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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-0034
Comment on FR Doc # 2019-18491

Submitter Information

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General Comment

NRC FFD Comments from Stakeholders:

1. Alignment with the HHS Guidelines:
a. The NRC should eliminate redundant provisions such as Direct Observation collection guides and MRO specimen
handling.

2. Special Analyses Testing:
a. It is my opinion that special analysis testing should also apply to the testing of individuals that already have tested positive.
i. To identify new drug chemicals that may be misrepresented in drug test results.
ii. To provide trends of drug use in different departments.
iii. To provide trends on confirmed misuse at the different employee levels.
a. If the NRC wants the comments on whether it should be applied to those that have already tested positive then, in my opinion, a direct observation testing is not needed. The test already shows a use of illegal drugs or the illegal misuse of legal drugs. It leads me to conclude that,

at this point, there is no need for a directly observed test. The exceptions to this are as follows:
1. If there is a retest allowed, for whatever reason, under the NRC direction meeting the NLCP and FFD guidelines.
2. If an NRC employee has reported a problem with illegal drug use, random drug screens should be a directly observed.

3. Provide Flexibility to Conduct Additional Specimen Validity Tests
a. It is my opinion that a licensee or other entity with the option to conduct specimen validity testing be given the flexibility to use lower cutoff levels.
b. It is my opinion that licensee or other entity should have the flexibility to use different forms of testing such as hair testing.
i. With allowing such testing to take place, the integrity and accountability of the program should be within NLCP Audit parameters. This must be checked and accounted for so there is not mis-representation at any level.

4. Effective Date of the Final Rule
a. It is my opinion that this timeframe is not adequate to allow the proposed rule changes to take place for the following reasons:
i.There is not enough time to review and assess the comments and their application to changes, unless we are just agreeing to what the NRC has already proposed. In my opinion, you will need at least 120 days and this timeframe is still very aggressive.
a. To reach this within the proposed 60-day timeframe, all departments and sections would need to understand what the new requirements are that will affect the drug screening program. Complete communication to all departments and sections, with agreed understanding of the expectations should be attained for the purpose of illegal use deterrence and rehab where accommodations may have been made.

5. Direct Observation of Specimen Collection
a. Although the NRC is not asking for my comment on direct observation during a collection of a second sample, it is my opinion that a direct observation is the only way to ensure that the integrity of the specimen is maintained in this given scenario.
b. In comment to the request, it is my opinion that there are not any other effective alternatives than direct observation in this given scenario. Although, this scenario must maintain the highest integrity of procedure. There cannot by any type of conflict of interest between the observer and the observed. The relationship must be of such that the result can be pure. No harassment of the observer or the observed can be allowed. No bribery, payoff or blackmail can be allowed to any degree. The integrity of the program must meet the highest standard.

6. 2017 HHS GuidelinesNew Test Analytes
a. It is my opinion that the NRC require initial and confirmatory testing of these drugs; specifically, hydrocodone, hydromorphone, oxycodone, and oxymorphone, at the cutoff levels recommended in the 2017 HHS Guidelines.

7. Methylenedioxyethylamphetamine
a. It is my opinion that the NRC adopt the MDEA as a confirmatory analyte in the drug testing panel. The knowledge that confirmatory testing on this "Ecstasy Drug" has not been adopted just left a drug user the loop hole opportunity to escape accountability for drug use while working with potential radioactive substances that can be harmful to the health and welfare of the public.

In summary, I think the NRC changes in the FFD program are very positive and should be implemented as soon as practical. The decision to not adopt confirmatory testing of MDEA should be reviewed to ensure there is not an allowance of the Ecstasy drug use while working in a sensitive position within the NRC.

Please see full comments attached.

Attachments

Professional Safety Comment NRC 20191127

November 27, 2019

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

RE: Nuclear Regulatory Commission (NRC)
Proposal to Amend Fitness for Duty (FFD) Programs
[Docket ID NRC-2009-0225]

The NRC has requested advice and recommendations from stakeholders concerning updates to the FFD, specifically commenting on the following:

1. Alignment with the HHS Guidelines
2. Special Analyses Testing
3. Provide Flexibility to Conduct Additional Specimen Validity Tests
4. Effective Date of the Final Rule
5. Direct Observation of Specimen Collection
6. 2017 HHS Guidelines—New Test Analytes
7. Methylenedioxyethylamphetamine (MDEA)

1. Alignment with the HHS Guidelines:
    a. **The NRC is seeking comment on additional provisions in 10 CFR part 26 that are consistent with the HHS Guidelines and could be eliminated from 10 CFR part 26.**
        i. I agree that if there are redundancies that can lead to duplicative oversite, and there are no missed responsibility of oversite, then the NRC should eliminate redundant provisions.
        ii. Concerning direct observation collection, both the HHS Subpart D-Collectors, 4.4 (b) and the §26.115 state that the observer be the same gender. This is a redundancy and may be removed from the standard as long as the HHS guidelines are followed.
        iii. Medical Review Officer responsibilities are redundant with the specimen handling in both documents allowing the NRC to eliminate this redundant provision.
2. Special Analyses Testing:
    a. **The NRC is seeking comment on whether special analyses testing should also apply to the testing of individuals that already have tested positive on a 10 CFR part 26 test (*i.e.*, denied unescorted access authorization by § 26.75(d) for a first or second drug testing positive result).**
        i. It is my opinion that special analysis testing should also apply to the testing of individuals that already have tested positive. But, please let me note, special analysis testing should be performed within a timeframe that is crucial for the integrity of the collected specimen. I would think that it

would need to be performed after the immunoassay result and the Gas Chromatography-Mass Spectrometry (GC-MS) confirmation. Then, with the use of this same confirmed sample, the special analysis testing be performed. I can see this being performed for the following reasons:

1. To identify new drug chemicals that may be misrepresented in drug test results.
2. To provide trends of drug use in the different NRC business departments.
3. To provide trends on confirmed misuse at the different employee levels from the front line to the executive level (NOTE: I know this may already be provided by the GC-MS results alone but if there is any new drug with new trends found under social or industry use within the NRC employee ranks, then historical trends should be captured).

ii. If the NRC wants the comments on whether it should be applied to those that have already tested positive then, in my opinion, a direct observation testing is not needed. The test already shows a use of illegal drugs or the illegal misuse of legal drugs. It leads me to conclude that, at this point, there is no need for a directly observed test. The exceptions to this are as follows:

1. If there is a retest allowed, for whatever reason, under the NRC direction meeting the National Laboratory Certification Program (NLCP) and the NRC FFD guidelines.

2. If an NRC employee has reported that they have a problem with the illegal use of drugs and random drug screen is performed during their probation period, this should be a directly observed test.

3. Provide Flexibility to Conduct Additional Specimen Validity Tests
    a. **The NRC is seeking comment on whether § 26.161(h) should be revised to provide a licensee or other entity with the option to conduct additional specimen validity tests and/or to utilize lower cutoff levels if the HHS Guidelines are revised in the future to include such testing.**
        i. It is my opinion that a licensee or other entity with the option to conduct specimen validity testing be given the flexibility to use lower cutoff levels.
        ii. It is my opinion that licensee or other entity should have the flexibility to use different forms of testing such as hair testing.
            1. With allowing such testing to take place, the integrity and accountability of the program should be within NLCP Audit parameters. This must be checked and accounted for so there is not mis-representation at any level.

4. Effective Date of the Final Rule
    a. **The NRC is seeking comment on whether this implementation time period is appropriate based on the proposed rule changes.**
        i. It is my opinion that this timeframe is not adequate to allow the proposed rule changes to take place for the following reasons:

1. There is not enough time to review and assess the comments and their application to changes, unless we are just agreeing to what the NRC has already proposed. In my opinion, you will need at least 120 days and this timeframe is still very aggressive.
    a. To reach this within the proposed 60-day timeframe, all departments and sections would need to understand what the new requirements are that will affect the drug screening program. Complete communication to all departments and sections, with agreed understanding of the expectations should be attained for the purpose of illegal use deterrence and rehab where accommodations may have been made.

5. Direct Observation of Specimen Collection
    a. **The NRC is seeking comment on whether there are any effective alternatives to direct observation that will assist in preventing subversion of the drug testing process.**
        i. Although the NRC is not asking for my comment on direct observation during a collection of a second sample, it is my opinion that a direct observation is the only way to ensure that the integrity of the specimen is maintained in this given scenario.
        ii. In comment to the request, it is my opinion that there are not any other effective alternatives than direct observation in this given scenario. Although, this scenario must maintain the highest integrity of procedure. There cannot by any type of conflict of interest between the observer and

the observed. The relationship must be of such that the result can be pure. No harassment of the observer or the observed can be allowed. No bribery, payoff or blackmail can be allowed to any degree. The integrity of the program must meet the highest standard.

6. 2017 HHS Guidelines—New Test Analytes
    a. **The NRC is seeking comment on whether §§ 26.31(d)(1) and 26.405(d) should be revised to identify hydrocodone, hydromorphone, oxycodone, and oxymorphone test substances, and whether §§ 26.133 and 26.163(a)(1) and (b)(1) should be revised to require initial and confirmatory testing of these drugs at the cutoff levels recommended in the 2017 HHS Guidelines.**
        i. It is my opinion that the NRC require initial and confirmatory testing of these drugs; specifically, hydrocodone, hydromorphone, oxycodone, and oxymorphone, at the cutoff levels recommended in the 2017 HHS Guidelines.
7. Methylenedioxyethylamphetamine
    a. It is my opinion that the NRC adopt the MDEA as a confirmatory analyte in the drug testing panel. The knowledge that confirmatory testing on this "Ecstasy Drug" has not been adopted just left a drug user the loop hole opportunity to escape accountability for drug use while working with potential radioactive substances that can be harmful to the health and welfare of the public.

In summation, I think the NRC changes in the FFD program are very positive and should be implemented as soon as practical. The decision to not adopt confirmatory testing of MDEA

should be reviewed to ensure there is not an allowance of the Ecstasy drug use while working in a sensitive position within the NRC.