Presentation to the
Drug Testing Advisory Board (HHS/SAMHSA)

Program Updates

U.S. Nuclear Regulatory Commission
10 CFR Part 26, Fitness for Duty Programs

June 21, 2022
Discussion Topics

- Fitness-for-Duty (FFD) Program Objective
- FFD Program Performance Trend Update
- FFD Rulemaking Update
  - HHS Guidelines
  - 10 CFR Part 53
NRC Fitness for Duty Program Objectives
(10 CFR 26.23)

A licensee must implement an FFD program to provide reasonable assurance that persons are:

- Trustworthy and reliable;
- 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.
Assuring Safety and Security through a Defense-in-Depth Strategy

- Access Authorization
  - Fit
  - Reliable
  - Trustworthy
  - Workers
- Behavioral Observation
- Drug and Alcohol Testing
- Fatigue Management
### Results by Test and Employment Categories, 2021 [DRAFT]

<table>
<thead>
<tr>
<th>Test Category</th>
<th>Licensee Employees</th>
<th>Contractor/Vendors (C/Vs)</th>
<th>Total</th>
<th>% of Total Positives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Tested</td>
<td>Positive</td>
<td>Percent Positive</td>
<td>Tested</td>
</tr>
<tr>
<td>Pre-Access</td>
<td>7,825</td>
<td>46</td>
<td>0.59%</td>
<td>55,218</td>
</tr>
<tr>
<td>Random</td>
<td>28,575</td>
<td>78</td>
<td>0.27%</td>
<td>16,953</td>
</tr>
<tr>
<td>For Cause</td>
<td>69</td>
<td>7</td>
<td>10.14%</td>
<td>191</td>
</tr>
<tr>
<td>Post Event</td>
<td>75</td>
<td>-</td>
<td>0.00%</td>
<td>285</td>
</tr>
<tr>
<td>Followup</td>
<td>2,284</td>
<td>17</td>
<td>0.74%</td>
<td>2,732</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>38,828</td>
<td>148</td>
<td>0.38%</td>
<td>75,379</td>
</tr>
</tbody>
</table>

**Where were the most tests conducted in 2021 (>90% of tests)?**

<table>
<thead>
<tr>
<th>Category</th>
<th>Licensee Employees</th>
<th>Contractor/Vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-access</td>
<td>20.2%</td>
<td>Pre-access 73.3%</td>
</tr>
<tr>
<td>Random</td>
<td>73.6%</td>
<td>Random 22.5%</td>
</tr>
<tr>
<td>Followup</td>
<td>5.9%</td>
<td>Followup 3.6%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>99.6%</td>
<td>99.4%</td>
</tr>
</tbody>
</table>

**Where were most drug and alcohol testing violations identified in 2021 (>90% of positives)?**

<table>
<thead>
<tr>
<th>Category</th>
<th>Licensee Employees</th>
<th>Contractor/Vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre Access</td>
<td>31.1%</td>
<td>Pre-access 72.2%</td>
</tr>
<tr>
<td>Random</td>
<td>52.7%</td>
<td>Random 20.4%</td>
</tr>
<tr>
<td>For Cause</td>
<td>4.7%</td>
<td>For Cause 3.5%</td>
</tr>
<tr>
<td>Followup</td>
<td>11.5%</td>
<td><strong>Total</strong> 96.1%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0%</td>
<td></td>
</tr>
</tbody>
</table>
Results by Employment Category, 2021 [DRAFT]

**Licensee Employees**
(38,828 tested, 148 individuals positive)
- Alcohol: 40.3%
- Marijuana: 43.6%
- Cocaine: 6.0%
- Refusal to Test: 5.4%
- Amphetamines: 3.4%
- Opiates: 1.3%

n = 149

**Contractor/Vendors**
(75,379 tested, 951 individuals positive)
- Alcohol: 12.1%
- Marijuana: 49.4%
- Cocaine: 8.5%
- Refusal to Test: 20.8%
- Amphetamines: 8.5%
- Opiates: 0.6%

n = 998
Detection Trends – NRC Testing Panel
Percentage of Total Positives by Substance Tested

- **marijuana**
- **cocaine**
- **alcohol**
- **amphetamines**
- **opiates**
- **PCP**

*Draft data (2021 reporting cycle closed 02/28/22)*
**Subversion Attempt Trends (2016-2021)**

**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)

<table>
<thead>
<tr>
<th>Category</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Subversion Attempts</td>
<td>305</td>
<td>305</td>
<td>298</td>
<td>307</td>
<td>288</td>
<td>272</td>
</tr>
<tr>
<td>Percentage of Drug Testing Violations</td>
<td>32.4%</td>
<td>31.9%</td>
<td>31.0%</td>
<td>34.5%</td>
<td>34.4%</td>
<td>29.7%</td>
</tr>
<tr>
<td>Identified at Pre-access Testing</td>
<td>77.6%</td>
<td>72.1%</td>
<td>67.5%</td>
<td>77.5%</td>
<td>74.7%</td>
<td>71.3%</td>
</tr>
<tr>
<td>Committed by Contractor/Vendors</td>
<td>98.0%</td>
<td>97.7%</td>
<td>95.6%</td>
<td>97.4%</td>
<td>96.2%</td>
<td>94.5</td>
</tr>
<tr>
<td>Percentage of Sites Reporting At Least One Subversion</td>
<td>53%</td>
<td>64%</td>
<td>70%</td>
<td>61%</td>
<td>72%</td>
<td>71%</td>
</tr>
</tbody>
</table>

* Draft data (2021 reporting cycle closed on February 28, 2022)

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

10 CFR Part 26, HHS Guidelines (RIN 3150-AI67; Docket NRC-2009-0225)

The Final Rule was approved by the Commission and the rule:

• Aligns the urine drug testing panel and cutoff levels with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Guidelines) issued in 2008 and 2017
  ➢ Lowers testing cutoffs for amphetamine, cocaine, and methamphetamine
  ➢ Improves testing method for the heroin metabolite (6-acetylmorphine)
  ➢ Expands testing panel to include two Ecstasy-type drugs (MDMA, MDA) and four prescription opioids (hydrocodone, hydromorphone, oxycodone, oxymorphone)

• Provides an option to collect and test an oral fluid specimen under direct observation (consistent with the HHS Guidelines)

• Strengthens subversion detection methods by mandating special analyses testing of all dilutes and specimens collected under direct observation conditions (i.e., suspected subversion attempts)
Rulemaking Update


- Consolidated preliminary rule language, second iteration, was released in May 2022 (ADAMS accession no. ML22125A000)

- Regulatory guidance is being developed

- More public meetings will be conducted, https://www.nrc.gov/about-nrc/regulatory/rulemaking/public-involvement.html

Rulemaking Update

The Proposed Part 53 Fitness for Duty Framework

- Risk-informed – proposal based on FFD program requirements for commercial power reactors under construction

- Technology Inclusive – proposal enables:
  - Urine or oral fluid testing for all test conditions
  - Hair for pre-access testing of Schedule I drug metabolites
  - Point of Collection Testing and Assessment Devices
  - Passive drug and alcohol screening devices at Protected Area portals

- Innovative Regulatory Framework
  - Licensee developed, implemented, and maintained FFD procedures
  - Licensees may leverage the HHS Guidelines by section (HHS-certified labs)
  - Performance-based requirements
Rulemaking Update

Part 53 Rulemaking Schedule

- Ongoing
- Draft Proposed Rule to Commission (February 2023)
- Publish Proposed Rule and Draft Key Guidance (July 2023, with a 60-day public comment period)
- Draft Final Rule to Commission (December 2024)
- Publish Final Rule and Key Guidance (July 2025)

United States Nuclear Regulatory Commission
Protecting People and the Environment
NRC Fitness for Duty Program Staff

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