

without the knowledge and consent of the licensee.

(b) Each licensee subject to this part shall assure that contractors whose own fitness-for-duty programs are relied on by the licensee adhere to an effective program, which meets the requirements of this part, and shall conduct audits pursuant to § 26.80 for this purpose.

§ 26.24 Chemical and alcohol testing.

(a) To provide a means to deter and detect substance abuse, the licensee shall implement the following chemical testing programs for persons subject to this part:

(1) Testing within 60 days prior to the initial granting of unescorted access to protected areas or assignment to activities within the scope of this part.

(2) Unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an equal probability of being selected and tested. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Random testing must be conducted at an annual rate equal to at least 50 percent of the workforce.

(3) Testing for-cause, i.e., as soon as possible following any observed behavior indicating possible substance abuse; after accidents involving a failure in individual performance resulting in personal injury, in a radiation exposure or release of radioactivity in excess of regulatory limits, or actual or potential substantial degradations of the level of safety of the plant if there is reasonable suspicion that the worker's behavior contributed to the event; or after receiving credible information that an individual is abusing drugs or alcohol.

(4) Follow-up testing on an unannounced basis to verify continued abstinence from the use of substances covered under this part.

(b) Testing for drugs and alcohol, at a minimum, must conform to the "Guidelines for Drug and Alcohol Testing Programs," issued by the Nuclear

Regulatory Commission and appearing in appendix A to this part, hereinafter referred to as the NRC Guidelines. Licensees, at their discretion, may implement programs with more stringent standards (e.g., lower cutoff levels, broader panel of drugs). All requirements in this part still apply to persons who fail a more stringent standard, but do not test positive under the NRC Guidelines. Management actions must be the same with the more stringent standards as if the individual had failed the NRC standards.

(c) Licensees shall test for all substances described in paragraph 2.1(a) of the NRC Guidelines. In addition, licensees may consult with local law enforcement authorities, hospitals, and drug counseling services to determine whether other substances with abuse potential are being used in the geographical locale of the facility and the local workforce. When appropriate, other substances so identified may be added to the panel of substances for testing. Appropriate cutoff limits must be established by the licensee for these substances.

(d)(1) Licensees may conduct initial screening tests of an aliquot before forwarding selected specimens to a laboratory certified by the Department of Health and Human Services (HHS), provided the licensee's staff possesses the necessary training and skills for the tasks assigned, the staff's qualifications are documented, and adequate quality controls for the testing are implemented. Quality control procedures for initial screening tests by a licensee's testing facility must include the processing of blind performance test specimens and the submission to the HHS-certified laboratory of a sampling of specimens initially tested as negative. Except for the purposes discussed below, access to the results of preliminary tests must be limited to the licensee's testing staff, the Medical Review Officer (MRO), the Fitness-for-Duty Program Manager, and the employee assistance program staff, when appropriate.

(2) No individual may be removed or temporarily suspended from unescorted access or be subjected to other administrative action based solely on an unconfirmed positive result from any

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drug test, other than for marijuana (THC) or cocaine, unless other evidence indicates that the individual is impaired or might otherwise pose a safety hazard. With respect to onsite initial screening tests for marijuana (THC) and cocaine, licensee management may be informed and licensees may temporarily suspend individuals from unescorted access or from normal duties or take lesser administrative actions against the individual based on an unconfirmed presumptive positive result provided the licensee complies with the following conditions:

(i) For the drug for which action will be taken, at least 85 percent of the specimens which were determined to be presumptively positive as a result of preliminary onsite screening tests during the last 6-month data reporting period submitted to the Commission under §26.71(d) were subsequently reported as positive by the HHS-certified laboratory as the result of a GC/MS confirmatory test.

(ii) There is no loss of compensation or benefits to the tested person during the period of temporary administrative action.

(iii) Immediately upon receipt of a negative report from the HHS-certified laboratory, any matter which could link the individual to a temporary suspension is eliminated from the tested individual's personnel record or other records.

(iv) No disclosure of the temporary removal or suspension of, or other administrative action against, an individual whose test is not subsequently confirmed as positive by the MRO may be made in response to a suitable inquiry conducted under the provisions of §26.27(a), a background investigation conducted under the provisions of §73.56, or to any other inquiry or investigation. For the purpose of assuring that no records have been retained, access to the system of files and records must be provided to licensee personnel conducting appeal reviews, inquiries into an allegation, or audits under the provisions of §26.80, or to an NRC inspector or other Federal officials. The tested individual must be provided a statement that the records in paragraph (d)(2)(iii) of this section have not been retained and must be informed in

writing that the temporary removal or suspension or other administrative action that was taken will not be disclosed, and need not be disclosed by the individual, in response to requests for information concerning removals, suspensions, administrative actions or history of substance abuse.

(e) The Medical Review Officer's review of the test results must be completed and licensee management notified within 10 days of the initial presumptive positive screening test.

(f) All testing of specimens for urine drug testing, except onsite testing under paragraph (d) above, must be performed in a laboratory certified by the U.S. Department of Health and Human Services for that purpose consistent with its standards and procedures for certification. Except for suspect specimens submitted for special processing (Section 2.7(d) of appendix A), all specimens sent to certified laboratories shall be subject to initial screening by the laboratory and all specimens screened as presumptively positive shall be subject to confirmation testing by the laboratory. Licensees shall submit blind performance test specimens to certified laboratories in accordance with the NRC Guidelines (appendix A).

(g) Tests for alcohol must be administered by breath analysis using breath alcohol analyses devices meeting evidential standards described in section 2.7(O)(3) of appendix A. A breath alcohol content indicating a blood alcohol concentration of 0.04 percent or greater must be a positive test result. The confirmatory test for alcohol shall be done with another breath measurement instrument. Should the person demand further confirmation, the test must be a gas chromatography analysis of blood.

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§26.25 Employee assistance programs (EAP).

Each licensee subject to this part shall maintain an employee assistance program to strengthen fitness-for-duty programs by offering assessment,