

Enclosure 2: Staff Positions on FFD Programs for Construction (Subpart K)

Issue	Rule Text	Position 1	Position 2
<p>Should there be requirements for construction workers?</p>	<p><i>Current § 26.2(c):</i> Certain regulations in this part apply to licensees holding permits to construct a nuclear power plant. Each construction permit holder, with a plant under active construction, shall comply with §§ 26.10, 26.20, 26.23, 26.70, and 26.73 of this part; shall implement a chemical testing program, including random tests; and shall make provisions for employee assistance programs, imposition of sanctions, appeals procedures, the protection of information, and recordkeeping.</p> <p><i>Draft final § 26.4(f):</i> Any individual who is constructing safety- or security-related structures, systems, and components (SSCs) shall be subject to an FFD program that meets the requirements of subpart K of this part, unless the licensee or other entity subjects these individuals to an FFD program that meets all of the requirements of this part, except subparts I and K of this part.</p>	<p>Requirements in the current rule should be retained and clarified by explicitly stating that construction workers fall within the scope of the FFD program for construction.</p> <p>The requirements in the current rule should be retained because:</p> <ul style="list-style-type: none"> • Construction workers continue to have the highest rate of substance abuse among occupational groups, indicating that FFD requirements in addition to those commonly imposed by industrial/commercial FFD programs are warranted, • Relying on industrial FFD programs does not ensure coverage of all individuals of interest, and • Industrial/commercial FFD programs vary in effectiveness and some may not be effective in meeting the rule’s objectives of detecting and deterring substance abuse. <p>To achieve the current rule’s objective for requirements that are commensurate with potential risk, limit the program elements required for detecting and deterring substance abuse to:</p> <ul style="list-style-type: none"> • Pre-assignment, for-cause, and post-accident drug and alcohol testing, and • Either a fitness monitoring program or a random drug and alcohol testing program supplemented by behavioral observation. 	<p>Requirements for construction workers are unnecessary because the expected industrial/commercial FFD programs that licensees will undertake to meet their insurance or other demands, in combination with the requirements on first-line supervisors, security officers, QA/QC, and ITAAC personnel, provide a sufficient basis for concluding that the quality of safety and security features of the facility will be reasonably assured.</p>

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<p>Should the scope include construction activities for security- or safety-related SSCs that occur at any location on licensee- or applicant-owned property where the nuclear power plant will be operated?</p>	<p><i>Draft final § 26.5: Constructing or construction activities</i> mean, for the purposes of this part, the tasks involved in building a nuclear power plant that are performed at the location where the nuclear power plant will be constructed and operated. These tasks include fabricating, erecting, integrating, and testing the nuclear power plant SSCs that are required by the Commission's rules and regulations to be described in the site safety analysis report, preliminary or final safety analysis report, or physical security or safeguards contingency plans, and the installation of their foundations, including the placement of concrete.</p>	<p>Individuals who are constructing safety- or security-related SSCs on the licensee's or applicant's property where the nuclear power plant will be operated should be subject to the FFD program. If a modular fabrication facility is established on property that is not owned by the licensee or applicant, or it is located on property owned by the licensee or applicant but is not where the nuclear power plant will be operated, the licensee or applicant should not be required to extend the program to include persons involved in construction activities at that facility.</p> <p>Basis:</p> <ul style="list-style-type: none"> • Applying FFD requirements on the basis of assigned duties and location is consistent with the remainder of the rule, and • These persons' duties will be similar to the duties of others who will be constructing safety- and security-related SSCs where the nuclear power plant will be operated. 	<p>Modular fabrication facilities at the location where the nuclear power plant is being constructed and will operate, or in near proximity to the site, will not need to be covered by the proposed rule since the work will be done in a controlled work environment and will be subject to the same QA/QC program as remote fabrication facilities, which are not covered.</p>

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<p>Should there be a requirement for NRC review and approval of an applicant's FFD program for construction?</p>	<p><i>Draft final § 26.401(b):</i> Licensees and other entities who intend to implement an FFD program under this subpart shall submit an FFD program plan to the NRC for review and approval as part of the license or permit application.</p>	<p>Review and approval of FFD program plans would enhance the effectiveness and efficiency of the overall program because:</p> <ul style="list-style-type: none"> • To permit the flexibility needed with a large and transient construction workforce, Subpart K emphasizes performance objectives rather than imposing prescriptive requirements. However, prescriptive requirements have been desired by the industry in the past to avoid unnecessary litigation related to drug and alcohol testing, • Increased inspection resources may be required without prior review and approval, • Enforcement may be more complex without prior approval, and • FFD programs for construction may be implemented for several years before inspections can occur and any weaknesses identified are corrected. <p>The impact of this requirement on staff resources and the new reactor license application review process is expected to be minimal because:</p> <ul style="list-style-type: none"> • The staff will work with stakeholders to develop a Regulatory Guide and expects licensees and applicants will adopt it, and • Public comment on the Regulatory Guide will provide an opportunity to develop FFD programs that are publicly acceptable. 	<p>The FFD program plan review and approval requirement seems to be unnecessary and inconsistent with the goal of streamlining the new reactor license application review process.</p> <p>The draft final part 52 already includes a provision, 52.79(a)(44), that would require a COL application to contain "A description of the fitness-for-duty program required by 10 CFR part 26 and its implementation."</p>

Issue	Rule Text	Position 1	Position 2
<p>Should first-line supervisors be subject to a full FFD program instead of fitness monitors?</p>	<p><i>Draft final § 26.4(e):</i> When construction activities begin, any individual whose duties for the licensees and other entities in § 26.3© require him or her to perform the following activities at the location where the nuclear power plant will be constructed and operated shall be subject to an FFD program that meets all of the requirements of this part, except subparts I and K of this part:</p> <ul style="list-style-type: none"> (1) Serves as a security officer under NRC requirements; (2) Performs quality assurance activities, as specified in Appendix B to part 50; (3) Is designated under § 26.406 by a licensee or other entity to monitor the fitness of the individuals specified in paragraph (f) of this section; or (4) Has responsibility for determining that inspections, tests, and analyses, or parts thereof, required under part 52 of this chapter have been successfully. 	<p>The fitness monitoring program does not require first-line supervisors to be subject to the full program, but instead, permits licensees and applicants to designate the individuals who will monitor those persons who are constructing safety- and security-related SSCs because:</p> <ul style="list-style-type: none"> • Some first-line supervisors will work at the construction site only for short periods (1-3 weeks). Providing flexibility to designate fitness monitors avoids unnecessary regulatory burden by allowing licensees to invest their resources (i.e., the costs imposed by the full FFD program) in individuals who will work at the site for an extended period, and • Some first-line supervisors will not be directing actual work at the site. Providing flexibility to select fitness monitors ensures that the individuals selected will be on site so that they can observe those who are constructing safety-related and security-related SSCs as the work is being performed. <p>The fitness monitoring option requires monitoring to occur at the work site, but permits licensees and applicants to:</p> <ul style="list-style-type: none"> • Determine the number of monitors to be present on any given day, based on the number of workers who will be constructing safety- and security-related SSCs on that day (i.e., the ratio of monitors to workers), and • Determine the frequency with which monitoring will occur (e.g., the first-line supervisors for some tasks may be assigned as fitness monitors, while for other tasks, a trained watchman may stop by the job site once or twice a day, or during certain construction stages, monitoring would only occur as individuals enter the construction site at the beginning of a shift and after a lunch break). 	<p>First-line supervisors or others designated to oversee safety-related or security-related construction activities should be added to the full FFD program instead of fitness monitors.</p> <p>First-line supervisors should be required to take action when they observe unfit behavior of construction workers working on safety- or security-related structures, systems and components (i.e., a fitness monitoring program).</p>

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<p>What requirements should apply to security personnel?</p>	<p><i>Draft final § 26.4(e):</i> When construction activities begin, any individual whose duties for the licensees and other entities in § 26.3© require him or her to perform the following activities at the location where the nuclear power plant will be constructed and operated shall be subject to an FFD program that meets all of the requirements of this part, except subparts I and K of this part:</p> <ul style="list-style-type: none"> (1) Serves as a security officer under NRC requirements; (2) Performs quality assurance activities, as specified in Appendix B to part 50; (3) Is designated under § 26.406 by a licensee or other entity to monitor the fitness of the individuals specified in paragraph (f) of this section; or (4) Has responsibility for determining that inspections, tests, and analyses, or parts thereof, required under part 52 of this chapter have been successfully. 	<p>Covering security officers during the construction of safety- and security-related SSCs is appropriate because:</p> <ul style="list-style-type: none"> • These individuals will have responsibility for detecting and responding to malicious acts involving the safety- and security-related SSCs that are under construction, particularly when no other licensee or applicant personnel are present at the location where the nuclear power plant is being constructed and will operate, and should be able to safely and competently perform their duties, • There should be reasonable assurance that these individuals will be fit for duty (i.e., able to communicate effectively) when interacting with local law enforcement agencies who will respond to any potential or actual malicious acts involving safety- and security-related SSCs under construction, and • These individuals should be trustworthy and reliable, as demonstrated by the avoidance of substance abuse, to provide reasonable assurance that they will not be vulnerable to coercion to actively or passively collude in malicious acts affecting safety- and security-related SSCs under construction. <p>Other considerations:</p> <ul style="list-style-type: none"> • The NRC is considering access authorization and physical protection requirements for construction, but does not now require security personnel for new plant construction. Therefore, licensees and applicants would not be required to cover security personnel under an FFD program until requirements for security personnel are established. • The draft final rule text does not impose requirements on security officers who will be armed at the behest of the licensee or applicant. 	<p>A requirement to cover unarmed security personnel under the full FFD program is unnecessary unless there is fuel on site or the security personnel are armed. The requirement should be limited to only those security personnel who are required under NRC regulations or may be extended to personnel who carry weapons at the behest of a licensee or applicant. However, because the NRC does not have requirements related to security officers for construction, this provision should be removed from the rule.</p>

