

PR-026  
84FR48750

12

# PUBLIC SUBMISSION

<b>As of:</b> 12/3/19 9:32 AM <b>Received:</b> November 29, 2019 <b>Status:</b> Pending_Post <b>Tracking No.</b> 1k3-9dl0-bw8r <b>Comments Due:</b> December 02, 2019 <b>Submission Type:</b> Web
--

**Docket:** NRC-2009-0225  
Fitness-for-Duty Drug Testing Program Requirements

**Comment On:** NRC-2009-0225-0009  
Fitness for Duty Drug Testing Requirements; Request for Comment on Proposed Rule and Draft Regulatory Guide

**Document:** NRC-2009-0225-DRAFT-0038  
Comment on FR Doc # 2019-18491

---

## Submitter Information

**Name:** Johnny Rogers  
**Address:**  
931 Brynwood Drive  
Chattanooga, TN, 37415  
**Email:** johnn151@yahoo.com

---

## General Comment

As noted below, 26.77 denotes management actions denoting possible impairment. Determining possible impairment or an individual's ability to perform involves multiple factors. Behavioral signs and symptoms indicating possible substance use often mimic physical illness making a determination precarious. Evaluations are complex and often requires the elimination of multiple contributing factors before a final determination can be reached. Behaviors that are classified as "odd or eccentric" may not meet the definition of impairment, but may be the direct result of substance use/abuse, onset of addictive behavior, or a not yet diagnosed mental health issue. Behaviors may be reported may seem benign, but present in such a manner that there is an element of doubt.

**Recommendation:** Consider language that clearly allows for drug and alcohol testing to eliminate the possibility that drugs and alcohol are playing a role in the behavior. Impairment

may not be observed, but behavior that may deviate significantly from the individual's recognized customary character or practice necessitates a drug/alcohol screen. Restriction of duty may not be warranted, but the behavior causes enough concern to justify further review. A negative finding on a drug and alcohol screen will eliminate the possibility that drugs or alcohol are playing a role in the observed behavior. Once this factor is eliminated, other contributing factors such as mental or physical health may be considered. There have been note worthy cases where behaviors were reported as "odd or irregular" only to find that, following a drug/alcohol screen, prescription drug abuse, alcohol abuse, or a combination of the two was the contributing cause. In other cases, mental illness was detected resulting in the need for treatment. In each of these cases, there was no demonstrated impairment. Drug/alcohol screens are a vital data point in a process of next steps in reaching a decision concerning the need for a full determination of fitness.

As mentioned, these determinations are complex and involve multiple elements. Program managers are often reluctant to act for fear that they do not meet the standard of impairment to warrant any standard of review. Very often individual's who use substances determine how to become functional in order to maintain their lifestyle and support their habit. Behaviors that manifest as "odd or eccentric" (without impairment) are often the first indicator of an issue. Eliminating the possibility of substance use/abuse in these types of cases is the first reasonable and prudent step in determining the next steps to advance the determination, or simply return the individual to duty without restrictions. Providing for the necessary discretion in these unique circumstances provides the proper tools for program professionals.

#### 10 CFR 26.77

If an individual appears to be impaired or the individual's fitness is questionable, except as permitted under 26.27(c)(3), 26.207, and 26.209, the licensee or other entity shall take immediate action to prevent the individual from performing the duties that require him or her to be subject to this subpart.

If an observed behavior or physical condition creates a reasonable suspicion of possible substance abuse, the licensee or other entity shall perform drug and alcohol testing. The results must be negative before the individual returns to performing the duties that require the individual to be subject to this subpart. However, if the physical condition is the smell of alcohol with no other behavioral or physical indications of impairment, then only an alcohol test is required and the results must be negative before the individual returns to performing his or her duties.