

Comments and Changes to the Final Rule in SECY-06-0244

1. The provisions for minimum days off during normal operating conditions (e.g. 26.205(d)(3)) should provide maintenance personnel within the scope of 26.4(a)(2) a minimum of 2 days off per week when working 10 or 12 hour shifts and 1 day off per week when working 8 hour shifts, as averaged over a 6 week shift cycle.
2. The provisions for minimum days off during outage conditions (e.g. 26.205(d)(4)) should provide maintenance personnel within the scope of 26.4(a)(2) a minimum of 1 day off per week.
3. The staff should include in § 26.5 “Definitions” an appropriate definition of ‘maintenance’ reasonably consistent with the NRC’s existing guidelines in Generic Letter 83-14.
4. The staff should ensure that personnel who actually perform independent quality control/verification (QC/QV) checks under the licensee's NRC-approved Quality Assurance Program are subject to the same Subpart I provisions as operating personnel defined in category § 26.4(a)(1). If staff and OGC determine that this provision of the rule requires re-notice and comment under the APA, staff should issue the final rule without this provision. In that case, staff should separately initiate the additional appropriate noticing for this provision.
5. The staff should delete § 26.205(d)(7).
6. The requirement for licensees to evaluate the effectiveness of their control of work hours of individuals who are subject to this rule should be revised to a frequency of once per year.
7. The staff should delete proposed § 26.203(e)(2)(i) through (iv) and replace it with a revised § 26.203(e)(2) as follows: “A summary of corrective actions, if any, resulting from the analyses of these data, including fatigue assessments.” The deleted items should be moved to an appropriate location in § 26.211 Fatigue Assessments.
8. When construction activities begin, full Part 26 fitness-for-duty (FFD) program, except Subparts I and K, should apply to the following personnel at the site where the plant will be operated:
 - security personnel required by the NRC
 - those who perform quality assurance / quality control / quality verification activities related to safety-related or security-related construction activities
 - individuals directly involved in witnessing or determining inspections, tests, and analyses (ITAAC) certification
 - designated individuals to monitor the fitness of individuals
 - individuals responsible for oversight and implementation of the licensee fitness-for-duty and access authorization programs.
 - second-level and higher supervisors and managers

9. For construction workers and first level supervisors, the Subpart K FFD program elements required for detecting and deterring substance abuse should be:
 - pre-assignment, for-cause, and post-accident drug and alcohol testing, and
 - either a fitness monitoring program, or a random drug and alcohol testing program and behavioral observation program
10. The supporting documents to the Commission paper, particularly the Federal Register notice, should be amended to reflect the EDO's resolution of the different staff positions, as further modified by the Commission.
11. The staff should clarify the Statements of Consideration regarding the acceptability of Evidential Breath Testing (EBT) device calibration methods currently in use.
12. The staff should revise the Summary section on page 1 of the final rule package to include that this rule also applies to facilities possessing Category 1A material.
13. Change the word "sanctions" to "disciplinary actions" in § 26.203(b)(4).
14. The staff should delete § 26.401(b) since the requirement to submit a description of the fitness-for-duty program will be required by the new § 52.79(a)(44). The staff should verify that a Part 50 applicant would be similarly required to submit a description of the fitness-for-duty program under existing regulation; if not, the staff should modify 26.401(b) as necessary to create a requirement for Part 50 applicants.
15. The staff should replace working on unit outage activities with solely performing outage activities in the first sentence of § 26.205(d)(4) and any other pertinent sections to clarify the requirements.