

NEI 06-06 [Revision 4]

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Fitness for Duty Program Guidance for New Nuclear Power Plant Construction Sites

October 2008

Nuclear Energy Institute

Fitness for Duty Program Guidance for New Nuclear Power Plant Construction Sites

October 2008

ACKNOWLEDGEMENTS

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EXECUTIVE SUMMARY

This document, *Fitness for Duty Guidance for New Nuclear Power Plant Construction Sites*, hereinafter referred to as NEI 06-06, has been designed to establish program level consistency in Fitness for Duty Programs for new plant construction sites throughout the nuclear power industry in the implementation of 10 CFR Part 26 Fitness for Duty Program requirements.

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FITNESS FOR DUTY PROGRAM GUIDANCE FOR NEW NUCLEAR POWER PLANT CONSTRUCTION SITES

1 INTRODUCTION

This document, Fitness for Duty Guidance for New Nuclear Power Plant Construction Sites, hereinafter referred to as NEI 06-06, has been designed to further define implementation criteria for new plant construction throughout the nuclear power industry in the implementation of 10 CFR Part 26 Subpart K, “Fitness for Duty Programs for Construction”. This criteria is required for each new plant construction site, with a plant under construction, and shall remain in effect until the operating plant’s Fitness for Duty (FFD) Program is implemented.

NEI 06-06 provides construction site entities a process to authorize and maintain a worker’s status in the construction site entity Fitness for Duty Program in order to allow an individual to work on a construction site. It is acknowledged that entities implementing this guidance will include NRC licensees; contractor/vendors (C/V); applicants for, or holders of, a Combined **Operating License (COL), Construction Permit (CP) or Limited Work Authorization (LWA)**; or other entities authorized by the NRC and shall hereafter be referred to as construction site entities.

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2 PURPOSE AND SCOPE

This document is applicable to a construction site entity and applies only to persons who direct construction or construct, at the location where the nuclear plant will be constructed and operated, safety and security related structures, systems, and components (SSCs). It has been designed to provide a standard industry approach in establishing and implementing a FFD program for evaluating the suitability of personnel for whom access to the construction site has been requested. This standard approach ensures consistent application of regulations and is intended to serve as the FFD Program description for COL applications as required in 10 CFR Part 52.

The FFD program described herein applies only to construction activities that are performed at the location within the footprint of the new power reactor where safety- and security-related SSCs will be installed and operated when the plant begins operation. Construction activities include any fabrication, erection, integration, or testing of safety- or security-related SSCs and the installation of their foundations including the placement of concrete. Construction activities conducted at facilities outside this prescribed area such as another location, city, state, or outside of the U.S. would not be subject to the program described herein.

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Management and oversight personnel, as listed below, shall be subject to a full operating plant FFD program that meets the requirements of 10 CFR Part 26, subparts A through H, N, and O. NEI 06-06 will not provide implementing guidance for these personnel because of the prescriptive nature of 10 CFR Part 26 for operating plants.

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- security personnel required by the NRC
- those who perform quality assurance/quality control/quality verification activities related to safety- 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

This document is effective for use on the date of the publication of Regulatory Guide XX-XX.

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3 RESPONSIBILITY

Each construction site entity is responsible to the United States Nuclear Regulatory Commission (USNRC) for ensuring that the applicable FFD program/program elements of 10 CFR Part 26 are implemented and effective at their construction sites including those implemented by an C/V. Once it has been determined that an individual has a negative drug and alcohol test result, the individual may be eligible to gain access to the construction facility. A construction site entity can maintain an individual in this status as long as the person remains in the construction site entity random fitness for duty testing program for new plant construction and is subject to a behavioral observation program; or is subject to a fitness monitoring program.

Comment: See Section 1.0 for clarification of "construction site entity"

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Each construction site entity approving a C/V program shall ensure the latest revision of this document has been provided to each of its C/Vs for use and require that the criteria herein be met. Audits are used to assure that licensee and licensee-approved C/V programs supporting the fitness for duty program for the construction site meet regulatory requirements. Construction site entities are responsible for ensuring that program deficiencies are corrected.

4 DEFINITIONS

Note: These definitions expand upon but do not replace those found in regulatory documents. As used herein, any term that is not defined in this document but is defined in 10 CFR Part 26 has the meaning given in 10 CFR Part 26.

Construction Site – The defined physical location within the footprint of the new power reactor where safety- and security-related SSCs will be installed and operated when the plant begins operation.

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Contractor/Vendors – Any company or individual not employed by the construction site entity that is providing work or services either by contract, purchase order, oral agreement, or other arrangement.

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Conviction - A finding of guilt (including a plea of nolo contendere), or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug and/or alcohol statutes.

Criminal Drug Statute - A federal or non-federal, criminal statute involving the manufacture, distribution, dispensing, possession, or use of any illegal drug as defined in 10 CFR Part 26 and herein.

Cutoff Level - the concentration or decision criteria established for designating and reporting a test result as positive, of questionable validity (referring to validity screening or initial validity test results from a licensee testing facility), or adulterated, substituted, dilute, or invalid (referring to initial or confirmatory test results from an HHS-certified laboratory).

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First Level Supervisors - The first level supervisory position that does not perform manual work.

HHS-certified laboratory - A laboratory that is certified to perform urine drug testing under the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs (the HHS Guidelines), which were published in the Federal Register on April 11, 1988 (53 FR 11970), and as amended, June 9, 1994 (59 FR 29908), November 13, 1998 (63 FR 63483), and April 13, 2004 (69 FR 19643).

Illegal Drugs - Any drug that is included in Schedules I to V of Section 202 of the Controlled Substances Act [21 U.S.C 812], but not when used pursuant to a valid prescription or when otherwise authorized by law.

Legal Action - A formal action taken by a law enforcement authority or court of law, including an arrest, an indictment, the filing of charges, a conviction, or the mandated implementation of a plan for substance abuse treatment in order to avoid a permanent record of an arrest or conviction, in response to any of the following activities:

- The use, sale, or possession of illegal drugs;
- The abuse of legal drugs or alcohol; or
- The refusal to take a drug or alcohol test.

Management and Oversight - Those personnel defined in Section 2.0 herein.

Deleted: Under the Influence - A determination that an individual is affected by drugs or alcohol in any detectable manner. The symptoms of influence include but are not confined to those consistent with aberrant behavior or obvious impairment of physical or mental abilities such as slurred speech or difficulty in maintaining balance.¶

MRO (Medical Review Officer) - a licensed physician who is responsible for receiving laboratory results generated through the construction site entity's FFD program and who has the appropriate medical training to properly interpret and evaluate an individual's drug and validity test results together with his or her medical history and any other relevant biomedical information.

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SSC (Systems, Structures or Components)

Inserted: or other program as defined by the construction site entity

- Safety-related SSCs mean those structures, systems, and components that are relied on to remain functional during and following design basis events to ensure the

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integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in 10 CFR 50.34(a)(1).

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- *Security-related SSCs* mean those structures, systems, and components that the licensee will rely on to implement the licensee's physical security and safeguards contingency plans that either are required under 10 CFR Part 73 if the licensee is a construction permit applicant or holder as described in 10 CFR 26.3(c), or are included in the licensee's application if the licensee is a combined license applicant or holder as described in 10 CFR 26.3(c).

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5 DRUG AND ALCOHOL POLICY & PROCEDURES

Drug and Alcohol Policy

Each construction site entity who implements an FFD program shall ensure that a clear, concise, written FFD policy statement is provided to individuals who are subject to the program. The policy statement must be written in sufficient detail to provide affected individuals with information on what is expected of them and what consequences may result from a lack of adherence to the policy. At a minimum, the written policy statement must:

- Describe the consequences of the following actions:
 - i. The use, sale, or possession of illegal drugs on or off site;
 - ii. The abuse of legal drugs and alcohol;
 - iii. **The use or possession of alcohol on site**
- Describe the requirement that individuals who are notified that they have been selected for random testing must report to the collection site within the time period specified by the licensee or other entity;
- Describe the actions that constitute a refusal to provide a specimen for testing; the consequences of a refusal to test; as well as the consequences of subverting or attempting to subvert the testing process;
- Prohibit the consumption of alcohol, at a minimum
 - i. Within an abstinence period of 5 hours preceding the individual's arrival at the licensee's or **construction site entity's site**, and
 - ii. During the period of any tour of duty;
- Convey that abstinence from alcohol for the 5 hours preceding any scheduled tour of duty is considered to be a minimum that is necessary, but may not be sufficient, to ensure that the individual is fit for duty;
- Describe the consequences of violating the policy;
- Describe the individual's responsibility to report legal actions;
- Describe the responsibilities of **management and oversight personnel** to report FFD concerns;
- Describe the individual's responsibility to report FFD concerns.

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Procedures

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Construction site entity procedures must provide reasonable assurance that the individuals are fit to safely and competently perform their duties, and are trustworthy and reliable, as demonstrated by the avoidance of substance abuse. Construction site entities shall develop, implement, and maintain written procedures that address the following topics:

- The methods and techniques to be used in testing for drugs and alcohol, including procedures for protecting the privacy of an individual who provides a specimen, procedures for protecting the integrity of the specimen, and procedures used to ensure that the test results are valid and attributable to the correct individual;
- The immediate and follow-up actions that will be taken, and the procedures to be used, in those cases in which individuals who are subject to the FFD program are determined to have:
 - i. Been involved in the use, sale, or possession of illegal drugs;
 - ii. Consumed alcohol to excess before or while constructing safety- or security-related SSCs, as determined by a test that accurately measures BAC (breath alcohol content);
 - iii. Attempted to subvert the testing process by adulterating or diluting specimens (in vivo or in vitro), substituting specimens, or by any other means;
 - iv. Refused to provide a specimen for analysis; or
 - v. Had legal action taken relating to drug or alcohol use; and
- The process to be followed if an individual's behavior or condition raises a concern regarding the possible use, sale, or possession of illegal drugs on or off site; the possible use or possession of alcohol while constructing safety- or security-related SSCs; or impairment from any cause which in any way could adversely affect the individual's ability to safely and competently perform his or her duties.

5.1 USE, POSSESSION, OR SALE OF DRUGS OR ALCOHOL

5.1.1 Illegal Drugs

Using, selling, manufacturing, purchasing, transferring, dispensing, distributing, or possessing illegal drugs by any individual while on the construction site is strictly prohibited.

5.1.2 Alcohol

Using, selling, purchasing, transferring, dispensing, distributing, or possessing alcohol by an individual subject to this program while on a construction site is strictly prohibited.

Consumption of alcohol onsite or within 5 hours of performing construction work to safety-related or security-related SSCs is strictly prohibited. Abstinence from alcohol for the 5 hours preceding any scheduled work is considered to be the minimum that is necessary, but may not be sufficient, to ensure an individual is fit for duty.

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5.1.3 Reporting of Legal Actions

An individual subject to the provisions of this document is required to notify the construction site entity of any legal action involving drugs or alcohol as required by the construction site entity policies.

5.2 DISCIPLINARY ACTIONS

Individuals requiring access to the construction site shall sign a Consent Form (As an example, see NEI STANDARD FORM 06-06-01 in Appendix A.) prior to gaining access, attesting to their understanding of the consequences for a violation of construction site entity's FFD policy.

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The construction site entity shall establish sanctions for FFD policy violations that, at a minimum, prohibit the individuals from being assigned to construct safety- or security-related SSCs unless or until the licensee or other entity determines that the individual's condition or behavior does not pose a potential risk to public health and safety or the common defense and security.

5.3 DRUG AND ALCOHOL TESTING

The construction site entity shall employ urinalysis, saliva, breath tests or other methods as permitted by 10 CFR Part 26 to determine fitness for duty, including but not limited to pre-access, for-cause and random testing. At a minimum, the construction site entity shall test specimens for marijuana metabolite, cocaine metabolite, opiates (codeine, morphine, 6-acetylmorphine), amphetamines (amphetamine, methamphetamine), phenacyclidine, adulterants, and alcohol, at the cutoff levels specified herein or comparable cutoff levels, if specimens other than urine are collected for drug testing.

An individual must consent to submit to such tests as a condition of access to the construction site entity and refusal to consent shall result in denial of access to the construction site.

Testing of urine specimens for drugs and validity, except validity screening and initial drug and validity tests that may be performed by a licensee testing facility compliant with 10 CFR Part 26 Subpart F, must be performed in a laboratory that is certified by HHS for that purpose, consistent with its standards and procedures for certification. Any initial drug test performed by a construction site entity must use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. Urine specimens that yield positive, adulterated, substituted, or invalid initial validity or drug test results must be subject to confirmatory testing by the HHS-certified laboratory in accordance with 10 CFR 26.161, except for invalid specimens that cannot be tested.

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Other specimens that yield positive initial drug test results must be subject to confirmatory testing by a laboratory that meets stringent quality control requirements that are comparable to those required for certification by the HHS.

Confirmatory drug testing is performed using GC/MS (gas chromatography) techniques. Specimens that are negative on the confirmatory test are reported as negative and are not subject to further testing unless they are suspected of having been adulterated, substituted, invalid, or diluted.

Testing for alcohol will be conducted through breath measurement or oral fluids (e.g., saliva). The initial test for alcohol performed at the collection site shall be conducted by a breath measurement device or by using oral fluids (e.g., saliva) using acceptable alcohol screening devices (ASDs) which meet the requirements of the National Highway Traffic Safety Administration (NHTSA) standards (49 FR 48855) and any applicable State statutes and are listed on the most recent version of NHTSA's Conforming Products List (CPL). Confirmatory tests for alcohol must be conducted by an evidential breath measurement device (EBT). Evidential breath testing devices listed in the NHTSA CPL for evidential devices that meet the requirements of 10 CFR 26.91 (c) must be used to conduct confirmatory alcohol tests, and may be used to conduct initial alcohol tests. Note that, among the devices listed in the CPL for EBTs, only those devices listed without an asterisk (*) may be used for confirmatory alcohol testing.

For the initial alcohol tests that are negative, no confirmatory tests are required.

The following initial cutoff levels shall be used when testing specimens to determine whether they are negative for the indicated substances:

NOTE: The following do not apply to drug test results obtained through testing methods that use saliva.

Initial Test Cutoff Levels

Substance	Cutoff level
Marijuana metabolites	50 ng/mL
Cocaine metabolites	300 ng/mL
Opiate metabolites	2000 ng/mL ¹
Phencyclidine	25 ng/mL
Amphetamines	1000 ng/mL
Alcohol ²	> 0.02% BAC

- (1) 25 ng/ml is immunoassay specific for free morphine.
- (2) Applicable only for breath measurement devices and ASDs.

Construction site entities may specify more stringent cutoff levels as well as other illegal drugs as necessary. However, results shall be reported for both levels in such cases.

Confirmatory testing for alcohol must be conducted using an EBT.

Confirmatory testing for drugs or drug metabolites must be conducted by a HHS-certified laboratory.

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NOTE: The following do not apply to testing conducted by saliva testing methods.

Confirmatory test cutoff levels

Substance	Cutoff level
Marijuana metabolite	15 ng/mL ¹
Cocaine metabolite	150 ng/mL ²
Opiates: Morphine	2000 ng/mL
Opiates: Codeine	2000 ng/mL
Opiates: 6-acetylmorphine	10 ng/mL ³
Phencyclidine (PCP)	25 ng/mL
Amphetamines: Amphetamine	500 ng/mL
Amphetamines: Methamphetamine	500 ng/mL ⁴
Alcohol ⁵	≥ 0.01 % BAC

- (1) As Delta-9-tetrahydrocannabinol-9-carboxylic acid
- (2) As Benzoylcegonine
- (3) Test for 6-AM when the confirmatory test shows a morphine concentration exceeding 2,000ng/mL
- (4) Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/mL
- (5) Applicable only for breath measurement devices

In addition, construction site entities may specify more stringent cutoff levels. Results shall be reported for both levels in such cases.

CONFIRMED POSITIVE TEST RESULTS FOR ALCOHOL:

A confirmed positive test result for alcohol must be declared under any of the following conditions:

- (1) When the result of the confirmatory test for alcohol is 0.04 percent BAC or higher;
- (2) When the result of the confirmatory test for alcohol is 0.03 percent BAC or higher and the donor had been in a work status for at least 1 hour at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.); or
- (3) When the result of the confirmatory test for alcohol is 0.02 percent BAC or higher and the donor had been in a work status for at least 2 hours at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.).

When the result of the confirmatory test for alcohol is equal to or greater than 0.01 percent BAC but less than 0.02 percent BAC and the donor has been in a work status for

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3 hours or more at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.), the collector shall declare the test result as negative and inform FFD program management. The construction site entity shall prohibit the donor from performing any duties that require the individual to be subject to the program herein and may not return the individual to performing such duties until the donor is determined fit to safely and competently perform his or her duties.

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6 DRUG AND ALCOHOL TESTING PROCEDURE

6.1 CONSENT FORM

Individuals are required to sign the Consent Form (NEI STANDARD FORM 06-06-01) as a condition of access to the construction site. Included in the consent form is the agreement to submit to periodic unannounced (random) testing during the course of their access to the construction site. Refusal to cooperate with or submit to such testing shall result in immediate termination of access to the construction site.

- Deleted: On-site Testing Facilities¶ If used, any licensee
- Deleted: construction site entity
- Deleted: testing facility shall have an individual to be responsible for day to-day operations and to supervise the testing technicians. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the licensee testing facility, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; and proper remedial actions to be taken in response to detecting aberrant test or quality control results.¶
- Collector qualifications and responsibilities:¶ ... [51]

6.2 TESTING PROCEDURES

The construction site entity shall ensure the following testing is performed as part of the FFD program:

6.2.1 Pre-Access

Each worker who will construct or direct the construction of SSCs shall have negative drug and alcohol test results prior to start of the worker's construction, or direction of the construction of any SSCs. This drug/alcohol test must be administered no more than 30 days prior to the directing or constructing of an SSC.

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6.2.2 For Cause

Post Accident

As soon as practical after an event involving a human error that was committed by an individual subject to this plan where the human error may have caused or contributed to the accident, the construction site entity shall test the individual(s) who committed the error(s), and need not test individuals who were affected by the event but whose actions likely did not cause or contribute to the event. Individuals involved in a work-related accident shall be required to submit to a drug and alcohol test at a designated testing facility.

In all cases treatment of an individual's illness or injury takes precedence over drug and alcohol testing.

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For purposes of this policy, an “accident” is defined as the following:

- Work-related injury/illness – An injury or illness, resulting in an OSHA Recordable Incident.
- Work-related motor vehicle accident -- A significant on-site accident that occurs while an individual is in a vehicle performing construction site entity business, as defined the construction entity’s procedures.
- Significant property damage -- Damage, during construction, to any safety- or security-related SSC in excess of \$100,000.

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Occupational Injury and Illness Resulting in an OSHA Recordable Incident

Defined as a significant illness or personal injury to the individual to be tested or another individual, which within 4 hours after the event is recordable under the Department of Labor standards contained in 29 CFR, 1904.7.

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- The injured individual must notify their onsite supervisor of the injury or illness if able.
- The construction site entity management shall make arrangements for the individual to submit for a drug and alcohol test at a designated testing facility.
- The results of the drug and alcohol test shall be submitted to the construction site entity management.

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Significant Property Damage

- The supervisor shall notify the respective construction site entity management that an incident has occurred that resulted in damage to safety- or security-related SSC in excess of \$100,000.
- Construction site entity management shall make arrangements for the individuals involved in the damage to submit for a drug and alcohol test at a designated testing facility.
- The results of the drug and alcohol test shall be submitted to the construction site entity management

Observed Behavior

- Management and oversight personnel shall notify the construction site entity about any FFD concerns about individuals, as a minimum.
- If observed behavior or a physical condition creates a reasonable suspicion of possible substance abuse, the construction site entity shall perform drug and alcohol testing. The results must be negative before the individual returns to performing on work SSCs.
- If credible information is received that an individual is engaging in substance abuse, the construction site entity shall perform drug and alcohol testing
- If there is the smell of alcohol with no other behavioral or physical indications of impairment, then only an alcohol test is required.

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- For other indications of possible impairment that do not create a reasonable suspicion of substance abuse, the construction site entity may permit the individual to return to work only after the impairing or questionable conditions are resolved and the MRO has determined that the individual is fit to safely and competently perform his or her duties.

6.2.3 Follow-up

As part of a follow-up plan to verify an individual's continued abstinence from substance abuse.

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6.2.4 Random Drug and Alcohol

Random Selection and Frequency

Initially, random testing shall be performed at an annual rate of 50% of the construction site population that is subject to testing under this FFD program. The random testing rate will be reevaluated thereafter on a **nominal** annual basis for each construction site entity. Based on the results of the random testing, the random testing rate may be adjusted up or down for the upcoming year. The following table describes the actions that a construction site entity will take based on these results.

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Annual Random Positive Test Rate ¹	Required Action
< 0.9%	Lower Random Testing Rate by 25% ²
0.9% - 1.1%	No Action Required
> 1.1%	Raise Random Testing Rate by 25% ³

¹ The Annual Random Positive Test Rate will be calculated for the previous year by dividing the number of positive random tests by the total number of random tests and multiplied by 100. One significant digit and standard rounding rules will be used.

² The random testing rate may not be lowered below 25%.

³ The random testing rate may not be raised above 100%.

A construction site entity may actually use a random testing rate that is slightly higher than the required rate to provide added assurance of meeting the required rate. For example, if the required rate is 50%, a construction site entity may use a rate of 57%. Under no circumstance should a rate below the required rate be used.

Testing will be conducted during all types of work periods, including weekends and holidays and at various times of the day or night throughout the calendar year. There should be no "safe time or day" with regard to random testing. If an individual is selected and is not at work, the individual is not required to report for the purposes of random testing; and the construction site entity will select another individual for testing. Test selection is statistically random and unannounced, so that all individuals in the population subject to testing have an equal probability of being selected and tested. Testing will be administered in a manner that provides

Comment: Need to address the NRC staff comment relative to the random selection method. The staff noted their portal based approach noted in the last meeting.

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reasonable assurance that individuals are unable to predict the time periods during which specimens will be collected;

Random testing for individuals concurrently authorized Unescorted Access to an operating power reactor shall be deemed adequate to maintain access to a construction site without being subject to additional random testing.

Random selection includes all individuals described in Section 2.0 herein and who are **actively working at the construction site**. **Actively working at the construction site means that the worker is part of the current (as of the day of the random testing selection) construction site workforce. Since the construction site workforce is expected to change often, the construction site entity will establish a method, through site procedures, on how to determine the current workforce and the frequency that it is determined in support of the random testing program. Under all circumstances, the construction site entity's methodology must ensure that the required random testing rate is met.**

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Individuals to be tested (hereinafter the "subject") shall be chosen by use of a method which randomly selects the number of subjects from among the individuals eligible for testing at the construction site. **Several methods can be used that will satisfy this requirement. The following are two examples of methods that may be employed by the construction site entity:**

- **Use of a random number generator that is based on the employee numbers for the active workforce.**
- **Use of a portal-based method that randomly selects individuals as they enter the construction site.**

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In any case, the method chosen by the construction site entity must ensure that the subjects are selected randomly, the selection method is not predictable based on either the time of day or frequency, and the required testing rate is met. The construction site entity will develop procedures to describe the method that will be used.

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Notification Procedures

At the time of random drug and alcohol testing, the following steps shall be taken:

- A record of the individuals selected for random testing shall be documented
- The construction site entity shall notify the subject individuals and request they report to the **collection site** by a specific time.
- If an individual refuses to submit to the testing, the onsite supervisor shall attempt to inform the individual that access to the construction site shall be terminated unless he/she submits to testing.
- Individuals selected for testing from the random pool will be immediately available to be selected the next time the random list is generated.

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- Individuals not onsite the day the random selection is determined will not be subject to testing unless they are selected randomly again.
- When the construction site entity receives the results of the tests appropriate action shall be taken in the event of positive results.
- The laboratory forwards a written report to the construction site entity for the drug testing file.

6.3 SPECIMEN COLLECTION AND LABORATORY

On-site Licensee Testing Facility

The construction site entity may use an on-site licensee testing facility. If used, the licensee testing facility shall have an individual to be responsible for day to-day operations and to supervise the testing technicians. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the licensee testing facility, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; and proper remedial actions to be taken in response to detecting aberrant test or quality control results.

Collector qualifications and responsibilities:

The construction site entity may establish a collection site that meets the requirements of 49 CFR Part 40, "Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs" (65-FR-41944; August 9, 2001) and ensure the following:

- *Urine collector qualifications:* Urine collectors shall be knowledgeable of the requirements of the construction site FFD policy and procedures and shall keep current on any changes to urine collection procedures. Collectors shall receive qualification training that meets the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:
 - i. All steps necessary to complete a collection correctly and the proper completion and transmission of the custody-and-control form;
 - ii. Methods to address "problem" collections, including, but not limited to, collections involving "shy bladder" and attempts to tamper with a specimen;
 - iii. How to correct problems in collections; and
 - iv. The collector's responsibility for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.
- *Alcohol collector qualifications:* Alcohol collectors shall be knowledgeable of the requirements of the construction site FFD policy and procedures and shall keep

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current on any changes to alcohol collection procedures. Collectors shall receive qualification training meeting the requirements of 10 CFR 26.85 and demonstrate proficiency in applying the requirements before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

- i. The alcohol testing requirements of 10 CFR Part 26;
- ii. Operation of the particular alcohol testing device(s) [i.e., the alcohol screening devices (ASDs) or EBTs] to be used, consistent with the most recent version of the manufacturers' instructions;
- iii. Methods to address "problem" collections, including, but not limited to, collections involving "shy lung" and attempts to tamper with a specimen;
- iv. How to correct problems in collections; and
- v. The collector's responsibility for maintaining the integrity of the specimen collection process, carefully ensuring the privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

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Alternative Collection and Testing

Construction site entities may rely on a local hospital or other organization that meets the requirements of 49 CFR Part 40, "Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs" (65-FR-41944; August 9, 2001) to collect urine specimens and conduct alcohol tests for the FFD program listed herein. The construction site entity may also use a HHS-certified laboratory to perform the testing.

Testing Methods

Any initial test performed by a licensee testing facility or a HHS-certified laboratory and the confirmatory test performed by a HHS-certified laboratory shall use a process which meets the requirements of the Food and Drug Administration (FDA). Testing for drugs and drug metabolites will be conducted through the analysis of urine specimens or other process which meets the requirements of the FDA. Testing for alcohol will be conducted through breath measurement or oral fluids (e.g., saliva).

Analytic methods used for testing will be urinalysis, saliva analysis, or any other method approved in 10 CFR Part 26. Testing indicates the presence of specific drugs or drug metabolites, but is not an indication of impairment due to drug use.

Initial analysis and validity testing may be performed by licensee testing facility or by a HHS-certified laboratory. Confirmatory analysis is performed by a HHS certified laboratory. Breath analysis may be performed at the construction site entity collection site.

Initial cutoff levels shall be detailed in the construction site entity procedures as specified in section 5.3. Those specimens that test negative on the initial test are not subject to further testing unless they are suspected of having been substituted, invalid, adulterated or diluted.

Specimens with a confirmed positive laboratory result for drugs, other than alcohol, will be evaluated by the MRO who will determine whether there is a legitimate medical reason for the presence of that drug in that specimen. This may involve review of medication history, physical examination and/or personal interview.

Vendors authorized by the construction site entity to conduct testing in accordance with NEI 06-06 shall comply with the provisions of this guidance through the use of detailed procedures and shall be subject to assessment by the construction site entity or its representatives prior to implementation of the service and at a periodicity as specified in the construction site entity procedures.

6.4 SPECIMEN PROCESSING

Construction site entity shall arrange for urine specimen and initial alcohol tests to be performed either at the licensee testing facility or HHS-laboratory. The testing should be done as soon as is reasonable after appropriate medical care if required.

Collection site personnel shall arrange for the transfer of collected specimens to either the licensee testing facility or HHS-certified laboratory. The construction site entity shall take appropriate and prudent actions to minimize false negative results from specimen degradation. Specimens that have not been shipped to the HHS-certified laboratory or a licensee testing facility within 24 hours of collection and any specimen that is suspected of having been substituted, adulterated, or tampered with in any way must be maintained cooled to not more than 6 °C (42.8 °F) until they are shipped to the HHS-certified laboratory. Specimens must be shipped from the collection site to the HHS-certified laboratory or a licensee testing facility as soon as reasonably practical but, except under unusual circumstances, the time between specimen shipment and receipt of the specimen at the licensee testing facility or HHS-certified laboratory should not exceed two business days.

The specimen collection and alcohol testing process will be detailed in the construction site entity procedures and will meet or exceed the requirements of specimen collection as stated in 10 CFR Part 26. For alternative methods not described in 10 CFR Part 26 the construction site entity will develop detailed collection and specimen testing procedures.

6.5 POSITIVE RESULTS

A positive confirmatory breath alcohol test indicates a violation of the FFD program.

A positive initial drug test result does not always indicate a violation of the FFD program. The MRO will determine whether a legitimate medical reason exists for the positive result and will be the final determination as to whether an individual is in violation of the FFD program. If the MRO determines that there is a legitimate medical explanation for the positive initial drug test result, the MRO shall report the result as negative. Substituted, invalid, adulterated or diluted samples will also be subject to MRO review for final determination.

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Only the MRO can authorize the reanalysis of the original specimen, or the analysis of an aliquot of a split sample. The donor may request the MRO to authorize reanalysis. Such reanalysis shall be conducted by an HHS-certified laboratory.

The MRO shall report all positive results to the construction site entity management person responsible for the FFD program. The construction site entity shall ensure that appropriate action is taken as detailed in the construction site entity procedures. These procedures shall clearly state the consequences of violating the FFD program requirements.

6.6 REVIEW PROCESS

The construction site entity shall have an alternative review process that is objective and impartial. The construction site entity shall include a description of the process to be used in the procedures that implement this requirement. Construction site entity programs are not intended to modify, subjugate, or abrogate any review rights that currently exist for individuals with their respective employers. An individual who has been denied access to the construction site or whose access has been terminated due to a violation of the FFD program shall have the capability to:

- Be provided the basis for the denial of access;
- Have an opportunity to provide additional information, and;
- Be provided the opportunity to have the decision, together with any additional information, reviewed by another designated construction site entity manager who is equivalent or senior to and independent of the individual who made the decision to deny or terminate access to the construction site due to the program violation. The determination from this independent review is final.

6.7 BEHAVIORAL OBSERVATION PROGRAM

The construction site entity's Behavioral Observation Program is the primary means to detect behavior that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty; or any physical impairment or any cause that, if left unattended, may constitute a risk to public health and safety or the common defense and security. Management and oversight personnel that are responsible for observing individuals subject to a Behavioral Observation Program shall report any FFD concerns about individuals to the personnel designated in the construction site entity's policy.

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Management and oversight personnel that are responsible to observe individuals subject to the Behavioral Observation Programs must be trained to have sufficient awareness and sensitivity to detect degradation in performance which may be the result of being under the influence of any substance, legal or illegal, physical or mental impairment which in any way may adversely affect their ability to safely and competently perform their duties. Training shall communicate the expectation of promptly reporting noticeable changes in

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behavior or FFD concerns about other individuals to the construction site entity designated personnel for appropriate evaluation and action in accordance with the FFD policy.

6.8 RECORDKEEPING AND CONFIDENTIALITY

Personal information, whether electronic or hardcopy must not be disclosed to unauthorized persons. The construction site entity shall obtain a signed consent that authorizes the disclosure of the personal information collected and maintained before disclosing the personal information, except for disclosures to the following persons who are authorized:

- Operating plant licensees and other licensees or construction site entities seeking the information as required for determinations of access to construction sites;
- NRC representatives;
- **Assigned MROs and MRO staff;**
- Appropriate law enforcement officials under court order;
- The subject individual or his/her representative who has been designated in writing;
- Licensee or construction site entity representatives who have a need to have access to the information in performing assigned duties, including audits of licensee, contractor or vendor programs, except where specifically excluded by regulation;
- Persons deciding matters on review or appeal;
- Persons who have the authority to change personal data in electronic records;
- **The presiding officer in a judicial or administrative proceeding initiated by the subject individual, or**
- Other persons pursuant to court order.

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The construction site entity will establish and maintain a system of files and procedures that clearly indicate that test records and associated documentation shall be retained and used with the highest regard for individual privacy and confidentiality.

Records which must be retained and the retention period shall be identified in the construction site entity program procedures.

Electronic Format Records

For information stored or transmitted in electronic format, access to personal information will be controlled by password protection to control access to personal data and limiting data entry to each authorized individual's area of responsibility.

Hardcopy Records

Hard copy records shall be maintained in secured storage or lockable file cabinets when not in review. Access to the FFD area where files and file cabinets are contained is limited to those authorized above.

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Reporting

Construction site entities shall make the following reports:

- Reports to the NRC Operations Center by telephone within 24 hours after the entity discovers any intentional act that casts doubt on the integrity of the FFD program and any programmatic failure, degradation, or discovered vulnerability of the FFD program that may permit undetected drug or alcohol use or abuse by individuals who are subject to the FFD program. These events must be reported under 10 CFR 26.417, rather than under the provisions of 10 CFR 73.71; and
- Annual program performance reports for the FFD program.

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6.9 AUDITS

Construction site entities who implement an FFD program shall ensure that audits are performed to assure the continuing effectiveness of the FFD program, including FFD program elements that are provided by C/Vs, and the FFD programs of C/Vs that are accepted by the licensee or other entity.

Construction site entity shall ensure that these programs are audited at a frequency that assures their continuing effectiveness and that corrective actions are taken to resolve any problems identified. Construction site entities may conduct joint audits, or accept audits of C/Vs conducted by others, so long as the audit addresses the relevant C/Vs' services.

Construction site entities need not audit HHS-certified laboratories or the specimen collection and alcohol testing services that meet the requirements of 49 CFR Part 40, "Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs" (65 FR 41944; August 9, 2001).

The construction site entity will develop procedures to address the implementation of the audit requirements herein.

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APPENDIX A

CONSENT

The individual applying for access is required to sign a Consent (NEI STANDARD FORM 06-06-01) that authorizes a construction site entity and its authorized agents to test the individual for drug and alcohol use as determined by the construction site entity.

The individual's signature on the Consent confirms that the individual has read and understands the Consent, and has voluntarily agreed to authorize the construction site entity and its authorized agents performing drug and alcohol testing and the individuals and entities releasing information to take the actions set out in the Consent. The Consent includes the following:

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- Blank lines to be filled in with the name of the construction site entity and its authorized agent obtaining the Consent.
- Authorization to perform drug and alcohol testing for use in access decisions and the release of information among construction site entities and their authorized agents and their employees who have a need-to-know.
- Authorization to use the information collected solely for the purpose of determining eligibility for access and subsequent work within the boundary of the nuclear power plant construction site.
- Authorization of the retention of collected information in files that are secure for a period required by NRC.
- Language to convey to the applicant that participation in drug and alcohol testing is voluntary. If an individual will not sign the consent or withdraws consent or does not cooperate with the test process, the process cannot continue. In any of these cases, access to the nuclear plant construction site shall be denied or withdrawn immediately.
- The Consent serves to release construction site entities and their authorized agents, NEI, and the officers, employees, representatives, agents, and records custodians of each as well as the officers, employees, representatives, agents, and records custodians of any entity or individual supplying drug and alcohol testing services from any and all liability based on their authorized receipt, disclosure, and use of the information obtained based on the individual's consent.
- The individual's rights and responsibilities relative to reviewing the records collected pursuant to this consent in accordance with NEI 06-06.
- Notice that nothing in the Consent is to be construed to waive any right or responsibility that the individual granting consent, the construction site entity or if different from the construction site entity, the individual's employer may have under § 211 of the Energy Reorganization Act of 1974, as amended. Section 211 addresses "protected activity" by workers in the nuclear industry.

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NEI STANDARD FORM 06-06-01 CONSENT FORM

_____ has my consent to perform drug and alcohol testing necessary to determine whether to grant me access to a nuclear power plant construction site and to allow me to maintain such access. **I have been provided with a copy of the Fitness for Duty Policy and understand the consequences of violating this policy.** The Nuclear Regulatory Commission (NRC) requires that this information be used in determining that an individual is fit-for-duty prior to granting and while maintaining access. The results of this determination may be available to other construction site entities.

I understand that the information may be released, electronically or otherwise, to other construction site entities and contractor/vendors or the agents of each. This information shall include, but is not limited to:

- Name and Social Security Number;
- Dates of any completed drug and alcohol tests
- Dates when access has been authorized or terminated;
- Dates associated with drug and/or alcohol follow-up testing, if applicable;

I authorize any individual, organization, institution, or entity that now has, or obtains in the future, drug and/or alcohol testing information about me (examples of which are provided in the above paragraph), to release any such information in order to perform the evaluation required for access.

I understand that information obtained pursuant to this Consent shall be treated as confidential. The release of access-related information about me shall be limited to the following authorized personnel:

- Operating plant licensees and other licensees or construction site entities seeking the information as required for determinations of access to construction sites;
- NRC representatives;
- Appropriate law enforcement officials under court order;
- The subject individual or his/her representative who has been designated in writing;
- Licensee or construction site entity representatives who have a need to have access to the information in performing assigned duties, including audits of licensee, contractor or vendor programs, except where specifically excluded by regulation;
- Persons deciding matters on review or appeal;
- Persons who have the authority to change personal data in electronic records, or
- Other persons pursuant to court order.

I understand that, upon my written request to _____, and at no cost to me, I shall be provided, within 10 working days, with a copy of the information, as described above, about me which is in the construction site entity files. If, after my review of such information, I can show that any of the information is incorrect or incomplete, such information shall be corrected and/or completed as soon as is reasonably practical.

I hereby release _____, NEI, and the officers, employees, representatives, agents, and records custodians of each as well as the officers, employees, representatives, agents, and

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records custodians of any entity or individual supplying or using such information from any and all liability based on their authorized receipt, disclosure, or use of the information obtained pursuant to this Consent and to determine my eligibility for construction site access.

I understand that at any time and upon written notice to _____, I may withdraw this Consent, but this will also constitute a withdrawal of my request for access. I understand that any processing activities that were initiated before receipt of my withdrawal of consent shall continue and the resulting information will be retained. No new activities shall be initiated after receipt of my withdrawal of consent and other construction site entities are not permitted to receive information other than my name and the fact that my consent has been withdrawn, thereafter unless I provide a currently valid Consent or it is required by NRC regulation

I understand that this Consent is not intended to and does not affect any right or responsibility that I, my employer (if not _____), or _____ may have under Section 211 of the Energy Reorganization Act of 1974, as amended. I further understand that nothing herein (1) affects my right or my responsibility to bring potential safety concerns to my employer (if not _____), _____, or the NRC; or (2) prohibits me from participating in any proceeding or investigation regarding such a potential safety concern.

I have read and understand this Consent and authorize _____ to take such actions as are described herein. While I understand that construction site access is dependent upon my accepting the regulatory requirements of this program, the statements made by me in this Consent and my decision to sign this Consent are voluntary. The statements were not induced by any promise nor have I been subjected to any threat, duress or coercion to sign this Consent.

[Additional provisions required by applicable state law would be included here.]

_____	_____
<i>Applicant's Printed Name</i>	<i>Social Security No.</i>
_____	_____
<i>Applicant's Signature</i>	<i>Date</i>

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Other specimens that yield positive initial drug test results must be subject to confirmatory testing by a laboratory that meets stringent quality control requirements that are comparable to those required for certification by the HHS.		
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; or by using oral fluids (e.g., saliva) using acceptable alcohol screening devices (ASDs) that		
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25 ng/ml is immunoassay specific for free morphine.		

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* As Delta-9-tetrahydrocannabinol-9-carboxylic acid.
** As Benzoylcegonine
*** Test for 6-AM when the confirmatory test shows a morphine concentration exceeding 2,000ng/mL

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****Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/mL

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CONFIRMED POSITIVE TEST RESULTS FOR ALCOHOL

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and demonstrate proficiency in applying the requirements

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before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

The alcohol testing requirements of 10 CFR Part 26

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;

Operation of the particular alcohol testing device(s) [i.e., the alcohol screening devices (ASDs) or EBTs] to be used, consistent with the most recent version of the manufacturers' instructions;

Methods to address "problem" collections, including, but not limited to, collections involving "shy lung" and attempts to tamper with a specimen;

How to correct problems in collections; and

The collector's responsibility for maintaining the integrity of the specimen collection process, carefully ensuring the privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

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Alternative Collection and Testing

Construction site entities who are subject to this procedure may rely on a local hospital or other organization that meets the requirements of 49 CFR Part 40, "Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs" (65-FR-41944; August 9, 2001) to collect specimens and conduct alcohol tests for the FFD program listed herein.

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The initial test for alcohol performed at the collection site shall be conducted by a breath measurement device which meets the requirements of the National Highway Traffic Safety Administration (NHTSA) standards (49 FR 48855) and to any applicable State statutes or by using oral fluids (e.g., saliva) using acceptable alcohol screening devices (ASDs) that are listed on the most recent version of NHTSA's Conforming Products List (CPL) for ASDs.