

# **Presentation to the Nuclear Energy Institute's Annual Access Authorization/Fitness for Duty Conference**

## **Operating Experience and Status of Regulatory Issues**

10 CFR Part 26, Fitness-for-Duty Programs  
*"A Direct Contribution to Safety and Security"*

***July 14, 2021***



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# Discussion Topics

- Fitness-for-Duty (FFD) Program Objective
- FFD Program Performance Test Results
- Rulemakings & Guidance
  - Part 26, HHS Guidelines
  - Part 50-52, Lessons Learned
  - Part 53, Advanced Reactors
  - RROAR
- Items of Possible Interest



## FFD Program Objective

Provide reasonable assurance that personnel subject to 10 CFR Part 26 (e.g., nuclear power plant personnel) are trustworthy, reliable, and not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform assigned duties or be afforded unescorted access to the protected areas of nuclear power plants, sensitive information, or strategic special nuclear material (SSNM).

An FFD program developed under 10 CFR Part 26 is intended to create an environment which is free of drugs and alcohol, and the effects of such substances.



# FFD Program Performance, 2018-2020

## Summary Results



	2018	2019	2020 (draft)
<b>Number of Facilities Reporting</b>	71	70	69
<b>Individuals Tested</b>	145,797	131,417	124,398
<b>Individuals Testing Positive*</b>	1,187	1,085	1,045
Identified at Pre-access Testing	69.6%	67.3%	67.5%
Identified at Random Testing	17.8%	21.8%	22.7%
<b>Industry Positive Rate, All Tests</b>	0.81%	0.83%	0.84%
Licensee Employee (LE)	0.28%	0.26%	0.32%
Contractor/Vendors (CVs)	1.06%	1.10%	1.09%
<b>Industry Positive Rate, Random Tests</b>	0.37%	0.45%	0.49%
LE Positive Rate	0.17%	0.19%	0.23%
CV Positive Rate	0.68%	0.86%	0.92%

\* Positive = Positive drug and alcohol tests, adulterated and substituted validity test results, and refusals to test  
All results in presentation are MRO verified

# FFD Performance Results [DRAFT] by Test and Employment Categories, 2020



Test Category	Licensee Employees			Contractor/Vendors (C/Vs)			Total			% of Total Positives
	Tested	Positive	Percent Positive	Tested	Positive	Percent Positive	Tested	Positive	Percent Positive	
Pre-Access	6,736	26	0.39%	62,824	679	1.08%	69,560	705	1.01%	67.5%
Random	30,649	71	0.23%	17,961	166	0.92%	48,610	237	0.49%	22.7%
For Cause	91	7	7.69%	238	39	16.39%	329	46	13.98%	4.4%
Post-Event	84	1	1.19%	373	1	0.27%	457	2	0.44%	0.2%
Follow-up	2,441	22	0.90%	3,001	33	1.10%	5,442	55	1.01%	5.3%
<b>Total</b>	<b>40,001</b>	<b>127</b>	<b>0.32%</b>	<b>84,397</b>	<b>918</b>	<b>1.09%</b>	<b>124,398</b>	<b>1,045</b>	<b>0.84%</b>	<b>100.0%</b>

## Where were the most tests conducted in 2020 (>90% of tests)?

Licensee Employees		Contractor/Vendors	
Pre-access	16.8%	Pre-access	74.4%
Random	76.6%	Random	21.3%
Follow-up	6.1%	Follow-up	3.6%
	99.6%		99.3%

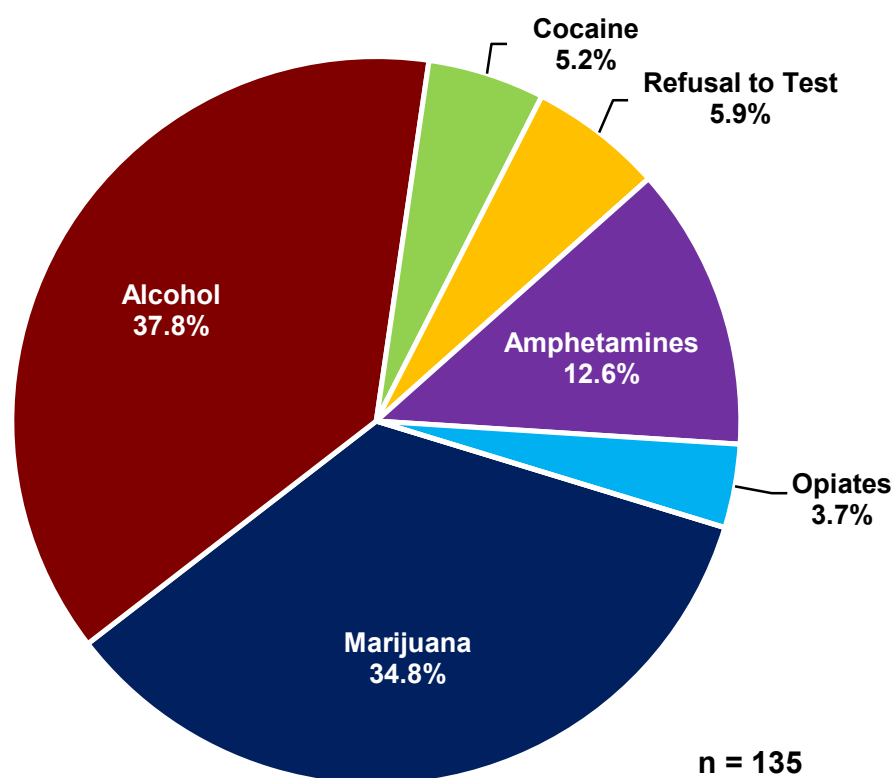
## Where were most drug and alcohol testing violations identified in 2020 (>90% of positives)?

Licensee Employees		Contractor/Vendors	
Pre-Access	20.5%	Pre-access	74.0%
Random	55.9%	Random	18.1%
For Cause	5.5%	ForCause	4.2%
Follow-up	17.3%		96.3%
	99.2%		

# FFD Performance Results [DRAFT] by Employment Category, 2020

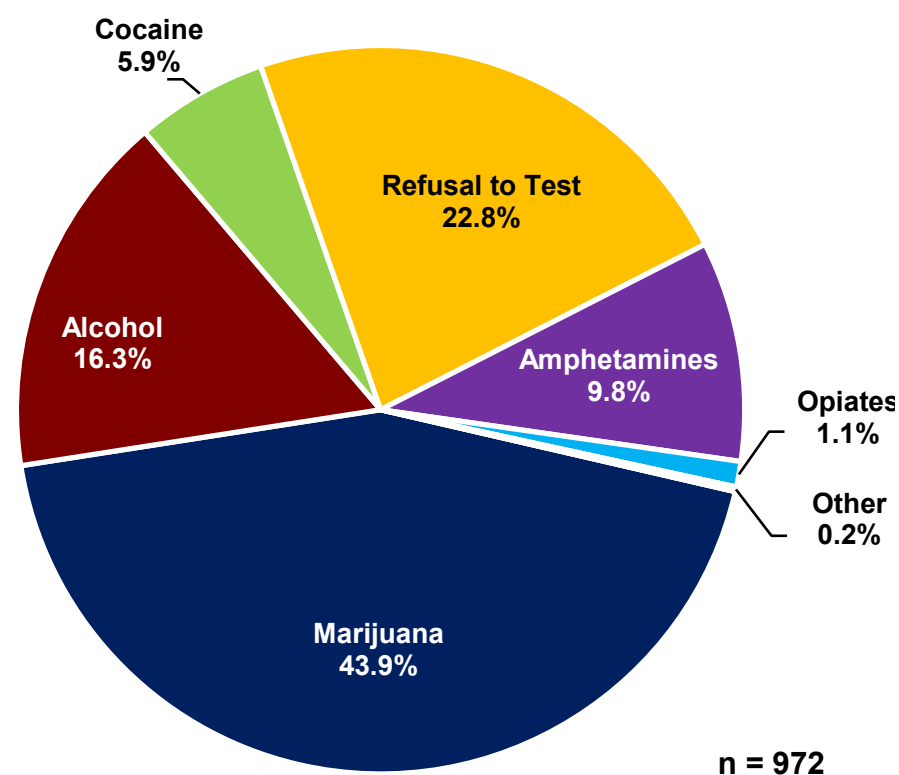
## Licensee Employees

(40,001 tested; 127 individuals positive)



## Contractors/Vendors

(84,397 tested; 918 individuals positive)



# Subversion Attempt Trends (2016-2020)

**Subversion attempt:** Any willful act or attempted act to cheat on a required test (e.g., refuse to provide a specimen, alter a specimen with an adulterant, provide a specimen that is not from the donor’s body)

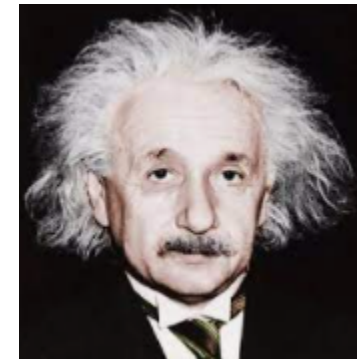
**Subversion attempt sanction:** Permanent denial unescorted access, 10 CFR 26.75(b)

	2016	2017	2018	2019	2020 (Draft)
Number of Subversion Attempts	305	305	298	307	288
Percentage of Drug Testing Violations	32.4%	31.9%	31.0%	34.5%	34.4%
Identified at Pre-access Testing	77.6%	72.1%	67.5%	77.5%	73.3%
Committed by Contractor/Vendors	98.0%	97.7%	95.6%	97.4%	96.2%
Percentage of Sites Reporting At Least One Subversion	53%	64%	70%	61%	72%



# Rulemaking & Guidance

- Part 26, HHS Guidelines
- Part 50-52, Lessons Learned
- Part 53, Advanced Reactors
- RROAR



# Rulemakings & Guidance

## **Part 26, HHS Guidelines**

(RIN 3150-AI67; Docket NRC-2009-0225)

- Aligning Part 26 drug testing requirements more closely with U.S. Department of Health and Human Services' 2008 and 2017 Mandatory Guidelines for Federal Workplace Drug Testing of urine specimens
- NRC has resolved public comments received on the Proposed Rule (84 FR 48750, September 16, 2019) and is preparing the Final Rule package, which is due to the Commission in September 2021
- Substantive changes from the Proposed Rule discussed at Cumulative Effects of Regulation public meeting on April 13, 2021 (ADAMS No. ML21096A015)
  - Align drug testing panel to 2017 HHS Guidelines (add hydrocodone, hydromorphone, oxycodone, oxymorphone)
  - Optional oral fluid testing for observed collection conditions



# Rulemakings & Guidance

## **Part 50-52, Lessons Learned**

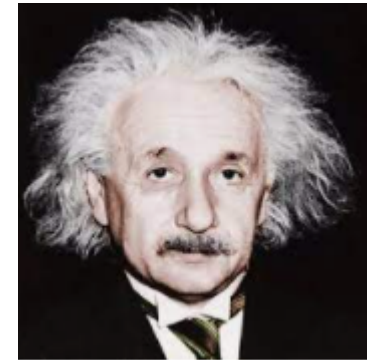
(RIN: 3150-AI66; Docket: NRC-2009-0196)

- Purpose: alignment of licensing requirements of Parts 50 and 52. The Commission directed the NRC staff to also pursue rulemaking to incorporate lessons learned from recent new power reactor licensing reviews
- Regulatory Basis completed and issued
- Working to issue the proposed rule (9/22)

### FFD Topics:

- "Full program" implementation date - initial core load
- Escorting individuals
- MRO review of dilutes
- Clarifications

**"The only  
mistake in life  
is the lesson  
not learned"**



# Rulemakings & Guidance

## Part 53, Advanced Reactors

### Highlights

A new regulatory paradigm

Technology Inclusive

Risk-informed

- consequence based
- two FFD criterion in development

Objective-based

- fewer prescriptive requirements
- framework conforms to other Parts

Performance-based

- one new requirement being proposed

### Technical Considerations

Transportation of advanced reactors

Human performance – walk-a-way

Design Basis Threat – designed mitigation

Radiological consequences – minimized



# Rulemakings & Guidance



## **Retrospective Review of Administration Requirements (ROAR)**

(Docket: NRC-2017-0214)

- Request for Comment, February 4, 2020 (85 FR 6103) (ADAMS Accession No. ML20128J340)
- Petition for rulemaking for NRC immediate notifications (SECY-20-0109) 10 CFR 50.72
- Finalize rulemaking plan (July-November 2021)  
46 of 145 comments being evaluated



### FFD Topics

- Reporting of FFD policy violations for “any supervisory personnel” under 10 CFR 26.719(b)(2) and 26.417(b)(1)
- May need to update RG 5.84 and NEI 06-06

## Items of Possible Interest



### 2017 Federal Custody and Control Form expiring

The 2020 Federal CCF must be used starting August 30, 2021 (if use 2017 Federal CCF, need to submit a memo to the HHS laboratory, see 26.153(g))

### Information Collection Clearance on Part 26 (3-year extension)

Final package at OMB since March 17, 2021 (existing clearance expired April 30, 2021 – automatically extends while OMB reviews final package)

### Office of Nuclear Security and Incident Response Management Changes

- Office Director, Mirela Gavrilas
- Deputy Office Director, Craig Erlanger
- Division Director, Physical, Cyber, and Security Policy, acting Sabrina Attack (Greg Bowman)



# NRC Fitness-for-Duty Program Staff



## U.S. Nuclear Regulatory Commission

Office of Nuclear Security and Incident Response

Paul Harris, Senior Program Manager

[Paul.Harris@nrc.gov](mailto:Paul.Harris@nrc.gov) (301-287-9294)

Brian Zaleski, Fitness-for-Duty Program Specialist

[Brian.Zaleski@nrc.gov](mailto:Brian.Zaleski@nrc.gov) (301-287-0638)