

for the licensee's or other entity's purposes as described in this part. Except as provided in paragraph (b) in this section, the licensee testing facility shall store Bottles A and B of the specimen in a secure manner until the facility has finished testing. If the initial validity and drug test results are negative and the specimen in Bottle A will not be forwarded to the HHS-certified laboratory, the licensee testing facility may discard both Bottle A and Bottle B. If any test results are positive or indicate that the specimen is of questionable validity, the licensee testing facility shall forward Bottle A to the HHS-certified laboratory for testing and shall retain Bottle B in secure storage, under the requirements of § 26.159(i), or may forward it to the HHS-certified laboratory for storage.

(b) If the MRO confirms any positive, adulterated, or substituted result for a specimen in Bottle A, based on the results of confirmatory testing at an HHS-certified laboratory, and the licensee testing facility has elected to retain Bottle B of the specimen, and the donor requests testing of the specimen in Bottle B, as permitted under § 26.165(b), the MRO shall ensure that Bottle B is forwarded to an HHS-certified laboratory other than the laboratory that tested the specimen in Bottle A, under the procedures specified in § 26.165(b).

(c) If the MRO confirms that the specimen in Bottle A is positive, adulterated, substituted, or invalid and the donor does not request that Bottle B be tested, the licensee or other entity shall ensure that Bottle B is maintained in long-term, frozen storage ($-20^{\circ}\text{C}/-68^{\circ}\text{F}$ or less) for a minimum of 1 year. If a licensee testing facility elects to retain the specimen in Bottle B, rather than forwarding it to the HHS-certified laboratory with Bottle A, the licensee testing facility shall ensure proper storage conditions in the event of a prolonged power failure. After the end of 1 year, the licensee or other entity may discard Bottle B, with the exception that the licensee testing facility shall retain any specimens under legal challenge, or as requested by the NRC, until the specimen is no longer needed.

§ 26.137 Quality assurance and quality control.

(a) *Quality assurance program.* Each licensee testing facility shall have a quality assurance program that encompasses all aspects of the testing process including, but not limited to, specimen acquisition, chain of custody, security and reporting of results, validity screening (if validity screening tests are performed), initial validity and drug testing, and validation of analytical procedures. Quality assurance procedures must be designed, implemented, and reviewed to monitor the conduct of each step of the process of validity testing and testing for drugs and drug metabolites.

(b) *Performance testing and quality control requirements for validity screening tests.* (1) Licensee testing facilities may rely on validity screening tests to determine the need for initial tests of specimen validity either at the licensee testing facility or HHS-certified laboratory. Licensees and other entities shall ensure that the HHS-certified laboratory is capable of conducting confirmatory testing for any adulterant for which the licensee testing facility conducts validity screening tests. Licensee testing facilities shall use only validity screening tests that meet the following criteria:

(i) Either the test, by lot number, has been placed on the Substance Abuse and Mental Health Services Administration (SAMHSA) list of point-of-collection tests that are approved for use in the Federal Workplace Drug Testing Program; or

(ii) Before using the test, the licensee or other entity has ensured that the validity screening test, by lot number, effectively identifies specimens of questionable validity by meeting the following performance testing and quality control requirements:

(A) The creatinine validity screening test must use a 20 mg/dL cutoff concentration;

(B) A pH specimen validity screening test must be able to determine if pH is less than 4.5 and if pH is equal to or greater than 9; and

(C) An oxidant validity screening test must be able to determine if an oxidant concentration is equal to or greater than a 200 mcg/mL nitrite-equivalent

cutoff, and/or a chromium screening test must be able to determine concentrations equal to or greater than a 50 mcg/mL chromium(VI)-equivalent cutoff, and/or a halogen screening test must be able to determine the halogen concentration is equal to or greater than the LOD. Licensees and other entities who use validity screening tests for additional adulterants shall establish performance testing requirements to challenge the licensee testing facility and the HHS-certified laboratory for the additional validity screening test(s);

(D) The manufacturer has conducted validation studies to document the validity screening test's performance characteristics around each applicable cutoff specified in this section, using performance testing samples that have been formulated to challenge the validity screening test around the applicable cutoffs. These validation studies must demonstrate the validity screening test's ability to differentiate valid samples from those of questionable validity and the performance of the validity screening test(s) around the applicable cutoffs specified in this section; and

(E) The licensee testing facility shall submit three consecutive sets of performance testing samples to the manufacturer, using performance testing samples that have been formulated to challenge the validity screening test around the applicable cutoffs specified in this paragraph and whose formulation levels have been confirmed by an HHS-certified laboratory. For example, one set of performance testing samples used to challenge a creatinine validity screening test must include at least six samples formulated at different concentrations ranging from 0 to 20 mg/dL. A set of performance testing samples used to challenge a pH validity screening test must include at least six samples formulated with different pH levels that are equal to or less than 4.5, and six samples formulated with different pH levels that are equal to or greater than 9. And, a set of performance testing samples used to challenge an oxidizing adulterant validity screening test must include at least six samples to challenge each validity screening test used. The performance

testing samples for oxidizing adulterants must contain nitrite and other oxidizing adulterant concentrations in a range of less than or equal to a 200 mcg/mL nitrite-equivalent cutoff to a 500 mcg/mL nitrite-equivalent cutoff; chromium samples formulated in a range less than or equal to a 50 mcg/mL chromium(VI)-equivalent cutoff to 100 mcg/mL chromium(VI)-equivalent cutoff; or halogen samples formulated in a concentration at or near the LOD and 25 percent above the LOD. The results of analyzing the three consecutive sets of performance test samples for each validity screening test (i.e., creatinine, pH, nitrite and general oxidants, chromium, or halogen) must demonstrate that the validity screening test, by lot number, correctly identified at least 90 percent of the total validity performance test challenges on each of three sets of performance testing samples, and, for each individual specimen validity screening test, the test, by lot number, correctly identified at least 90 percent of the validity performance test challenges on each of three sets of performance testing samples; and

(iii) After the licensee testing facility has placed a validity screening test in service, the licensee or other entity shall verify that the test, by lot number, remains on the SAMHSA-approved list. Or, if the SAMHSA-approved list is unavailable, the licensee or other entity shall ensure that the test continues to identify specimens of questionable validity, as demonstrated by documentation from the manufacturer that a set of validity screening tests from each lot in use by the licensee testing facility correctly identified at least 90 percent of the total validity test challenges on a set of performance testing samples, and, for each individual specimen validity screening test, that the test, by lot number, correctly identified at least 90 percent of the validity test challenges. This performance testing must be performed at a nominal annual frequency after the date on which the manufacturer completed the initial validation studies required under paragraph (b)(1)(ii)(D) of this section. The performance testing samples used must be formulated to challenge the validity screening test

around the applicable cutoffs of this subpart.

(2) In addition, licensee testing facility personnel who perform the validity screening tests shall conduct quality control testing of validity screening tests as follows:

(i) At the beginning of any 8-hour period during which the licensee testing facility will perform validity screening tests, licensee testing facility personnel shall test a minimum of one quality control sample that is negative for each specific validity test to be performed (e.g., creatinine, pH, nitrites, chromium) during the 8-hour period, and one quality control sample that is formulated to challenge the validity screening test(s) around the cutoffs specified in this subpart for each specific validity test to be performed during the 8-hour period. The results of these quality control tests must be correct before any donor specimens may be tested.

(ii) After screening every ten donor specimens during the 8-hour period, licensee testing facility personnel shall also challenge each validity screening test with at least one quality control sample that is formulated to challenge the validity screening test(s) around the cutoffs specified in this subpart. If fewer than ten donor specimens were screened during the 8-hour period or the number of donor specimens tested exceeds a multiple of ten but is less than the next multiple of ten (e.g., 24 donor specimens, 48 donor specimens), licensee testing facility personnel shall challenge each validity screening test at the end of the 8-hour period during which the validity screening tests were performed.

(3) The licensee testing facility shall also submit at least one specimen out of every ten donor specimens that test negative using each validity screening test that the licensee testing facility uses to an HHS-certified laboratory as part of the licensee testing facility's quality assurance program.

(4) Licensee testing facilities shall store specimen validity tests as specified by the manufacturer's instructions and may not use such tests after the manufacturer's expiration date.

(c) *Validity screening test results.* If the results of a validity screening test indi-

cate that the specimen is of questionable validity, the licensee testing facility may either perform initial validity testing or shall forward the specimen to the HHS-certified laboratory for further testing.

(d) *Quality control requirements for performing initial validity tests.* Licensees and other entities shall ensure that the HHS-certified laboratory is capable of conducting confirmatory testing for any adulterant for which the licensee testing facility conducts initial validity tests.

(1) Creatinine. Creatinine concentration must be measured to 1 decimal place. The initial creatinine test must have a control in the range of 3 to 20 mg/dL and a control in the range of 21 to 25 mg/dL.

(2) Requirements for performing initial pH tests are as follows:

(i) Colorimetric pH tests must have a dynamic range of 2 to 12 and pH meters must be capable of measuring pH to one decimal place.

(ii) An initial colorimetric pH test must have the following calibrators and controls:

- (A) One calibrator at 3;
- (B) One calibrator at 11;
- (C) One control in the range of 2 to 2.8;
- (D) One control in the range of 3.2 to 4;
- (E) One control in the range of 4.5 to 9;
- (F) One control in the range of 10 to 10.8; and
- (G) One control in the range of 11.2 to 12.

(iii) If a pH screening test is not used, an initial pH meter test must have the following calibrators and controls:

- (A) One calibrator at 4;
- (B) One calibrator at 7;
- (C) One calibrator at 10;
- (D) One control in the range of 2 to 2.8;
- (E) One control in the range of 3.2 to 4;
- (F) One control in the range of 10 to 10.8; and
- (G) One control in the range of 11.2 to 12.

(iv) If a pH screening test is used, an initial pH meter test must have the following calibrators and controls when the screening result indicates that the

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pH is below the lower decision point in use:

- (A) One calibrator at 4;
- (B) One calibrator at 7;
- (C) One control in the range of 2 to 2.8; and
- (D) One control in the range of 3.2 to 4.

(v) If a pH screening test is used, an initial pH meter test must have the following calibrators and controls when the screening test result indicates that the pH is above the upper decision point in use:

- (A) One calibrator at 7;
- (B) One calibrator at 10;
- (C) One control in the range of 10 to 10.8; and
- (D) One control in the range of 11.2 to 12.

(3) Oxidizing adulterants. Initial tests for oxidizing adulterants must include a calibrator at the appropriate cutoff concentration for the compound of interest, a control without the compound of interest (i.e., a certified negative control), and a control with at least one of the compounds of interest at a measurable concentration. For nitrite, the licensee testing facility shall have one control in the range of 200 to 400 mcg/mL, one control in the range of 500 to 625 mcg/mL, and a control without nitrite (i.e., a certified negative control).

(4) Other adulterants. Initial tests for other adulterants must include an appropriate calibrator, a control without the compound of interest (i.e., a certified negative control), and a control with the compound of interest at a measurable concentration.

(5) Each analytical run performed to conduct initial validity testing shall include at least one quality control sample that appears to be a donor specimen to the licensee testing facility technicians.

(6) The licensee testing facility shall also submit at least one specimen out of every 10 donor specimens that test negative on the initial validity tests performed by the licensee testing facility to an HHS-certified laboratory as part of the licensee testing facility's quality assurance program.

(e) *Quality control requirements for initial drug tests.* (1) Any initial drug test performed by a licensee testing facility

must use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. Licensee testing facilities may not use non-instrumented immunoassay testing devices that are pending HHS/SAMHSA review and approval for initial drug testing under this part. In addition, licensees and other entities may not take management actions on the basis of any drug test results obtained from non-instrumented devices that may be used for validity screening tests.

(2) Licensee testing facilities shall discard negative specimens or may pool them for use in the licensee testing facility's internal quality control program after certification by an HHS-certified laboratory that the specimens are negative and valid. Licensee testing facilities may not retain any information linking donors to specimens that are pooled for use in the internal quality control program.

(3) Licensee testing facilities may perform multiple initial drug tests for the same drug or drug class, provided that all tests meet the cutoffs and quality control requirements of this part. For example, a licensee testing facility may use immunoassay technique "A" for all drugs using the licensee's or other entity's cutoff levels, but specimens testing positive for amphetamines may also be tested using immunoassay technique "B" to eliminate any possible positives due to structural analogues; or, a valid analytical result cannot be obtained using immunoassay technique "A" and immunoassay technique "B" is used in an attempt to obtain a valid analytical result.

(4) Licensee testing facilities need not assess their false positive testing rates for drugs, because all specimens that test as positive on the initial tests for drugs and drug metabolites must be forwarded to an HHS-certified laboratory for initial and confirmatory testing.

(5) To ensure that the rate of false negative drug tests is kept to the minimum that the immunoassay technology supports, licensee testing facilities shall submit to the HHS-certified laboratory a minimum of 5 percent (or at least one) of the donor specimens

screened as negative from every analytical run.

(6) A minimum of 10 percent of all specimens in each analytical run of specimens to be initially tested for drugs by the licensee testing facility must be quality control samples, which the licensee testing facility shall use for internal quality control purposes. (These samples are not forwarded to the HHS-certified laboratory for further testing, other than for performance testing of the samples.) Licensee testing facilities shall ensure that quality control samples that are positive for each drug and metabolite for which the FFD program conducts testing are included in at least one analytical run each calendar quarter. The quality control samples for each analytical run must include—

(i) Sample(s) certified by an HHS-certified laboratory to contain no drugs or drug metabolites (i.e., negative urine samples);

(ii) At least one positive control with drug(s) or drug metabolite(s) targeted at 25 percent above the cutoff;

(iii) At least one positive control with drug(s) or drug metabolite(s) targeted at 25 percent below the cutoff;

(iv) A sufficient number of calibrators to ensure and document the linearity of the assay method over time in the concentration area of the cutoff (after acceptable values are obtained for the known calibrators, those values will be used to calculate sample data); and

(v) At least one positive control, certified to be positive by an HHS-certified laboratory, which appears to be a donor specimen to the licensee testing facility technicians.

(7) Licensee testing facilities shall document the implementation of procedures to ensure that carryover does not contaminate the testing of a donor's specimen.

(f) *Errors in testing.* Each licensee testing facility shall investigate any testing errors or unsatisfactory performance discovered in the testing of quality control samples, in the testing of actual specimens, or through the processing of management reviews and/or MRO reviews, as well as any other errors or matters that could adversely

reflect on the licensee testing facility's testing process.

(1) Whenever possible, the investigation must determine relevant facts and identify the root cause(s) of the testing or process error.

(2) The licensee testing facility shall take action to correct the cause(s) of any errors or unsatisfactory performance that are within the licensee testing facility's control.

(3) If false negative results are obtained in any analytical run from testing the quality control samples specified in paragraphs (b), (d), and (e) of this section at the licensee testing facility, the licensee testing facility shall forward all donor specimens from that analytical run to the HHS-certified laboratory for additional testing and implement corrective actions before resuming testing of donor specimens for the drug(s), drug metabolite(s), adulterant(s), or other specimen characteristics (i.e., creatinine, pH) associated with the quality control sample that yielded the false negative result(s).

(4) If a donor specimen that yielded negative validity or drug test results at the licensee testing facility yields positive, substituted, adulterated, or invalid results after confirmatory testing by the HHS-certified laboratory under paragraphs (b)(3), (d)(6), or (e)(5) of this section, the licensee or other entity shall implement corrective actions before resuming testing of donor specimens for the drug(s), drug metabolite(s), adulterant(s), or other specimen characteristics (i.e., creatinine, pH) associated with the donor specimen that yielded the false negative result(s). In addition to resolving any technical, methodological, or administrative errors in the licensee testing facility's testing process, the licensee or other entity may re-collect and test specimens from any donor whose test results from the licensee testing facility may have been inaccurate.

(5) A record of the investigative findings and the corrective actions taken, where applicable, must be dated and signed by the individuals who are responsible for the day-to-day management of the licensee testing facility and reported to appropriate levels of management.

(g) *Accuracy.* Volumetric pipettes and measuring devices must be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors must be checked for accuracy and reproducibility before being placed in service, and periodically thereafter.

(h) *Calibrators and controls.* Calibrators and controls must be prepared using pure drug reference materials, stock standard solutions obtained from other laboratories, or standard solutions that are obtained from commercial manufacturers and are properly labeled as to content and concentration. Calibrators and controls may not be prepared from the same stock solution. The standards and controls must be labeled with the following dates: when received; when prepared or opened; when placed in service; and when scheduled for expiration.

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§ 26.139 Reporting initial validity and drug test results.

(a) The licensee testing facility shall report as negative all specimens that are valid on the basis of validity screening or initial validity tests, or both, and are negative on the initial tests for drugs and drug metabolites. Except as permitted under § 26.75(h), positive test results from initial drug tests at the licensee testing facility may not be reported to licensee or other entity management. In addition, the licensee testing facility may not report results from validity screening or initial validity testing indicating that a specimen is of questionable validity or positive initial drug test results from specimens that are of questionable validity.

(b) Except as provided in §§ 26.37 and 26.75(h), access to the results of initial tests must be limited to the licensee testing facility’s staff, the MRO and MRO staff, the FFD program manager, and, when appropriate, EAP staff and the SAE.

(c) The licensee testing facility shall provide qualified personnel, when required, to testify in an administrative or disciplinary proceeding against an individual when that proceeding is

based on urinalysis results reported by the licensee testing facility.

(d) The licensee testing facility shall prepare the information required for the annual report to the NRC, as required in § 26.717.

(e) The data in the annual report to the NRC must be presented for either the cutoff levels specified in this part, or for more stringent cutoff levels, if the FFD program uses more stringent cutoff levels for drugs and drug metabolites. If the FFD program tests for drugs and drug metabolites that are not specified in § 26.31(d)(1), the summary must also include the number of positive test results and the cutoff levels used for those drugs and drug metabolites.

(f) The designated FFD program official shall use the available information from the licensee testing facility’s validity and drug test results, the results of quality control testing performed at the licensee testing facility, and the results from testing the quality control samples that the licensee testing facility submits to the HHS-certified laboratory to evaluate continued testing program effectiveness and detect any local trends in drugs of abuse that may require management action or FFD program adjustments. FFD program adjustments may include, but are not limited to, training enhancements, procedure changes, the expansion of the FFD program’s drug panel to include additional drugs to be tested, or changes in the types of assays, validity screening tests, or instruments used.

Subpart G—Laboratories Certified by the Department of Health and Human Services

§ 26.151 Purpose.

This subpart contains requirements for the HHS-certified laboratories that licensees and other entities who are subject to this part use for testing urine specimens for validity and the presence of drugs and drug metabolites.

§ 26.153 Using certified laboratories for testing urine specimens.

(a) Licensees and other entities who are subject to this part shall use only laboratories certified under the Department of Health and Human Services