

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

## **Proposed Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (Discussion on Drug and Alcohol Testing Provisions)**

July 13, 2022



# Rulemaking Background



- An increase in plant shutdowns led the NRC to initiate rulemaking in December 2015 to improve the transition to decommissioning
- The NRC conducted extensive public outreach including soliciting comments on an advance notice of proposed rulemaking and a regulatory basis document
- The proposed rule was published in the *Federal Register* on **March 3, 2022** ([87 FR 12254](#)).
- The deadline to submit comments on the proposed rule is **August 30, 2022**

# Topics Addressed in the Proposed Rule

- Emergency preparedness
- Physical security
- Cyber security
- **Drug and alcohol testing**
- Certified fuel handler definition and elimination of the shift technical advisor
- Decommissioning funding assurance
- Offsite and onsite financial protection requirements and indemnity agreements
- Environmental considerations
- Record retention requirements
- Low-level waste transportation
- Spent fuel management planning
- Backfit rule
- Foreign ownership, control, or domination
- Clarification of scope of license termination plan requirement
- Removal of license conditions and withdrawal of orders
- Changes for consistent treatment of holders of combined licenses and operating licenses

# Drug and Alcohol Testing

- This proposed rule would correct inconsistencies in the NRC's regulations for fitness-for-duty (FFD) programs and clarify provisions regarding a nuclear power reactor licensee's insider mitigation program (IMP).
- The following three sections of the CFR would be amended:
  - 10 CFR 26.3, "Scope"
  - 10 CFR 26.825, "Criminal penalties"
  - 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage"
- The proposed rule discussed these topics on Federal Register Notice pages 87 FR 12286 and 87 FR 12287.

# Drug and Alcohol Testing – 10 CFR 26.3, “Scope”

- The proposed rule would correct an inconsistency in the applicability of Part 26 to Part 50 and Part 52 license holders of nuclear power reactors.
- Part 26 does not apply to a Part 50 license holder once the NRC docket the licensee's 50.82(a)(1) certification that the power reactor has permanently ceased operations, which formally begins the decommissioning process. However, Part 26 continues to apply to the holder of a combined license issued under Part 52 throughout decommissioning. No technical basis exists for this inconsistency.
- The proposed rule would revise 26.3(a) to specify that Part 26 also no longer applies to a Part 52 license holder once the NRC docket the licensee's 52.110(a) certification that the power reactor has permanently ceased operations.

# Drug and Alcohol Testing – 10 CFR 26.825, “Criminal penalties”

- Section 26.3(a) includes a substantive requirement for certain entities to comply with requirements in Part 26 by a specific deadline and violations of this regulation should be subject to criminal penalties.
- The compliance deadlines in 26.3(a) were added in the 2008 Part 26 Final Rule ([73 FR 16966](#)), but 26.825(b) was not updated to reflect this change, which was an oversight.
- The proposed rule would remove 26.3 from the list of provisions in 26.825(b) that are not subject to criminal penalties if violated.

# Drug and Alcohol Testing – 10 CFR 73.55, Insider Mitigation Program



- Section 73.55(b)(9)(ii)(B) requires that a licensee's IMP contain elements from the FFD program described in Part 26 but does not identify which FFD program elements must be included in the IMP.
- The proposed rule would establish the required elements of an FFD program in the IMP for decommissioning reactors under Parts 50 and 52.

# Drug and Alcohol Testing – 10 CFR 73.55, Insider Mitigation Program

The proposed rule would establish the required FFD program elements for decommissioning reactor sites under a new 73.55(b)(9)(ii)(B)(2) as follows:

- Full Part 26 FFD program (except Subparts I and K) would apply to:
  - ☐ Any individuals who maintain unescorted access authorization (UAA) and have unescorted access (UA) to a vital area
  - ☐ Certified fuel handlers covered by 50.2
  - ☐ Security personnel, as defined in 26.4(a)(5)
  - ☐ FFD program personnel, as defined in 26.4(g)
- Any individuals who maintain UAA and have UA to the protected area, and not described above under a Full Part 26 FFD program, would be subject to:
  - ☐ Pre-access and For-cause testing, 26.31(c)(1) and (2)
  - ☐ Behavioral Observation Program, 26.33



# How to Submit a Comment



- Complete a Comment Form at Regulations.gov:  
<https://www.regulations.gov/commenton/NRC-2015-0070-0229>  
  
or
- Email: [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov)  
  
or
- Mail: Secretary, U.S. Nuclear Regulatory Commission,  
Washington, DC 20555-0001,  
ATTN: Rulemakings and Adjudications Staff

# Rulemaking Schedule



- Public comment period ends: August 30, 2022
- Final rule to the Commission: October 2023 (estimated)
- Final rule publication: May 2024 (estimated)

# Rulemaking Resources



- NRC public website for the rule: <https://go.usa.gov/xzksC>
- Unofficial redline/strikeout document of proposed rule changes is available at: <https://www.nrc.gov/docs/ML2203/ML22032A001.pdf>
- **Rulemaking Senior Project Manager**  
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