

# REGULATORY ANALYSIS

## DRAFT REGULATORY GUIDE DG-5036 FITNESS FOR DUTY PROGRAMS AT NEW REACTOR CONSTRUCTION SITES (Proposed New Regulatory Guide)

The NRC staff did not prepare a separate regulatory analysis for this draft regulatory guide. A value/impact analysis was included in the Regulatory Analysis of the Final Rulemaking to amend the Fitness-for-Duty (10 CFR Part 26) requirements (ADAMS Accession No. ML080580135). A copy of the regulatory analysis is available for inspection or copying for a fee in the Commission's Public Document Room at 11555 Rockville Pike, Rockville, MD.

### 1. Statement of the Problem

Companies licensed by the NRC have begun to construct new commercial nuclear power reactors. Through the regulations in 10 CFR Part 26, "Fitness for Duty [FFD] Programs," the NRC requires certain individuals involved in the construction of these facilities to be *fit-for-duty* to help assure that the conduct of NRC-regulated activities related to the construction of new reactors is not inimical to public health and safety, common defense and security, or protection of the environment. These requirements are prescriptive in a number of areas, such as drug and alcohol testing; however, in other areas, such as those associated with Subpart K, "FFD Program for Construction," the regulations contain less prescriptive, performance-based requirements. The lack of prescriptive regulations in Subpart K enables licensees, applicants, and other entities to develop, implement, and/or maintain site-specific (or fleet-wide) FFD programs in a manner that best suits their needs while still meeting regulatory requirements. However, this flexibility, without regulatory guidance, can challenge consistent and effective rule implementation. For example, a licensee can implement sanctions for FFD policy violations that are markedly more or less severe than sanctions for an equivalent violation at another licensee's construction site.

Currently, there is no guidance available to provide a common understanding of the key attributes forming an FFD program for construction. Applicants need guidance while developing their construction-related FFD programs to meet Subpart K requirements. Licensees need this guidance to assist in the transition from an FFD program during the construction of a reactor to an FFD program for an operating reactor. The NRC staff needs this guidance to make NRC reviews more efficient and effective. Members of the public could use this guidance to better understand how the industry meets the Commission's FFD requirements.

### 2. Objective

The objective of this draft regulatory guidance would be to provide licensees, applicants, and entities specified in 10 CFR 26.3(c) and contractors/vendors (C/V) specified in 10 CFR 26.3(d) who implement FFD with information that they could use to develop, implement, and maintain an FFD Program for Construction. The draft regulatory guide could also provide NRC staff and the public with information to help the staff conduct its inspections and reviews and the public understand how affected entities comply with the NRC's FFD regulations.

### **3. Alternative Approaches**

The NRC staff considered the following alternative approaches:

1. Do not issue new Regulatory Guide
2. Issue new Regulatory Guide

#### Alternative 1: Do Not Issue a New Regulatory Guide

Under this alternative, the NRC would not issue additional guidance. If NRC does not take action, there would not be any changes in costs or benefit to the public, licensees or NRC. However, the “no-action” alternative would not address identified problems with the absence of NRC guidance relating to FFD for persons conducting NRC-regulated activities related to the construction of new reactors. This alternative provides a baseline condition from which any other alternatives would be assessed.

#### Alternative 2: Issue a New Regulatory Guide

Under this approach, the NRC would issue a regulatory guide, taking into consideration the full or partial endorsement of NEI 06-06, revision 6, dated April 2013.

This approach would provide substantial benefit for the commercial power reactor industry and NRC staff. One benefit is that industry stakeholders would lead the development of guidance that provides at least one method of meeting the Commission’s regulations and is acceptable to the staff and industry stakeholders. This would enhance consistency, rule implementation, and solidify industry support of proposed guidance. This option also would enable industry representatives the opportunity to propose and develop site-specific policies, procedures, and processes coincidentally with the development of industry-wide guidance (i.e., NEI 06-06). Early industry consensus during the development of NEI 06-06 has already enhanced the quality and consistency of construction applications made pursuant to 10 CFR Parts 50 and 52.

Industry-developed guidance provides a foundation on which the NRC staff can provide additional detail through a draft regulatory guide. This should result in less NRC staff burden to develop a stand-alone regulatory guide. Another benefit would be fewer and/or less substantial comments from industry representatives for the staff to resolve before regulatory guide publication. This approach would also reduce burden on the NRC staff and applicants because the NRC would have fewer requests for information regarding Combined Operating License (COL)-related FFD information. Lastly, the publication of a regulatory guide that endorses industry guidance would facilitate effective public and industry participation in the regulatory process.

An additional value to the NRC staff of industry-developed guidance would be enhanced consistency, efficiency, and effectiveness in licensees’ implementation of 10 CFR Part 26, Subpart K, requirements. This enhanced consistency would further increase the effectiveness of NRC inspection activities because construction site entities would be implementing FFD programs consistent with the staff’s expectations in the regulatory guidance document.

The value to the public would be an increased awareness and confidence that licensees are implementing similar FFD programs that provide reasonable assurance that individuals constructing and directing the construction of safety- or security-related structures systems and components at our Nation’s

commercial nuclear power facilities are fit for duty, trustworthy, and reliable as demonstrated by the avoidance of substance abuse.

#### **4. Conclusion**

The NRC staff concludes that alternative 2, issuing a new regulatory guide, would enhance licensees' understanding of the NRC's regulations and inform these entities of acceptable methods that meet the requirements of 10 CFR Part 26, Subpart K. This alternative would reduce staff and industry stakeholder burden and enhance consistency, which should result in reduced costs to the NRC staff, applicants, and licensees. Furthermore, this approach has already included public involvement and early stakeholder input.