COPY

Public Meeting to Discuss Development of a Proposed Rule Concerning
Worker Fatigue at Nuclear Power Plants

April 24, 2003

Attendance List

| NAME | AFFILIATION |
|-------------------|---------------------------------|
| David Trimble | NRC/NRR |
| David Desaulniers | NRC/NRR |
| Will Paul | IBEW |
| Dave Goldin | Sanford Cohen & Associates |
| Bryan Dolan | Duke Energy |
| Robert Evans | NEI |
| Jim Gallman | TXU |
| Patrick Shaffer | Southern California Edison |
| Ralph Mullis | Progress Energy |
| Terry Matlosz | South Carolina Electric and Gas |
| Brian Richter | NRC/NRR |
| Steven Turrin | PROS (via teleconference) |
| Getachew Tesfaye | CEG |
| Alan Roecklein | NRC/NRR |
| Deann Raleigh | Sciencetech |
| Garmon West | NRC/NSIR |
| J. Persensky | NRC/RES |
| Bruce Palagi | NRC/Region III/DRS |
| Jim Davis | NEI |
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PROPOSED RULE CONCERNING WORKER FATIGUE
AT NUCLEAR POWER PLANTS

April 24, 2003

AGENDA

Morning Session

- | | |
|-------------|--|
| 8:30-8:40 | Introductions and Opening Remarks |
| 8:40-9:15 | Definitions <ul style="list-style-type: none">• Directing• Self-declaration |
| 9:15-9:30 | Written Policy and Procedures |
| 9:30-10:00 | Work Scheduling Controls - Authorization Criteria |
| 10:00-10:15 | Break |
| 10:15-11:00 | Work Scheduling Controls - Deviation Authorization <ul style="list-style-type: none">• Supervisory assessment• Senior management assessment |
| 11:00-12:00 | Work Scheduling Controls - Group Limits |
| 12:00- 1:00 | Lunch |

Afternoon Session

- | | |
|-----------|---|
| 1:00-2:30 | Fatigue Assessment <ul style="list-style-type: none">• Self-declaration• Observation |
| 2:30-2:45 | Break |
| 2:45-3:30 | Fatigue Assessment <ul style="list-style-type: none">• Post-Event |
| 3:30-4:00 | Meeting Summary and Future Schedule |

Note: This is a Category 3 Meeting. The public is invited to participate in this meeting by providing comments and asking questions throughout the meeting.

Fatigue Assessments

Objectives: Provide basis for specific responses, consistent with 26.77, to information indicating that an individual's performance may be degraded by fatigue.

Fitness for duty determinations

Compensatory measures

Provide licensees performance-based feedback concerning effectiveness of fatigue management measures.

Fatigue-related events

Self-declarations of not-fit because of fatigue

Observations

Stakeholder questions and concerns reported at April 3, 2003 stakeholder meeting:

- "For-cause" term has negative connotations because it is associated with illegal or willful violations of FFD.
- Will fatigue assessment require 26.77 process?
- Will self-declarations allow for projected assessments of FFD?
- Must self-declarations be made in person or can they be made by phone?
- For-cause and self-declaration are different in significance.
- Fatigue assessments could put an individual's job in jeopardy.
- Should post-event assessments be focused on the job or the individual?
- Is assessment necessary if the supervisor agrees the individual can go home? If assessment is not required if supervisor agrees to relieve individual, does this create disparate treatment if supervisor questions the veracity of other individual's declarations and requires an assessment?
- Should regulation require assessments to be performed by an M.D. or other professionally qualified individual?
- What happens if an individual refuses to provide information that may be required for the fatigue assessment?

- What is required if a fatigue assessment yields a positive result?
- Companies may need to issue sanctions because of moonlighting policies.
- Without sanctions workers may use requirements as a haven.
- Corrective actions for fatigue findings may force sanctions for off-duty behavior.
- If an individual is determined not FFD because of fatigue, is it necessarily a policy violation?
- Management could abuse fatigue assessments to target unwanted employees.

(c) Group Work Hour Controls.

(1) The work hours for personnel performing the functions identified in §26.30(a)(1)-(4) shall be controlled in accordance with the following limit. While the plant is operating, the number of hours actually worked by personnel within each job function category shall not exceed an average of X [value of X TBD] hours per person per week.

(2) The work hours for personnel performing the functions identified in §26.30(a)(5) shall be controlled in accordance with the following limits:

TBD

(3) Work hours shall be averaged over a period not greater than 3 calendar months. Hours paid but not actually worked shall not be included in the average. Workers who are assigned to a functional group but are not actually working within the functional group for any portion of the calculation period will have their group-related hours prorated.

(4) If the group average for any job function category exceeds X hours per person per week, the licensee shall take corrective action to restore the average to X hours or less within the next quarter.

(5) If the group average for any job function category exceeds Y [value of Y TBD] hours per person per week, the licensee shall notify the NRC in writing of the conditions causing the average to exceed X hours and the actions being taken to restore the average to less than X hours within the next quarter.

(6) If the group average for any job function category exceeds, or is projected to exceed, X hours per person per week in any two consecutive quarters, the licensee shall take the actions specified 26.30(c)(5) and notify the NRC in writing of the conditions causing the average to exceed X hours and the actions being taken to restore the average to less than X hours as soon as practicable.

(d) Licensees shall be exempt from the individual and group work scheduling controls during declared emergencies as defined in the facility's emergency plan.

(e) Licensees shall monitor and control individual work hours to provide reasonable assurance that worker fitness for duty is not compromised. As a minimum, the plant manager, or designee, shall review individual hours actually worked on a quarterly basis to (1) ensure that workers are not being assigned hours that can compromise their alertness and performance and (2) verify that group averages for each job function category are indicative of adequate staffing for all jobs in the group.

SUMMARY OF STAKEHOLDER COMMENTS CONCERNING

DRAFT WORKER FATIGUE RULE LANGUAGE, REVISION 3

The following synopsis of substantive stakeholder comments concerning the fatigue assessment process charts and draft language for group work hour controls was derived from staff meeting notes:

Self Declaration Process Chart

The chart should be restructured to indicate that response to a self declaration would not be within the scope of the Part 26 fitness for duty requirements unless there is a disagreement between the worker and supervisor concerning the fitness for duty declaration.

Documentation of self declarations could have a chilling effect.

Observation Process Chart

No substantive comments

Post-Event Process Chart

The decision “Did the event involve a “failure” in human performance?” is not needed because this criterion is addressed within the first decision box, “Does the event meet the criteria specified in 26.31(c)(3).”

Work Hours in Excess of Threshold

The chart should be restructured to have the first decision box address whether or not the worker performs functions subject to work hour controls as specified in 26.30(a) of the draft rule language.

Fatigue Assessment and Resolution Process Chart

The chart should be revised to include a path to address the possibility that a supervisor may complete an assessment and determine that worker fatigue is not a concern.

Group Work Hour Controls

The averaging period of 3 months is too short (e.g., heavy vacation periods could cause a licensee to exceed an averaging limit.

The requirement to prorate the hours of personnel who do not work the complete averaging period should be simplified.

If a licensee notifies the NRC of an exceedance of a group average threshold, will it be necessary to notify the NRC every reporting period until the condition is resolved?

PROS Feedback to NRC Fatigue Rule

Although we refer below to "the industry" in several places, this is mostly in reference to a series of White Papers that NEI issued to the NRC for wording and enhancements to the rule. But, we must be clear on one thing. We feel confident that all of the key stakeholders are genuinely sincere about the overall factors of this rule: *safe operations of nuclear plants and prevention of abusive practices that could cause workers to be fatigued to the point making an error.*

§26.30 Work Scheduling Controls

(aa) *Work scheduling controls shall be implemented at nuclear power reactors authorized to operate. These controls shall apply to the following categories of job functions:*

- (1) operation or directing the operation of systems and components that a risk-informed evaluation process has shown to be significant to public health and safety;*
- (2) maintenance or directing the maintenance of structures, systems and components that a risk-informed evaluation process has shown to be significant to public health and safety;*

"Directing" work as a function of position has sparked debate over definitions. Industry input has defined this as a "first line supervisor, foreman, or team leader that is ... providing direct supervision of an ongoing operational evolution or maintenance task." This drew further discussion of what "ongoing operational evolution" meant. **PROS is proposing a definition for this as "a specific task or series of tasks that require, by their risk-significance, consistent and continual performance."** These words may also help determine some other wording that is being debated, as will be seen later.

§26.30 (b)(2) Individuals shall have a minimum 10-hour break between work periods. Participation in shift turnover is permitted during the break period. An 8-hour break is permitted as an exception to the 10-hour break requirement if the 8-hour break is necessary to accommodate a scheduled transition of a crew between work schedules or shifts.

Debate in this area centers mostly around a small number of plants that exercise a "reverse-rotation" of an 8-hour schedule. When asked who in particular uses this type of rotation,

industry sources said that it was limited to a few plants' security organization. PROS commented that we don't know of any operational group that works this type of schedule, but that is not to say that there are none.

This rotation will put the workers in conflict with the 10-hour break period once every five weeks. Both PROS and the industry believe that the wording is somewhat unclear as to whether the exception is allowed for those NOT on the reverse-rotation 8-hour shift. As it stands now, **PROS would endorse removing the vague wording and adhering to the 10-hour rest period.**

§26.30 Work Scheduling Controls

(bb) Individual Work Hour Controls. Personnel performing the functions identified in §26.30(a) shall be subject to the following work scheduling controls:

(3) Licensees may authorize individual workers to deviate from the requirements of §26.30(b)(1) and (2) provided:

(ii) the operations shift manager determines that the deviation is necessary to mitigate or prevent conditions adverse to safety, or the security shift manager determines that the deviation is necessary to maintain the security of the facility

The industry finds fault with two points here: 1) the "shift manager" term is too limiting and 2) "necessary to mitigate or prevent conditions adverse to safety ..." is also too limiting. They feel that the determination and authority to grant a deviation could be made by other senior level management. **PROS asserts that the determination and approval authority are two separate functions. For safety-significant needs, the licensed "shift manager" (or supervisor designation at some plants) should make the determination. The senior-level management person should approve the deviation based on input from the shift manager (for safety concerns) and other factors such as business needs and historical perspective of deviations at the site.**

As for the second part, PROS feels that the term used earlier in 26.30(a) could be utilized here also. **PROS proposes:**

(ii) the operations shift manager determines that the work schedule extension is for a necessary task or series of tasks that require, by their risk-significance to mitigate or prevent conditions adverse to safety or maintain the security of the facility, consistent and continual performance

PROS' goal is to ensure this rule does not impede the ability to administer the day-to-day operation of the nation's nuclear power plants. This includes ensuring that those individuals working with, and on, equipment important to safety are in complete control of their physical and mental state. We want to ensure that cases of fatigue brought on by "overwork" are NOT acceptable practice and that operators' concerns in this situation will be properly addressed.

Steve Turrin
PROS President

White Paper Number Six
Group Work-Hour Controls
April 23, 2003

Purpose: The purpose of this section is to provide reasonable assurance that individual work hours are tracked to preclude work-hours related effects on individual fitness for duty.

Issue: The cited section contains the word ensure in two locations. The language in 26.23 Performance Objectives clearly states that a fitness-for-duty program must provide reasonable assurance that worker fatigue is managed commensurate with maintaining public health and safety. Ensure denotes an absolute and, as a consequence, should be removed to maintain consistency throughout the rule. In addition, the terms alertness and performance are integral components of the overarching concept fitness-for-duty. These two stand-alone terms should be removed from the section, in favor of the term fitness-for-duty.

Proposed Text: 26.30 Work Scheduling Controls (C) Group Work-Hour Controls (e). Licensees shall monitor and control individual work hours to provide reasonable assurance ~~ensure that worker alertness and performance are~~ fitness-for-duty is not compromised. As a minimum, the plant manager, or designee, shall review individual hours actually worked on a quarterly basis to provide reasonable assurance ~~ensure that workers are not being assigned hours that may compromise their fitness-for-duty. alertness and performance.~~ This review will evaluate, by exception, those individuals with work hours in extreme when compared to the norm. Those individuals may be susceptible to the effects of cumulative fatigue, resulting in a potential compromise to their fitness-for-duty.

White Paper Number Seven
Defining Directing Work
April 11, 2003

Purpose: The draft rule requires that the work hour scheduling controls apply to personnel directing the operation or maintenance of structures, systems and components that a risk-informed evaluation process has shown to be significant to public health and safety. It is important that there be a clear and consistent understanding of what ***directing*** operation or maintenance means.

Issue: In the most recent version of draft part-26, the NRC provides a definition of directing that is simple and in many respects universal. There are two items that are understood, but should be specified so as not to leave any room for misunderstanding. These two items are the directing is to be conducted in real time, and the person directing is to be the one responsible for task completion

Proposed Text for Definitions Section: *Directing* means real-time, face-to-face supervision, by the person responsible for ~~of~~ an ongoing operational evolution or maintenance task.

White Paper Number Eight
Granting Work-Hour Deviations
April 23, 2003

Purpose: This draft section specifies the level of plant management that can determine and grant work-hours deviations for operations, maintenance and security personnel.

Issue: (1) The industry agrees that a senior-level plant manager should both determine whether a deviation is necessary and grant the deviation after pre-specified conditions have been met, focusing on both the work to be performed and the person(s) being granted the deviation. The industry does think, however, that by specifying only operations and security shift supervisors the pool of potential senior-level decision makers is limited. Suggested alternative language would generically specify senior-level plant decision-making personnel, with the requirement that approved senior-level titles be specified in individual plant procedures.

(2) Limiting work hour deviations exclusively to conditions (precursors) essentially out of the control of the licensee is too restrictive and eliminates any management discretion. It seems reasonable that after a comprehensive evaluation where there is reasonable assurance public health and safety will not be negatively affected by the granting of work-hours deviations, those deviations should be granted.

(3) Anchoring the decision process to the prevention of conditions adverse to safety limits the normal decision making process. Although infrequent, non-safety or security related situations do arise in a plant that would be adequately compelling to justify granting individuals work-hour deviations. As a consequence, rigidly adhering to safety and/or security precursors as the only drivers for the thoughtful process of granting deviations significantly reduces licensee management prerogatives. If the process for granting follows an auditable path with required decision points reviewed by responsible plant management, the precursors to the decision should remain at the plant level.

(4) Finally, compensatory measures should be indicated to the extent they provide reasonable assurance that risk-significant functions will not be affected by fatigue-related errors.

Proposed Text: 26.30 Work Scheduling Controls, (b) Individual Work Hour Controls (3). Licensees may authorize individual workers to deviate from the requirements of §26.30(b)(1) and (2) provided:

(i) the licensee could not have reasonably foreseen or controlled the circumstances necessitating the deviation, or through an evaluation has determined there is reasonable assurance there will be no increased risk to public health and safety.

(ii) The operations shift manager, or a site senior-level designee, with requisite signature authority, determines, that the deviation is necessary to mitigate or prevent conditions adverse to safety, or the security shift manager determines that the deviation is necessary to maintain the security of the facility after a thorough review of plant or security conditions, and a review of

the fatigue/alertness levels of the personnel being considered, whether or not to grant a work-hour deviation., and (iii) a supervisor trained in the contributors, symptoms, and effects of fatigue assess the individual's fitness for duty and determines that there is reasonable assurance the individual's fitness-for-duty it will not be adversely affected by the additional work period to be authorized under the deviation. At a minimum, the assessment shall address the individual's work history for the past 7 days, the potential for fatigue-related errors to affect the safe performance of risk-significant functions the work, and whether any compensatory measures are being taken to establish reasonable assurance that any risk-significant functions will not be adversely affected. ~~the use of compensatory measures.~~

White Paper Number Nine
Documenting Individual Deviations
April 11, 2003

Purpose: To assure accuracy, the documentation of the requirements specified in 26.30 Work Scheduling Controls (b) (4) (i)-(iii), should follow absolutely the requirements in the authorization section (3) (i)-(iii).

Issue: The language in both sections (i) and (ii) is not wholly consistent with the requirements in the authorization section, and it essentially eliminates management discretion. Under (i), in-depth justification is required through the development of a description of circumstances causing the need for a work schedule extension to be unforeseen or uncontrollable. In the requirements section under (i), it states the licensee could not have **reasonably** foreseen or controlled the circumstances necessitating the deviation. A cogent description of the circumstances upon which a management decision is to be made, allows the exercise of an important management prerogative.

In the requirements section under (ii), it states that the operations shift manager determines that the deviation is necessary to mitigate or prevent conditions adverse to safety, or the security shift manager determines that the deviation is necessary to maintain the security of the facility. While the documentation section (ii) follows the authorization section, it again eliminates any management intervention and decision making outside the very prescriptive specifications.

Proposed Text: 26.30 Work scheduling Controls (b)(4) The basis for individual deviations from the requirements of §26.30(b)(1) and (2) shall be documented. The documented basis shall include:

(i) A statement of the scope of work for which the individual work limit extension is approved, ~~and a description of the circumstances causing the need for the work schedule extension to be unforeseen or uncontrollable,~~

(ii) the basis for the determination that the work schedule extension is necessary ~~to mitigate or prevent conditions adverse to safety or maintain the security of the facility,~~

(iii) the basis for the determination that the individual's fitness for duty will not be adversely affected by the additional work period to be authorized under the deviation, including the use of any compensatory measures.

White Paper Number Eleven
Defining Self Declaration
April 23, 2003

Purpose: The draft rule requires the industry to take particular action when a worker self declares that he/she is not fit for duty because of illness, fatigue or other impairing conditions which cannot be resolved by a supervisory evaluation. It is important that there be a clear and consistent understanding of what constitutes a self declaration to ensure consistency in rule development and implementation.

Issue: Without a clear and consistent definition, there is the potential for misunderstanding both at the licensee and regulatory levels.

Proposed Text for Definitions Section: Self declaration is a documented notification, by an employee covered under 10 CFR Part 26, to his/her supervisor, subsequent to a prior statement or notification that the he/she is not fit for duty, which effected a disagreement relative to the employee's disposition .

Self-Declaration

Statement by nuclear power plant worker subject to Part 26 indicating that he/she is not fit to safely and competently perform duties.

How does supervisor want to resolve concern?

- Reassign worker
- Return worker to assigned duties

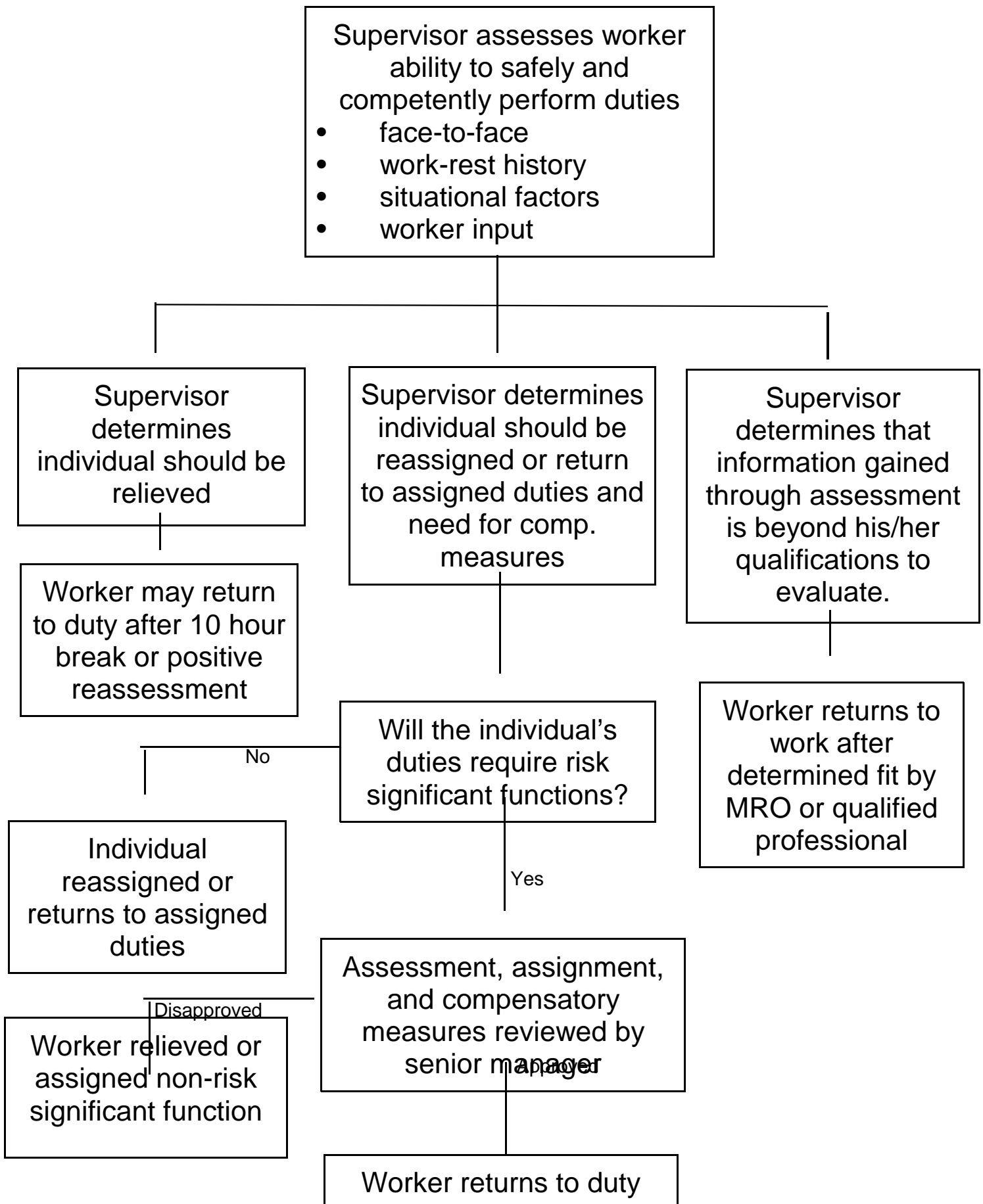
Assess
Worker Fatigue
(Go to Fatigue
Assessment and
Resolution)

Relieve worker of duties

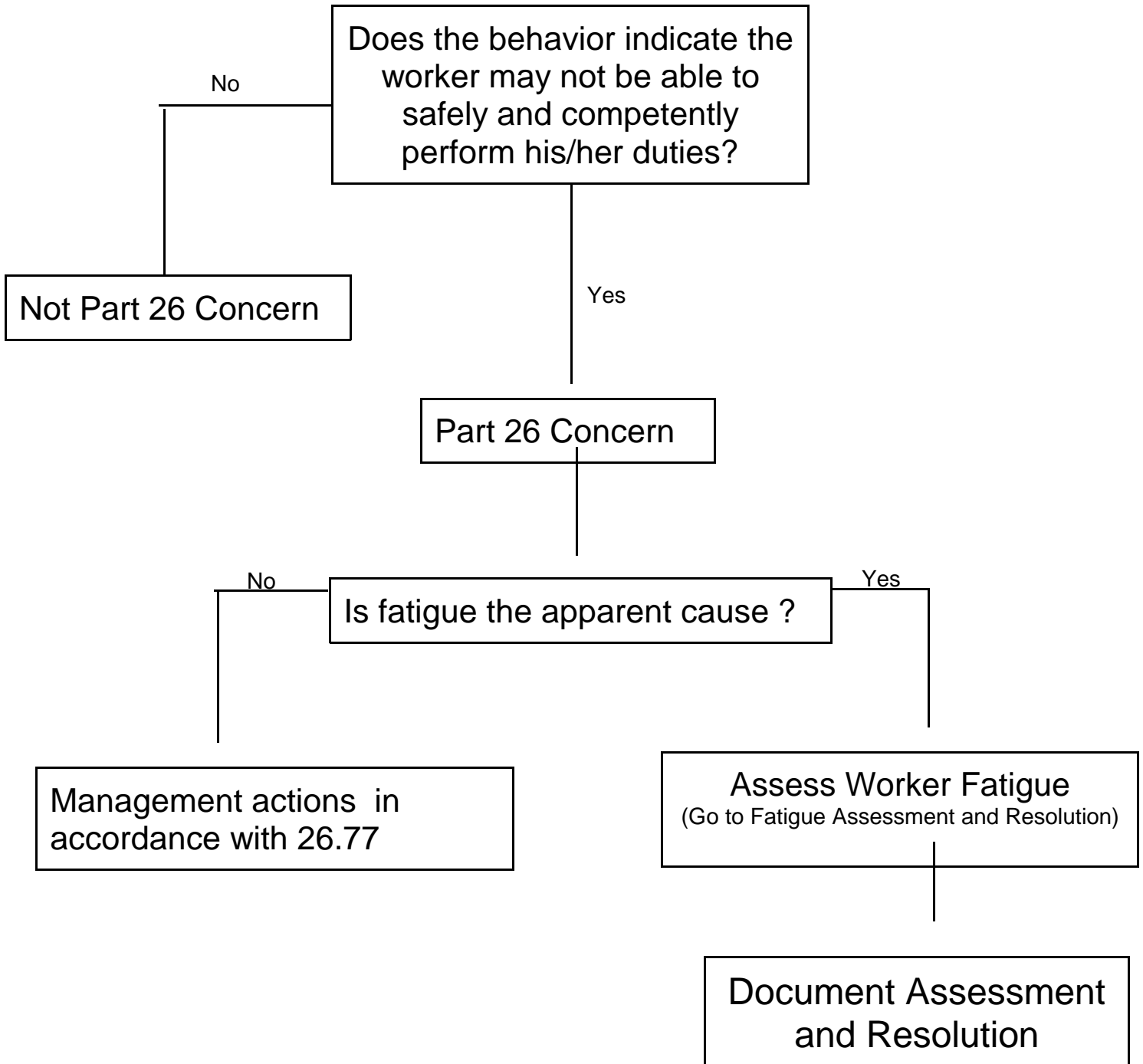
Document
Assessment and
Resolution

Document
Declaration and
Resolution

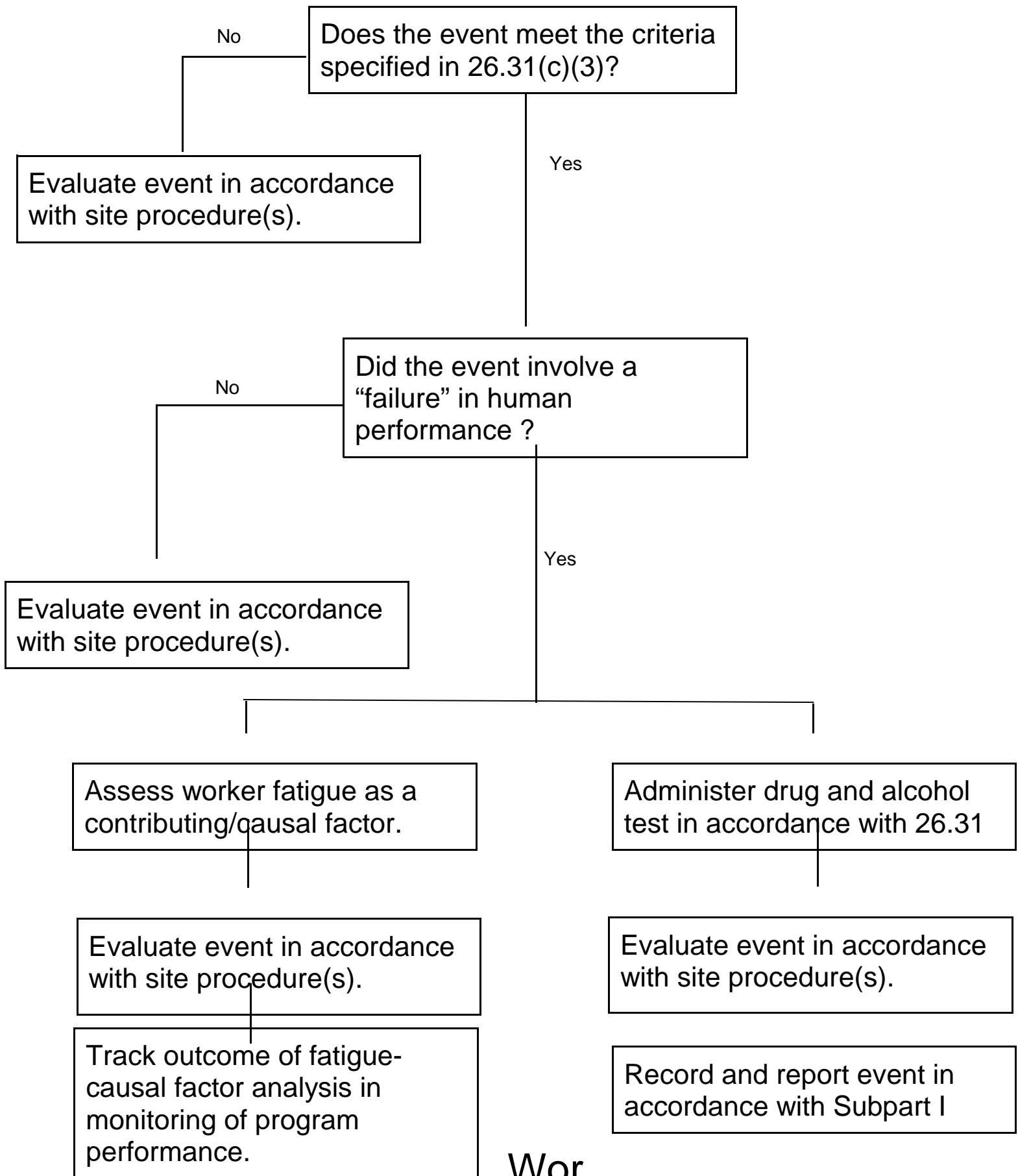
Fatigue Assessment & Resolution



Observation

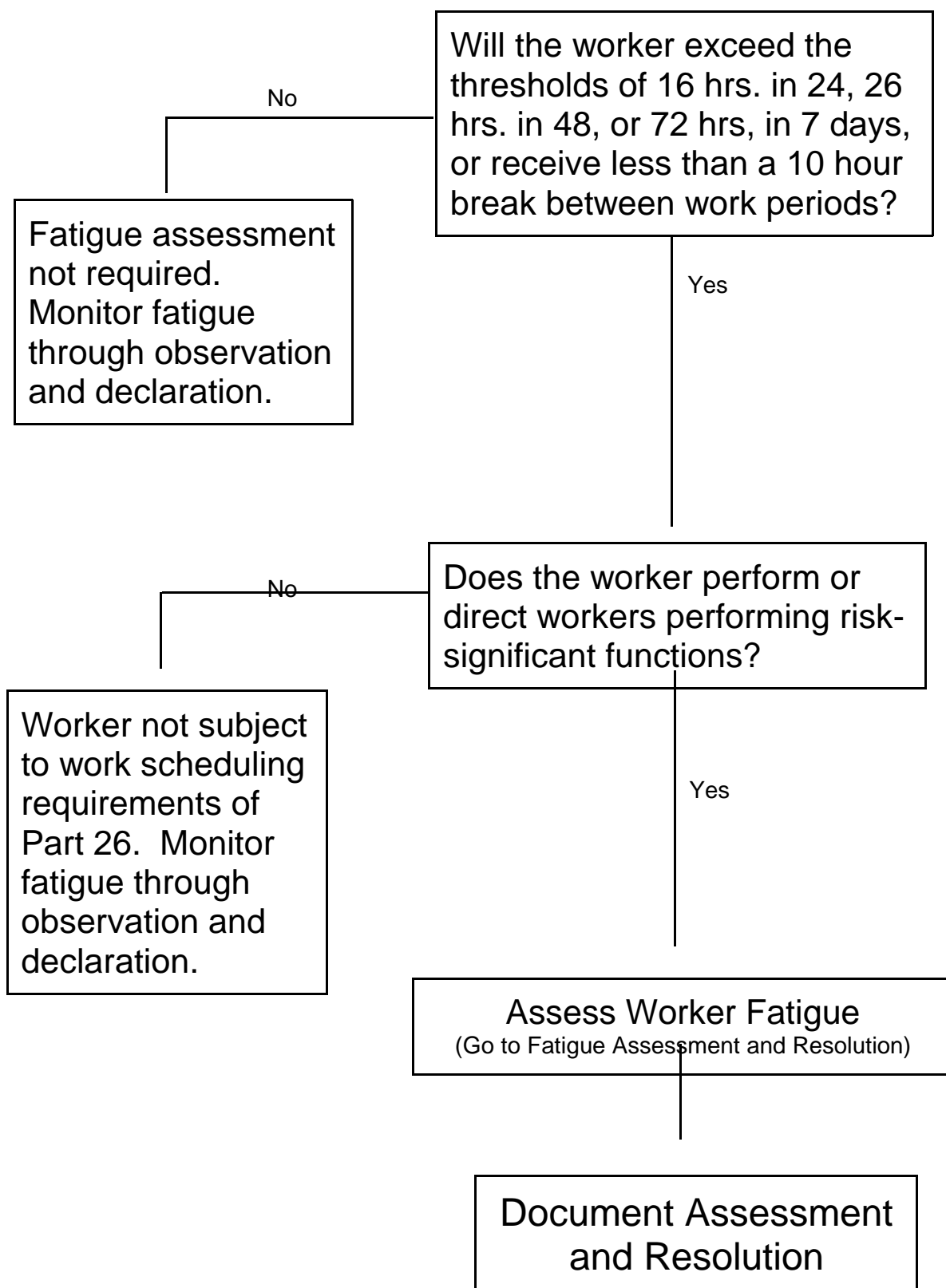


Post-Event



Wor

k Hours in Excess of Threshold



References

(Excerpts from broader proposed revision of Part 26 that are referenced in the process charts)

§ 26.31 Drug and alcohol testing.

(c) Conditions for testing. Licensees shall administer drug and alcohol tests under the following conditions:

(1) Pre-access. Within 30 days before the assignment to activities within the scope of this part, unless the individual meets the conditions for an exemption described in §§26.XX and 26.XX of this part;

(2) For cause. In response to any observed behavior or physical condition that creates a reasonable suspicion of possible substance abuse or after receiving credible information that an individual is abusing drugs or alcohol;

(3) Post-event. As soon as practical after an event involving a failure in individual performance that resulted in:

(i) A significant injury or illness that results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness, or a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness;

(ii) A radiation exposure or release of radioactivity in excess of regulatory limits,

or

(iii) Actual or potential substantial degradations of the level of safety of the plant.

§ 26.77 Management actions regarding possible impairment

(b) If an individual subject to this part is impaired or the individual's fitness is questionable, the licensee shall take immediate action to prevent the individual from performing activities within the scope of this part. If an observed behavior or physical condition creates a reasonable suspicion of possible substance abuse, the licensee must perform a drug and alcohol test and the results must be negative before the individual is returned to performing activities within the scope of this part. If the physical condition is the smell of alcohol with no other behavioral or physical indications of impairment, then only an alcohol test is required. For other indications of possible impairment that do not create a reasonable suspicion of substance abuse, the licensee may return the individual to performing activities within the scope of this part only after

impairing or questionable conditions are resolved and a determination of fitness indicates that the individual is fit to safely and competently perform activities within the scope of this part.

Subpart H - Determining FFD Policy Violations and Determining Fitness

§ 26.181 Purpose.

This subpart part defines requirements for determining that a FFD policy violation has occurred and for making a determination of fitness.

§ 26.183 Medical Review Officer.

§ 26.185 Verifying a FFD policy violation.

§ 26.187 Substance abuse expert.

§ 26.189 Determination of fitness.

(a) A determination of fitness is the process whereby it is determined whether there are indications that an individual may be in violation of the licensee's FFD policy or is otherwise unable to safely and competently perform duties. . . .

(e) If there is no conclusive evidence of a FFD policy violation but there is a significant basis for concern that the individual may be impaired while on duty, then the subject individual shall be determined to be unfit for duty. These results do not constitute a violation of this part or of the licensee's FFD policy, and no sanctions under the rule or the FFD policy shall be applied. However, the professional who made the determination of fitness shall consult with licensee management personnel to identify the actions required to ensure that any possible limiting condition does not represent a threat to workplace or public health and safety. Licensee management personnel shall implement the actions required. When appropriate, the subject individual may also be referred to the EAP.

Subpart I - Recordkeeping and Reporting Requirements

§ 26.195 General provisions.

§ 26.197 Recordkeeping requirements for licensees and C/Vs.

§ 26.199 Recordkeeping requirements for collection sites, licensee testing facilities and

HHS-certified laboratories.

§ 26.201 FFD program performance data.

- (a) Each FFD program subject to this part shall collect and compile FFD program performance data.
- (b) The FFD program performance data must include:
 - (1) the random testing rate;
 - (2) drugs tested for and cutoff levels, including results of tests using lower cutoff levels and tests for drugs not included in the HHS panel;
 - (3) workforce populations tested (i.e., permanent licensee employees, C/Vs) ;
 - (4) numbers of tests administered and results of those tests sorted by workforce population tested (i.e., permanent licensee employee, C/Vs);
 - (5) conditions under which the tests were performed, as defined in 26.31(b);
 - (6) substances identified;
 - (7) number of subversion attempts by type; and
 - (8) summary of management actions.
- (c) The data must be analyzed at least annually and appropriate actions taken to correct program weaknesses. Records of the data, analysis, and corrective actions taken must be retained for at least three years or until the completion of any related legal proceedings, whichever is later.
- (d) Any licensee that terminates an individual's authorization or takes administrative action on the basis of the results of a non-negative initial test for marijuana (THC) or cocaine shall also report these test results in the annual summary by processing stage (i.e., onsite screening, laboratory screening, confirmatory tests, and MRO determinations). The report shall also include the number of terminations and administrative actions taken against individuals for the reporting period.
- (e) The FFD program performance data must be submitted to the Commission annually (January through December), before March 1 of the following year.
- (f) The FFD program performance data may be submitted in a consolidated report as long as the data are reported separately for each site.
- (g) Each C/V that maintains an approved drug and alcohol testing program is subject to the reporting requirements of this section and shall submit the information required either directly to the NRC or through the licensee to which the C/V provided services during the year. Licensees and C/Vs shall share information to ensure that the information is reported completely and is not duplicated in reports submitted to the NRC.

§ 26.203 Reporting requirements.

(a) Each licensee subject to this part, and C/Vs with approved FFD programs, shall inform the Commission of significant violations of the FFD policy, significant FFD program failures, and errors in drug and alcohol testing. These events shall be reported under this section rather than reported under the provisions of 10 CFR 73.71.

(b) Significant FFD policy violations or programmatic failures. The following significant FFD policy violations or programmatic failures must be reported to the NRC Operations Center by telephone within 24 hours of discovery of the violation by a licensee:

(1) The sale, distribution, use, possession, or presence of illegal drugs, or the use or presence of alcohol within a protected area or by an individual while performing activities within the scope of this part;

(2) Any acts by any person licensed under 10 CFR parts 52 and 55 to operate a power reactor, by SSNM transporters, by FFD program personnel, or by any supervisory personnel assigned to perform activities within the scope of this part that:

(i) Involve the sale, use, or possession of a controlled substance within a protected area or while performing activities within the scope of this part,

(ii) Results in a determination that the individual has violated the licensee's FFD policy including subversion as defined in §26.5; or

(iii) Involve use of alcohol within a protected area or while performing activities within the scope of this part.

(3) An intentional act that casts doubt on the integrity of the FFD program.

(4) A programmatic failure, degradation, or discovered vulnerability of the FFD program that allowed undetected drug or alcohol use or abuse by individuals within a protected area, or by persons assigned to activities within the scope of this part.

(c) Other, non-reportable FFD issues that identify programmatic weaknesses must be documented, trended, and corrected under the licensee's corrective action program.

(d) Drug and alcohol testing errors.

(1) Within 30 days of completing an investigation of any testing errors or unsatisfactory performance discovered in blind performance testing at either a licensee testing facility or an HHS-certified laboratory, in the testing of actual specimens, or through the processing of appeals

and MRO reviews, as well as any other errors or matters that could reflect adversely on the integrity of the testing process, the licensee or C/V shall submit to the NRC a report of the incident and corrective actions taken or planned. If the error involves a HHS-certified laboratory, the NRC shall ensure notification of the finding to HHS.

(2) Should a false positive error occur on a blind performance test specimen or on a regular specimen, the licensee or C/V shall notify the NRC within 24 hours of knowledge of the error.

§ 26.205 Violations.

§ 26.207 Criminal penalties.