

NRC Staff Best Practices: Reporting a Subversion Attempt using a Single Positive Test Form (SPTF)

Disclaimer

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Requirement

Section 26.717, "Fitness-for-Duty Program Performance Data," requires licensees and other entities to compile and submit on an annual basis FFD program performance data for each program subject to 10 CFR Part 26, Subpart N, "Recordkeeping and Reporting Requirements." Section 26.717(b)(7) requires the reporting of the number of subversion attempts by test type and each test type is described in § 26.31(c) (i.e., pre-access, for cause, post-event, followup, and random).

Problem Statement

Electronic reporting (e-reporting) of FFD performance data has permitted the NRC staff to identify a number of occurrences in which licensees have double counted positive drug test results for a single testing event. A typical example is for a pre-access test that is associated with an out-of-temperature range urine specimen. During the collection process two specimens are collected and sent to the HHS-certified laboratory for testing. The initial out-of-temperature range specimen tests negative for drugs and the second specimen collected under direct observation tests positive for a drug. The licensee completes a SPTF for each specimen tested. The initial specimen is reported as a "pre-access" test with a refusal to test because of the subversion attempt and the second specimen is reported as a "for cause" test with a positive test result. By submitting a SPTF for each specimen tested, the licensee has double counted the test results for this individual; one as a subversion attempt for a "pre-access" test and one as a positive for a "for cause" test. Even though two specimens were tested as required by regulation due to the out-of-temperature specimen, only one determination is made about this individual for the pre-access testing conducted and should be reflected by using only one SPTF.

FFD Performance Reports

To comply with the annual reporting requirements of 10 CFR 26.717, a licensee or other entity must submit a written report with all required information or can use the voluntary e-reporting system first offered for results reporting in calendar year 2009. Use of the e-reporting system consists of completing one Annual Reporting Form for Drug and Alcohol Tests to summarize testing program information and a SPTF for each individual with a testing program violation.

For additional information on the e-reporting system, please visit the following NRC website <http://www.nrc.gov/reactors/operating/ops-experience/fitness-for-duty-programs/submit-ffd-reports.html>.

This best practices document addresses two cases observed by NRC staff that resulted in the double counting of test results for a single event. Both cases are associated with subversion attempts.

- Case 1: Initial urine specimen collected is outside the acceptable temperature range and the second specimen collected under direct observation tests positive.
- Case 2: Initial urine specimen collected is outside the acceptable temperature range and the donor refuses to provide a second specimen under direction observation.

Example: A job applicant is informed to report for pre-access drug and alcohol testing. The individual presents an initial urine specimen that is outside the acceptable temperature range specified in § 26.111(a). A second specimen is then collected under direct observation as required by § 26.115(a)(2). Both specimens collected from this individual are sent to an HHS-certified laboratory for testing. The initial specimen tests negative for drugs and the second specimen tests positive for a drug. Based on the combination of test results, the MRO determines that a subversion attempt has occurred and reports the initial specimen collected as a subversion attempt and the second specimen collected as drug positive.

To report this testing event, the licensee completes a SPTF for each specimen tested:

- The initial specimen is reported as a “pre-access” test with a refusal to test because of the subversion attempt.
- The second specimen is reported as a “for cause” test with a positive test result.

By submitting a SPTF for each specimen tested, the licensee has double counted the test results for this individual; one as a subversion attempt for a “pre-access” test and one as a positive for a “for cause” test. Even though two specimens were tested, as required by regulation due to the out-of-temperature range specimen, only one determination is made about this individual for the pre-access testing conducted and should be reflected by using only one SPTF.

In addition, a “for cause” test should not be chosen as the “Reason for Testing” on the SPTF when a second specimen is collected under direct observation; the reason the individual initially arrived for testing (i.e., pre-access) should be selected. This reason does not change even if the temperature of the initial specimen collected is out of the acceptable temperature range.

Section 26.31(c)(2) states that “for cause” testing is to be conducted *“In response to an individual’s observed behavior or physical condition indicating possible substance abuse or after receiving credible information that an individual is engaging in substance abuse, as defined in § 26.5.”*

To correctly report a subversion attempt characterized by Case 1 or 2 above, please use the Subversion Attempt Reporting SPTF Completion Checklist on the next two pages of this document. The checklist details each step in the form completion process.

Subversion Attempt Reporting SPTF Completion Checklist

Case 1		Case 2	
Collection 1	First specimen collected is outside the acceptable temperature range		
Collection 2	Section 26.115(a)(2) requires a second specimen be provided under direct observation		
	Second specimen collected is drug positive	Donor refuses to provide a second specimen	
Step 1	Complete form fields: "Unique Reference Number", "Select Facility", and "Date of Collection"		
Step 2	Complete form field: "Reason for Testing" for the Collection 1 specimen		
Step 3	Complete form fields: "Employment Type" and "Labor Category"		
Step 4	Complete form field "Refusal - Was this collection refused (Yes/No)?"		
	Select "No" because neither collection was refused	Select "Yes", the donor refused to provide a second specimen. Based on this response, Steps 5 through 10 do not apply.	
Step 5	Complete form field "Test Validity"		
	Select "Valid"	N/A	
Step 6	Complete form field "Test Types(s) for Results (s) Reported"		
	Select "Drug Only"	N/A	
Step 7	Complete form field "Drug Testing"		
	Select "Urine"	N/A	
Step 8	Complete "Was this collection observed?"		
	Select "Yes"	N/A	
Step 9	Select the "Substance" identified in the donor's second specimen collected		
	If more than one substance was identified, complete the "Additional Substance (as applicable)" fields	N/A	
Step 10	Select "Yes" or "No" for the "Use NRC Cutoff (Yes/No)" field that appears below the "Substance" and "Additional Substance (as applicable)" fields		
	If "No" is selected, enter the drug testing cutoff levels used for "Initial Cutoff" and "Confirmatory Cutoff"	N/A	

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Step 11	Select "Yes" or "No" to the question "Is this a 24-Hour Reporting Event?" Note: the field will automatically populate "Yes" if "Supervisor", "Licensed Operator", "FFD Program Personnel", or "SSNM Transporter" is selected in form field "Labor Category"		
	If "Yes" is selected, provide additional information in the text box "Please elaborate on the 24-hour reporting event."		
Step 12	Answer "yes" to "Did this collection involve a subversion attempt (Yes/No)?"		
	Select "Yes"	The form auto-populates this field as "Yes" based on the response provided in Step 4	
	Characterize the subversion attempt by selecting all appropriate checkbox descriptions		
	At a minimum, select: "Specimen temperature (out of range)"	At a minimum, select: "Refused to provide second specimen" "Specimen temperature (out of range)"	
	Provide additional information on the subversion attempt in the text box that appears to the right of the subversion attempt checkbox descriptions, "Please elaborate on the choice(s) selected"		
Step 13	The "Management Actions" section of the form is auto-populated based on other form selections.		
Step 14	Enter information in the "Person(s) Responsible for Information Provided" section.		
Step 15	Select the "Validate & Lock" button to ensure the form has been completed correctly and that all required information has been supplied.		

Specimen Storage and Retention Guidance - Collections Involving a Subversion Attempt

The NRC staff has received a number of questions on the specimen retention and storage requirements for specimens collected during a subversion attempt. This section of the best practices document summarizes applicable Part 26 requirements and includes staff guidance.

1. Case 1 – The initial out of temperature range specimen must be tested at an HHS-certified laboratory, should be stored per § 26.159(h) or better, and can be discarded 30 days after the Medical Review Officer (MRO) has completed the § 26.185 review and if no appeal is in progress. The second specimen collected under direction observation and confirmed drug positive must be retained per § 26.159(i) or better.
2. Case 2 – The initial out of temperature range specimen must be preserved per § 26.111(e) and stored per § 26.117(j). NRC recommends that the specimen be discarded 30 days after the collection date unless an appeal is in progress. Note, the collection process was terminated when the donor refused to provide a second specimen under direct observation (§ 26.115(g) defines this donor action as a refusal to test). Therefore, the first specimen need not be sent to the HHS-certified laboratory for testing.

Subversion Attempt Specimen Storage and Retention Summary Table

	Case 1	Case 2
Collection 1 – First specimen collected is outside the acceptable temperature range		
Specimen Storage & Retention	<p><u>Collection Site:</u> Immediately after completing the collection process, store the specimen at a temperature of not more than 6 °C (42.8°F) until shipment to the testing laboratory.</p> <p><u>HHS-certified laboratory:</u> After testing the specimen at the HHS-certified laboratory, retain the negative specimen per §26.159(h).</p>	<p><u>Collection Site:</u> Preserve and store the specimen per §§ 26.111(e) and 26.117(j). The specimen collected should not be sent for testing because the donor refused to provide a second specimen under direct observation.</p> <p><u>HHS-certified laboratory:</u> Not applicable.</p>
Collection 2 – Second specimen is to be provided under direct observation per § 26.115(a)(2)		
Specimen Storage & Retention	<p><u>Collection Site:</u> Immediately after completing the collection process, store the specimen at a temperature of not more than 6 °C (42.8°F) until shipment to the testing laboratory.</p> <p><u>HHS-certified laboratory:</u> After testing the second specimen at the HHS-certified laboratory, retain the drug positive specimen in frozen storage pursuant to § 26.159(i).</p>	<p><u>Collection site:</u> No specimen collected as the donor refused to provide one.</p> <p><u>HHS-certified laboratory:</u> Not applicable.</p>