

Congressional Review Act Summary

AGENCY: U.S. Nuclear Regulatory Commission

TITLE OF ACTION: Fitness for Duty Drug Testing Requirements
(10 CFR Part 26)

TYPE OF ACTION: Final Rule

LEVEL OF SIGNIFICANCE: Non-Major

AGENCY IDENTIFICATION: 3150

RIN AND/OR DOCKET ID: 3150-AI67 / NRC-2009-0225

DATE OF ISSUANCE: Estimated April 2022; effective on the date of publication;
compliance is required by 1 year after the date of
publication.

STATUTORY OR
JUDICIAL DEADLINE: None

DESCRIPTION OF ACTION:

The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations related to fitness for duty drug testing requirements for certain licensees and other entities.

This final rule amends the NRC's regulations regarding fitness for duty (FFD) programs in 10 CFR Part 26, "Fitness for Duty Programs," for certain licensees and other entities to more 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" in 2008 and as revised in 2017. The final rule also incorporates lessons learned from implementation of the NRC's current FFD regulations. These changes enhance the ability to identify individuals using illegal drugs, misusing legal drugs, or attempting to subvert the drug testing process. This final rule provides additional protections to individuals subject to drug testing and improves the clarity, organization, and flexibility of the NRC's FFD regulations. This final rule provides a new flexibility for the collection and drug testing of an oral fluid specimen as an alternative to the collection and testing of a urine specimen under direct observation conditions. The NRC is also issuing final implementation guidance for this final rule.

ANALYSIS

- **Is there an annual effect on the economy of \$100 million or more?**

No, there is not an annual effect on the economy of \$100 million or more. This final rule is projected to result in a net benefit to industry of between \$418,356 based on a 7 percent net present value and \$692,799 based on a 3 percent net present value. This final rule would result in an estimated total one-time industry cost of \$136,936, followed by a total annual industry savings of \$47,650. On a per licensee or other entity site

basis, this final rule would result in an average one-time cost of \$2,321 and annual savings of \$808. The NRC is not expected to incur any incremental costs resulting from the final rule changes.

The NRC estimates are based on the following assumptions:

- Evaluated 11 years (years 2009 through 2019) of site-specific Part 26 FFD program performance data to establish baseline estimates used for tested populations and positive testing rates for substances
 - Used Part 26 FFD performance testing data as the basis to forecast the future positive testing rates for 6-AM, amphetamines, cocaine, dilute specimens, and suspect specimens
 - Assumed the publication year of final rule is 2022
 - Collected fitness for duty drug testing cost data from licensees and certified drug testing laboratories
 - Estimated expected positive testing rates for expanded panel drugs based on Department of Transportation (DOT) drug testing performed from years 2010 through 2018 for three DOT modal administrations
- **Is there a major increase (typically 10% - 20%) in costs for consumers, individual industries, Federal, State, or local government agencies, or geographical regions?**

No, there is no major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographical regions.

The NRC staff finds that, considered together, the detection of additional drug users and the qualitative benefits of doing so continue to maintain reasonable assurance of a drug-free workplace and outweigh the low costs of the final rule. The direct benefit of this rule is to enhance the effectiveness of NRC-required FFD drug testing programs by identifying additional individuals using drugs. The NRC staff estimates that the final rule results in a 22-percent increase in the number of individuals identified each year using illegal drugs, misusing legal drugs, or attempting to subvert the drug testing process. The final rule also improves regulatory efficiency by aligning elements of 10 CFR Part 26 with changes in the 2008 and 2017 HHS Guidelines and by applying lessons learned from implementation of the NRC's 2008 FFD final rule by licensees and other entities. A more robust drug testing program also may deter additional individuals using drugs from seeking employment for positions subject to 10 CFR Part 26 and incentivize those in regulated positions to cease drug use or seek medical assistance to address an addiction or misuse issue, or both.

- **Is there a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets?**

There is no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The licensees and other entities affected by this final rule are U.S. based entities. This final rule will have a positive effect on licensees and other entities because the revised requirements are based on the best available knowledge from the HHS Guidelines and

operational experience. As a result, the revised requirements are coherent, logical, and practical, and thus are readily understood and easily applied.

SUMMARY

The NRC staff believes that this final rule to revise the fitness for duty drug testing requirements is not a major action (not a major rule) under the Congressional Review Act and is cost-justified. The final rule will more closely align the drug testing provisions in 10 CFR Part 26 with the 2008 and 2017 HHS Guidelines to enhance the ability of licensees and other entities to identify individuals using illegal drugs and misusing legal drugs. The final rule is legally binding and would not result in a net economic impact of more than \$100 million annually.

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