

NEI 06-06 [Revision 6]

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

May 2012

Enclosure 2

Notes on the NRC staff comments and descriptions provided in this document. Comments provided are included to facilitate NRC's understanding of the guidance, which is necessary for NRC endorsement of the guidance.

In general, NRC staff comments and justifications have not been provided for minor editorial or grammar revisions or changes.

An "Editorial" comment is intended to improve grammar and readability and is not substantive.

A "Clarification" is intended to improve the reader's understanding of the guidance. These comments might be substantive.

A "Consistency" comment is intended to enhance the consistency of word choice in the guidance or to help ensure that different sections within the guidance are in harmony with each other. These comments are substantive.

A "Conforming" comment is intended to enhance the guidance to help ensure that the guidance comports (or conforms) with the regulatory requirement. These comments are substantive.

A "Staff Comment" is substantive and important because the guidance is ambiguous, unclear, or inconsistent, or where the NRC staff is otherwise concerned with the specific guidance provided because it could be contrary to regulatory requirements.

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NEI 06-06 [Revision 6]

Nuclear Energy Institute

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

May 2012

ACKNOWLEDGEMENTS

This document, NEI 06-06, *Fitness for Duty Guidance for New Nuclear Power Plant Construction Sites*, was developed by selected members of the NEI New Plant Security Task Force, selected members of the PADS/AA/FFD Task Force and the New Plant FFD Task Force. These industry professionals, experts on construction practices and fitness for duty programs, drawing upon practical lessons learned during the application of the previous requirements, provided valuable insights to update the program guidance. The changes provide a more efficient and effective program. NEI also wishes to acknowledge the extensive review and comment by those industry representatives who shaped the final form of this document:

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EXECUTIVE SUMMARY

This document, NEI 06-06, *Fitness for Duty Guidance for New Nuclear Power Plant Construction Sites*, 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, NEI 06-06, *Fitness for Duty Guidance for New Nuclear Power Plant Construction Sites*, 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*.” The criteria defined in this document ~~required can be implemented~~ for each new plant construction site, with a plant under construction, and shall remain in effect until the construction site transitions to a phase requiring site-wide implementation of Subparts A-IH, N and O, 10 CFR Part 26. This document ~~also~~ provides descriptive guidance on the transition from a construction-related program to an operations-related program (See Table 3-1). ~~It does not address specific~~ include guidance for those individuals with duties ~~required by~~ specified in 10 CFR Part 26.4(e) and (f) whose duties require the individual to be who must be included within subject to an ~~full scope~~ (Subparts A-I, N and O), 10 CFR Part 26 FFD program that meets all the requirements of 10 CFR Part 26, except Subparts I and K. ~~This document also does not include guidance for those individuals specified in 10 CFR Part 26.4(f) who, at the construction entity’s discretion, are subject to an FFD program that meets all the requirements of 10 CFR Part 26, except Subparts I and K. because the rule requirements for these individuals are sufficient for implementation. Individuals identified within 10 CFR Part 26.4(e) and (f) are evaluated and maintained within a FFD program implemented by an NRC licensee or a licensee approved contractor/vendor (C/V).~~

It is acknowledged that the construction site entities implementing this guidance will include United States Nuclear Regulatory Commission (NRC) licensees; licensee-approved contractor/vendors (C/V); applicants for, or holders of, a Combined 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.”

NEI 06-06 provides the construction site entity with a process to authorize and maintain the status of individuals who are constructing or directing the construction of safety or security-related SSCs in the construction site entity’s FFD program in order to allow these individuals to work on a construction site. ~~Licensees or~~ construction site entities are required to meet the minimum requirements set forth in ~~this document, Part 26~~; however, they may institute more stringent program requirements at their discretion.

~~NEI 06-06 provides the construction site entity a process to authorize and maintain a worker’s status in the construction site entity’s FFD Program in order to allow an individual to work on a construction site. It is acknowledged that the construction site entities implementing this guidance will include United States Nuclear Regulatory Commission (NRC) licensees; licensee approved contractor/vendors (C/V); applicants for, or holders of,~~

Comment [PH1]: Clarification. This guidance document is not a requirement unless committed to by the construction site entity in its licensing basis. Further, the document represents one acceptable method that the NRC staff considers acceptable for implementing specific parts of the Commission’s regulations. See PH5.

Comment [PH2]: Staff Comment. Staff comment - The first sentence states that the scope/focus of the document is on a 10 CFR Part 26, Subpart K, construction FFD program and is specifically applicable to only the individuals in Section 26.4(f). The first paragraph also states that this guidance does not address individuals specified in Section 26.4(e) who must be subject to a “full” FFD program (i.e., all Part 26 subparts, except Subparts I and K).

However, throughout the document, the guidance is also written to be applicable to the individuals listed in Section 26.4(e). For example, the document includes individuals in Section 26.4(e) in the definition of “construction site workforce,” and the term “construction site workforce” is used throughout the document, including in places where some level of distinction is needed between applicability to the individuals specified in Section 26.4(e) and (f) (e.g., random drug testing, BOP, FFDA). If NEI does intend for this guidance to be applicable to individuals specified in Section 26.4(e) (which would conflict with the scope and focus), then the document must be revised to address the differences in requirements as they apply to these individuals compared to those performing the duties listed in Section 26.4(f).

Based on conversation with industry representatives, the staff understands that the industry desires to have individuals subject to 10 CFR 26.4(e) included in this document.

Therefore, NRC staff comments made in this document are intended to help apply NEI (... [1])

Comment [PH3]: Consistency. Because the guidance is defining “construction site entities,” this phrase should be used throughout the guidance in lieu of “licensees.”

Comment [PH4]: Clarification. Revised wording to clarify who is included in the construction site entity’s FFD program.

Comment [PH5]: Clarification. This change was made to clarify that Part 26 establishes the minimum regulatory requirements; NEI 06-06, a guidance document, provides one method that the NRC had found acceptable for use to meet the Commission’s requirements. See PH1.

Comment [PH6]: Editorial. This sentence was deleted because it was described above.

~~a Combined 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."~~

Comment [PH7]: Editorial. This sentence was deleted because it is described above.

2 PURPOSE AND SCOPE

2.1 CONSTRUCTION

This document is applicable to a construction site entity and applies ~~only~~ to the construction site workforce as defined in Section 4. It has been designed to provide a standard industry approach in establishing and implementing an FFD program for evaluating and maintaining the authorization 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 ~~c~~Construction FFD ~~p~~Program description for ~~COL applications as required in 10 CFR Part 52~~ construction site entities.

Comment [PH8]: Consistency.

The FFD program described herein applies only to construction activities, as defined in 10 CFR 26.5, performed on the construction site. Specifically, ~~on safety- and security-related SSCs that are performed on the construction site where the new power reactor will be installed and operated.~~

Comment [PH9]: Conforming. The lined out guidance is only partially correct, see, § 26.5. The proposed revision is intended to improve ease of reading and not re-state Part 26 requirements. See PH11.

~~The construction site entity must determine whether the site activity is a construction activity as defined in 10 CFR Part 26.5. The FFD program described herein applies to~~ Therefore, if the activities ~~is~~ being performed to fabricate, erect, integrate, ~~and~~ test a safety- or security-related structures, systems, and components (SSCs), ~~and~~ the installation of their foundations, including the placement of concrete, ~~the FFD program as defined in this document must apply to those individuals.~~ The construction site entity must determine whether the site activity is a construction activity.

Comment [PH10]: Editorial. This sentence was moved to the end of the paragraph.

The FFD program for construction applies to individuals specified in 10 CFR 26.4(f) who are constructing or directing the construction of safety- or security-related SSCs, unless the construction site entity chooses to subject these individuals to a full FFD program that meets all of the requirements in 10 CFR Part 26, except Subparts I and K. Thus, the FFD program for construction applies to individuals who perform the following types of activities:

Comment [PH11]: Conforming. These changes align this sentence with the tasks in “Constructing or construction activities” definition in § 26.5. See PH9.

a. ~~Direct~~ This would include individuals who are directing, supervising or installing engineered backfill (e.g., dirt) designated or determined to be safety-related (i.e., safety-related dirt) because it is part of the engineered fabric of the safety-related foundation. ~~For example, the FFD Program for Construction applies to persons who~~

Comment [PH12]: Editorial. This paragraph was added to enhance understanding of why the following bullets are provided. This changed the lettering of the bullets.

b. Produce concrete to be used for security- or safety-related structures and build or fabricate foundations for those particular SSCs. ~~Note that the truck driver transporting the concrete to the work site or the worker operating the controls to pump the concrete to the concrete’s final resting spot would not be within the scope of the Subpart K program. However, the persons producing the concrete (i.e., the persons mixing, weighing, and measuring the ingredients to make concrete) and the~~

Comment [PH13]: Editorial. This content was moved down from the preceding (NRC staff inserted) paragraph. See PH12.

~~persons supervising, directing, or causing the concrete to flow from the transfer shoot to its final resting spot would be subject to Subpart K;~~

- c. Fabricate safety-related emergency diesel generator buildings or install associated safety-related tanks, electrical and piping systems, and support systems;
- d. Weld or fabricate bullet resisting physical barriers and vital areas required by the Security Plan;
- e. Install and test vehicle control measures, personnel access control, intrusion detection systems, and contraband search equipment required by the Security Plan;
- f. Test safety- or security-related SSCs (e.g., motor-operated valves) or conduct bench-testing of safety-related relief valves prior to installation in the nuclear power plant (this is not to include, for example, warehouse receipt inspection/testing or a mechanical/electrical shop located outside the ~~licensee~~ ~~construction site entity-defined~~ ~~scribed~~ construction site) ~~area~~);
- g. Integrate (i.e., welding, bolting, wiring, or connecting) safety- or security-related pre-fabricated modules to other safety- or security-related modules, structures, or systems;
- h. Install or fabricate security blast walls, install cable trays, pull electrical cables, or lay sensory electronics for safety- or security-related SSCs; and,

~~Perform construction duties specified in 10 CFR 26.4(e). In addition, individuals who perform the duties specified in 10 CFR 26.4(e) also may be included in the program covered by this guidance.~~

Construction activities ~~conducted~~ ~~conducted~~ at facilities outside the ~~licensee~~ ~~construction site entity-defined~~ ~~scribed~~ construction site ~~area~~ such as another location, city, state, or outside of the U.S. would not be subject to the program described herein.

~~The construction site entity may permit individuals onto the construction site as "visitors." An individual designated as a visitor may be any individual the construction site entity determines to have a need to enter the construction site for a period of up to seven continuous days or less. An individual in a visitor status is not required to meet the provisions of 10 CFR 26 but, must be clearly identifiable as a visitor and escorted by an construction site entity designated individual subject to the construction site entity's PFD program. If the needs of the individual exceed the seven continuous days, then the individual must meet the appropriate section of 10 CFR 26.~~

Comment [PH14]: Conforming. The NRC staff provides these sentences to help ensure that the guidance is consistent with the intent of the rule. See 73 FR 17007, dated March 31, 2008.

Comment [PH15]: Consistency and Editorial.

Comment [PH16]: Consistency. If individuals performing the duties in § 26.4(e) are covered by this guidance, the guidance needs to be revised to account for the differences in requirements applicable to individuals in § 26.4(e) and (f). See PH2.

Comment [PH17]: Consistency and Editorial.

Comment [PH18]: Staff Comment. This paragraph is contrary to Section 26.401(a) which states, in part, that the requirements of Subpart K shall be applied to the individuals specified in Section 26.4(f). The NRC staff agrees that the concept of escorting visitors at construction sites is warranted to develop this option within the existing regulatory framework.

A ~~contractor/vendor (C/V)~~ approved by the construction site entity to implement a ~~10 CFR 26.10~~ ~~CFR Part 26~~ construction site program in accordance with NEI 06-06 shall comply with the provisions of this guidance through the development and use of detailed procedures approved by the construction site entity.

2.2 OPERATION

Management and oversight personnel, ~~listed below~~ as defined in Section 4 of this document, shall be subject to a full FFD program that meets the requirements of 10 CFR Part 26, Subparts A – H, N, and O. NEI 06-06 will not provide specific implementing guidance for these personnel because ~~10 CFR 26.10~~ ~~CFR Part 26~~ has sufficient details specified for implementation. ~~Management and oversight personnel included are as follows:~~

~~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; and~~

~~second level and higher supervisors and managers.~~

Comment [PH19]: Editorial. The guidance is unnecessarily repeated because it is included in Section 4.

3 RESPONSIBILITY

Each construction site entity is responsible to the NRC 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 a C/V.

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

Comment [PH20]: Clarification. This change helps ensure that construction site entities use the “approved” version of this guidance document and not a draft or proposed version.

Each construction site entity is responsible to ensure that its FFD program at the construction site is implemented for individuals who perform certain activities during the full lifecycle of construction, i.e., as the construction site transitions to an operational mode. As summarized below and in Table 3-1, the applicability of specific 10 CFR Part 26 requirements is based on the conduct of certain activities (e.g., receipt of nuclear fuel onsite) and the roles and responsibilities of certain individuals. For example, although not part of a 10 CFR Part 26, Subpart K, FFD program, the fatigue provisions in 10 CFR Part 26, Subpart I, ~~are applied~~apply to security officers required by the NRC when a construction site is in receipt of special nuclear material in the form of fuel assemblies (10 CFR 26.4(e)(1) and 26.5-). Furthermore, FFD requirements become more comprehensive as the site transitions through construction towards an operational mode.

3.1 BEFORE THE START OF CONSTRUCTION

~~Licensees and~~Construction site entities must have a fully functional ~~Construction FFD Program~~FFD program for reactor construction with ~~licensee construction site entity-~~approved procedures/instructions in place prior to allowing individuals subject to the requirements of 10 CFR Part 26 to construct or direct the construction of a nuclear power plant as specified below.

Comment [PH21]: Editorial and Consistency.

3.1.1 FFD Program Personnel

FFD program personnel involved in the day-to-day operations of the FFD program must be subject to an FFD program that meets all of the requirements of Part 26, except subparts I and K, and, at the construction site entity’s discretion, Subpart C. ~~A full scope FFD program (10 CFR Part 26 Subparts A, B, D, H, N and O), is required for FFD program personnel involved in the day-to-day operations of the FFD program and at the discretion of the licensee, 10 CFR 26 Subpart C.~~

Comment [PH22]: Clarification. This change is proposed because the phrase “full scope FFD program” was not defined and because the parenthetical did not reference Subparts C and I, so the sentences were confusing. For clarification, the staff provides the wording from § 26.4(g).

3.1.2 Persons Constructing or Directing the Construction of Safety- or Security-Related SSCs

~~Persons constructing or directing the construction of safety- or security-related SSCs as specified in 10 CFR 26.4(f) must be subject to a~~ An FFD program for reactor construction (such as a Subpart K program) ~~will be needed for persons constructing or directing the construction of safety- or security-related SSCs as described in 10 CFR 26.4(f) unless the~~ A licensee construction site entity ~~can also elects to implement an FFD program that includes all requirements of 10 CFR Part 26, except Subparts I and K, for these individuals listed described in 10 CFR 26.4(f).~~ can also elect to implement an FFD program that includes all requirements of 10 CFR Part 26, except Subparts I and K, for these individuals listed described in 10 CFR 26.4(f).

Comment [PH23]: Clarification. The staff proposes to restructure the sentence for clarity. Furthermore, there are no other FFD programs for construction, except for Subpart K and NEI 06-06.

Comment [PH24]: Editorial and Clarification.

3.1.3 Persons Performing the Activities Listed in 10 CFR 26.4(e)

~~Licensees~~ Construction site entities must have an FFD program that includes all requirements of 10 CFR Part 26, except Subparts I and K, for all persons performing the activities listed in 10 CFR 26.4(e), such as those: serving as security personnel required by the NRC; performing quality assurance, quality control, or quality verification activities; implementing a fitness monitoring program; witnessing or determining inspections, tests, and analyses under 10 CFR Part 52; supervising/managing (above 1st line supervisors) the construction of safety- or security-related SSCs; or directing or implementing the access authorization program and those, in part, who have certain access or decision-making authority. For security personnel required by the NRC, this FFD program only applies before the receipt of special nuclear material in the form of fuel assemblies.

3.2 NO LATER THAN THE RECEIPT OF SNM IN THE FORM OF FUEL ASSEMBLIES¹

3.2.1 Security Personnel

~~For security personnel~~ As required in 10 CFR 26.4(e)(1) ~~required by the NRC,~~ construction site entities ~~licensees~~ must implement an FFD program for security personnel that includes all requirements of 10 CFR Part 26, excluding Subpart K, no later than the receipt of SNM in the form of fuel assemblies, ~~for security personnel as required by 10 CFR 26.4(e)(1) and 26.5. Note that if a~~ construction site entity is not in receipt of fuel assemblies prior to when the Commission makes its 10 CFR 52.103(g) finding or the establishment of a protected area, then security personnel would be subject to Section 3.1.3 of this document ~~above~~ until the construction site entity ~~licensee or other entity~~ reaches the applicable milestone in Section 3.3 of this document ~~below~~.

Comment [PH25]: Clarification. The staff proposes to restructure the sentence for clarity.

¹ Each licensee who possesses, stores, or uses special nuclear material of low strategic significance (e.g., new or un-irradiated fuel assemblies) at a fixed site or contiguous sites, except those who are licensed to operate a nuclear power reactor pursuant to 10 CFR Part 50, shall implement the requirements of 10 CFR 73.67(f) and (g).

3.3 PRIOR TO THE EARLIER OF WHEN THE COMMISSION MAKES ITS 10 CFR 52.103(G) FINDING, THE LICENSEE'S RECEIPT OF FUEL ASSEMBLIES ON-SITE, OR WHEN THE PROTECTED AREA IS ESTABLISHED

Prior to the earlier of when the Commission makes its 10 CFR 52.103(g) finding, the licensee's receipt of fuel assemblies on-site, or when the protected area is established, the construction site entity licensees must implement an FFD program that includes all requirements, except Subpart K, for all personnel performing the duties described in 10 CFR 26.4(a)(1)-(5). These duties include operating or directing the operation of safety-significant systems or components; performing health physics or chemistry duties as a member of the onsite emergency response organization minimum shift complement; performing the duties of a fire brigade member who is responsible for understanding the effects of a fire and fire suppressants on safe shutdown capability; performing maintenance or onsite directing of the maintenance of safety-significant SSCs; or performing security duties as security personnel.

Licensees-Construction site entities must implement an FFD program that meets all requirements of 10 CFR Part 26, except 10 CFR 26.205 through 26.209 and Subpart K, for all personnel granted unescorted access to the protected areas by the licensees in 10 CFR 26.3(a) and, as applicable, 10 CFR 26.3(c) and who do not perform the duties described in 10 CFR 26.4(a).

3.4 PRIOR TO THE CONDUCT OF THE FIRST FULL-PARTICIPATION EMERGENCY PREPAREDNESS EXERCISE UNDER 10 CFR PART 50, APP. E, SECTION F.2.A

3.4.1 Emergency Responders

Construction site entities licensees must implement an FFD program that includes all requirements of 10 CFR Part 26, except 10 CFR 26.205 through 26.209 and Subpart K, for all persons who are required by a licensee in 10 CFR 26.3(a) and, as applicable, 10 CFR 26.3(c) to physically report to the licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) by licensee emergency plans and procedures.

Comment [PH26]: Clarification. Staff-proposed initial lead-in phrase to add clarity.

Table 3-1—FFD Program Applicability and Milestones—For Construction and Transition to Operations

Item	Persons Subject to FFD Program	10 CFR Part 26 Requirement	Milestone	Applicable 10 CFR Part 26 Subparts
1	Construction (workers and first line supervisors)	10 CFR 26.4(f)	Prior to initiating 10 CFR Part 26 construction activities	Subpart K, or Subparts A-H, N and O
2	Construction (management and oversight personnel)	10 CFR 26.4(e)	Prior to initiating 10 CFR Part 26 construction activities	Subparts A-H, N and O
3	Security Personnel (Required by the NRC)	10 CFR 26.4(e)(I)	Prior to fuel assemblies being received on site	Subparts A-H, N and O
		10 CFR 26.4(a)(5)	Prior to the earlier of: A. Licensee's receipt of fuel assemblies on site or B. Establishment of a protected area or C. The 10 CFR 52.103(g) finding	Subparts A-I, N and O
4	FFD Program Personnel	10 CFR 26.4(g)	Prior to initiating 10 CFR Part 26 construction activities	Subparts A, B, D-H, N, O and at the discretion of the licensee construction site entity, Subpart C.
5	Persons required to physically report to the TSC and EOF	10 CFR 26.4(c)	Prior to the conduct of the first full-participation emergency preparedness exercise under 10 CFR Part 50, Appendix E, Section F.2.a	Subparts A-I, N and O, except for 10 CFR 26.205-209
6	FFD Program for Operation	10 CFR 26.4(a) and (b)	Prior to the earlier of: A. Licensee's receipt of fuel	Subparts A-I, N, and O, except for individuals listed in Section 26.4(b), who

Comment [PH27]: Conforming. The Commission's requirements allow a construction site entity to implement either a Subpart K FFD program or a program that meets the requirements of Subparts A-H, N, and O, see § 26.4(f).

Comment [PH28]: Conforming. In NEI 06-06, revision 5, Table 3-1, paragraph 6 was provided as guidance. In revision 6, paragraph 6 was removed. The staff suggests adding paragraph 6 back into Table 3-1 to conform to the title of this table: "FFD Program Applicability and Milestones – For Construction and Transition to Operations," as to inform persons implementing NEI 06-06.

			assemblies onsite or B. Establishment of a protected area or C. The 10 CFR 52.103(g) finding	are not subject to Sections 26.205-209.
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Notes:

- 1) The FFD program is typically described in Chapter 13.7 of the licensee's or other entity's Final Safety Analysis Report.
- 2) Construction site entities do not need to establish license conditions for the above milestones since the implementation requirements are described in 10 CFR Part 26. See Staff Requirements Memorandum for SECY-05-0197, February 22, 2006.

4 DEFINITIONS

Accident—An incident including a:

- a. Work-related injury/illness—An injury or illness, resulting in an OSHA Recordable Incident;
- b. Work-related motor vehicle accident—As defined in the ~~construction entity~~ construction site entity's procedures, a significant on-site accident ~~that involving a vehicle that occurs in the performance of~~ occurs while an individual is in a vehicle performing work on the construction site; or
- c. Radiation Exposure or Release of Radiation—For any event resulting in a radiation exposure or release of radiation in excess of 10 CFR Part 20 regulatory limits.

Construction Site—The defined physical location (as pictorially illustrated or described in a construction site entity procedure) within or near the footprint of the new power reactor where safety- and security-related SSCs will be installed and operated when the plant begins operation. Nearby areas include, but are not limited to areas used to fabricate, erect, integrate, and test any safety- or security-related SSC's or materials used to fabricate, erect, integrate, and test safety- or security-related SSC's (e.g. producing the concrete to be used for the foundation of the reactor building in a facility).

Construction Site Workforce—Those personnel performing construction or directing the construction of safety- or security-related SSCs (as described in 10 CFR 26.4(f)) and those individuals performing the duties listed in 10 CFR 26.4(e). The personnel in the construction site workforce may be changed (not to be reduced further than those persons required by 10 CFR 26.4(f)) for purposes of practical implementation.

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

Fit for Duty—An individual who can safely and competently perform his/hershe duties and is trustworthy and reliable, as demonstrated by the avoidance of substance abuse.

Fitness-for-Duty (FFD) Authorization (FFDA)—A term commensurate with "Authorization" as defined in ~~40 CFR 26~~ 10 CFR Part 26 that identifies the status of an individual's required fitness-for-duty elements, which are then evaluated by a reviewing official to determine whether the individual is trustworthy, reliable and fit for duty. Generally, the required elements for granting FFDA for an individual subject to ~~40 CFR 26~~ 10 CFR Part 26 Subparts A-H, N and O are: consent, suitable inquiry (including education in lieu of employment and military service as employment); self-disclosure; pre-

Comment [PH29]: Conforming. NEI could either repeat all of the relevant definitions that are already defined in Part 26 or include none of them. If NEI includes only definitions that are new (i.e., not included in the rule), then construction site entities should refer to § 26.5 for definitions of words and phrases used in this guidance that have not been defined herein.

Comment [PH30]: Conforming. The staff notes that a work-related motor vehicle accident should not be limited to whether or not an individual is in the vehicle or at the controls. This is consistent with the OSHA recordable accident in 29 CFR 1904 and the DOT reportable accident in 49 CFR 390, et. al.

Comment [PH31]: Consistency. This definition includes two groups of individuals, those described in § 26.4(e) and (f). See PH2.

Comment [PH32]: Clarification. The staff suggests edits to this paragraph because the requirements vary slightly depending on whether it is initial authorization, authorization update, or authorization reinstatement, or if there is personally disqualifying FFD information. Further, the "authorization-like" requirements in Part 26 are different for persons subject to Subpart K and those subject to a full FFD program.

access drug and alcohol testing; training in the required FFD knowledge and abilities (K&A's), ~~FFD~~ and being subject to a random drug and alcohol testing program. The required elements for maintaining FFDA for an individual subject to 10 CFR Part 26 Subpart A-H, N, and O are: complying with FFD policies and procedures, being subject to a drug and alcohol testing program, being subject to a behavioral observation program (BOP), and successfully completing FFD training. ~~being subject to both licensee approved BOP and drug and alcohol testing program.~~ The elements for FFDA for individuals subject to ~~10 CFR 26~~ 10 CFR Part 26 Subpart K ~~only~~ include consent, pre-access drug and alcohol testing, and training in the required FFD policy, sanctions, and FFD expectations. ~~These individuals shall also be;~~ being subject to a ~~both licensee~~ construction site entity-approved BOP and a drug and alcohol testing program.

Management and Oversight—Personnel, including:

- a. security personnel required by the NRC,
- b. those who perform quality assurance/quality control/quality verification activities related to safety- or security-related construction activities,
- c. ~~individuals~~ those directly involved in witnessing or determining inspections, tests, and analyses (ITAAC) certification,
- d. designated ~~individuals~~ personnel to monitor the fitness of individuals,
- e. ~~individuals~~ those responsible for oversight and implementation of the licensee or other entity fitness-for-duty program, and
- f. second-level and higher supervisors and managers.

Nominal—~~The limited flexibility that is permitted in meeting a scheduled due date for completing a recurrent activity that is required under this part, such as the nominal annual (12-month) frequency required for FFD refresher training in 10 CFR 26.29(e)(2) and the nominal annual (12-month) frequency required for certain audits in 10 CFR 26.41(e)(1). Completing a recurrent activity at a nominal frequency means that the activity may be completed within a period that is 25 percent longer or shorter than the period required in this part. The next scheduled due date would be no later than the current scheduled due date plus the required frequency for completing the activity.~~

OSHA Recordable Incident—A significant illness or personal injury to the individual which within 4 hours after the event is recordable under the Department of Labor standards contained in 29 CFR 1904.7.

Significant Illness or Personal Injury—A determination or diagnosis made by a physician or other licensed healthcare professional.

Comment [PH33]: Consistency. The lead-in sentence above characterizes "Management and Oversight" as personnel, not individuals.

Comment [PH34]: Editorial. "Nominal" is defined in § 26.5. See PH29.

Significant Property Damage—Damage, during construction, to any safety- or security-related SSC in excess of \$100,000.

To Excess—An individual:

- a. consumed alcohol within the 5-hour abstinence period or while on the construction site;
- b. consumed alcohol any time before entering the construction site and has a blood alcohol concentration of 0.02 percent blood alcohol concentration (BAC) or higher; or
- c. is unfit for duty as determined by a 10 CFR 26.419 suitability and fitness evaluation.

5 FFD POLICY & PROCEDURES

5.1 DRUG AND ALCOHOL POLICY

5.1.1 Policy Statement and Performance Objectives

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 prior to pre-assignment testing. 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 the failure to adhere to the policy.

The construction site entity must develop a written policy statement to address the FFD performance objectives of 10 CFR 26.23, which provide reasonable assurance that:

1. Individuals are trustworthy and reliable as demonstrated by the avoidance of, ~~for example,~~ substance abuse;
2. Individuals are 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 their duties;
3. Measures are established and implemented for the early detection of individuals who are not fit to perform their duties; ~~the construction site is free from the presence and effects of illegal drugs and alcohol;~~
4. ~~The work places are~~ construction site is free from the presence and effects of illegal drugs and alcohol; and,
5. The effects of fatigue and degraded alertness on an individual's ability to safely and competently perform their duties are managed commensurate with maintaining public health and safety.

Comment [PH35]: Staff Comment. The inclusion of "for example" makes substance abuse just an example and allows an individual to avoid something else - besides substance abuse - to demonstrate trustworthiness and reliability. This is not consistent with 26.23(a).

Comment [PH36]: Editorial. This sentence was deleted because it is described in bullet 4 below.

Comment [PH37]: Clarification. The NRC staff proposes replacing "workplace" with "construction site" because construction site is defined in Section 4 and not all work places (such as warehouses and engineering and training facilities located outside the construction site) are subject to Subpart K.

5.1.2 Policy Statement Details

At a minimum, the written policy statement must:

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

- b. Using, selling, purchasing, transferring, dispensing, distributing, or possessing alcohol by an individual subject to this program while on a construction site is strictly prohibited.
 - c. 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
 - d. An individual subject to the provisions of this document is required to notify the construction site entity of any legal action on or off site involving drugs or alcohol as required by the construction site entity policies.
2. Describe the consequences of the following actions:
 - a. The use, sale, or possession of illegal drugs on or off **the construction site**;
 - b. The abuse of legal drugs and alcohol; **and**
 - c. The use or possession of alcohol on **the construction site**
 3. 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~~ construction site entity;
 4. 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;
 5. Prohibit the consumption of alcohol, at a minimum
 - a. Within an abstinence period of 5 hours preceding the individual's arrival at the construction site for both scheduled and unscheduled work, and
 - b. During the period of any tour of duty;
 6. Convey that abstinence from alcohol for the 5 hours preceding any scheduled and unscheduled work is considered to be a minimum that is necessary, but may not be sufficient, to ensure that the individual is fit for duty;
 7. Describe the consequences of violating the policy;
 8. Describe the individual's responsibility to report legal actions;

9. Describe the responsibilities of management and oversight personnel to report FFD concerns;
10. Describe the individual's responsibility to report FFD concerns;
11. Describe the circumstances that constitute a significant on-site accident; and,
12. Describe the review process.

5.2 PROCEDURES

Construction site entity procedures must provide reasonable assurance that **individuals in the construction site workforce** ~~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:

1. The identification of individuals that compose the construction site work-force;
2. The methods used to identify persons subject to FFD testing;
3. The method of determining who is on the construction site and subject to testing;
4. 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. These methods, techniques, and procedures shall comply with the requirements contained in 10 CFR Part 26, Subparts E, F and G for urine testing and Subpart K for alternate testing;
5. The immediate and follow-up actions that will be taken, sanctions, and the procedures to be used, in those cases in which individuals who are subject to the FFD program are determined to have:
 - a. Been involved in the use, sale, or possession of illegal drugs;
 - b. Consumed alcohol to excess before or while constructing or directing the construction of safety- or security-related SSCs, as determined by a test that accurately measures BAC; ~~(blood alcohol concentration)~~;
 - c. Attempted to subvert the testing process by adulterating or diluting specimens (in vivo or in vitro), substituting specimens, or by any other means;
 - d. Refused to provide a specimen for analysis; or

e. Had legal action taken relating to drug or alcohol use; ~~and;~~

~~6.~~ 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 abuse or misuse of legal drugs (including prescription and over-the-counter drugs) and alcohol; the possible use or possession of alcohol~~ while constructing or directing the construction of safety- or security-related SSCs as a member of the construction site workforce; 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. The behavioral observation program (BOP), ~~for instance,~~ must ~~cover and focus on~~ include those persons described in 10 CFR 26.4(f), even if;

Comment [PH38]: Consistency. Change made to align with the Section 4 definition of "construction site workforce."

~~7.6.~~ **NOTE:** If the construction site entity elects to increase the scope of ~~their~~ its BOP beyond that required by 10 CFR 26.407 for the individuals specified in 10 CFR ~~by 26.4(f)~~ 10 CFR 26.407 (e.g., to all persons subject to random testing or who have access to the construction site),. In this case, the entity shall establish procedural requirements to ensure that the Section 26.407-required program remains effective. See paragraph 8 below.

Comment [PH39]: Clarification. The scope of § 26.407 already is "all persons subject to random testing."

Comment [PH40]: Clarification. Paragraph 8 below describes one method (the establishment of a construction site entity procedure) to help ensure that the BOP will be effective.

~~8.7.~~ Access control to FFD-related software and hardware systems and FFD site and personnel databases to protect personal information and the integrity of the FFD program. These controls include, but are not limited to:

- a. Access control rights (i.e., which individuals can access specific FFD resources) and access control privileges (i.e., what these individuals can do with the FFD resources when accessed);
- b. Change control processes to control and identify revision of: random testing pool and determination protocols; personal and privacy information; drug and alcohol test results; and Medical Review Officer (MRO) and Substance Abuse Expert (SAE) communications; and,
- c. Controls to ensure that all persons who are required to be in the random testing pool are in the pool and that these persons have an equal probability of being selected and tested;

~~9.8.~~ Conduct of behavioral observations, review processes, audits, and suitability and fitness evaluations;

Note: A construction site entity ~~10 CFR 26.10~~ 10 CFR Part 26 BOP procedure should account for how an effective program can be implemented as the reactor power plant transitions through construction to an operational mode ~~and as the population of the construction site workforce changes.~~ For example, a construction site entity should

Comment [PH41]: Conforming. As described in paragraph 6, the construction site entity can change the applicability of its BOP as long as the BOP remains effective. This phrase is added to conform to paragraph 6.

consider a risk-informed element of its BOP to account for safety-significant activities, such as:

- a. pre-operational testing of installed security- or safety-related structures, systems, and components (e.g., safety-related instrument and controls),
- b. reactor physics and coolant system hydrostatic pressure testing, and
- c. performance or verification of ITAAC (inspections, tests, analyses, and acceptance criteria (ITAAC) on) SSCs as described in the construction site entity's application and other technical information (10 CFR 52.80);

Comment [PH42]: Clarification.

- ~~10~~.9. A BOP simultaneously accounting for the routine/continuous observations to detect and appropriately address impairment and adverse behaviors of the construction site work-force. The BOP should also, in general, accounting for large influxes of new workers or short-duration/transient construction site workers force personnel;
- ~~11~~.10. The case in which a person is offsite in a work status for a portion of day (e.g., the person was selected for random testing while offsite in training mode or retrieving equipment from a warehouse) but will be returning or has been directed to return to the construction site later that shift. For example, this person would be subject to, in part, random testing as described in paragraph 6.3.2;
- ~~12~~.11. Adequate instructions for the conduct of point-of-collection (POC) alternate specimen collection and alcohol testing, if applicable;
- ~~13~~.12. The records to be retained and the period of retention and
- ~~14~~.13. The FFD program day-to-day staff composition.

Note: Staff personnel involved in the day-to-day operations of the FFD program does not include persons within the construction entity construction site entity's line organizations responsible for constructing and directing the construction of safety- and security-related SSCs (or individuals described in 10 CFR 26.4(e)). These persons, such as managers, supervisors, and secretaries, may transmit information from FFD program personnel to the individual who must proceed to testing have an implementation role in the FFD notification process; however, they are not involved in the day-to-day operations of the FFD program. For example, the shop secretary or supervisor who receives the phone call from the FFD program personnel notifying the shop that a particular welder is required to report for testing is not an FFD program person, as described in 10 CFR 26.4(g).

Comment [PH43]: Clarification. The NRC technical staff position is that individuals described in § 26.4(e) and (f) are not "FFD Program Personnel." See Sections 3.1.1 and 6.3.3.

5.3 CONSENT

Individuals ~~requiring access to the construction site~~ **within the construction site workforce** shall sign a Consent form (~~e.g.,~~ see NEI STANDARD (STD) FORM 08-06-01, Consent, Figure 5-1, NEI 08-06, Nuclear Power Plant Access Authorization and Fitness-for-Duty Forms).

Comment [PH44]: Consistency.

A signed Consent authorizes the licensee or approved C/V or **construction site entity** to enter certain general, non-negative information into an industry database; transfer the data to another authorized user; as appropriate, conduct ~~of~~ a background investigation, including verification of certain information self-disclosed by the individual through the conduct of a suitable inquiry as defined within 10 CFR Part 26; as well as to verify the accuracy and completeness of the information provided by the individual. Finally, the Consent identifies which information may be released to which parties, including the NRC.

Comment [PH45]: Clarification. The staff proposes this addition to add flexibility to the process; this is consistent with the intent of Part 26, Subpart K.

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 ~~to obtain~~ the information and the individuals and entities releasing information to take the actions set out in the Consent for purposes of complying with the provisions of 10 CFR Part 26.

5.4 SANCTIONS

The construction site entity shall establish sanctions for FFD policy violations that, at a minimum, meet the requirements of 10 CFR 26.75 that prohibit the individuals from being assigned to construct or direct the construction of safety- or security-related SSCs and performing 10 CFR 26.4(e) duties unless or until the construction site 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.

The first violation of the FFD policy involving a confirmed positive drug or alcohol test result must, at a minimum, result in the immediate unfavorable termination of the individual's authorization for at least 14 days from the date of the unfavorable termination.

Any subsequent confirmed positive drug or alcohol test result, including during an assessment or treatment period, must result in the denial of authorization for a minimum of 5 years from the date of denial.

At a minimum, if an individual is notified to report for random testing and fails to report at the collection location in the specified time period, the individual's supervisor and FFD management will be notified; and the individual will be prohibited from being assigned to construct or direct the construction of safety- or security-related SSCs and performing 10

CFR 26.4(e) duties until it is determined whether there was a valid reason (e.g. verifiable and/or documented medical reason, weather condition, accident, or vehicle maintenance condition) for not reporting for testing.

If it is determined that the individual subverted the collection or testing process (e.g., intentionally avoided random testing), the person's ~~fitness for duty authorization (FFDA)~~ to the construction site shall be ~~permanently~~ denied.

Comment [PH46]: Editorial. This sentence and the next were part of the previous paragraph. The staff separated this sentence and the next from the previous sentence to enhance clarity of the subject discussions.

If ~~an~~ the individual's condition or behavior poses a potential risk to public health and safety or the common defense and security, the individual's FFDA to the construction site will be denied until ~~determined otherwise by~~ a suitability or fitness evaluation ~~finds the person fit for duty or is unfavorably terminated.~~

Comment [PH47]: Conforming. If an individual subverts a Part 26 drug or alcohol test, he/she is permanently denied consistent with § 26.75.

Comment [PH48]: Editorial.

5.5 DRUG AND ALCOHOL TESTING

The construction site entity shall employ urinalysis, oral fluid testing, breath tests, or other specimen testing methods as permitted and required in 10 CFR 26.405, to determine whether ~~persons~~ construction site workforce personnel performing duties listed in 10 CFR 26.4(f) are fit for duty, including but not limited to pre-assignment or -pre-access, ~~post-accident~~, for-cause, ~~followup~~, and random testing.

Comment [PH49]: Conforming. Change provided to conform with § 26.405(e)(3) and (4).

NOTE: As used in this guidance, "pre-access" testing is synonymous with "pre-assignment" testing. See Section 4 for the definition of FFDA which utilizes the "pre-access" terminology and the guidance described in Sections 8 and 9.

Comment [PH50]: Conforming. The staff provides this note to help clarify that the two terms are synonymous as used in this guidance; however, the staff notes that Part 26, Subpart K, does not use "pre-access" terminology.

At a minimum, the construction site entity shall test specimens for marijuana metabolite, cocaine metabolite, opiates (codeine, morphine, 6-acetylmorphine), amphetamines (amphetamine, methamphetamine), phencyclidine, adulterants, and alcohol at the cutoff levels specified in ~~10 CFR 26~~ 10 CFR Part 26, 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~~ of being granted FFDA and refusal to consent shall result in denial or unfavorable termination of FFDA to the construction site. See Section 5.4, "Sanctions," above.

Comment [PH51]: Consistency and Clarity. Part 26, Subpart K, does not have access requirements and it is the NRC staff's understanding that the industry desires to clarify this as well. Therefore, the staff proposes this change consistent with Section 9.

5.5.1 Drug Testing

Testing of urine specimens for drugs and validity, except validity screening and initial drug and validity tests that may be performed by a ~~licensee~~ construction site entity or approved C/V -testing facility ~~compliant with~~ per 10 CFR Part 26, Subpart F, must be performed in a laboratory that is certified by the U.S. Department of Health and Human Services (HHS) as described in 10 CFR Part 26, Subpart G. Any initial drug test performed by a construction site entity must

Comment [PH52]: Clarification. Construction site entities can utilize a licensee testing facility or HHS-certified laboratory for the conduct of specimen validity testing and initial drug testing.

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 Part 26, Subpart G (e.g., 10 CFR 26.161 and 10 CFR 26.163)**, except for invalid specimens that cannot be tested.

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.

In the case of a follow-up test, the confirmatory testing may rely upon a laboratory's Limit of Quantification (LOQ). Any detectible presence of the substance is sufficient for determining a confirmed positive follow-up test.

5.5.2 Alcohol Testing

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 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.

5.5.3 Initial and Confirmatory Cut-off Levels

The initial and confirmatory cutoff levels that shall be used when testing urine specimens to determine whether they are negative for the indicated substances are defined **with**in 10 CFR 26.133 and 26.163(a) and (b). The values depicted in 10 CFR 26.133 and 26.163(a) and (b) must be adhered to unless validity testing

indicates that the specimen is dilute ~~or; the construction entity~~ construction site entity has established a more stringent cutoff levels, ~~or the cutoff levels provided in 10 CFR 26.163(a) and/or (b) were amended.~~

Comment [PH53]: Consistency and Editorial.

5.5.4 Determining Positive Test Results for Alcohol

The construction site entity may rely upon the 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, and/or ~~10 CFR 26~~ 10 CFR Part 26 for testing individuals and determining a positive alcohol test result.

If the construction site entity relies upon ~~10 CFR 26~~ 10 CFR Part 26 for determining positive test results for an alcohol test, ~~the confirmatory test must be completed within 30 minutes after the conclusion of the initial test.~~

Comment [PH54]: Conforming. This staff-inserted phrase helps ensure that the guidance implements the Part 26 30 minute confirmatory testing requirement.

~~Aa~~ confirmed positive test result for alcohol, ~~regardless of whether the test was conducted according to 10 CFR Part 26 or 49 CFR Part 40 testing procedures,~~ must be declared under any of the following conditions:

Comment [PH55]: Conforming. Section 26.405(d) requires that the Part 26 alcohol cutoffs be used at construction sites. Note that the Part 26 confirmatory test cutoff is different than its corresponding requirement in § 40.251.

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.).

Comment [PH56]: Clarification. This sentence was split from the previous paragraph to improve clarity. The staff provides this a new phrase to clarify the confirmatory guidance for alcohol testing.

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 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.

In instances in which the construction site entity relies upon 49 CFR 40.247 to conduct an alcohol screening tests, a result ~~equal to or greater than 0.02 percent~~

~~(BAC)~~ will require a confirmation test ~~within 30 minutes, but no earlier than 15 minutes, of the completion of the initial test in accordance with 49 CFR 40.251.~~ If the confirmation test results are 0.02 percent ~~(BAC)~~ or greater, ~~the construction site entity's designated representative (such as the FFD program manager) responsible for reviewing alcohol test results received from the conduct of Part 26 testing, must be notified by the person administering the alcohol test.~~

Comment [PH58]: Conforming. The proposed revision clarifies a substantive time difference between the DOT and NRC alcohol testing processes.

Comment [PH59]: Clarification. Change provided to describe the responsibilities of the "designated representative."

Comment [PH60]: Clarification. Change clarifies who will notify the designated representative. See PH87.

6 SPECIMEN COLLECTION, TESTING, AND ANALYSIS

6.1 CONSENT FORM

Individuals **within the construction site workforce** are required to sign the Consent Form (NEI STANDARD FORM 08-06-01) 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 denial or unfavorable termination of FFDA and access to the construction site.

Comment [PH61]: Consistency.

6.2 TYPES OF TESTING

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

6.2.1 Pre-Assignment ~~as 10 CFR 26 Worker~~

~~10 CFR 26 workers~~ Individuals within the construction site workforce ~~who will construct or direct the construction of safety- or security-related SSCs~~ shall have negative drug and alcohol test results prior to the start of the individual worker's covered activities ~~construction, or direction of the construction of any safety- or security-related SSCs and performing 10 C-FR 26.4(e) duties~~. These drug and alcohol tests must be administered no more than 30 days prior to the start of the individual worker's constructing or directing the construction of a safety- or security-related SSCs ~~and~~ performing 10 C-FR 26.4(e) duties. 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 site. A construction site entity may maintain an individual in this status **as described in Section 9 (e.g.,** as long as the individual **successfully passes required training,** remains in the construction site entity random fitness for duty testing program for new plant construction, and is subject to a BOP as defined in Section 6.8).

Comment [PH62]: Consistency.

6.2.2 For Cause

6.2.2.1 Post Accident

As soon as practical after an event involving a human error that was committed by an individual subject to this program 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.

Comment [PH63]: Clarification. The proposed revision is provided to help ensure alignment with the guidance provided in Section 9.

Comment [PH64]: Conforming. For-cause, as well as pre-assignment, post-accident, followup are specific test conditions required by § 26.405(c). In other words, "post-accident" is not a subset of "for-cause" testing. Staff proposes that "For-Cause" be move below "Post Accident." See PH68.

Comment [PH65]: Editorial. See PH64 for renumbering "Post Accident" as 6.2.2. Post-accident testing (§ 26.405(c)(3)) includes occupational injuries and significant property damage, see next two sub-sections.

Individuals involved in a work-related accident shall be required to submit to a drug and alcohol test at a designated testing facility.

Drug and alcohol for-cause testing may be delayed only if necessary to seek urgent medical care. “Urgent medical care” could include, but is not limited to: head trauma; broken bones; internal organ problems; and burns and other wounds requiring a medical doctor, paramedic, or nursing care.

6.2.2.2 Occupational Injury and Illness Resulting in an OSHA Recordable Incident

Comment [PH66]: Editorial. See PH65 for renumbering as 6.2.2.1.

The injured individual must notify their onsite supervisor of the injury or illness, if able.

1. The construction site entity management shall make arrangements for the individual to submit for a drug and alcohol test at a designated testing facility.
2. The MRO-reviewed positive, adulterated, substituted, and invalid confirmatory drug and validity test results and alcohol test results shall be submitted to the construction site entity’s designated representative.

Note: The qualifying phrase “within 4 hours after the event” is utilized in 10 CFR 26.31(c)(3)(i) and 26.405(c)(3)(i) because, in some cases, it will be difficult to detect illnesses and injuries that meet the threshold for post-accident (i.e., post-event) testing and to conduct testing within that 4-hour window. Therefore, the determination of whether the event is OSHA recordable must be made within 4 hours and the post-accident/for-cause testing must commence as soon as practical after the event occurred. The 4-hour window should not be misinterpreted as requiring post-event testing to be completed within 4 hours after the event.

6.2.2.3 Significant Property Damage

Comment [PH67]: Editorial. See PH65 for renumbering as 6.2.2.2.

The supervisor shall notify the respective construction site entity’s designated representative that an incident has occurred that resulted in damage to safety- or security- related SSC in excess of \$100,000.

10 CFR 26.405(c), requires that drug and alcohol post-accident testing be accomplished “as soon as practical after an event,” therefore determination of the monetary value of an accident should not be unnecessarily complex or burdensome as to cause an unacceptable delay in post-accident testing. This determination should be made by an individual authorized by the ~~construction entity~~ construction site entity (i.e., a person who can make an informed determination, who did not cause or contribute to the event, and ~~or~~ who did not direct the activities leading up to the event) and be documented in sufficient detail

to enable post-event reviews. Examples include but are not limited to the following:

A human error that causes:

1. A load to be dropped onto or moved across a seismically-engineered floor or foundation that exceeds its evaluated structural capacity;
2. A fire or flood that adversely affects a safety- or security related SSC;
3. A dropped safety- or security-related ~~structure or system~~SSC; or,
4. The retraction of a 10 CFR 52.99(c)(1) notification⁵; could be examples that meet the 10 CFR 26.405(c)(3)(ii) post-accident testing requirement for “Significant damage, during construction, to any safety- or security-related SSC.”

Construction site entity management shall make arrangements for the individuals involved in the damage event sequence to submit for a drug and alcohol test at a designated testing facility as soon as practicable.

The MRO-reviewed positive, adulterated, substituted, and invalid confirmatory drug and validity test results and alcohol test results shall be timely (e.g., electronically) submitted in writing to the construction site entity’s designated representative.

6.2.2.4 **For-Cause – Observed Behavior**

Management and oversight personnel shall notify the construction site entity about any FFD concerns about individuals, as a minimum:

1. 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 **construction** work on **safety- and security-related** SSCs or **26.4(e)** assigned duties.
2. If credible information is received that an individual is engaging in substance abuse, the construction site entity shall perform drug and alcohol testing
3. If there is the smell of alcohol with no other behavioral or physical indications of impairment, then only an alcohol test is required.

Comment [PH68]: Editorial and Conforming. Based on the definition § 26.31(c)(2) for cause testing is in response to an observed behavior. See PH64 for renumbering as 6.2.3.

For other indications of possible impairment that do not create a reasonable suspicion of alcohol use or substance abuse, the construction site entity may permit the individual to return to work only after the condition (e.g., fatigue, legal use of prescription or over-the-counter medications, etc.) is evaluated by the MRO and the MRO has determined that the individual is fit to safely and competently perform his or her duties.

6.2.3 Follow-up

For individuals covered by a follow-up plan, the construction site entity must conduct follow-up testing to verify an individual's continued abstinence from substance abuse as determined by the MRO.

Construction site entities should establish in its site procedures a framework of actions or steps that constitute a followup plan to provide reasonable assurance that the subject individual has demonstrated continued abstinence from substance abuse. For example, construction site entities could build a program based on selected followup testing requirements described in 10 CFR 26.69.

Comment [PH69]: Editorial. See PH68 for renumbering as 6.2.4.

Comment [PH70]: Staff Comment. The staff provides this paragraph to communicate its concern that the guidance does not describe an adequate methodology/process for the establishment of a follow-up plan. The establishment of a follow-up testing framework in site procedures would enhance due process and consistency.

6.3 RANDOM DRUG AND ALCOHOL TESTING

6.3.1 Random Testing Population

The population of individuals subject to random testing (i.e., the random testing pool) must include at least all 10 CFR 26 workers persons within the construction site workforce. An individual within the construction site workforce 10 CFR 26 worker may not construct or direct construction of safety- or security-related SSCs or perform 10 CFR 26.4(e) duties unless he/she is identified with included in the random testing pool for the time period he/she is constructing or directing the construction of safety- or security-related SSCs or performing 10 CFR 26.4(e) duties. Since the construction site workforce composition is expected to change frequently, the construction site entity must update the random testing pool to include all individuals subject to testing prior to generating each random testing selection list.- Therefore, the construction site entity must be able to track whether the individual is performing a 10 CFR 26.4(e) or (f) activity. As a result, determine the 10 CFR 26 population at the time of the required random testing frequency and then generate its random testing selection list.

Comment [PH71]: Consistency. See PH2.

because individuals may move into or out of job responsibilities for which inclusion in the random testing program is required (i.e., the category of random test-eligible individuals), that will form a particular testing population, the construction site entity must develop a means (e.g., badge, other unique identification, coupled with work schedule documentation, etc.) that will identify

and account for all each individual, when at the construction site, who is subject to the FFD program and included in random testing pool. ~~10 CFR 26 workers who are constructing or directing the construction of safety or security related SSCs or performing 10 CFR 26.4(e) duties at the time random pool is created.~~ For example, unlike for a person in the 10 CFR 26.4(f) group of individuals, the random testing program must test an individual subject to 10 CFR 26.4(e) upon return to the site, when he/she was not onsite during a particular selection. Furthermore, ~~a~~ An accurate accounting of the random testing pool is necessary so that that each time random selections are made, all individuals subject to testing have an equal probability to being selected. ~~Construction site entities must be able to link those individuals subject to random testing and those individuals who are identified as included in the random testing pool.~~ To help accomplish this, construction site entities may use commercially-available random testing software, such as those used by other licensees or affected entities subject to 10 CFR Part 26. |

Comment [PH72]: Staff Comment. As described in Enclosure 1, the guidance provided in NEI 06-06 has not provided reasonable assurance that construction site entities will implement consistent and effective random testing programs. The staff provides these proposed changes to better communicate its concern that the construction site entity must develop and implement a random testing program in which, in part, ensures that the random testing pool is up-to-date and that it accurately reflects the construction site workforce at the time the list of individuals subject to random testing is determined.

The construction site entity's random testing methodology must ensure that the required annual random testing rate of 50 percent for the construction site workforce is met or exceeded.

The construction site entity should not change the size of its random testing population in an effort to reduce the occurrence of positive test results and should implement appropriate procedure instructions (i.e., reviews and approvals) to manage changes to the construction site workforce population.

The construction site entity must ensure that the selection method must not be predictable based on either the time of day or frequency.

6.3.2 Random Testing Frequency

Random testing shall be performed at an annual rate of at least 50% of the ~~10~~ construction site workforce. ~~CFR 26 workers and~~ The construction site workforce (i.e., group of individuals required to be in the random testing pool) must be determined and random testing must be ~~generated~~ conducted on a nominal weekly basis. |

Comment [PH73]: Clarification. The proposed revisions to this paragraph are intended to help clarify that the construction site workforce makes up the random testing pool and that this pool of individuals is subject to a 50% random testing rate. Determination of this pool and the testing of those individuals selected for random testing must be conducted on a nominal weekly basis.

Random testing must be administered in a manner that provides reasonable assurance that individuals are unable to predict the time periods during which specimens will be collected. The construction site entity must take reasonable steps to either conceal from the workforce that collections will be performed during a scheduled collection period or create the appearance that specimens are being collected during a portion of each day on at least 4 days in each calendar

week at the construction site. The portions of each day and the days of the week must vary in a manner that cannot be predicted by donors.

A construction site entity may have more than one random testing pool. However, the construction site entity must ensure that all individuals subject to testing is in a pool that is clearly defined, documented, and subject to the guidance herein. Additionally, procedural controls must be established to manage the random testing pool(s) to provide assurance that manipulation of the random pool(s) does not occur to cover a programmatic weakness (e.g., one pool did not meet the 50 percent random testing rate) or violation of 10 CFR Part 26 requirements.

Comment [PH74]: Staff Comment. The staff provides this paragraph to communicate that construction site entities have flexibility in defining their random test pool; however, all pools must be appropriately managed to meet regulatory requirements.

The construction site entity must collect specimens on an unpredictable schedule, including weekends, backshifts, and holidays, and at various times during a shift. There shall be no “safe time or day” with regard to random testing.

If an individual is selected and is not at work on the day of testing, the individual is not required to report for the purposes of random testing, and the construction site entity will randomly select another individual for testing. Test selection shall be 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 reasonable assurance that individuals are unable to predict the time periods during which specimens will be collected.

Note: An ~~Unescorted Access to an operating power reactor~~ or the individual's participation in an C/V Part 26 random testing program shall be deemed shall satisfy the random testing requirements at the construction site as long as the individual is subject to and participating in the concurrent program and this participation is enabled by construction site entity procedures adequate to maintain access to a construction site without being subject to additional random testing. In addition, if an individual is called for random testing while at the construction site, the individual must report for random testing at the designated collection facility subject to construction site entity reporting exceptions.

Comment [PH75]: Staff Comment. The staff agrees that a person subject to random testing at an operating unit need not be in the construction site entity's random testing pool, as long as the individual is subject to and participates in a random testing program under 10 CFR Part 26. Furthermore, if the individual is participating in a Contractor/Vendor (C/V) program that meets the requirements of 10 CFR Part 26 (such as that for Institute of Nuclear Power Operations (INPO), Westinghouse, or another C/V) then that also would satisfy this requirement.

6.3.3 Random Selection Notification Process

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

1. A record of the individuals selected for random testing shall be documented in the construction site entity's records, maintained and controlled by the FFD program personnel and include those individuals selected for testing, but were

not on the construction site and available for testing. A record must include the following:

- a. The time the notifications were made to the construction line organization for the individuals selected for testing, and
 - b. The times the individuals ~~was~~ were tested.
2. The construction site entity shall notify the subject individuals and direct them to report to the collection site as soon as practicable after notification and within the time period specified in the construction site entity's FFD program. If the individual's supervisor determines that the selected individual is performing safety- or security-related construction work or performing 10 CFR 26.4(e) duties in which relief is not reasonably possible or safe (i.e., the immediate disruption of such work would have a high likelihood of causing an unsafe or unsecure work environment), ~~then- the supervisor shall notify the FFD program personnel that this determination was made, at what time, for what reason, and direct the individual to appear for the test~~ ~~the individual should be permitted to report for testing~~ immediately upon the next break in work or immediately after his/her shift, but in every case, prior to leaving the construction site at the end of the work shift. ~~The selected individual shall not be notified until he/she is able to report to testing to reduce the opportunity for subversion.~~ If the testing facility is located off-site, the construction site entity must provide a reasonable amount of travel time to the testing facility and the timeframe shall be documented within ~~licensee~~ construction site entity procedures. Some example activities that may require greater time reporting allowance than the construction site entity's normal expectation include but are not limited to the following:
- a. performing activities within an atmosphere requiring OSHA respiratory-controls;
 - b. welding a reactor coolant pressure boundary (including time-sensitive weld preparation);
 - c. manipulating crane controls during a heavy lift; or
 - d. implementing security contingency response actions.
3. Individuals selected for testing from the random pool must be immediately available for subsequent selections.

Comment [PH76]: Staff Comment. The "individual's supervisor" is making a determination in accordance with the construction site entity procedure that an individual can leave the job site (without causing a safety or security concern) and report to testing. The "individual's supervisor" is not an FFD Program Personnel as described in § 26.4(g).

Comment [PH77]: Staff Comment. This change helps provide assurance that the individual selected for testing will not be cited for subverting the testing process based on a determination made by his/her supervisor that the individual cannot report for testing within the designated time-line. Also, it provides reasonable assurance that the individual's supervisor isn't protecting the individual.

Comment [PH78]: Staff Comment. Any delay afforded to an individual providing a urine specimen can have a significant adverse impact on the effectiveness of detecting certain drugs or drug metabolites, or afford the individual an opportunity to subvert the testing process. These administrative delays should be minimized.

6.3.4 Individual Fails to Report for Random Testing

If an individual is notified to report for random testing and fails to report at the collection location in the specified time period:

1. the individual's supervisor and FFD program management will be notified; and
2. the individual will be prohibited from being assigned to construct or direct the construction of safety- or security-related SSCs or performing 10 CFR 26.4(e) duties until it is determined whether there was a valid reason (e.g. verifiable and/or documented medical reason, weather condition, accident, or vehicle maintenance condition) for not reporting for testing.

6.3.5 Failure to Comply with Random Testing Program Requirements

If ~~it is determined that~~ the individual intentionally failed to comply with and report for testing when notified; otherwise avoided or disregarded the random testing notification; or the individual's condition or behavior poses a potential risk to public health and safety or the common defense and security, the individual's FFDA will be permanently denied and access to the construction site will be terminated unfavorably.

6.3.6 Construction Site Entity Actions When ~~a 10 CFR 26 Worker~~ an Individual Fails to Comply

If an ~~individual within the construction site workforce~~ ~~10 CFR 26 worker~~ refuses to submit to the testing, the ~~individual~~ ~~worker~~ shall be informed that FFDA and access to the construction site shall be terminated unless he/she submits to testing. If the individual still does not comply, the individual will be removed from the construction site and the construction site entity's FFD program manager will be notified.

6.3.7 Random Testing Exceptions

An individual selected for random testing that is not available (i.e., not on the construction site) at the time testing is being conducted will be tested at the next available time as determined by the ~~FFD Program~~ FFD program personnel. ~~This individual will be notified of his/her selection to appear for a random test just as any other individual will be notified (i.e., the individual will be given no prior notice of a testing selection).~~

Comment [PH79]: Consistency. Any significant pre-notification time afforded to an individual prior to drug or alcohol testing affords the individual an opportunity to subvert the test.

6.4 SPECIMEN COLLECTION AND LABORATORY SPECIMEN ANALYSIS

6.4.1 ~~Collection~~ Site and Collector Qualifications:

The construction site entity may establish a collection site that meets the requirements of the current version of 49 CFR Part 40, “*Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs*,” as amended, and ensure the following:

6.4.1.1 Urine Collector Qualifications:

Urine collectors (and alternative collectors as provided in 10 CFR 26.85(c)) 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 (either those described in 10 CFR Part 26 and/or 49 CFR Part 40 if relied upon to support the ~~construction entity~~ construction site entity’s program). Collectors shall either receive qualification training that meets the requirements of 10 CFR 26.85 and demonstrate proficiency in applying the requirements of 10 CFR 26.85 before serving as a collector or meet the 49 CFR Part 40, Subpart C~~s~~, collection and training requirements.

6.4.1.2 Alcohol Collector Qualifications:

Alcohol collectors shall be knowledgeable of the requirements of the construction site FFD policy and procedures and shall keep current on any changes to alcohol collection procedures (either those described in 10 CFR Part 26 and/or 49 CFR Part 40 if relied upon to support the ~~construction entity~~ construction site entity’s program). 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 or meet the 49 CFR Part 40 Subpart J, ~~c~~Collection and ~~t~~Training ~~r~~Requirements.

6.4.2 Alternative Collection Sites

Construction site entities may rely on a local hospital or other organization that meets the requirements of the current version of 49 CFR Part 40, “*Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs*” to collect urine specimens and conduct alcohol tests for the FFD program listed herein.

6.4.3 ~~On-site~~ Licensee Testing Facility

The construction site entity may use a licensee testing facility, whether located on or off-site, that meets the requirements of 10 CFR Part 26, Subpart F, to conduct initial validity and initial testing of urine specimens.

Comment [PH80]: Clarification. Deletion of "on-site" aligns with the paragraph description. There is no requirement that the Licensee Testing Facility be located "on-site." In fact, at multi-unit sites it may be beneficial to utilize only one Licensee Testing Facility.

6.4.4 Initial and Confirmatory 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 (or comparable laboratory for alternate specimens) shall use a ~~process~~ immunoassay which meets the requirements of the Food and Drug Administration (FDA) for commercial distribution. Testing for drugs and drug metabolites will be conducted through the analysis of urine specimens or other alternative specimens which meets the requirements of the FDA. Testing for alcohol will be conducted through breath measurement or oral fluids.

Comment [PH81]: Conforming. See § 26.405(f)

Analytic methods used for testing will be urinalysis, oral fluid analysis, or any other specimens approved in 10 CFR Part 26. Testing that indicates the presence of alcohol, specific drugs, or drug metabolites, may or may not be an indication of impairment due to substance use. The final determination is made by the MRO.

~~Note: As an example, a person who confirmed positive for a Schedule I drug of Section 202 of the Controlled Substances Act [21 U.S.C. 812] is considered unfit for duty, even if the drug was legally prescribed and used under State law.~~

Comment [PH82]: Editorial. This note was moved to Section 6.6 following paragraph 2.

Initial analysis and validity testing of urine specimens will be performed by either a licensee testing facility, a HHS-certified laboratory, or a HHS-certified instrumented initial test facility. Confirmatory analysis is performed by an HHS certified laboratory. Breath analysis may be performed at the construction site entity collection site or other site (e.g., local hospitals) as described herein that meets the requirements of 49 CFR Part 40, as amended.

6.4.5 Point-of-Collection (POC) Alternate Specimen Collection and Alcohol Testing

Note: DOT-qualified urine collectors are trained to split urine specimens and not trained to conduct alternative specimen collections.

The construction site entity:

1. May elect to conduct, for example, oral fluid drug or alcohol screening as long as its collection procedures and testing of oral fluids meet or exceed the requirements in ~~40 CFR 26~~ 10 CFR Part 26 regarding, in part, specimen

integrity, cutoffs for drugs and drug metabolites, quality controls, protection of information, and chain of custody.

2. Should ensure that the use of its selected POC apparatus tests drugs and drug metabolites at cutoffs specified in 10 CFR 26.133 or at comparable levels. For example, some POC equipment may not be optimized to detect delta-9-tetrahydrocannabinol-9-carboxylic acid (THC-COOH) because of cross reactivity to other metabolites. Therefore, the oral fluid result would not be comparable to a urine result as required by 10 CFR 26.405(d) and the construction site entity would need to establish an appropriate POC cutoff. This same type of comparable analysis is required by 10 CFR 26.405(f) if the construction site entity utilizes a laboratory that is comparable to an HHS-certified laboratory for confirmatory analysis.
3. Should establish in procedures other alternate specimen collection considerations, such as: dry mouth, oral/salivary contamination, privacy, specimen security, preservation, information protection, custody, collection, and other considerations to meet the requirements of ~~10 CFR 26~~ 10 CFR Part 26.
4. Should establish in procedures the process to be followed if an initial drug and/or alcohol screening test indicates the need for confirmatory analysis per ~~10 CFR 26~~ 10 CFR Part 26.

Note: Where applicable, construction site entities, should assess whether their POC procedure requirements for POC testing (e.g., performed for follow-up, for cause, pre-assignment/pre-access, etc.) might need to be different than that established for continual (e.g., random) POC testing to provide reasonable assurance that the FFD ~~p~~Program for ~~c~~Construction remains effective.

6.4.6 Interpretation of Testing Results and Follow-up Activities

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 must 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.

6.5 SPECIMEN PROCESSING

Construction site entity shall arrange for specimen collections for drug evaluation and initial alcohol tests to be performed at the collection location as specified in the construction site entity procedures. The testing should be done as soon as practicable after appropriate medical care if required is rendered ~~if required~~, as discussed in Sections 6.2.6.2, ~~“For Cause,” subsections~~ “Post Accident,” and 6.2.3, “For Cause.” ~~and “Notification Procedures.”~~

Comment [PH83]: Editorial.

Collection site personnel shall arrange for the transfer of collected specimens to the appropriate testing facility (e.g., licensee testing facility or HHS-certified laboratory for urine specimens). 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 appropriate testing facility (e.g., 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 appropriate laboratory. Specimens must be shipped from the collection site to the appropriate 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 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, pursuant to ~~10 CFR 26~~ 10 CFR Part 26 and this guidance, will develop detailed collection and specimen testing procedures. These procedures will be subject to NRC inspection.

6.6 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 must review positive test results from the HHS-certified laboratory or comparable laboratory for alternative specimens, determine whether a legitimate medical reason exists for the positive result, and make the final determination as to whether the test is a “confirmed positive” and the individual has violated the FFD program. If the MRO determines that there is a legitimate medical explanation for the confirmed positive test result from the confirmatory analysis, and the drug was used in the manner and dosage prescribed, **and the results do not reflect a lack of reliability or trustworthiness,** the MRO shall report the result as negative that no FFD policy violation has occurred.

Note: If the MRO determines that the individual’s condition poses a potential risk to the individual’s ability to safely and competently perform his/her assigned duties in a trustworthy and reliable manner, a determination of fitness should also be performed in accordance with the construction site entity’s FFD program.

Note: A person who confirmed positive for a Schedule I drug of Section 202 of the Controlled Substances Act [21 U.S.C. 812], as amended, is considered unfit for duty, even if the drug was legally prescribed and used under State law.

Adulterated, substituted, diluted and invalid confirmatory drug and validity test results will also be subject to MRO review for final determination.

Only the MRO can authorize the reanalysis of the original specimen, or the analysis of an aliquot of a split sample. The donor must request the MRO to authorize reanalysis. Such reanalysis shall be documented by the MRO and conducted by an HHS-certified laboratory or comparable laboratory for alternative specimens.

The MRO shall report all confirmed positive ~~results~~ (and for which analyte), and adulterated, substituted, ~~diluted~~ ~~dilute~~, and invalid results to the construction site entity’s designated ~~person representative~~, without disclosing quantitative test results, and except as ~~permitted in~~ ~~required under 10 CFR 26~~ ~~10 CFR 26.37(b)~~. The construction site entity shall ensure that appropriate action is taken as defined in the construction site entity procedures to deny the individual ~~access~~ ~~FFDA~~ to the construction site.

Comment [PH84]: Conforming. The purpose of drug and alcohol testing, for individuals described in § 26.4(e) and (f), is to help ascertain whether an individual is fit for duty and whether he/she is trustworthy and reliable. See § 26.23.

Comment [PH85]: Editorial. Moved from Section 6.4.4.

Comment [PH86]: Conforming. The correct terminology is “dilute,” not “diluted.” See § 26.169(d).

Comment [PH87]: Staff Comment. “Person” was replaced with “representative” to be consistent with other sections where the construction site entity identifies the specific person or persons as being responsible for the conduct of a certain activity as a “representative” of the construction site entity. This use is different than the identification of “designated personnel,” who are individuals who might be supervisors to whom employees report observations as in Sections 4 (Management and Oversight’ personnel, bullet d), 7, and the individual’s representative in Section 10 (bullet 5).

Furthermore, as detailed in § 26.5, “reviewing official” is reserved for licensees or other entities specified in § 26.3(a) though (c). See PH91.

Comment [PH88]: Conforming. The specific reference is provided. See § 26.169(d).

Comment [PH89]: Consistency. NEI 06-06 establishes and uses “FFDA” at construction sites.

7 BEHAVIORAL OBSERVATION PROGRAM

The construction site entity's BOP 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 condition that, if left unattended, may constitute a risk to public health and safety or the common defense and security.

Management and oversight personnel, ~~identified~~ defined in Section 2-24 of this document, who are responsible for observing individuals subject to a BOP, shall be identified within the construction site entity's procedures and shall report any FFD concerns about individuals to the personnel designated (i.e., designated personnel) in the construction site entity's policy.

Comment [PH90]: Consistency. See PH91

Management and oversight personnel that are responsible to perform BOP 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, or a 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 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.

8 REVIEWING OFFICIAL

The ~~licensee~~ construction site entity or as applicable, approved C/V, is required to designate in writing one or more individuals as a reviewing official to make FFDA determinations relative to a potential construction site workforce member's ~~an individual's~~ trustworthiness and reliability and fitness for duty. These designated ~~representative~~ reviewing official must have a demonstrated knowledge of all aspects of the FFDA elements and the applicable FFD program requirements impacting an individual's FFDA.

Comment [PH91]: Consistency. See PH87.

In every case, the ~~reviewing official~~ designated representative shall evaluate trustworthiness and reliability based on an accumulation of information including potentially disqualifying information (PDI), BOP data, and/or any subsequent determination of fitness. This information must support a trustworthiness and reliability determination prior to the ~~licensee~~ construction site entity granting FFDA or maintaining of FFDA. The individual must be informed of the basis for any denial of FFDA. Items to evaluate include:

Comment [PH92]: Consistency. See PH87.

1. The self-disclosed and developed activities of the individual;
2. The consistency and completeness of self-disclosed and developed information;
3. Results of true identity verification ~~of the individual~~, such as comparing ~~personal history questionnaire~~ PHQ data to developed information, or other data sources; and
4. The reason for inconsistencies detected through review of collected information, i.e., intentional, innocent, or an oversight. Willful or intentional acts of omission or untruthfulness would be grounds for denial of FFDA.

Comment [PH93]: Editorial.

Whenever an individual who is granted FFDA is subsequently terminated unfavorably, the organization responsible for controlling access to the construction site must be notified prior to or simultaneous with the unfavorable termination.

~~The~~ A potential construction site workforce member ~~individual~~ must be notified in writing that any document submitted ~~by the individual~~ as part of the FFDA process must contain accurate, complete and truthful information, and be advised of the consequences for failure to do so.

The following actions related to providing and sharing the ~~required~~ personal information ~~required~~ are sufficient cause for denial or unfavorable termination of FFDA:

1. Refusal to provide written consent for the suitable inquiry;

2. Refusal to provide, or the falsification of any personal information including, but not limited to, the failure to report any previous denial or unfavorable termination of nuclear power plant access authorization;
3. Refusal to provide written consent for the sharing of personal and developed information with other licensees, construction site entities or C/Vs; and
4. Failure to report any legal actions, if applicable.

The ~~licensee reviewing official designated representative~~ may determine that FFDA shall be denied or terminated at any time based on disqualifying information even if all information required has not been provided, collected, or evaluated. However, FFDA must not be granted until all applicable FFDA elements are completed and have been favorably evaluated by the ~~designated representative licensee reviewing official. However, the reviewing official may deny or terminate FFDA of any individual based on disqualifying information even if not all the information required by this section has been collected or evaluated.~~

Comment [PH94]: Consistency.

Comment [PH95]: Consistency.

Comment [PH96]: Editorial. This sentence is repeating the first sentence of the paragraph.

If an individual who has FFDA status is not subject to an FFD program that ~~meets the requirements of~~ complies with the guidance in this document for more than 30 continuous days, then the ~~reviewing official~~ designated representative shall terminate the individual's FFDA status and the individual shall meet the requirements in order to reestablish FFDA.

Comment [PH97]: Consistency.

9 GRANTING AND MAINTAINING FFDA

9.1 FFDA ELEMENTS

The FFDA elements individuals subject to ~~40 CFR 2610 CFR Part 26~~ Subpart A-H, N & O must have completed include, in accordance with ~~40 CFR 2610 CFR Part 26~~ Subpart C:

1. Sign a consent;
2. Verification of identity;
3. Complete a self-disclosure of FFD potentially disqualifying information (PDI) and legal actions;
4. Conduct a suitable inquiry of employers (including education in lieu of employment and military service within the scope period) to verify self-disclosure information;
5. Successfully pass a pre-assignment drug and alcohol test;
6. Receive and successfully pass training on the ~~40 CFR 2610 CFR Part 26~~-required ~~knowledge and abilities (K&A's)~~;
7. Be subject to an approved BOP; and
8. Be subject to a random drug and alcohol testing program.

The FFDA elements ~~that~~ individuals subject to ~~40 CFR 2610 CFR Part 26~~, Subpart K, must completed are:

1. Sign a consent;
2. Verification of identity;
3. Successfully pass a pre-assignment drug and alcohol test; and
4. Receive training on FFD policy, sanctions and FFD~~P~~ program expectations.

9.2 TYPES OF FFDA

The requirements for FFDA are separated into the following categories:

1. Initial FFDA;
2. Reinstated FFDA; and

3. Maintained FFDA or elements thereof.

The determining factor that differentiates the use of any of these categories is:

1. whether the individual has previously held FFDA;
2. the lapsed time (the total number of days that the individual's FFDA is interrupted to include the day after the individual's last period of FFDA was terminated and the intervening days until the day upon which the individual applies for FFDA); and
3. whether or not the FFDA has been terminated favorably.

9.3 GRANTING FFDA AND FFDA ELEMENTS

A construction site entity may grant FFDA upon successful completion and documentation of the elements specified within Section 9.1, as appropriate.

Construction site entities and C/Vs may rely upon the information that other licensees, construction site entities and C/V's who are subject to ~~10 CFR 2610~~ [10 CFR Part 26](#) have:

1. gathered about individuals who have previously applied for FFDA and
2. developed about individuals during periods in which the individuals were maintained in an FFDA status.

Construction site entities who are seeking to grant FFDA to an individual who is subject to another NRC-approved program (e.g., 10 CFR 73.56 Personnel Access Authorization Requirements for Nuclear Power Plants) or another program that complies with the [requirements-guidance](#) contained within this document (including programs designed to meet the requirements of 10 CFR 73.56), may rely on those documented programs or program elements to comply with the FFDA requirements.

The construction site entity who is seeking to grant FFDA is required to document that the program elements being accepted have been maintained consistent with the [requirements-guidance](#) of this section by the other program (e.g., access authorization or FFDA at another construction site).

Operating US nuclear power plants and construction site entities that collect personal data under requirements of ~~10 CFR 2610~~ [10 CFR Part 26](#) are committed to the [requirements guidance](#) contained within this document and therefore, are able to share and rely upon information that has been collected and evaluated in accordance with the requirements of this program.

If an individual who has FFDA status is not subject to a FFDA program that meets the [requirements-guidance](#) as defined in this section for more than 30 continuous days, then the [construction site entity licensee](#) shall terminate the individual's FFDA status.

9.4 MAINTAINING FFDA AND FFDA ELEMENTS

Once Initial FFDA is granted, the individual may be maintained in a FFDA-certified status.

FFDA elements completed prior to the granting of FFDA may be maintained current indefinitely for an individual covered by an approved BOP. Additional [pre-assignment](#) drug and alcohol testing is not required if the individual was subject to a random drug and alcohol testing program throughout the period since the individual's last FFDA was terminated.

Self Disclosure (SD) and Suitable Inquiry (SI) once completed can be maintained indefinitely provided the individual is under a [licensee construction site entity](#)-approved BOP since the completion of SD and SI or throughout the period since the individual's last FFDA was terminated favorably.

9.5 FFDA TERMINATED UNFAVORABLY

For individuals whose last FFDA was terminated unfavorably, whose FFDA was suspended due to violation of a FFD program policy or whose last FFDA or request for FFDA was denied, the individual's trustworthiness and reliability must be re-established through the conduct of program elements necessary to establish an Initial FFDA as described in Section 9.2~~(a)(1)~~.

9.6 REVIEW PROCESS

The construction site entity shall have a review process that is objective and impartial. The construction site entity's review program is 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 FFDA at the construction site or whose authorization has been terminated due to a violation of the FFD program shall:

1. Be provided the basis for the denial of FFDA;
2. Have an opportunity to provide additional information and/or correct incorrect information contained on the record, and;

3. Be provided the opportunity to have the decision, together with any additional information, reviewed in accordance with the construction site entity appeal/review process as defined in the construction site entity's procedures. For example, the appeal/review process may entail a separate review by another 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.
4. The determination from this independent review is final.

10 PROTECTION OF INFORMATION

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 under the construction site entity's FFD program before disclosing the personal information, except for disclosures to the following persons who are authorized:

1. A ~~licensee's or other entity's~~ construction site entity's representatives who have a need to have access to the information to perform their assigned duties under the FFD program, including determinations of fitness, FFD program audits, or some human resources functions;
2. NRC representatives;
3. Assigned MROs and MRO staff;
4. Appropriate law enforcement officials under court order;
5. The subject individual or his/her representative who has been designated in writing;
6. Persons deciding matters on review or appeal;
7. The presiding officer in a judicial or administrative proceeding initiated by the subject individual (see note below), or
8. Other persons pursuant to court order.

Note: For example, the presiding officer and a licensee's or other entity's attorneys of record defending the licensee in an alternative dispute resolution, judicial, or administrative proceeding that is initiated by the subject individual regarding a wrongful termination claim or action resulting from a violation of the license's FFD policy. The information disclosed to the presiding officer and the licensee's or other entity's attorneys must be limited to the subject individual's personal FFD information that is at issue in the proceeding, the information disclosed to the presiding officer must be identical to the information disclosed to the licensee's or other entity's attorneys, and the discloser of the information to the presiding officer and the licensee's or other entity's attorneys must include a binding stipulation that the presiding officer and the licensee's or other entity's attorneys will not make the information publicly available.

11 RECORDS RETENTION

The construction site entity must establish and maintain a system of files and procedures that clearly indicate how the records pertaining to the administration of the program are maintained so that they are available for NRC inspection purposes and for any legal proceedings resulting from the administration of the program. The records may be stored and/or archived either in hardcopy or electronic format.

11.1 FIVE-YEAR RECORDS RETENTION

The construction site entity shall maintain **the following** for at least five (5) years after the construction site entity terminates or denies an individual's FFDA or until the completion of all related legal proceedings, whichever is later.

1. Records pertaining to individual workers including:
 - a. Information used to make pre-assignment (i.e., FFDA, consent, termination, FFD testing results, etc.) decisions;
 - b. Records pertaining to the determination of a violation of the FFD policy and related management actions; and
 - c. Records of any MRO evaluations or suitability and fitness evaluations.
2. FFD ~~p~~Program records including:
 - a. A list of the random pool (including all updates), a list of individuals selected for random testing for each day of testing, including those individuals selected but not tested, and the reason individuals were not tested;
 - b. Superseded versions of the written FFD policy and procedures;
 - c. Procedures involving behavioral observation, protection of information, reviews conducted for FFD policy violations, audits, suitability and fitness evaluations, sanctions, and drug and alcohol selection, collection, testing (e.g., pre-assignment/pre-access, random, for-cause, post-accident, and follow-up), evaluation; test results;
 - d. Technical information and evaluations used to justify or support the conduct of alternate specimen sampling and licensee-selected drug and drug metabolite cutoff levels;
 - e. Information, data, and reports necessary to implement the requirements of ~~10~~ **CFR 2610 CFR Part 26**;

- f. NRC Operations Center reports by telephone pursuant to Section ~~12-6.11~~; and
- g. Annual program performance reports for the FFD program. If the construction site entity elects to electronically report 10 CFR 26.717 information, then the single positive test forms and the annual reporting forms (drug and alcohol and, as required, the fatigue form) need to be retained.

11.2 THREE (3)-YEAR RECORDS RETENTION

The construction site entity shall maintain for at least three (3) years records that, include:

- a. Records of FFD training and examinations
- b. Records of audits, audit findings and corrective actions

11.3 LIFE OF AGREEMENT

The construction site entity shall maintain ~~for until~~ the life of the agreement or until completion of all legal proceedings, whichever is later, written agreements for the provision of services supporting the FFD program.

11.4 FFD PROGRAM PERSONNEL FOR THE LENGTH OF EMPLOYMENT BY OR CONTRACTUAL RELATIONSHIP WITH THE CONSTRUCTION SITE ENTITY

The construction site entity shall maintain ~~FFD Program~~ FFD program personnel records; background investigations, credit and criminal history checks, and psychological assessments of FFD program personnel for the length of the individual's employment by or contractual relationship with the licensee or other entity, or until the completion of all related legal proceedings, whichever is later.

11.5 FOR THE TIME THE FFD PROGRAM PERMITS TESTING FOR DRUGS NOT SPECIFIED IN 10 CFR PART 26

The construction site entity shall maintain records ~~for the FFD program that includes~~ pertaining to the testing for (1) drugs not specified in ~~10 CFR 26~~ 10 CFR Part 26 or (2) ~~for those that used~~ more stringent cutoff levels than required under ~~10 CFR 26~~ 10 CFR Part 26. ~~required~~ These records must be maintained for the time the FFD program follows these practices or until the completion of all related legal proceedings, whichever is later.

Comment [PH98]: Clarification. Consistent with the § 26.717 reporting requirement, if electronic reporting is utilized, the construction site entity must submit the Single Positive Test Form for each FFD policy violation and an Annual Reporting Form for Drug and Alcohol Tests. If Subpart I is applicable during construction, then the construction site entity must, in addition, submit a Annual Fatigue Reporting Form. These forms are provided at <http://www.nrc.gov/reactors/operating/ops-experience/fitness-for-duty-programs/submit-ffd-reports.html>

11.6 ELECTRONIC FORMAT RECORDS AND SIGNATURES

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.

When signing forms specified within this document, either a handwritten signature or an electronic signature (e.g., USER ID Account or process that links the data to the individual, etc.) may be used to signify that the individual signed the form providing appropriate consent or acknowledged that the data on the form is accurate. If the signature or approval is electronic, the signature or approval must be in a form that is capable of being retained and accurately reproduced for later reference by parties required to maintain the record.

11.7 HARDCOPY RECORDS

Hard copy FFD records containing personal information shall be maintained in secured storage or lockable file cabinets when not in review. Access to the FFD area where FFD files and FFD file cabinets containing personal information are maintained is limited to those individuals authorized by the construction site entity.

12 REPORTING RESPONSIBILITIES

~~Licensee-approved~~ Construction site entity C/Vs must report to the ~~licensee or other~~ construction site entity within 8 hours of discovery ~~of 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.

Comment [PH99]: Consistency. This addition was added to assist in consistency with paragraph 1 below.

Construction site entities shall make 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 2610~~ [CFR Part 26](#), rather than under the provisions of 10 CFR 73.71.

Construction site entities, for example, should exercise prudent judgment in determining whether to report a particular construction-related FFD issue to the NRC Operations Center. The following examples are guidance to assist construction site entity reportability determinations:

1. An “intentional act that casts doubt on the integrity of the FFD program” could involve, but is not limited to, the following examples:
 - a. the unauthorized notification of a person, to subvert the FFD program’s normal notification procedure, that he/she will be selected for drug or alcohol testing on a certain day or at a certain time;
 - b. any unauthorized diversion or subversion of a drug or alcohol specimen or its documentation while in construction site entity custody;
 - c. any actual tampering or unauthorized alteration of onsite instrumentation or equipment used to analyze or store a drug or alcohol specimen; or
 - d. any actual collusion between any person with FFD-related program management access or authorization (e.g., an instrument calibration technician, computer software/hardware technician, FFD program personnel, supervisors, etc.) and any person subject to drug or alcohol testing to subvert the test.
2. Any programmatic failure, degradation, or discovered vulnerability of the FFD program that may permit undetected drug or alcohol abuse by individuals who are subject to the FFD program. ~~This~~ could involve, but is not limited to, the following examples that involve the failure to:

- a. conduct behavioral observation or perform pre-assignment/pre-access or random testing of a significant number of persons who constructed or directed the construction of safety- or security-related SSCs or perform 10 CFR 26.4(e) duties;
- b. implement an effective suitability and fitness evaluation (~~10 CFR 26~~ 10 CFR Part 26) process that enabled unfit persons to construct or direct the construction of safety- or security-related SSCs or perform 10 CFR 26.4(e) duties; or
- c. provide reasonable assurance that one or more of the 10 CFR 26.23, “Performance objectives,” are met.

Note: Single occurrences or non-related multiple occurrences not representing a programmatic failure should not be reported.

3. Construction site entities should also consider making a report for the following persons, if found and confirmed to be unfit for duty during the onsite conduct of the described duty(ies):
 - a. a person maintaining or has applied to the NRC for a 10 CFR Part 55 license who directed or performed a safety-significant activity;
 - b. Certified Fuel Handler (see 10 CFR Part 50.2) who directed or manipulated nuclear fuel;
 - c. a security person performing NRC-required duties; or,
 - d. a person who performed quality assurance/verification activities on an Inspection, Tests, and Analysis and Acceptance Criteria (ITAAC)-designated SSC or other 10 CFR 26.4(e) duties.
4. If a construction site entity identifies that a particular 10 CFR Part 26, Subpart G, laboratory has a significant quality issue or a collection contractor has trustworthy and reliability concerns, and the issue meets the criteria in ~~10 CFR 26~~ 10 CFR Part 26, this issue should be reported.
5. If a person entered the construction site in possession or “constructive possession” of more than a personal-use quantity (e.g., a quantity established by State law) of an illegal drug, the issue should be reported.
6. FFD-reportable occurrences should be evaluated and documented (with appropriate protection of information) by the construction site entity for the implementation of corrective actions to help assure the continuing effectiveness of the FFD program and to enable NRC inspection.

12.1 ANNUAL PROGRAM PERFORMANCE REPORTS FOR THE FFD PROGRAM

For the annual report:

1. The construction site entity should submit its FFD performance data for its construction site ~~population~~ workforce excluding individuals covered under a co-located operating reactor site population.
2. If a construction site and an operating reactor site share employees, these shared persons should be reported (i.e., included) in the operating reactor FFD performance report.
3. The construction site entity should coordinate the reporting of C/V personnel with the C/V entity in order to preclude double counting of C/V personnel in the construction site entity's, licensee's and NRC's FFD databases.

Note: If the reporting protocols of 1-3 above are not implemented, the construction site entity should inform the NRC of the particular reporting protocols in its ~~10 CFR 2610~~ [CFR Part 26](#) report so that the NRC's FFD database can be annotated.

4. If implementing electronic reporting, the construction site entity will need to submit the "Single Positive Test Form" for each occurrence; ~~and the "Annual Reporting Form for Drug and Alcohol Tests," and the "Annual Fatigue Reporting Form,"~~ to satisfy the ~~10 CFR 2610~~ [CFR Part 26](#) reporting requirement.
5. The electronic reporting of the "Single Positive Test Form" will not satisfy the 24-hour telephone report to the NRC Operations Center pursuant to ~~10 CFR 2610~~ [CFR Part 26](#) and Section ~~6-12~~.
6. If implementing electronic reporting, the FFD e-forms provide space and drop-down menus for the submittal of voluntary information. This voluntary information is currently not required by regulation (see 10 CFR 26.8, "Information collection requirements: OMB approval"). However, construction site entities should consider submitting this information as it will enhance consistency across the industry, the NRC's FFD database, and the quality of NRC's assessment of construction site entity FFD performance.
7. The construction site entity shall ensure that the information protection requirements pursuant to ~~10 CFR 2610~~ [CFR Part 26](#) are applied to all FFD-related communications and correspondence. Privacy information and other personally identifiable information shall not be included on any reports or forms required by ~~10 CFR 2610~~ [CFR Part 26](#).

13 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 approved by the ~~licensee or other~~ construction site entity.

Construction site entities 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.

Audits can be combined and performance dates managed in accordance with construction site entity procedures.

If adverse performance data exists necessitating the conduct of an audit, the construction site entity should schedule the conduct of its audit(s) as soon as reasonably practicable to maintain reasonable assurance that the FFD program provides on-going detection and deterrence of substance abuse to help ensure that persons constructing or directing the construction of safety- or security-related SSCs or performing 10 CFR 26.4(e) duties are fit for duty, trustworthy, and reliable commensurate with the potential risk to public health and safety and the common defense and security.

Persons performing FFD audits must be independent of the FFD functional area being audited.

The audit report, findings, observations, and recommendations must be reported to management at a level above that of the FFD program manager

The following audits are required:

1. An audit evaluating a majority of the 10 CFR Part 26, ~~Subpart B~~, program elements [discussed in this guidance](#):
 - a. Within 12 months of the start of safety- or security-related construction;
 - b. Prior to the earlier of when the Commission makes its 10 CFR 52.103(g) finding, the licensee's receipt of fuel assemblies on site, or when the protected area is established; and
 - c. If performance data indicates an adverse trend that challenges a performance objective listed in 10 CFR 26.23, for the elements of concern.

2. An audit of construction site entity program elements on a periodic schedule, not to exceed a nominal 24 months period, as determined by the construction site entity.
3. An audit of approved-C/V programs on a nominal 12 month period.

Construction site entities need not audit HHS-certified laboratories or the specimen collection and alcohol testing services that meet the requirements of the current version of 49 CFR Part 40, "Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs."

Staff Comment.

Staff comment - The first sentence states that the scope/focus of the document is on a 10 CFR Part 26, Subpart K, construction FFD program and is specifically applicable to only the individuals in Section 26.4(f). The first paragraph also states that this guidance does not address individuals specified in Section 26.4(e) who must be subject to a "full" FFD program (i.e., all Part 26 subparts, except Subparts I and K).

However, throughout the document, the guidance is also written to be applicable to the individuals listed in Section 26.4(e). For example, the document includes individuals in Section 26.4(e) in the definition of "construction site workforce," and the term "construction site workforce" is used throughout the document, including in places where some level of distinction is needed between applicability to the individuals specified in Section 26.4(e) and (f) (e.g., random drug testing, BOP, FFDA). If NEI does intend for this guidance to be applicable to individuals specified in Section 26.4(e) (which would conflict with the scope and focus), then the document must be revised to address the differences in requirements as they apply to these individuals compared to those performing the duties listed in Section 26.4(f).

Based on conversation with industry representatives, the staff understands that the industry desires to have individuals subject to 10 CFR 26.4(e) included in this document.

Therefore, NRC staff comments made in this document are intended to help apply NEI 06-06 guidance to individuals subject to 10 CFR 26.4(e) and (f). However, the guidance remains insufficient for persons subject to a "full" FFD program. Therefore, the NRC will not endorse this document (even with NRC staff comments incorporated) as an acceptable method of meeting the requirements for individuals