

NRC Staff Best Practices

Reporting a Subversion Attempt on a Single Positive Test Form

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Requirement

Section 26.717, "Fitness-for-Duty Program Performance Data," requires licensees and other entities to collect and compile 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 that the performance data must include, in part, the number of subversion attempts by test type. Test types are described in § 26.31(c) as pre-access, for cause, post-event, followup, and random.

Problem Statement

Because electronic reporting of FFD performance data results in better quantification of performance results, the NRC staff has identified occurrences in which licensees have double counted positive drug results, this inaccurately increases the positive test rates. A typical example is that if a licensee conducts a pre-access test involving two collections and with two laboratory results, the licensee would report this on two SPTFs, resulting in double counting of the singular pre-access test (i.e., this pre-access test did involve two specimen collections because both were required by regulation; however, only one "test" was conducted).

FFD Performance Reports

A licensee or other entity can either submit a written report satisfying the requirements of 10 CFR 26.717 or provide electronics reports as discussed and provided on the NRC's website located at <http://www.nrc.gov/reactors/operating/ops-experience/fitness-for-duty-programs/submit-ffd-reports.html>. The use of the electronic reports is voluntary; however, it results in substantial benefits for both an FFD Program and the NRC staff by: ensuring consistent nomenclature and quality of reported information; enabling auto-check functions and logic within the electronic forms to help ensure the complete and accurate reporting of all required performance data; facilitating quantitative data evaluation to objectively inform the public and provide performance feedback to the industry to improve performance if necessary; and, informing the NRC inspection process. The following practices are to assist licensees and other entities in accurately communicating subversion attempts on a *Single Positive Test Form* (SPTF) to the NRC and to prevent double counting of drug tests.

Three situations are covered in this document:

1. Initial urine specimen collected is out of temperature range and the second specimen collected under direct observation tests positive.
2. Initial urine specimen collected is out of temperature range and the donor refuses to provide a second specimen under direction observation.
3. Initial urine specimen is out of temperature range and tests positive and the second specimen collected under direct observation tests negative.

Case Examples to Prevent Double Counting of Drug Tests

Case 1 — If a person is informed to report for pre-access testing or directed to report for random or followup testing and presents an initial specimen outside the acceptable temperature range, § 26.111(a), “for cause” testing should not be selected as the “Reason for Testing” on the SPTF when a second specimen is collected under direct observation; the actual reason for testing (e.g., pre-access, random, or followup) should be selected. The reason is that the donor appeared for pre-access, random, or followup testing and that reason has not changed even if the urine temperature was out of range. Furthermore, knowing why the person showed up for testing (and still was able to attempt to subvert the test) enables a licensee to better focus corrective actions. The only change is that additional collection steps must be implemented to fully evaluate the donor’s fitness (such as the collection of a second specimen under direct observation).

Case 2 — If a person is directed to report either for post-event or for cause testing and presents an initial specimen outside the acceptable temperature range, § 26.111(a), then “post-event” or “for cause”, respectively, should be selected as the “Reason for Testing” on the SPTF, because that is the event which initiated the drug/alcohol test.

Note: For cause testing, as described in § 26.31(c)(2), 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.*”

1. Initial urine specimen collected is out of temperature range and the second specimen collected under direct observation tests positive.

For this example, the out-of-specification temperature urine specimen must be tested and preserved. The initial specimen should be tested at an HHS-certified laboratory, stored pursuant to § 26.159(h) or better, and be destroyed 30 days after the Medical Review Officer (MRO) has completed its § 26.185 reviews with no appeal in progress.

Submit only one SPTF for this situation as follows:

- a) Complete form fields: Unique Reference Number, Date of Collection, and Select Facility.
- b) Select the “Reason for Testing” for the initial specimen collected. Refer to the “Case Examples to Prevent Double Counting of Drug Tests” located above. Select the test type for why the person was informed or directed to report for testing.

- c) Complete form fields: Employment Type and Labor Category.
- d) Select "No" for form field "Refusal – Was this collection refused (Yes/No)?"
Selecting "No" indicates that neither collection was refused.

Note: If the second specimen collection was refused, you must select "Yes" indicating that the collection was refused and therefore subverted, and you need to implement Paragraph 2 below.

- e) Select "Valid" for the form field "Test Validity"
- f) Complete form field "Test Type(s) for Result(s) Reported" by either selecting "Drug and Alcohol," if alcohol was greater than or equal to a § 26.103 time-dependent limit, or "Drug Only," if there was no alcohol violation.
- g) Complete form fields "Alcohol Testing" and "Drug Testing" as needed.
- h) Select "Yes" for the question "Was this collection observed (Yes/No)?"
- i) Select the "Substance" identified in the donor's Direct Observed specimen. Also, complete the "Use NRC Cutoff (Yes/No)" question. If additional substances were identified, complete the "Additional Substance (as applicable)" form field(s).
- j) Complete form field "Is this a 24-Hour Reporting Event (Yes/No)?" and the comment block as needed.
- k) Select "Yes" for the question "Did this collection involve a subversion attempt (Yes/No)?"

Note: A drug testing event involving an initial out-of-specification temperature urine specimen followed by a direct observed collection that resulted in a MRO-confirmed positive test result creates reasonable suspicion that the individual is untrustworthy and unreliable, § 26.77(a) and (b), and has violated the drug provisions pursuant to licensee's or other entity's FFD Policy, § 26.75(a) and (b). A scenario in which the first specimen is questionable, (e.g., due to abnormal color, precipitant, out of specification temperature, etc.) tests negative and the direct observed specimen tests positive is evidence that the collection was subverted.

- l) Characterize the subversion attempt by selecting all appropriate checkbox descriptions that appear in the "Subversion Attempts" form section. For this example, you should at least consider checking "Specimen temperature (out of range)" and "Other."
- m) Add a descriptive comment in the "Please elaborate on the choice(s) selected" text box that appears in the "Subversion Attempts" form section. Describe how the subversion attempt was determined. For example, provide information regarding: (1) the initial specimen was ___°F and outside the acceptable temperature range; (2) the result(s) of the initial specimen as tested by an HHS-certified lab; (4) the result(s) of the second specimen collected under direct observation and as tested by an HHS-certified lab; and (5); a summary description of the MRO determinations pursuant to § 26.183(c)(1) and § 26.185.

- n) Complete all remaining form fields such as "Management Actions" and the "Person(s) Responsible for Information Provided."
- o) Select the "Validate & Lock" button in the lower left corner of the form to ensure that the form has been completed correctly and that all required information has been supplied.

2. Initial urine specimen collected is out of temperature range and the donor refuses to provide a second specimen under direction observation.

For this example, the out-of-specification temperature urine specimen must be preserved. The specimen should be stored pursuant to § 26.129(f) or better, and be destroyed 30 days after the collection unless an appeal is in progress. Note that the test collection process terminated when the donor refused to perform a direct observation collection. Therefore, the first specimen need not be sent to the HHS-certified lab for testing.

Submit only one SPTF for this situation as follows:

- a) Complete form fields: Unique Reference Number, Date of Collection, Select Facility, Employment Type, and Labor Category.
- b) Select the "Reason for Testing" for the initial specimen collected. Refer to the "Case Examples to Prevent Double Counting of Drug Tests" located above. Select the test type for why the person was informed or directed to report for testing.
- c) Select "Yes" for the question "Was this collection refused?" Note that the following form fields will automatically lock based on this response: Test Results, Was this Collection Observed, Substance, Additional Substance, and Use of NRC Cutoffs.
- d) The form will also auto-populate "Yes" for the question "Did this collection involve a subversion attempt (Yes/No)?"
- e) Characterize the subversion attempt by selecting all appropriate checkbox descriptions that appear in the "Subversion Attempts" form section. For this example, you should at least consider checking Specimen temperature (out of range), Refused to provide second specimen, and Other.
- f) Add a descriptive comment in the "Please elaborate on the choice(s) selected" text box that appears in the "Subversion Attempts" form section. Describe how the subversion attempt was determined. For example, provide information regarding: (1) the initial specimen was ___°F and outside the acceptable temperature range and (2) the donor refused to provide a second specimen under direct observation. If you elected to test the first specimen, you need not report that information.
- g) Complete all remaining form fields such as "Management Actions" and the "Person(s) Responsible for Information Provided."

- h) Select the “Validate & Lock” button in the lower left corner of the form to ensure that the form has been completed correctly and that all required information has been supplied.

3. Initial urine specimen collected is out of temperature range and tests positive, adulterated, or substituted, and the second specimen under direction observation tests negative.

For this example, the out-of-specification temperature urine specimen must be tested and preserved. The initial specimen should be treated as a confirmed positive and stored and destroyed pursuant to § 26.159(h)(i) or after the completion of any appeal.

This event scenario is an extremely rare occurrence and creates reasonable suspicion that there was an error in the collection process (e.g., the first and second collections were swapped) or at the HHS-certified laboratory (e.g., the HHS-certified laboratory had a false positive on the first specimen), or the person subverted the testing process (e.g., provided a substituted positive specimen for the first collection).

The out-of-specification temperature specimen, by itself, creates suspicion that the initial specimen may have been altered or substituted. Furthermore, the individual has a confirmed positive test result.

The first and second collections/specimens should be sent to a second HHS-certified laboratory for confirmatory drug testing to test to the *Limit of Quantitation (LOQ)* for the identified substance.

The MRO shall review all test results and the individual shall be subject to an evaluation by the MRO.

If the second HHS-certified laboratory identified the presence of the drug at or above the LOQ for the substance in the direct observed specimen, the drug test is confirmed (see §§ 26.5 and 26.185(n)) and the test should be considered subverted.

If the second HHS-certified laboratory confirms at or above the LOQ for the substance in the first specimen and the direct observed specimen is drug free at or above the LOQ, then the individual should be subject to the graduated sanctions of § 26.75 (or more restrictive licensee sanctions if implemented) based on the positive drug test for the first collection, unless:

If the MRO or licensee determines that other potentially disqualifying information exists, then the licensee shall implement the provisions of §§ 26.69(d), 26.77(b), and 73.56(h), up to and including termination if justified. An out-of-specification temperature specimen coupled with a positive, adulterated, or substituted test result demonstrates drug abuse and creates reasonable suspicion that the donor may be untrustworthy and unreliable.