ANNOTATED COMMENT SUBMISSIONS ON PROPOSED RULE

FITNESS FOR DUTY DRUG TESTING REQUIREMENTS

10 CFR Part 26

November 2022

ADAMS Accession No. ML20121A017

PR-026
84FR48750

Comment Submission No. 1
ML19298B661

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Docket: NRC-2009-0225
Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0025
Comment on FR Doc # 2019-18491

Submitter Information

Name: Anonymous Anonymous (Comment-Response Document Abbreviation: ANON1)

General Comment

I feel this policy is not robust enough. Do more. 1

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Comment Submission No. 2
ML19308B430

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Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

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Comment on FR Doc # 2019-18491

Submitter Information

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General Comment

We as a nation need to continue to push the legalization of marijuana and keep it in schedule. Marijuana has been proven to be extremely beneficial to the human body Cannabidiol has the ability to stop cancer by turning off a gene called Id-1. This along with many other amazing things such as preventing Alzheimer are why we need to continue to push these regulations through congress. This needs to be doe for the people. 1

PR-02
84FR48750

Comment Submission No. 3
ML19316E072

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Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0029
Comment on FR Doc # 2019-18491

Submitter Information

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General Comment

I would like to make an initial comment regarding sanctions:

Sanctions should be part of these changes because the same 14-day denial must not be the same for a legal substance AND an illegal substance for the following reasons;

- Alcohol, which is legal substance has a 14-day denial period. An alcohol positive can be the result of an individual being unaware of their impairment, maybe a wedding the night before, a party at a friends house all of which include the use of a LEGAL substance

- Cocaine (or other illegal substance) also has a 14-day denial which, makes absolutely NO sense. In order to test positive for cocaine an individual has to;

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--- Know where to get cocaine
--- Buy it, and,
--- Use it
- ALL which are ILLEGAL

Why should a cocaine positive only have a 14-day denial and why would we want an operator only being out for 14-days after confirming they tested positive for an ILLEGAL drug?

From 1/1/90, we have held an ILLEGAL positive to a much longer denial period of 5-years because we do not want ILLEGAL users on our site, employees and contractors alike.

These sanctions have been wrong all these years but we have the chance to fix it now. Maybe 5-years is too long (I dont believe it is) but we need to have an industry standard that is much longer than 14-days.
- Maybe 3-years?
- However, keep in mind that any FFDPDI requires an expanded background investigation scope to 5-years instead of a 3-year scope to ensure there are no other FFD issues so, I still believe the 5-years should be the new mark to shoot for regarding a sanction for an ILLEGAL drug.

Many licensees would like to have a longer denial period but due to Union contracts, they have to abide by the rule and the rule alone so, if the rule required a longer denial period we could all get in line with being standard by having the same sanctions instead of many of us having higher standards.
- This is a prime opportunity for standardization and keep ILLEGAL users out longer.

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Comment Submission No. 4
ML19338D258

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Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

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Comment on FR Doc # 2019-18491

Submitter Information

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General Comment

26.33 denotes the standard for the behavior observation program as noted below. Behavior Observation is the cornerstone of the FFD program and has contributed to crucial observations that have protected the safety and security of licensee personnel. Behavior observation has been extremely effective when implemented properly, but disastrous when not executed in the manner prescribed by code. Over the years there have been note worthy examples of personnel who had expressed knowledge of FFD issues, but chose to ignore or down play observations for fear of becoming involved or implicated in actions that could impact an individual's that could employment. Additionally, the current language stipulates, "detect behaviors that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty." This language specifically addresses use, sale or possession of illegal drugs or alcohol, but does not address the abuse of legal drugs or other substances that have the propensity of impair and endanger safety.

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Recommendation: Consider additional language that emphasizes the vital importance of the FFD Behavior Observation program and the potential consequences of purposely ignoring the mandate to report behavior observation concerns. In two recent cases I was involved with, two supervisors observed serious behavior observation issues that were attributed to severe mental illness in each case. In these cases, the observations were overt and abundantly apparent but were ignored. Language should address willful noncompliance.

Additionally, recommend language that addresses detecting behaviors that may indicate possible sale or possession of abused legal or illegal drugs, alcohol, or any substance used for the expressed purpose of impairing an individual's ability to work safely and competently. This would include inhalants or other household substances that have been used to alter or impair consciousness.

1

The current requirements in § 26.33, "Behavioral observation," are as follows:

Licensees and other entities shall ensure that the individuals who are subject to this subpart are subject to behavioral observation. Behavioral observation must be performed by individuals who are trained under 26.29 to detect behaviors that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty; or impairment from fatigue or any cause that, if left unattended, may constitute a risk to public health and safety or the common defense and security. Individuals who are subject to this subpart shall report any FFD concerns about other individuals to the personnel designated in the FFD policy.

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Comment Submission No. 5
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Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0030
Comment on FR Doc # 2019-18491

Submitter Information

Name: Johnny Rogers (Comment-Response Document Abbreviation: JR2)

General Comment

The current rule stipulates personnel who are considered a part of the FFD program. 26.4 g, featured below states that personnel who are involved in the day to day operations of the program are considered FFD personnel, yet there are licensee employees who are called upon to perform infrequent duties, (For Cause, Post Event, back shift random testing) who are not involved in day to day operations. A typical example would include Security personnel. Security personnel, if not given access to random lists, are certainly notifying personnel and conducting collections. This wording has caused confusion among licensees. Recommend this section be clarified to clearly denote personnel who are considered FFD program personnel. 1

The current requirements in § 26.4, "FFD program applicability to categories of individuals," are as follows:

All FFD program personnel who are involved in the day-to-day operations of the program, as defined by the procedures of the licensees and other entities in 26.3(a) through (c), and, as applicable, (d), and whose duties require them to have the following types of access or perform the following activities shall be subject to an FFD program that meets all of the requirements of this part, except subparts I and K of this part, and, at the licensee's or other entity's discretion, subpart C of this part:

(1) All persons who can link test results with the individual who was tested before an FFD policy violation determination is made, including, but not limited to the MRO;

(2) All persons who make determinations of fitness;

(3) All persons who make authorization decisions;

(4) All persons involved in selecting or notifying individuals for testing; and

(5) All persons involved in the collection or onsite testing of specimens.

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Comment Submission No. 6
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Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

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Submitter Information

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General Comment

The conditions detailing remote collections (collections remote from the licensee) are not clearly denoted in the present code verbiage. 26.4 h,2, featured below seems to suggest that licensees may conduct remote collections via personnel who are asked to provide collections for the licensees. There are sections of the code that allow for remote collections at hospitals for example, as a contingency when emergency conditions dictate. Some licensees have established remote collection sites to manage personnel who are remote from the licensee's collection facilities. Examples include Information Technology, Engineering and other personnel who may reside in other states hundreds of miles from the licensee and provide services to the licensee remotely. This section of code (26.4 h, 2) is confusing and does not clearly provide sufficient guidance on managing the issue of remote collections. IF remote collections are permissible; under what conditions may they be managed? Concerns have been raised regarding how such collection facilities should or should not be audited if they are

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providing infrequent services to the licensee, and are not involved the daily operations of the FFD program. Should licensee's depend on other licensee collection facilities to manage this unique population of workers? If so, what guidance dictate the methods for managing the process? What should occur if the donor tests positive at licensee who is collecting a specimen for another licensee? Clearly, licensee's collecting specimens for each other is a far better option than relying on unvetted remote collection facilities. However, there are scenarios that create the possibly that remote collections could not be completed by another licensee due to distance. Recommend guidance that provides for clear direction concerning this unique issue. Licensee company's increasingly are placing demands on FFD program personnel to accommodate remote collection conditions that would allow the licensee to meet the definition of critical group, thereby requiring placement in the FFD program.

1

The current requirements in § 26.4, "FFD program applicability to categories of individuals," are as follows:

Individuals who have applied for authorization to have the types of access or perform the activities described in paragraphs (a) through (d) of this section shall be subject to 26.31(c)(1), 26.35(b), 26.37, 26.39, and the applicable requirements of subparts C, and E through H of this part.

(i) The following individuals are not subject to an FFD program under this part:

(1) Individuals who are not employed by a licensee or other entity in this part, who do not routinely provide FFD program services to a licensee or other entity in this part, and whose normal workplace is not at the licensee's or other entity's facility, but who may be called on to provide an FFD program service, including, but not limited to, collecting specimens for drug and alcohol testing, performing behavioral observation, or providing input to a determination of fitness. Such individuals may include, but are not limited to, hospital, employee assistance program (EAP) or substance abuse treatment facility personnel, or other medical professionals;

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Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

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Comment on FR Doc # 2019-18491

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General Comment

10 CFR 26.27, Written Policies and Procedures denotes how licensee's should establish their written policies and procedures. 26.27 b (4) captured below, establishes that the consumption of alcohol (impairing substance) is prohibited within a time period of 5 hours. While alcohol is among the most commonly used/abused legal substance, it by no means is the only impairing substance. There are additional substances equally as impairing and intoxicating as alcohol. Some examples include, prescription opiates[1], inhalant substances, benzodiazepines, sedatives, sleep aids, etc. The purpose of the 5 hour prohibition is to ensure no individual assumes duties in an impaired state as a result of consuming alcohol. However, it seems more prudent to stipulate that the 5 hour rule apply to any substance with known impairing qualities. For example, would an individual who engaged in huffing of an known intoxicating chemical (solvents, aerosol sprays, gases, cleaning fluids, etc) within ah hour of reporting for duty violate the 5 hour rule? Without doubt, the intoxicating affect of these substances are

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greater than or equal to alcohol. Yet, the current code language specifically calls out alcohol while neglecting to mention other substances that are equally impairing. While naming every impairing substance may not serve the purpose, would it be more efficacious to stipulate that any impairing substance ingested within 5 hours of reporting is prohibited, including alcohol. 1

The current requirements in § 26.27, "Written policy and procedures," are as follows:

Prohibit the consumption of alcohol, at a minimum

(i) Within an abstinence period of 5 hours preceding the individual's arrival at the licensee's or other entity's facility, except as permitted in 26.27(c)(3); and

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Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

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Comment on FR Doc # 2019-18491

Submitter Information

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General Comment

26.31 denotes the conditions for collection. Administration of post event collection specific to the 4 hour reference has cause some confusion in the industry. Very often a safety event is still under investigation after four hours leaving the OSHA recordable question unanswered. It may be that the recordable question is not answered for 24 hours or more. Personnel who are injured and transported for medical treatment may not return to duty days or weeks later without FFD testing. The rule is clear that medical assistance cannot be delayed for FFD testing consideration. However, when minor injuries occur, and the subject individual returns to duty the 8-10 hours later, the question of recordability is not yet answered, program personnel are often seeking guidance about whether FFD collections make sense under this standard. Language that clarifies this frequent scenario would be most beneficial. 1

Additionally, the term "substantial degradation to the level of safety" has been frequently 2

debated. The question is often asked, "What constitutes "substantial degradation?" Licensees are generally attempting to define what is meant by substantial. It seems more prudent to state that degradations of plant safety that generally may compromise general safety and security may be more appropriate.

2

The current requirements in § 26.31, "Drug and alcohol testing," are as follows:

Post-event. As soon as practical after an event involving a human error that was committed by an individual who is subject to this subpart, where the human error may have caused or contributed to the event. The licensee or other entity shall test the individual(s) who committed the error(s), and need not test individuals who were affected by the event whose actions likely did not cause or contribute to the event. The individual(s) who committed the human error(s) shall be tested if the event resulted in

(i) A significant illness or personal injury to the individual to be tested or another individual, which within 4 hours after the event is recordable under the Department of Labor standards contained in 29 CFR 1904.7, "General Recording Criteria," and subsequent amendments thereto, and results in death, days away from work, restricted work, transfer to another job, medical treatment beyond first aid, loss of consciousness, or other significant illness or injury as 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;

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Comment Submission No. 9
ML19338D245

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Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0034
Comment on FR Doc # 2019-18491

Submitter Information

Name: Anonymous Anonymous (Comment-Response Document Abbreviation: ANON2)

General Comment

NRC FFD Comments from Stakeholders:

1. Alignment with the HHS Guidelines:
a. The NRC should eliminate redundant provisions such as Direct Observation collection guides and MRO specimen
handling.

CL1

2. Special Analyses Testing:
a. It is my opinion that special analysis testing should also apply to the testing of individuals that already have tested positive.
i. To identify new drug chemicals that may be misrepresented in drug test results.
ii. To provide trends of drug use in different departments.
iii. To provide trends on confirmed misuse at the different employee levels.
a. If the NRC wants the comments on whether it should be applied to those that have already tested positive then, in my opinion, a direct observation testing is not needed. The test already shows a use of illegal drugs or the illegal misuse of legal drugs. It leads me to conclude that,

CL2

CL3 CL4

at this point, there is no need for a directly observed test. The exceptions to this are as follows:
1. If there is a retest allowed, for whatever reason, under the NRC direction meeting the NLCP and FFD guidelines.
2. If an NRC employee has reported a problem with illegal drug use, random drug screens should be a directly observed.

CL3 Cont.

CL4 Cont.

3. Provide Flexibility to Conduct Additional Specimen Validity Tests
a. It is my opinion that a licensee or other entity with the option to conduct specimen validity testing be given the flexibility to use lower cutoff levels.
b. It is my opinion that licensee or other entity should have the flexibility to use different forms of testing such as hair testing.
i. With allowing such testing to take place, the integrity and accountability of the program should be within NLCP Audit parameters. This must be checked and accounted for so there is not mis-representation at any level.

CL5

4. Effective Date of the Final Rule
a. It is my opinion that this timeframe is not adequate to allow the proposed rule changes to take place for the following reasons:
i.There is not enough time to review and assess the comments and their application to changes, unless we are just agreeing to what the NRC has already proposed. In my opinion, you will need at least 120 days and this timeframe is still very aggressive.
a. To reach this within the proposed 60-day timeframe, all departments and sections would need to understand what the new requirements are that will affect the drug screening program. Complete communication to all departments and sections, with agreed understanding of the expectations should be attained for the purpose of illegal use deterrence and rehab where accommodations may have been made.

CL6

5. Direct Observation of Specimen Collection
a. Although the NRC is not asking for my comment on direct observation during a collection of a second sample, it is my opinion that a direct observation is the only way to ensure that the integrity of the specimen is maintained in this given scenario.
b. In comment to the request, it is my opinion that there are not any other effective alternatives than direct observation in this given scenario. Although, this scenario must maintain the highest integrity of procedure. There cannot by any type of conflict of interest between the observer and the observed. The relationship must be of such that the result can be pure. No harassment of the observer or the observed can be allowed. No bribery, payoff or blackmail can be allowed to any degree. The integrity of the program must meet the highest standard.

CL7

6. 2017 HHS GuidelinesNew Test Analytes
a. It is my opinion that the NRC require initial and confirmatory testing of these drugs; specifically, hydrocodone, hydromorphone, oxycodone, and oxymorphone, at the cutoff levels recommended in the 2017 HHS Guidelines.

CL8

7. Methylenedioxyethylamphetamine
a. It is my opinion that the NRC adopt the MDEA as a confirmatory analyte in the drug testing panel. The knowledge that confirmatory testing on this "Ecstasy Drug" has not been adopted just left a drug user the loop hole opportunity to escape accountability for drug use while working with potential radioactive substances that can be harmful to the health and welfare of the public.

CL9

In summary, I think the NRC changes in the FFD program are very positive and should be implemented as soon as practical. The decision to not adopt confirmatory testing of MDEA should be reviewed to ensure there is not an allowance of the Ecstasy drug use while working in a sensitive position within the NRC.

CL10

CL9 Cont.

Please see full comments attached.

Attachments

Professional Safety Comment NRC 20191127

November 27, 2019

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

RE: Nuclear Regulatory Commission (NRC)
Proposal to Amend Fitness for Duty (FFD) Programs
[Docket ID NRC-2009-0225]

The NRC has requested advice and recommendations from stakeholders concerning updates to the FFD, specifically commenting on the following:

1. Alignment with the HHS Guidelines
2. Special Analyses Testing
3. Provide Flexibility to Conduct Additional Specimen Validity Tests
4. Effective Date of the Final Rule
5. Direct Observation of Specimen Collection
6. 2017 HHS Guidelines—New Test Analytes
7. Methylenedioxyethylamphetamine (MDEA)

1. Alignment with the HHS Guidelines:

    a. **The NRC is seeking comment on additional provisions in 10 CFR part 26 that are consistent with the HHS Guidelines and could be eliminated from 10 CFR part 26.**

        i. I agree that if there are redundancies that can lead to duplicative oversite, and there are no missed responsibility of oversite, then the NRC should eliminate redundant provisions.

        ii. Concerning direct observation collection, both the HHS Subpart D-Collectors, 4.4 (b) and the §26.115 state that the observer be the same gender. This is a redundancy and may be removed from the standard as long as the HHS guidelines are followed.

        iii. Medical Review Officer responsibilities are redundant with the specimen handling in both documents allowing the NRC to eliminate this redundant provision.

A1

2. Special Analyses Testing:

    a. **The NRC is seeking comment on whether special analyses testing should also apply to the testing of individuals that already have tested positive on a 10 CFR part 26 test (*i.e.*, denied unescorted access authorization by § 26.75(d) for a first or second drug testing positive result).**

        i. It is my opinion that special analysis testing should also apply to the testing of individuals that already have tested positive. But, please let me note, special analysis testing should be performed within a timeframe that is crucial for the integrity of the collected specimen. I would think that it

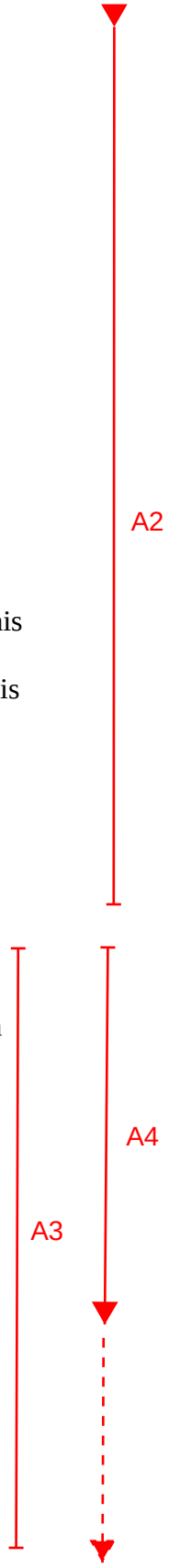
A2

would need to be performed after the immunoassay result and the Gas Chromatography-Mass Spectrometry (GC-MS) confirmation. Then, with the use of this same confirmed sample, the special analysis testing be performed. I can see this being performed for the following reasons:

1. To identify new drug chemicals that may be misrepresented in drug test results.
2. To provide trends of drug use in the different NRC business departments.
3. To provide trends on confirmed misuse at the different employee levels from the front line to the executive level (NOTE: I know this may already be provided by the GC-MS results alone but if there is any new drug with new trends found under social or industry use within the NRC employee ranks, then historical trends should be captured).

ii. If the NRC wants the comments on whether it should be applied to those that have already tested positive then, in my opinion, a direct observation testing is not needed. The test already shows a use of illegal drugs or the illegal misuse of legal drugs. It leads me to conclude that, at this point, there is no need for a directly observed test. The exceptions to this are as follows:

1. If there is a retest allowed, for whatever reason, under the NRC direction meeting the National Laboratory Certification Program (NLCP) and the NRC FFD guidelines.



2. If an NRC employee has reported that they have a problem with the illegal use of drugs and random drug screen is performed during their probation period, this should be a directly observed test.

A4 Cont.

3. Provide Flexibility to Conduct Additional Specimen Validity Tests

    a. **The NRC is seeking comment on whether § 26.161(h) should be revised to provide a licensee or other entity with the option to conduct additional specimen validity tests and/or to utilize lower cutoff levels if the HHS Guidelines are revised in the future to include such testing.**

        i. It is my opinion that a licensee or other entity with the option to conduct specimen validity testing be given the flexibility to use lower cutoff levels.

        ii. It is my opinion that licensee or other entity should have the flexibility to use different forms of testing such as hair testing.

            1. With allowing such testing to take place, the integrity and accountability of the program should be within NLCP Audit parameters. This must be checked and accounted for so there is not mis-representation at any level.

A5

4. Effective Date of the Final Rule

    a. **The NRC is seeking comment on whether this implementation time period is appropriate based on the proposed rule changes.**

        i. It is my opinion that this timeframe is not adequate to allow the proposed rule changes to take place for the following reasons:

A6

1. There is not enough time to review and assess the comments and their application to changes, unless we are just agreeing to what the NRC has already proposed. In my opinion, you will need at least 120 days and this timeframe is still very aggressive.
    a. To reach this within the proposed 60-day timeframe, all departments and sections would need to understand what the new requirements are that will affect the drug screening program. Complete communication to all departments and sections, with agreed understanding of the expectations should be attained for the purpose of illegal use deterrence and rehab where accommodations may have been made.

A6

5. Direct Observation of Specimen Collection
    a. **The NRC is seeking comment on whether there are any effective alternatives to direct observation that will assist in preventing subversion of the drug testing process.**
        i. Although the NRC is not asking for my comment on direct observation during a collection of a second sample, it is my opinion that a direct observation is the only way to ensure that the integrity of the specimen is maintained in this given scenario.
        ii. In comment to the request, it is my opinion that there are not any other effective alternatives than direct observation in this given scenario. Although, this scenario must maintain the highest integrity of procedure. There cannot by any type of conflict of interest between the observer and

A7

the observed. The relationship must be of such that the result can be pure. No harassment of the observer or the observed can be allowed. No bribery, payoff or blackmail can be allowed to any degree. The integrity of the program must meet the highest standard.

A7

6. 2017 HHS Guidelines—New Test Analytes

   a. **The NRC is seeking comment on whether §§ 26.31(d)(1) and 26.405(d) should be revised to identify hydrocodone, hydromorphone, oxycodone, and oxymorphone test substances, and whether §§ 26.133 and 26.163(a)(1) and (b)(1) should be revised to require initial and confirmatory testing of these drugs at the cutoff levels recommended in the 2017 HHS Guidelines.**

      i. It is my opinion that the NRC require initial and confirmatory testing of these drugs; specifically, hydrocodone, hydromorphone, oxycodone, and oxymorphone, at the cutoff levels recommended in the 2017 HHS Guidelines.

A8

7. Methylenedioxyethylamphetamine

   a. It is my opinion that the NRC adopt the MDEA as a confirmatory analyte in the drug testing panel. The knowledge that confirmatory testing on this "Ecstasy Drug" has not been adopted just left a drug user the loop hole opportunity to escape accountability for drug use while working with potential radioactive substances that can be harmful to the health and welfare of the public.

A9

In summation, I think the NRC changes in the FFD program are very positive and should be implemented as soon as practical. The decision to not adopt confirmatory testing of MDEA

A10

A9 Cont.

should be reviewed to ensure there is not an allowance of the Ecstasy drug use while working in a sensitive position within the NRC.

A9
Cont.

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84FR48750

Comment Submission No. 10
ML19338D246

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Docket: NRC-2009-0225
Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0035
Comment on FR Doc # 2019-18491

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General Comment

1 2

The current rule stipulates in 26.31 that follow up testing shall be implemented as part of a follow-up plan to verify an individual's continued abstinence from substance abuse. This has worked well over the years with the standard five NIDA panel. However, increasing over the past ten years individuals are being placed into the follow up program as a result of the opioid epidemic. A select few of the nuclear facilities have expanded their panels to address the opioid crisis. These expanded panel facilities place individuals into the follow up program for the purpose of monitoring abstinence from opiate addiction. However, when the individual in the follow up program travels to another utility; they are not monitored for the substance for which they were placed in the follow up program; as these programs have not expanded the panel and have no provision to test for the abused opiate. As a result, the industry is currently ill equipped to monitor a national epidemic problem, and as a result, represents a significant gap in the follow up program's ability to detect on going opiate abuse.

Recommendation: Include language that addresses the opiate epidemic and includes provisions for collection and testing under every FFD test condition, including follow up. Provide for mandates to ensure personnel who are placed in the follow up program for a specific substance are monitored for the substance that necessitated their placement in the follow up program regardless of where they are in the industry.

1

2 Cont.

PR-026
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Docket: NRC-2009-0225
Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0037
Comment on FR Doc # 2019-18491

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General Comment

10 CFR 26.75 provides for sanctions on any individual who violates the FFD program. As noted below, the sanction for possession of illegal drugs, consumption of alcohol within a protected area, or while performing duties shall result in a minimum 5 year denial. This section does not address use of other intoxicating agents such as solvents, computer cleaners, glue, etc that have a equal to or greater impairing effect. Additionally, the abuse of prescription drugs with the sole intent of impairing or producing a high is also not discussed in this section. Clearly the focus of this section is to address any individual who would willfully abuse substances with the sole intent of producing a high to alter consciousness, thus jeopardizing safety and security. There have been cases noted with licensees involving the use of inhalants and/or prescription drug abuse where other entities have argued that the language of the code did not support sanctions in these specific cases.

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Recommendation: Consider language that addresses substance abuse in all forms within the protected area or during performance of any tour of duty.

The current requirements in § 26.75, "Sanctions," are as follows:

Any individual who 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 the duties that require the individual to be subject to this subpart shall immediately have his or her authorization unfavorably terminated and denied for a minimum of 5 years from the date of the unfavorable termination of authorization.

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Comment Submission No. 12
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Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0038
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General Comment

As noted below, 26.77 denotes management actions denoting possible impairment. Determining possible impairment or an individual's ability to perform involves multiple factors. Behavioral signs and symptoms indicating possible substance use often mimic physical illness making a determination precarious. Evaluations are complex and often requires the elimination of multiple contributing factors before a final determination can be reached. Behaviors that are classified as "odd or eccentric" may not meet the definition of impairment, but may be the direct result of substance use/abuse, onset of addictive behavior, or a not yet diagnosed mental health issue. Behaviors may be reported may seem benign, but present in such a manner that there is an element of doubt.

Recommendation: Consider language that clearly allows for drug and alcohol testing to eliminate the possibility that drugs and alcohol are playing a role in the behavior. Impairment

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may not be observed, but behavior that may deviate significantly from the individual's recognized customary character or practice necessitates a drug/alcohol screen. Restriction of duty may not be warranted, but the behavior causes enough concern to justify further review. A negative finding on a drug and alcohol screen will eliminate the possibility that drugs or alcohol are playing a role in the observed behavior. Once this factor is eliminated, other contributing factors such as mental or physical health may be considered. There have been note worthy cases where behaviors were reported as "odd or irregular" only to find that, following a drug/alcohol screen, prescription drug abuse, alcohol abuse, or a combination of the two was the contributing cause. In other cases, mental illness was detected resulting in the need for treatment. In each of these cases, there was no demonstrated impairment. Drug/alcohol screens are a vital data point in a process of next steps in reaching a decision concerning the need for a full determination of fitness.

As mentioned, these determinations are complex and involve multiple elements. Program managers are often reluctant to act for fear that they do not meet the standard of impairment to warrant any standard of review. Very often individual's who use substances determine how to become functional in order to maintain their lifestyle and support their habit. Behaviors that manifest as "odd or eccentric" (without impairment) are often the first indicator of an issue. Eliminating the possibility of substance use/abuse in these types of cases is the first reasonable and prudent step in determining the next steps to advance the determination, or simply return the individual to duty without restrictions. Providing for the necessary discretion in these unique circumstances provides the proper tools for program professionals.

1

The current requirements in § 26.77, "Management actions regarding possible impairments," are as follows:

10 CFR 26.77
If an individual appears to be impaired or the individual's fitness is questionable, except as permitted under 26.27(c)(3), 26.207, and 26.209, the licensee or other entity shall take immediate action to prevent the individual from performing the duties that require him or her to be subject to this subpart.

If an observed behavior or physical condition creates a reasonable suspicion of possible substance abuse, the licensee or other entity shall perform drug and alcohol testing. The results must be negative before the individual returns to performing the duties that require the individual to be subject to this subpart. However, 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 and the results must be negative before the individual returns to performing his or her duties.

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Docket: NRC-2009-0225
Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0039
Comment on FR Doc # 2019-18491

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General Comment

26.119 determines the standards for conditions of Shy Bladder. This section of code has presented with unique challenges for Program Managers and donors alike. The code stipulates a 5 business day standard for donor's to consult with a physician when unable to produce a specimen. Many of the donor participants are transient workers who do not carry insurance or regularly maintain a personal physician. Workers who are traveling and away from their residence must now (when unable to produce a specimen) attempt to travel home and find a physician who will immediately schedule an appointment and see them. Finding a physician in the immediate area of the plant presents with challenges and appointments are difficult in a short time frame. In this frequent scenario, the worker is unable to meet the 5 day standard, which invariably results in a permanent denial. 1

Another issue is that of the alternative process. It would seem reasonable to immediately 2

proceed to an acceptable alternative testing process such as oral fluid. Established guidelines recently published should provide MRO's and program managers with the needed tools and guidance to address this issue. 2

Recommendation: Provide for a more reasonable and realistic time frame for review of medical information when an individual cannot provide a specimen under shy bladder conditions. Ten days seems reasonable since a review under positive conditions may be considered within days (see below). Providing for a minimum time frame of ten days, and perhaps providing for a extension (not to exceed 30 days) under approved conditions of the MRO or program manager seems reasonable. 1 Cont.
Additionally, adopt and clearly outline the conditions for alternative testing. Oral fluid is less evasive than blood extraction and easily implemented. Also consider providing program managers with the option to use oral fluid testing in any testing condition at any time. This provides for flexibility within the program and strengthens the integrity and viability of the program when donors cannot predict the method of testing. 2 Cont.

26.119 **The current requirements in § 26.119, "Determining 'shy' bladder," are as follows:**
FFD program personnel shall direct the donor to obtain, within 5 business days, an evaluation from a licensed physician who is acceptable to the MRO and has expertise in the medical issues raised by the donor's failure to provide a sufficient specimen.

If the MRO determines that the medical condition is highly likely to prevent the donor from providing a sufficient amount of urine for a very long or indefinite period of time, then the MRO shall authorize an alternative evaluation process, tailored to the individual case, for drug testing.

The current requirements in § 26.185, "Determining a fitness-for-duty policy violation," are as follows:
Time to complete MRO review. The MRO shall complete his or her review of positive, adulterated, substituted, and invalid test results and, in instances when the MRO determines that there is no legitimate medical explanation for the test result(s), notify the licensee's or other entity's designated representative within 10 business days of an initial positive, adulterated, substituted, or invalid test result. The MRO shall notify the licensee or other entity of the results of his or her review in writing and in a manner designed to ensure the confidentiality of the information.

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Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0040
Comment on FR Doc # 2019-18491

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General Comment

26.187 outlines the credentials of the Substance Abuse Expert. All industry SAE's are required to hold the credentials noted below. However, the SAE's providing services to the industry are not practicing field treating addiction personnel, nor do they have the expertise to do so. Instead, SAE's serving the nuclear industry are assessing, evaluating, and reporting recommendations to FFD program managers for referrals, but are not providing treatment.

Conversely, a Masters level addictions professional who has completed a six year addictions program including focused training in assessment, but does not hold a license because they are not providing treatment does not meet the standard as noted below. Individuals who have completed an addictions program have completed more focused training in substance abuse/addictions than the professionals currently listed.

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Recommendation: Consider incorporating language that allows for the completion of an advanced degree in addictions (Masters) as a credential standard for performing as an SAE.

The current requirements in § 26.187, "Substance abuse experts," are as follows:

Credentials. An SAE shall have at least one of the following credentials:

(1) A licensed physician;

(2) A licensed or certified social worker;

(3) A licensed or certified psychologist;

(4) A licensed or certified employee assistance professional; or

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Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

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Comment on FR Doc # 2019-18491

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General Comment

Determination of Fitness (DOF) is conducted in the event an individual has violated the FFD program, or is otherwise impaired on a level that compromises their ability to work safely and competently. Often the DOF is initiated based on observed behavior. However, code currently does not define what manner of observed behavior constitutes an evaluation. Logic would dictate that the behavior that requires a DOF would be predicated on a failure of the FFD program or impairment that compromises safe competent operation. However, utilities are conflicted and are initiating DOF's for any behavior due to an observed report. As an example, some utilities are launching DOF's for such innocuous behavior as looking at another worker in an odd manner. A preliminary assessment that collects relevant facts and information can determine if impairment may exist and identify any program violations, so that personnel are not being subjected to unnecessary evaluations.

1

Recommendation: Consider language that clarifies the role of the FFD program management in conducting relevant information that will contribute to a formal referral for DOF. A preliminary assessment that clarifies FFD management's responsibility for conducting interviews, ruling out the possibility that drugs may have played a role in the behavior by conducting FFD collection and testing, reviewing past behavior observation reports, reviewing past self reports. This information is akin to the information gathered by Reviewing Officials. Conducting relevant information and subsequently providing that information to the SAE, MRO, or Psychologist is absolutely necessary and is in fact occurring at many utilities, while others, out of an abundance of caution, conduct a DOF for any observed behavior. 1

The current requirements in § 26.189, "Determination of fitness," are as follows:

A determination of fitness must be made in at least the following circumstances:

(1) When there is an acceptable medical explanation for a positive, adulterated, substituted, or invalid test result, but there is a basis for believing that the individual could be impaired while on duty;

(2) Before making return-to-duty recommendations after an individual's authorization has been terminated unfavorably or denied under a licensee's or other entity's FFD policy;

(3) Before an individual is granted authorization when potentially disqualifying FFD information is identified that has not previously been evaluated by another licensee or entity who is subject to this subpart; and

(4) When potentially disqualifying FFD information is otherwise identified and the licensee's or other entity's reviewing official concludes that a determination of fitness is warranted under 26.69.

(c) A determination of fitness that is conducted for cause (i.e., because of observed behavior or a physical condition) must be conducted through face-to-face interaction between the subject individual and the professional making the determination. Electronic means of communication may not be used.

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Docket: NRC-2009-0225
Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0042
Comment on FR Doc # 2019-18491

Submitter Information

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General Comment

The frequency of required blind specimen submissions required of licensee's has been discussed and debated for years. The salient point is that thousands of blind specimen tests are submitted to labs that are audited and inspected. The cost of blind specimen submissions to labs are expensive and exceed reasonable standards for verifying the labs operational viability. The DOT has previously made the decision to discontinue the practice of blind specimens, as the accuracy of HHS labs has consistently been established over the years. Therefore, Third Party Administrators (TPAs) are no longer required to submit blind specimens on behalf of their clients. This seems appropriate for the FFD rule.

Recommendation: Amend the rule such that blind specimens may eliminated or at a minimum, are shared among industry plants to reduce the burden of cost given the current state of lab efficiency. If there is a demonstrated lack of proficiency in lab operation, a

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monitoring period of blind submissions could be instituted. 1

The current requirements in § 26.168, "Blind performance testing," are as follows:

Each licensee and other entity shall submit blind performance test samples to the HHS-certified laboratory.

(1) During the initial 90-day period of any contract with an HHS-certified laboratory (not including rewritten or renewed contracts), each licensee or other entity shall submit blind performance test samples to each HHS-certified laboratory with whom it contracts in the amount of at least 20 percent of the total number of specimens submitted (up to a maximum of 100 blind performance test samples) or 30 blind performance test samples, whichever is greater.

(2) Following the initial 90-day period, the number of blind performance test samples submitted per quarter must be a minimum of one percent of all specimens (up to a maximum of 100) or ten blind performance test samples, whichever is greater.

(3) Both during the initial 90-day period and quarterly thereafter, licensees and other entities should attempt to submit blind performance test samples at a frequency that corresponds to the submission frequency for other specimens.

(b) Approximately 60 percent of the blind performance test samples submitted to the laboratory must be positive for one or more drugs or drug metabolites per sample and submitted so that all of the drugs for which the FFD program is testing are included at least once each calendar quarter, except as follows:

(1) Licensees and other entities shall submit blind performance test samples that are positive for marijuana metabolite at least two times each quarter; and

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Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0043
Comment on FR Doc # 2019-18491

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General Comment

Industry Comments on Part 26 Proposed Rulemaking, "Fitness for Duty Drug Testing Requirements" noticed in the Federal Register, Vol. 84, No. 179, Dated September 16, 2019, and Draft Regulatory Guide DG-5040, "Urine Specimen Collection and Test Results Review Under 10 CFR Part 26, "Fitness for Duty Programs", dated August 2019, Docket ID NRC-2009-0225

Attachments

Part 26 Proposed Rulemaking and DG 5040 NRC Submittal Comment Letter

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NUCLEAR ENERGY INSTITUTE

December 02, 2019

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemaking and Adjudications Staff

Submitted via Regulations.gov

Subject: Industry Comments on Part 26 Proposed Rulemaking, "Fitness for Duty Drug Testing Requirements" noticed in the Federal Register, Vol. 84, No. 179, Dated September 16, 2019, and Draft Regulatory Guide DG-5040, "Urine Specimen Collection and Test Results Review Under 10 CFR Part 26, "Fitness for Duty Programs", dated August 2019, Docket ID NRC-2009-0225

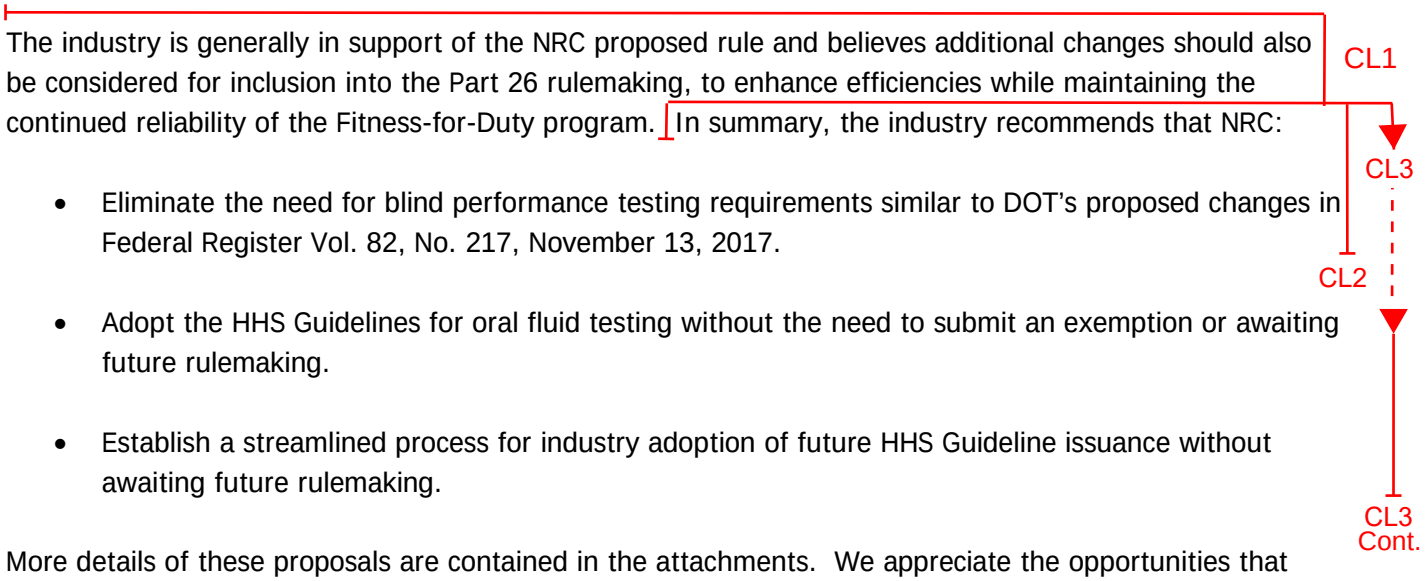
Project Number: 689

On behalf of the Nuclear Energy Institute's (NEI)[1] members (hereinafter referred to as industry), we provide the attached comments on Part 26 Proposed Rulemaking, "Fitness for Duty Drug Testing Requirements" noticed in the Federal Register, Vol. 84, No. 179, Dated September 16, 2019, and Draft Regulatory Guide DG-5040, "Urine Specimen Collection and Test Results Review Under 10 CFR Part 26, "Fitness for Duty Programs", dated August 2019, for consideration by the NRC staff. The proposed rule and DG 5040 closely align the NRC's drug testing requirements with the updates made to the U.S. Department of Health and Human Services "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued in 2008. The proposed rule and DG 5040 would also incorporate lessons learned from implementation of the NRC's current FFD regulations and would enhance the ability of NRC licensees and other entities to identify individuals using illegal drugs, misusing legal drugs, or attempting to subvert the drug testing process.

[1] The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

The industry is generally in support of the NRC proposed rule and believes additional changes should also be considered for inclusion into the Part 26 rulemaking, to enhance efficiencies while maintaining the continued reliability of the Fitness-for-Duty program. In summary, the industry recommends that NRC:

- Eliminate the need for blind performance testing requirements similar to DOT's proposed changes in Federal Register Vol. 82, No. 217, November 13, 2017.
- Adopt the HHS Guidelines for oral fluid testing without the need to submit an exemption or awaiting future rulemaking.
- Establish a streamlined process for industry adoption of future HHS Guideline issuance without awaiting future rulemaking.



More details of these proposals are contained in the attachments. We appreciate the opportunities that have been provided to interact with the staff and to provide comments on the revisions.

If you have any questions or require additional information, please contact Lisa Hogg, at (202) 739-8121 or lbh@nei.org, or me.

Sincerely,

William R. Gross

Attachments:

1) Industry Comments on Part 26 Proposed Rulemaking, "Fitness for Duty Drug Testing Requirements" noticed in the Federal Register, Vol. 84, No. 179, Dated September 16, 2019,

2) Industry Comments on Draft Regulatory Guide DG-5040, "Urine Specimen Collection and Test Results Review Under 10 CFR Part 26, "Fitness for Duty Programs", dated August 2019

c: Shana Helton, Director, DPCP
NRC Document Control Desk

Attachment 1

Industry Comments on Part 26, Fitness for Duty Drug Testing Requirements, Proposed Rulemaking

Response to specific requests for comment from section V. starting on page 48770 from Federal Register, volume 84, No. 179 dated Monday, September 16, 2019.

Comment	Response	
1. Alignment with HHS Guidelines The NRC is seeking comment on additional provisions in 10 CFR part 26 that are consistent with the HHS Guidelines and could be eliminated from 10 CFR part 26.	There should be a streamlined process other than rulemaking to incorporate the drug panel for Fitness for Duty (FFD) drug testing for nuclear facilities upon issuance of Department of Health and Human Services (HHS) Guidelines.	A1-1
2. Special Analyses Testing The proposed rule includes new requirements in § 26.163(a)(2) for the special analyses testing of urine specimens for drugs and drug metabolites. The first would require special analyses testing of specimens with dilute validity test results when initial drug testing identifies a drug or drug metabolite within 40 percent of the testing cutoff level. Currently, special analyses testing of dilute specimens is optional. The second new requirement would expand special analyses testing to specimens collected under direct observation as required by § 26.115(a)(1) through (a)(3) and new paragraph (a)(5). The NRC is seeking comment on whether special analyses testing should also apply to the testing of individuals that already have tested positive on a 10 CFR part 26 test (i.e., denied unescorted access authorization by § 26.75(d) for a first or second drug testing positive result). Requiring special analyses testing in this case would add a level of assurance to follow-up testing required by § 26.69(b)(6), which is conducted to confirm continued abstinence from illegal drug use and/or the misuse of legal drugs.	No. Special analyses testing will not provide additional value to the testing process for personnel in both random and follow up pools. This would make it difficult to allow credit of random tests for follow up tests. However, it is reasonable to conduct special analyses testing for the first observed test.	A1-2

Attachment 1

Industry Comments on Part 26, Fitness for Duty Drug Testing Requirements, Proposed Rulemaking

Comment	Response	
3. Provide Flexibility To Conduct Additional Specimen Validity Tests The NRC is seeking comment on whether § 26.161(h) should be revised to provide a licensee or other entity with the option to conduct additional specimen validity tests and/ or to utilize lower cutoff levels if the HHS Guidelines are revised in the future to include such testing.	This may result in an inconsistent approach across the industry however, there should be a more streamlined process for adopting future updates to the HHS Guidelines.	A1-3
4. Effective Date of the Final Rule The NRC is seeking comment on whether this implementation time period is appropriate based on the proposed rule changes.	Once the rule is issued licensees will need to evaluate change management plan items to include procedures, union/lab contracts, computer systems, training, etc. To fully and effectively implement the new program utilizing established processes, licensees will need approximately 12 months. Clarify that during the transition period, any program may accept and rely on another program's FFD-related information as long as the information being shared is compliant with the sharing program's current Part 26 processes.	A1-4
5. Direct Observation of Specimen Collection The proposed rule retains the requirement for direct observation during the collection of a second sample when there are indications of a subversion attempt during the initial collection. The NRC is seeking comment on whether there are any effective alternatives to direct observation that will assist in preventing subversion of the drug testing process.	Oral Fluid Testing should be considered as an effective alternative testing method especially for direct observations and for shy-bladder instances. The rule should be stated such that the industry can adopt and implement the HHS guidelines for oral fluid testing within their programs without submitting exemptions or awaiting rulemaking.	A1-5

Comment	Response
6. 2017 HHS Guidelines—New Test Analytes On January 23, 2017, HHS issued its latest revision of the Mandatory Guidelines for Federal Workplace Drug Testing Programs Using Urine Specimens (82 FR 7920). Subpart C, "Urine Drug and Specimen Validity Tests," of the 2017 HHS Guidelines was revised to include additional initial and confirmatory test analytes for certain opioids; specifically, hydrocodone, hydromorphone, oxycodone, and oxymorphone. The NRC is seeking comment on whether §§ 26.31(d)(1) and 26.405(d) should be revised to identify hydrocodone, hydromorphone, oxycodone, and oxymorphone test substances, and whether §§ 26.133 and 26.163(a)(1) and (b)(1) should be revised to require initial and confirmatory testing of these drugs at the cutoff levels recommended in the 2017 HHS Guidelines.	Although testing costs would increase, NEI and its members believe there is a safety benefit to include hydrocodone, hydromorphone, oxycodone, and oxymorphone test substances in the rule.

A1-6

Comment	Response
7. Methylenedioxyethylamphetamine The 2008 HHS Guidelines adds methylenedioxyethylamphetamine (MDEA) as a confirmatory analyte to the drug testing panel in Section 3.4. However, when the HHS revised the mandatory guidelines in 2017, HHS removed MDEA from Section 3.4 stating that "[t]he Department has evaluated the comments and has removed MDEA from the Guidelines (i.e., MDEA is no longer included as an authorized drug in Section 3.4). The number of positive MDEA specimens reported by HHS certified laboratories (i.e., information provided to the Department through the NLCP) does not support testing all specimens for MDEA in federal workplace drug testing programs." (82 FR 7920, 7923; January 23, 2017). The NRC is not proposing to adopt the 2008 HHS Guidelines' addition of MDEA as a confirmatory test analyte at this time. As a result, the NRC is also proposing to add MDA to the initial testing panel to fully align with the "Ecstasy drugs" testing panel in the 2017 guidelines. The NRC is seeking comment on these changes.	Although "Ecstasy drugs" have not been a prevalent issue in the industry, NEI and its members are in favor of aligning with the 2017 HHS Guidelines. However, if blind specimen testing remains a requirement, consideration should be given to eliminate testing of drugs that are not prevalent issues in the industry.

A1-7

Attachment 1

Industry Comments on Part 26, Fitness for Duty Drug Testing Requirements, Proposed Rulemaking

Comments on proposed rulemaking.

Proposed Rule Section	Comments	Suggested Wording/Revision	
Subpart A—Administrative Provisions **§ 26.4 FFD program applicability to categories of individuals.** (g)(6) All persons monitoring a donor during the hydration process described in § 26.109(b).	§26.31 only requires monitors to be trained to perform the activity. Requiring monitors to be covered by the program is an unnecessary expansion that does not improve the effectiveness of the activity. Observers are not required to be Collectors subject to the FFD program and their role is more significant ensuring the proper collection of a specimen. Requirements for the Hydration Monitor should be consistent with the requirements for an Observer.	Remove proposed (g)(6) from § 26.4	A1-8
Subpart A—Administrative Provisions **§ 26.5 Definitions**. **Federal custody and control form (Federal CCF)** means any HHS-approved form, which has not expired, that is published in the Federal Register and is used to document the collection, custody, transport, and testing of a specimen.	Additional clarity is needed for the following "which has not expired" and additional clarity is needed for the use of equivalent forms.	Recommend to revise definition to read: "Federal custody and control form (Federal CCF) means any HHS-approved or equivalent form, which has not expired, that is published in the Federal Register and is used to document the collection, custody, transport, and testing of a specimen. Expired custody	A1-9

Attachment 1

Industry Comments on Part 26, Fitness for Duty Drug Testing Requirements, Proposed Rulemaking

Proposed Rule Section	Comments	Suggested Wording/Revision	
		and control forms may be used if covered by an active memorandum for the record."	A1-9
Subpart A—Administrative Provisions **§ 26.5 Definitions**. **Potentially disqualifying FFD information** means information demonstrating that an individual has— (1) Violated a licensee's or other entity's FFD policy; (2) Had authorization denied or terminated unfavorably under §§ 26.35(c)(2), 26.53(i), 26.63(d), 26.65(g), 26.67(c), 26.69(f), or 26.75(b) through (e); (3) Used, sold, or possessed illegal drugs; (4) Abused legal drugs or alcohol; (5) Subverted or attempted to subvert a drug or alcohol testing program; (6) Refused to take a drug or alcohol test; (7) Been subjected to a plan for	Marijuana legalized by state law needs to be addressed. (7) is in direct conflict with (3) and (4)	Recommend to revise language to read: "(3) Used, sold, or possessed illegal drugs (Including controlled substances determined to be illegal under federal law, such as marijuana, but deemed legal under state law);" Recommend to revise language to read:	A1-10 A1-11

Attachment 1

Industry Comments on Part 26, Fitness for Duty Drug Testing Requirements, Proposed Rulemaking

Proposed Rule Section	Comments	Suggested Wording/Revision	
substance abuse treatment (except for self-referral); or (8) Had legal action or employment action, as defined in this section, taken for alcohol or drug use.	above.	"(7) Been subjected to a plan for substance abuse treatment; or"	A1-11
Subpart A—Administrative Provisions **§ 26.5 Definitions**. **Rejected for testing** means the result reported to the MRO by a licensee testing facility or HHS-certified laboratory when no tests can be performed on a specimen.	Consider re-wording for clarity.	Recommend to revise definition to read: "Rejected for testing means the result reported to the MRO by a licensee testing facility or HHS-certified laboratory when a fatal flaw disqualifies a specimen or, any of the required testing cannot be performed on a specimen."	A1-12
Subpart A—Administrative Provisions **§ 26.5 Definitions**. Substance abuse means the use, sale, or possession of illegal drugs, or the abuse of prescription and over-the-counter drugs, or the abuse of alcohol.	Consider including controlled substances, such as marijuana which has been legalized by some states to provide clarity.	Recommend to revise definition to read: "Substance abuse means the use, sale, or possession of illegal drugs, or the abuse of prescription and over-the-counter drugs, or controlled substances determined to be illegal under federal law, such as marijuana, but deemed legal under state law, or the abuse of alcohol."	A1-13

Attachment 1

Industry Comments on Part 26, Fitness for Duty Drug Testing Requirements, Proposed Rulemaking

Proposed Rule Section	Comments	Suggested Wording/Revision	
Subpart B—Program Elements **§ 26.31 Drug and alcohol testing.** (d)(2)(v) Require that individuals who are off site when selected for testing, or who are on site and are not reasonably available for testing when selected, shall be tested at the earliest reasonable and practical opportunity when both the donor and collectors are available to collect specimens for testing and without prior notification to the individual that he or she has been selected for testing;	Need to clarify availability of the collector performing in a collector capacity.	Recommend to revise language to read: "(d)(2)(v) Require that individuals who are off site when selected for testing, or who are on site and are not reasonably available for testing when selected, shall be tested at the earliest reasonable and practical opportunity when collection personnel are scheduled to perform collections and the donor is available for testing and without prior notification to the donor that he or she has been selected for testing;"	A1-14
Subpart E—Collecting Specimens for Testing **§ 26.89 Preparing to collect specimens for testing.** (d) In order to promote the security of specimens, avoid distraction of the collector, and ensure against any confusion in the identification of specimens, a collector shall conduct only one collection procedure at any given time, except as described in § 26.109(b)(1). The urine collection procedure is complete when the urine specimen container has been sealed with	Clarity is needed (and in § 26.117(c)) on what constitutes a label versus a seal. § 26.117 refers to an identification label, as well as a tamper-evident seal. Verbiage needs to completely align with other sub-section(s) to avoid future confusion or compliance issues.	Recommend to revise language to read: "(d) In order to promote the security of specimens, avoid distraction of the collector, and ensure against any confusion in the identification of specimens, a collector shall conduct only one collection procedure at any given time, except as described in § 26.109(b)(1). The urine collection procedure is complete when the urine	A1-15

Proposed Rule Section	Comments	Suggested Wording/Revision
tamper-evident tape, the seal has been dated and initialed, and the Federal CCF has been completed or when a refusal to test has been determined under § 26.107(d).		specimen container has been sealed with a tamper-evident seal, the seal has been dated and initialed, and the Federal CCF has been completed or when a refusal to test has been determined under § 26.107(d)."
Subpart E—Collecting Specimens for Testing **§ 26.109 Urine specimen quantity.** (b) If the quantity of urine in the first specimen provided by the donor is less than 30 mL, the collector shall take the following steps: (1) The collector shall encourage the donor to drink a reasonable amount of liquid (normally, 8 ounces of water every 30 minutes, but not to exceed a maximum of 40 ounces over 3 hours) until the donor provides a specimen of at least 30 mL. Alternatively, as specified in the licensee's or other entity's FFD program procedures, the collector may assign responsibility for monitoring a donor during the hydration process to another collector who meets the requirements in § 26.85(a) or to a hydration monitor who meets the requirements in § 26.4(g)(6). If another collector or hydration monitor is used, the collector:	The need for the Hydration Monitor to be a Collector is unnecessary and an administrative burden. Guidance and instruction can be provided similar to that given when needed for an observed test when the observer is not a FFD collector. There is insufficient room on the CCF to record the name of the hydration monitor on the CCF and it is unnecessary. The CCF does not require recording other monitors, nor does it require information when a hydration period is implemented. It is only required to be recorded when a direct observed collection takes place.	Recommend to revise language in § 26.109(b)(1) to read: "(1) The collector shall encourage the donor to drink a reasonable amount of liquid (normally, 8 ounces of water every 30 minutes, but not to exceed a maximum of 40 ounces over 3 hours) until the donor provides a specimen of at least 30 mL. Alternatively, as specified in the licensee's or other entity's FFD program procedures, the collector may assign responsibility for monitoring a donor during the hydration process to another collector who meets the requirements in § 26.85(a) or to a hydration monitor who meets the requirements in § 26.31(b)(1)(vi). If

A1-15

A1-16

A1-17

Attachment 1

Industry Comments on Part 26, Fitness for Duty Drug Testing Requirements, Proposed Rulemaking

Proposed Rule Section	Comments	Suggested Wording/Revision
(i) Shall explain the hydration process and acceptable donor behavior to the hydration monitor;		another collector or hydration monitor is used, the collector:" And, recommend to add the following language as § 26.31(b)(1)(vi): "(vi) When a donor is unable to provide an acceptable specimen of 30mL, they are encouraged to follow the hydration process in §26.109(b). During the hydration period, a donor may be under the observation of a hydration monitor as follows: (A) The donor must be continuously monitored by an individual who does not have a personal relationship with the donor. (B) Individuals who are assigned to monitor donors during a hydration period shall be provided instructions on the monitoring process and control the donor's access to any fluids, and control the hydration process in accordance with 26.109(b); (C) The hydration monitor shall be responsible for documenting the hydration process in accordance with program procedures."
(ii) Shall record the name of the other collector or hydration monitor on the Federal CCF and then provide the Federal CCF to that individual for the duration of the hydration process; and	Recording the name of the other collector or hydration monitor is un-necessary. The CCF should remain with the collector and not the hydration monitor.	Recommend to delete "(ii) Shall record the name of the other collector or hydration monitor on the Federal CCF and then provide the Federal CCF to that individual for the duration of the

A1-16

A1-18

Attachment 1

Industry Comments on Part 26, Fitness for Duty Drug Testing Requirements, Proposed Rulemaking

Proposed Rule Section	Comments	Suggested Wording/Revision	
		hydration process; and"	A1-18
Subpart E—Collecting Specimens for Testing **§ 26.115 Collecting a urine specimen under direct observation.** (e) The collector shall ensure that the observer is the same gender as the donor. A person of the opposite gender may not act as the observer under any conditions. The observer may be a different person from the collector and need not be a qualified collector. If the observer is not a qualified collector, the collector shall, in the presence of the donor, instruct the observer on the collection procedures in paragraph (f) of this section before proceeding with the directly observed collection.	Flexibility should be allowed on same gender collections with regards to donors who identify as one gender however still have the physical anatomy of the opposite gender, or those who identify as gender X. In these cases, it should be allowable to have a medical professional of the opposite gender of the donor, such as a doctor or nurse complete the direct observation. This would not be allowed based on the proposed wording.	Recommend to revise language to read: "(e) The collector shall reasonably ensure that the observer is the same gender as the individual donor. The observer may be a different person from the collector and need not be a qualified collector. If the observer is not a qualified collector, the collector shall, in the presence of the donor, instruct the observer on the collection procedures in paragraph (f) of this section before proceeding with the directly observed collection."	A1-19
Subpart H—Determining Fitness-for-Duty Policy Violations and Determining Fitness **§ 26.185 Determining a fitness-for-duty policy violation.** (f) Review of invalid specimens. (3) If the MRO and the laboratory agree that further testing would not be useful and there is no legitimate technical or	MRO's receive the required technical instruction for these situations through their required AAMRO qualification and	Recommend to delete (f)(3).	A1-20

Proposed Rule Section	Comments	Suggested Wording/Revision	
medical explanation, and the invalid result is based on pH in the range of 9.0 to 9.5, the MRO shall consider whether there is evidence of elapsed time, exposure of the specimen to high temperature, or both that could account for the pH value. If an acceptable explanation exists for the invalid test result due to pH, based on objective and sufficient information, that elapsed time, high temperature, or both caused the high pH and donor action did not result in the invalid pH result, the MRO shall report a cancelled test result to the licensee or other entity, cancel the test result, and direct the licensee or other entity to collect a second urine specimen from the donor as soon as reasonably practicable. The second specimen collected may not be collected under direct observation.	periodic requalification training. Mandating one course of action, when the MRO's license, training, and qualifications require us to rely upon their knowledge and skills, is contrary to the MRO's role. Unless this is also in other Federal programs, it is unnecessary.		A1-20
Subpart G—Laboratories Certified by the Department of Health and Human Services **§ 21.168 Blind Performance Testing**	Given the rigorous HHS oversight of the laboratories, as well as the business necessity for the laboratories to maintain a reliable record of accuracy, it is not likely that laboratories would relax their standards simply because the relatively small number of blind specimen tests now required was eliminated.	Eliminate the need for blind performance testing requirements similar to DOT's proposed changes in Federal Register Vol. 82, No. 217, November 13, 2017.	A1-21

Attachment 2

Industry Comments on DG 5040, Urine Specimen Collection and Test Result Review Under 10 CFR PART 26, "Fitness for Duty Programs"

Proposed Language	Comments	Suggested Wording/Revision
C. STAFF REGULATORY GUIDANCE 1. Monitoring a donor during the hydration process A. General guidance (7) Upon transferring responsibility for monitoring the donor to the hydration monitor, the collector should enter the name of the hydration monitor on the Federal custody and control form (Federal CCF). The area used for hydration should have a working clock visible to the donor(s) and the collector or hydration monitor. The clock that is used should be synchronized with the clock that the collector uses to document the start of the 3-hour hydration process.	There is no benefit or useful purpose in entering the name of the hydration monitor on the CCF. Synchronizing clocks is difficult to manage and is an un-necessary administrative burden.	Recommend to revise language to read: "(7) The area used for hydration should have a working clock visible to the donor(s) and the collector or hydration monitor. The collector is ultimately responsible for monitoring the clock."
C. STAFF REGULATORY GUIDANCE 1. Monitoring a donor during the hydration process B. Monitoring the donor during the hydration process (3) If during the hydration process, the collector or hydration monitor observes any action or behavior by the donor that may indicate an attempt to subvert the testing process, a description of the donor's conduct should be immediately documented on the Federal CCF (10 CFR 26.107(b)). If a hydration monitor observes the donor conduct, the	Throughout the guidance an excessive amount of information is required to be documented on the CCF. There is not adequate room on the CCF to document such information. Most licensees have internal documentation processes for documenting this information.	Recommend to revise language to read: "(3) If during the hydration process, the collector or hydration monitor observes any action or behavior by the donor that may indicate an attempt to subvert the testing process, a description of the donor's conduct should be immediately documented. If a hydration monitor observes the donor conduct, the hydration monitor shall then inform the collector of the observation. The hydration monitor should communicate this information to the collector while maintaining continuous monitoring of the

A2-1

A2-2

A2-3

Attachment 2

Industry Comments on DG 5040, Urine Specimen Collection and Test Result Review Under 10 CFR PART 26, "Fitness for Duty Programs"

Proposed Language	Comments	Suggested Wording/Revision	
hydration monitor shall then inform the collector of the observation. The hydration monitor should communicate this information to the collector while maintaining continuous monitoring of the donor.		donor."	A2-3
C. STAFF REGULATORY GUIDANCE 1. Monitoring a donor during the hydration process D. Providing a specimen during the hydration process (3) If the hydration monitor is not qualified as a collector, the donor shall be transferred to a collector when the donor is ready to attempt to provide a specimen.	Clarify that the collector should be available too.	Revised language to read: "(3) If the hydration monitor is not qualified as a collector, the donor shall be transferred to an available collector when the donor is ready to attempt to provide a specimen."	A2-4
C. STAFF REGULATORY GUIDANCE 2. Using mirrors during specimen collections under direct observation (10 CFR 26.115, "Collecting a Urine Specimen under Direct Observation") D. All mirrors should be sufficiently affixed or secured to a wall or structure to prevent injury to the occupants in the room, stall, or private area.	Proposal of permanently affixed mirrors creates a perception that could compromise privacy for non-observed tests. Use of portable mirrors will facilitate temporary collection facilities.	Recommend to revise language to read: "Allow for use of mirrors that are not secured to a wall or structure."	A2-5

Attachment 2

Industry Comments on DG 5040, Urine Specimen Collection and Test Result Review Under 10 CFR PART 26, "Fitness for Duty Programs"

Proposed Language	Comments	Suggested Wording/Revision
C. STAFF REGULATORY GUIDANCE 3. MRO consideration of time and temperature for urine specimens with invalid test results due to pH in the range of 9.0 to 9.5 (10 CFR 26.185(f)(3))	MRO's receive the required technical instruction for these situations through their required AAMRO qualification and periodic requalification training. Mandating one course of action, when the MRO's license, training, and qualifications require us to rely upon their knowledge and skills, is contrary to the MRO's role. Unless this is also in other Federal programs, it is unnecessary.	Recommend to delete section 3.

A2-6

PR-026
84FR48750

Comment Submission No. 18
ML19338D257

PUBLIC SUBMISSION

As of: 12/3/19 9:48 AM
Received: December 02, 2019
Status: Pending_Post
Tracking No. 1k3-9dna-wi76
Comments Due: December 02, 2019
Submission Type: Web

Docket: NRC-2009-0225
Fitness-for-Duty Drug Testing Program Requirements

Comment On: NRC-2009-0225-0009
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

Document: NRC-2009-0225-DRAFT-0044
Comment on FR Doc # 2019-18491

Submitter Information

Name: Laura Shelton, CAE, CMP (Comment-Response Document Abbreviation: DATIA)

General Comment

Drug & Alcohol Testing Industry Association (DATIA) Comments

Attachments

12.2.19.NRC.Comments.DATIA

Drug & Alcohol Testing Industry Association
1325 G Street, NW, Suite 500#5001
Washington, DC 2005
800.355.1257 (p)
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info@datia.org

December 2, 2019

Annette Vietti-Cook
Secretary, US Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Mail Stop O-16 B33
Washington, DC 20555-0001
Re: Fitness for Duty Drug Testing Requirements, Proposed Rule and Draft Regulatory Guide
No. NRC-2009-0225

Following are the comments of the Drug & Alcohol Testing Industry Association (DATIA) on the Nuclear Regulatory Commission's (NRC) Fitness for Duty Drug Testing Requirements proposed rule and draft regulatory guidance.

DATIA is a 1,500+-member national trade association representing the full spectrum of drug and alcohol testing providers including laboratories, specimen collection facilities, C/TPAs, BATs, MROs, SAPs, employers, and testing device manufacturers. DATIA's mission includes working closely with key policy makers in Federal Agencies and in Congress to ensure that the interests of the industry are heard and taken into account when changes in drug and alcohol testing rules are proposed. DATIA works to ensure that these changes foster rather than hinder the industry's growth and provide for safe and effective drug free workplaces. DATIA further works to educate the industry on current standards of service and regulatory policies and procedures. DATIA's comments on behalf of its constituency are based upon input from DATIA's members, Legislative & Regulatory Committee, and Board of Directors.

DATIA supports the NRC's proposed regulation and draft guidance that will serve to further protect public health and safety impacts as they relate to fitness for duty of personnel at NRC licensee and entity facilities. Aligning the NRC's drug testing requirements in Part 26 with the US Department of Health and Human Services' 2008 Mandatory Guidelines for Federal Workplace Drug Testing Programs is a positive step. This rulemaking would substantially increase public health and safety due to the estimated 10–12% increase in positive test results, which would lead to those individuals being denied authorized access to licensed facilities. DATIA has concluded that the proposed rule change will aid in detection and ultimately lead to enhanced public safety. Moving forward, DATIA encourages the NRC to begin immediately to work to adopt HHS' 2017 Mandatory Guidelines for Federal Workplace Drug Testing Programs that require expanded opioid testing panels. Adopting this expanded drug testing panel will provide greater reassurances that persons with authorization to access licensed facilities are fit for duty.

1

2

DATIA thanks the NRC for the opportunity to provide comments on its proposed Fitness for Duty Drug Testing Requirements and draft guidance. We are pleased to see guidelines being proposed to enhance the ability of NRC licensees to identify individuals using illegal drugs, misusing legal drugs, or attempting to subvert the drug testing process. Should you have any questions on DATIA's comments, please do not hesitate to contact me.

1
Cont.

Sincerely,

Laura Shelton, CAE, CMP

Comment Submission No. 19
ML20017A342

From: j max **(Comment-Response Document Abbreviation: MB)**
To: Schneider, Stewart
Subject: [External_Sender] PANYNJ FEDERAL FUNDING NON COMPLIANCE ON DOT 49 CFR PART 40
Date: Wednesday, September 18, 2019 10:03:16 PM
Attachments: schultz07.09.14.pdf
ATT00001.txt
ATT00002.txt
ATT00003.txt
image1.png
ATT00004.txt

This comment submission contains no comment responsive to this rulemaking or more broadly to any requirement in 10 CFR Part 26. Thus, this submission is treated as one comment and identified as MB-1 for the sake of comment tracking.

MR SCHNEIDER,
I HAVE A STORY ON PANYNJ, THEY ARE AN INDEPENDENT AGENCY THAT RECEIVES FEDERAL FUNDING BUT ARE NOT IN COMPLIANCE WITH FEDERAL REGULATIONS AND ONLY HAVE TO ANSWER TO CONGRESS. ALSO THEY JUST SETTLED THE P.O. CONTRACT. THIS WAS OUR SEVEN YEAR 300,000 STORY. ILL DONATE TO CAMPAIGN FOR YOUR TIME!
MY HUSBAND WAS DENIED DUE PROCESS FROM AN INDEPENDENT AGENCY THAT RECEIVES FEDERAL FUNDING AND ARE NOT IN COMPLIANCE WITH FEDERAL REGULATIONS? **THE 49 CFR PART 40 DOT DRUG TEST HAD NO SCIENTIST'S SIGNATURE WHICH IS A FATAL FLAW**!
NO N.Y OR N.J. GOVERNOR, POLITICIANS OR CONGRESSMAN WILL HELP, IF WANT TO BE RE-ELECTED AND OR FUNDED BY PANYNJ. HE TOOK MY PILL ON ACCIDENT, WE SPENT $300,000 ON THIS? WE BOTH WORK FULL TIME AND PAY TAXES. ALL I AM ASKING FOR HIM NOT TO BE BLACKBALLED, IT WAS MY MISTAKE !

PRISONERS AND POT DEALERS WILL GET A SECOND CHANCE BUT NOT MY HUSBAND WHO TOOK ONE ON MY PILLS ONCE?

THE ONLY PEOPLE WHO HAVE ANY SAY OVER THE PORT AUTHORITY OF NY&NJ
IS THE CONGRESS, **ITS AN INDEPENDENT AGENCY**. WE BATTLED THIS DYSFUNCTIONAL AGENCY FOR SEVEN YEARS AND $300,000 IN LEGAL BILLS (N.J. COURTS ALL THE WAY TO SUPREME COURT)? THE PA PBA LEGAL COUNSEL DID ASSIST US BY TESTIFYING BUT NEVER GAVE A DIME OF HIS UNION DUES TO US. PANYNJ PBA NEW CONTRACT WAS SETTLED LAST MONTH JULY 2019 . MY HUSBAND WAS A SECOND GENERATION PANYNJ PO, HIS FATHER SERVED 37 YEARS. NO ONE FROM NY-NJ GOVERNORS NOR CONGRESS WANTED TO GET INVOLVED WITH THIS DYSFUNCTIONAL AGENCY. **THEY RECEIVED FEDERAL FUNDING BUT IN DEPOSITIONS " THEY CLAIM THEY RECEIVED NO FEDERAL FUNDING AND THEIR POLICE OFFICERS DO NOT CARRY FIREARM"?**
TWO LIES AND NOT ONE N.J. JUDGE EVER QUESTIONED THIS, WE NEVER GOT THE CHANCE TO TESTIFY, THEIR IS NO JUST IN OUR JUSTICE SYSTEM?

MY HUSBANDS TEST WAS NOT CORRECTLY FILLED OUT OR SIGNED, AND HIS **ARBITRATOR WAS FIRED DURING DECISION DECEMBER 2011 TO BE REHIRED WITH A DIFFERENT POSITION AFTER MY HUSBANDS DECISION WAS GIVEN?**
LIKE I STATED I WANT TO SPEAK IN FRONT OF CONGRESS TO LET THEM KNOW THIS WAS NOT WHAT PRESIDENT REAGAN WANTED NOR INTENDED THIS TO

BE, AND THIS ONE MISTAKE HAUNTS HIM FOR THE REST OF HIS LIFE? NO SECOND CHANCE? NYC DOCS CAN DENY HIM ANY JOB? WOW PRISONERS NOW GET A SECOND CHANCE? HE WAS NEVER ALLOWED TO TELL HIS SIDE. THIS DYSFUNCTIONAL AGENCY HAVE REACH OVER ALL IN NY AND NJ.

MY HUSBANDS WENT BACK TO HIS FIRST JOB AS LOCAL ONE STAGEHAND AND NEITHER OF US EVER TOOK ANY PUBLIC ASSISTANCE THROUGH SEVEN YEAR COURT BATTLE.
I WOULD ASK FOR THE OPPORTUNITY TO TELL OUR STORY IN FRONT OF CONGRESS OR SENATE SO THIS DOES NOT HAPPEN TO ANYONE. THIS IS WHY AL NY NJ BRIDGES TOLLS ARE GOING UP!

PANYNJ P.O. JUST SETTLED THEIR CONTRACT JULY 2019;

2% base salary into medical. We jump to 115,000 when we sign up to 124000 in 2021. No more rule 3. Job is getting BDUs. Guys with over 15 years who retire before January 7 2023 can keep thier benefits as is. 2021 benefits 2.5% base salary and the changes to copays. New guys coming in have new benefits package. OT cap at 124,000 Contract January 2010 0% 6 months July 2010 2%. 91,800 July 2011 2%. 93,636 July 2012 1.25%. 94,806 July 2013 1.25%. 95,991 July 2014 2.25%. 98,151 July 2015 2.25%. 100,360 July 2016 2.25%. 102,618 July 2017 2.25%. 104,926 July 2018 2.25%. 107,287 Signing Bump 7.18% 115,000 completion of 7 years/2 steps added 8 steps instead of 6 July 2019 2.25%. 117,587 July 2020 2.5%. 120,527 July 2021 3%. 124.143 $ 750 additional duties pay upon ratification and each July after Health care 2019 Contribution 2% base no changes to plan Deducted before taxes 2021 2.5 % base pay contribution. Same coverage for all medical procedures Changes only to cost Co payment Doctor $20 Specialist/urgent care $35 Emergency room $100 of not admitted 75/25 out of network $3013 per year in 2021 top pay $119 paycheck Prescription Drugs $10 generic $20 preferred $40 non preferred Ongoing prescription have to join mail program 90 day supply 20/40/80 little savings from the above which is 30 day supply Detectable Going from 200/400 to 500/1000 Out pocket max 1000 per person to 3000 For out pocket max for reasonable rate going from 80/20 7k individual 14k family max to 75/25 1500 individual 3000 family Out pocket max going from 1000 per person to 3000 New hires 2.5 percent of base for epo plan in net work only. After 5 years can pay additional 1.5 percent to get out of network coverage Retirement 15+ years retire Jan 7 2023 Retired with current plan real legacy Notify job by July 2022 Retire on after 1/8/2023 2021 plan free after contract expires and before new contract when it can change 10+ legacy light 2% pension Or epo for free Really for people who vest Disability pension 2 percent of legacy or light for free Work rules Rule 3 gone where you have to talk Now if they give you notice and provide union rep have to talk and cooperate: Witnesses get a right to a union rep. Temporary suspension up to 30 days -- -- You are receiving this email because You are subscribed to the PAPD Google Groups email notification system, as part of www.gunsnhoses.com To EMAIL this group, send 1 email to PAPD@googlegroups.comfrom your registered email address. To unsubscribe from this group, send a email toPAPD-unsubscribe@googlegroups.com To change your email address Unsubscribe using the email above then go to www.GunsNHoses.com Sign up again with your new email address. You can change options by logging into your account at: https://www.google.com/accounts/Login The group stores all old posts, so you can visit this group at http://groups.google.com/group/PAPD This system is to be used exclusively for PAPD INFORMATION. --- You received this message because you are subscribed to the Google Groups "PAPD" group. To unsubscribe from this group and stop receiving emails from it, send an email to papd+unsubscribe@googlegroups.com. To post to this group, send email to papd@googlegroups.com. For more options, visit https://groups.google.com/d/optout.

THANK YOU FOR YOUR SERVICE,
GOOD LUCK AND GOD BLESS
MEGAN BARRY
WANTAGH N.Y.

CITY OF NEW YORK
CIVIL SERVICE COMMISSION

[illegible], Chair
[illegible], Vice Chair
[illegible]
[illegible]
Commissioner

1 Centre Street, Room 2300
New York, NY 10007
212-615-8913
www.nyc.gov/csc
appeals@csc.nyc.gov

[illegible]
General Counsel
[illegible]
Director of Administration

NOTICE OF CITY CIVIL SERVICE COMMISSION ACTION

John Barry
1595 Hitchcock Road
Wantagh, NY 11793
Appellant
(via email only)

Date:	07/10/2019
Case No.:	2018-1131
Exam No.:	6308
Exam Name:	Correction Officer
Expiration:	01/31/2022
Final Decision:	Affirm

The Civil Service Commission has made a final decision in connection with your appeal. A copy of the decision is attached.

Please note that if you wish to appeal this decision you must do so by filing an Article 78 proceeding in New York State Supreme Court within 4 months of the date of this decision.

NEW YORK CITY CIVIL SERVICE COMMISSION

c: [illegible]
Deputy Director of [illegible] Investigations
DOC Applicant Investigation Unit
(via email only)

[illegible]
Director of Operations
DCAS Office of the General Counsel
(via email only)

[illegible], Esq.
DCAS Legal
(via email only)

John F. Carman, Esq.
Law Offices of John F. Carman
(via email only)

PR-026
84FR48750

Comment Submission No. 20
ML20017A343

From: Nielsen, John A (INPO)
To: Zaleski, Brian; Harris, Paul
Cc: HOGG, Lisa (lbh@nei.org); rm@nei.org; Chapin, Timothy A. (INPO)
Subject: [External_Sender] NRC Open Meeting Comments 11-7-19
Date: Thursday, November 07, 2019 2:06:03 PM
Attachments: image001.png
NRC Open Meeting Comments 11-7-19.docx

(Comment-Response Document Abbreviation: INPO)

Attached are the comments you requested for the three questions I asked about/made comments about.

Hopefully we can chat more next week in DC.

John

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Thank you.

Additional comments for Proposed Part 26 Rulemaking

Submitted by John Nielsen, INPO

Hydration monitor. I already provided some comments to NEI about this, but wanted to be clear on what I offered at the Public Meeting.

I believe the changes are largely unnecessary because provisions already exist for having a third party involved in the collection process. Both §26.31 and §26.115 provide the means in which a person may be trained and used to ensure significant portions of the collection process are in compliance. Since these have been successful for at least 11 years without having to be FFD Program personnel, it appears to be unnecessary that another type of monitor would now require so much more.

It is suggested that the hydration monitor be added to the text in §26.31 and the provisions for training be clearly stated.

1

2

TEXT NOT BINNED

Validity testing/ Invalid result due to pH. This was not addressed in my comments to NEI. After the discussion for the Public Meeting, it appears that one of the most suspected causes for a specimen being out of normal range is the manner in which a specimen is handled - from time of receipt to time of delivery at the lab. “Sitting in a hot truck” was an example that was used a number of times, which would be the time that the laboratory’s courier has possession and time that we have no control over.

My comment is not about the out of range instruction, it is about the classification “Protecting the Donor.” There is current instruction in §26.117(j) that may be a significant contributor to the cause of the pH issue – potential mishandling of the donor’s specimen:

> Specimens must be shipped from the collection site to the HHS-certified laboratory or the licensee testing facility as soon as reasonably practical but, except under unusual circumstances, the time between specimen shipment and receipt of the specimen at the licensee testing facility or HHS-certified laboratory should not exceed 2 business days.

2

Allowing the courier to hold a specimen for up to 2 business days provides a much higher possibility that specimens could sit in an uncontrolled environment (hot truck) that would cause the questionable validity results. Nationally, we continue to hear examples where children or pets are dying in a hot vehicle, often exceeding 140° in a short period of time.

> Possible scenario – Courier picks up specimens on Wednesday before Thanksgiving but can’t make it to the lab on Wednesday. Since Thanksgiving is a holiday, Black Friday is often a holiday as well, and Saturday and Sunday are not business days, the 2 business days would be on Tuesday.
>
> This may be allowable by Part 26, but is it meeting intent and couldn’t this time frame cause the out of range readings?

Indirectly, is this long duration for shipping causing the donor to be suspected and additional work to be done by the MRO and FFD Staff? When questionable results arise, the donor is suspected and subject to additional testing, an MRO must interview the donor and make an assessment, and additional work is required by the FFD staff.

Rather than limiting this rule change to how the test results will be handled, I suggest the change also include the specimen handling by the courier. Shipping should be completed within 24 hours.

[Contractually, we can add a requirement that the courier service advise the client whenever this is exceeded, so I am not proposing that notification be included in the revision to §26.117(j).]

2

Blind Lots. – I did not provide comments to NEI for this item.

I believe there was an error on the slide presented. §26.168(h)(1) doesn't limit a blind provider to certifying a lot for only 6 months; it requires that any lot they certify be for a period of no more than 6 months.

In actuality, they do not certify the lot one time; they certify the lot each time they sell specimens from that lot, which could be on a daily or weekly basis. While sufficient quantity exists to conduct their certification testing, the controlled & numbered batch is considered to be an "open" lot; when no more of the batch is available for certification testing it is considered to be a "closed" lot.

The challenge that comes up is when a blind is not submitted within the two months of receipt and the open lot number must be re-verified. The first thing that must be verified is if it is still an open lot. If no longer an open lot, the blind cannot be used.

Once it is established to still be an open lot, the provider must provide evidence to the client that any time they tested the numbered lot, it was within NRC parameters. Therefore, that lot could be certified from the test date for another six months. Additional testing can be done for the open lot to establish a new certification date for the blind specimen.

3

It should be noted that neither "Lot" or "Open Lot" is defined in Part 26, so I suggest the following be added to §26.5 to minimize confusion:

> Lot (blind specimen) – A controlled and numbered batch prepared by a provider of Blind Specimens that meets specific Part 26 testing parameters for a drug type, metabolite, adulterant, etc. that must be tested and confirmed by an HHS-certified lab as part of the provider's specimen certification process.
>
> - Open Lot – A controlled and numbered batch that meets specific Part 26 testing parameters, and sufficient quantity remains to be tested and confirmed by an HHS-certified lab as part of the provider's specimen certification process.
> - Closed Lot - A controlled and numbered batch that previously met specific Part 26 testing parameters, but there is no longer sufficient quantity to support the provider's specimen certification process.

From: Adams, Dolores E:(Exelon Nuclear)
To: Zaleski, Brian
Subject: [External_Sender] RE: Part 26 Proposed Rule - Public Meeting on November 7, 2019
Date: Friday, November 08, 2019 2:47:10 PM **(Comment-Response Document Abbreviation: EN1)**

Hi Brian,

The proposed rule would revise and add requirements to permit a member of the FFD program personnel to observe a donor during the hydration process. This change would permit the initial collector to perform other activities (e.g., other collections).

I would like to propose that an individual who meets the qualifications for Fitness For Duty Authorization be an acceptable individual for the hydration monitor process. Many times, the shifts that perform chemical testing after hours and on weekends will not have a FFD program personnel to observe a donor during the hydration process. The main difference between FFD program personnel and FFD Authorization initial qualifications is the psychological test. Also, FFD Authorization personnel are in a random pool and must complete annual FFD/BOP training. The psychological test is the only element that FFD Authorization individuals do not get unless they have UAA or UA which most of them do.

1

Have a nice weekend and thank you,
Dolly

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If you SEE something, SAY something™

From: Josephchemistry
To: Schneider, Stewart
Subject: [External_Sender] quantification of urine dilution (10 CFR 26)
Date: Monday, December 02, 2019 10:11:20 PM **(Comment-Response Document Abbreviation: JC)**

Dear NRC,

In response to the proposed change to 10 CFR 26:

How is urine dilution being quantitatively determined? I am hoping quantitative specifications for determining dilution are listed somewhere else in 10 CFR. 1

Without quantifying what constitutes a dilute sample, specific individuals could be selectively chosen to meet a more stringent standard than their colleagues by a prejudiced Medical Review Officer. On the surface, this may not be a significant issue, but given the recent legalization of hemp by the 2018 Farm Bill Act, the potential for inadvertent ingestion minor amounts of THC containing foodstuffs exists. Under normal conditions, this would not trigger a positive drug test screening, but without quantitative requirements to determine urine dilution a prejudiced MRO may attempt to abuse their position. Furthermore, there's institutional pressures to "catch" drug offenders (particularly for employees are in disfavor with their supervisors), which could influence the determination if urine samples are considered dilute.

Sincerely,
Joseph

Sent with ProtonMail Secure Email.

RulemakingComments Resource

From: Mimi Estrada <mimiestrada95@yahoo.com>
Sent: Monday, March 29, 2021 12:41 PM
To: RulemakingComments Resource
Subject: [External_Sender] Fitness For Drug Testing Requirements

I personally can say I like this rule because it will keep people on track as well staying clean from any bad harmful drugs in this crazy world.
So I am all for this rule. If they can take away any of these illegals drugs the better because they don't want to be given to the wrong hands. The drug testing will not keep people in place but as well as keeping them protected subject to testing. Some may not like this rule due to being selfish and only thinking about them not being able to do drugs due to being tested. Nevertheless, it is actually for the best because like I said getting drug tested makes people scared also just being healthy and not putting bad toxicity into their bodies. So that being said Let the test keep running because it will do us some good.

1

PR-026
84FR48750

Comment Submission No. 24
ML21144A289

WILLIAM R. GROSS
Director, Incident Preparedness

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NUCLEAR ENERGY INSTITUTE

(Comment-Response Document Abbreviation: NEI2)

May 20, 2021

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemaking and Adjudications Staff

Subject: Summary of NEI Comments Provided during April 13, 2021, Public Meeting on the Effective Date of Part 26 Rulemaking, "Fitness for Duty Drug Testing Requirements" [Docket ID NRC-2009-0225]

Project Number: 689

On April 13, 2021, the U.S. Nuclear Regulatory Commission (NRC) conducted a public meeting to discuss the proposed effective date of the Final Rule, "Proposed Rulemaking: Fitness-for-Duty Drug Testing Requirements."[1] The Nuclear Energy Institute (NEI)[2] submitted comments[3] to the NRC on the proposed rule on December 2, 2019. Attachment 1 of that submittal included a comment on the proposed effective date of the Final Rule and requested the NRC to permit a 12-month period for implementation. The NRC's presentation[4] shown during a public meeting for the April 13, 2021, indicates a belief that 60 days for implementation is not expected to result in a cumulative impact on affected licensees because the "changes to FFD policy, procedures, contracts, and training are minimal." This letter summarizes the comments NEI provided at the April 13th public meeting and are being transmitted by this letter to ensure the NRC has the best available information with which to set the effective date for the Final Rule.

Licensee access authorization and fitness-for-duty staff would be directly involved in the implementation of the Final Rule. They would review the new requirements, and evaluate and oversee implementation of needed changes to policies, program descriptions, implementing procedures, and contracts with drug testing laboratories and supporting personnel. During the spring and fall outage season, access authorization and

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[1] The proposed rule was made publicly available in 84 Fed. Reg. 48750 (September 16, 2019).
[2] The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.
[3] NRC Agencywide Documents Access and Management System (ADAMS) Accession Number ML19338D255
[4] ADAMS Accession Number ML21096A010

fitness-for-duty program personnel are fully engaged in processing workers several weeks prior to the beginning of an outage. Their work continues through the outage and after as they complete the out-processing of workers no longer requiring access. In sum, their outage support work generally requires a dedicated commitment of approximately eight weeks. Depending on the publication date of the final rule, program personnel may not be available for nearly all of the proposed 60-day implementation period.

Implementation of the anticipated expanded drug testing panel (described in the Proposed Rule) will require changes to both licensee and third-party information technology systems. The third-party system will require development of a requirements specification, software updates, and testing and quality assurance verification and validation. Licensees must then perform acceptance testing, integration of the changes into their systems,[5] and training of site personnel on the changes. Further, associated changes will also be required to the industry's NANTeL Fitness for Duty training course;[6] it is anticipated that these changes will require considerable time to implement. All of these activities cannot be accomplished within the proposed 60-day implementation period.

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The one-year implementation period requested in our 2019 comment submittal accommodates the above needs and would allow licensees to address the new rule requirements without the need for exemption requests. In addition, a one-year period is consistent with those permitted to implement previous changes to FFD requirements. For example, in 2008, the NRC issued updated FFD requirements[7] and permitted a one-year period for implementation. Consequently, NEI continues to encourage the NRC to consider a 12-month implementation period for the Final Rule.

If you have any questions or require additional information, please contact Johnny Rogers at (202) 739-8032 or jdr@nei.org, or me.

Sincerely,

William R. Gross

c: Mr. Stewart Schneider, Rulemaking Project Manager, NMSS/REFS/RRPB, NRC
Mr. Brian Zaleski, Technical Lead, NSIR/DPCP/RSB, NRC
NRC Document Control Desk

[5] Many sites impose a blackout period around outages during which information technology system changes are not permitted.
[6] Maintained by the Institute of Nuclear Power Operations (INPO).
[7] Refer to 73 Fed. Reg. 16965 (March 31, 2008).

Zaleski, Brian

(Comment-Response Document Abbreviation: EH)

From: Gulliford, Maureen T <mtgulliford@energyharbor.com>
Sent: Tuesday, April 13, 2021 12:26 PM
To: Zaleski, Brian
Subject: [External_Sender] 10 CFR 26 Public Meeting

Good Day Brian,

Thank you for the meeting today! It was very informative.

I wanted to ensure it was clear that Johnny Rogers from NEI did speak on behalf of the licensees. I represent Energy Harbor and do support the comments presented by Johnny Rogers today during the public meeting detailing the challenges to implementation within the proposed 60 days. 1

As always, thank you for your consideration.

Kindest Regards, Maureen

Maureen T. Gilday-Gulliford
Energy Harbor
Supervisor, Nuclear Access
440-280-5830

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Zaleski, Brian (Comment-Response Document Abbreviation: EN2)

From: Yerkes, Mary Frances:(Exelon Nuclear) <Mary.Yerkes@exeloncorp.com>
Sent: Tuesday, April 13, 2021 1:05 PM
To: Zaleski, Brian
Cc: Anderson, Andy:(Exelon Nuclear); Harris, Paul
Subject: [External_Sender] NRC Public Meeting

Brian,
I wanted you to know that Exelon was on the call today and we were unable to provide comments (even after pressing *1). I want to make sure you understand that Johnny was speaking for all NEI members. We worked together on the response and agree 100% with NEI that 60 days would provide significant challenges for Exelon. 1
Thank you for your time.

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