

Nuclear Regulatory Commission

§ 26.77

§ 26.717 were subsequently reported as positive by the HHS-certified laboratory as the result of confirmatory testing;

(2) There is no loss of compensation or benefits to the donor during the period of temporary administrative action;

(3) Immediately on receipt of a negative report from the HHS-certified laboratory or MRO, any matter that could link the donor to the temporary administrative action is eliminated from the donor's personnel record and other records; and

(4) Licensees and other entities may not disclose the temporary administrative action against an individual whose initial drug test result is not subsequently confirmed by the MRO as a violation of the FFD policy in response to a suitable inquiry conducted under the provisions of § 26.63, a background investigation conducted under the provisions of this chapter, or to any other inquiry or investigation.

(i) To ensure that no records are retained, access to the system of files and records must be provided to personnel who are conducting reviews, inquiries into allegations, or audits under the provisions of § 26.41, and to NRC inspectors.

(ii) The licensee or other entity shall provide the donor with a written statement that the records specified in §§ 26.713 and 26.715 have not been retained with respect to the temporary administrative action and shall inform the donor in writing that the temporary administrative action that was taken will not be disclosed and need not be disclosed by the individual in response to requests for self-disclosure of potentially disqualifying FFD information.

§ 26.77 Management actions regarding possible impairment.

(a) This section defines management actions that licensees and other entities who are subject to this subpart must take when an individual who is subject to this subpart shows indications that he or she may not be fit to safely and competently perform his or her duties.

(b) 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.

(1) 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.

(2) If a licensee or C/V who is subject to subpart I of this part is certain that the observed behavior or physical condition is the result solely of fatigue, the licensee or C/V shall ensure that a fatigue assessment is conducted under § 26.211. If the results of the fatigue assessment confirm that the observed behavior or physical condition is the result solely of fatigue, the licensee or C/V need not perform drug and alcohol tests or implement the determination of fitness process otherwise required by § 26.189.

(3) For other indications of possible impairment that do not create a reasonable suspicion of substance abuse (or fatigue, in the case of licensees and C/Vs who are subject to subpart I of this part), the licensee or other entity may permit the individual to return to performing his or her duties only after the impairing or questionable conditions are resolved and a determination of fitness indicates that the individual is fit to safely and competently perform his or her duties.

(c) If a licensee or other entity has a reasonable belief that an NRC employee or NRC contractor may be under the influence of any substance, or is otherwise unfit for duty, the licensee or other entity may not deny access but shall escort the individual. In any such instance, the licensee or other entity shall immediately notify

the appropriate Regional Administrator by telephone, followed by written notification (e.g., e-mail or fax) to document the oral notification. If the Regional Administrator cannot be reached, the licensee or other entity shall notify the NRC Operations Center.

Subpart E—Collecting Specimens for Testing

§ 26.81 Purpose and applicability.

This subpart contains requirements for collecting specimens for drug testing and conducting alcohol tests by or on behalf of the licensees and other entities in § 26.3(a) through (d) for the categories of individuals specified in § 26.4(a) through (d) and (g). At the discretion of a licensee or other entity in § 26.3(c), specimen collections and alcohol tests must be conducted either under this subpart for the individuals specified in § 26.4(e) and (f) or the licensee or other entity may rely on specimen collections and alcohol tests conducted under the requirements of 49 CFR Part 40 for the individuals specified in § 26.4(e) and (f). The requirements of this subpart do not apply to specimen collections and alcohol tests that are conducted under the requirements of 49 CFR Part 40, as permitted in this paragraph and under §§ 26.4(j) and 26.31(b)(2) and Subpart K.

§ 26.83 Specimens to be collected.

Except as permitted under § 26.31(d)(5), licensees and other entities who are subject to this subpart shall—

(a) Collect either breath or oral fluids for initial tests for alcohol. Breath must be collected for confirmatory tests for alcohol; and

(b) Collect only urine specimens for both initial and confirmatory tests for drugs.

§ 26.85 Collector qualifications and responsibilities.

(a) *Urine collector qualifications.* Urine collectors shall be knowledgeable of the requirements of this part and the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to urine collection procedures. Collectors shall re-

ceive qualification training that meets the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) All steps necessary to complete a collection correctly and the proper completion and transmission of the custody-and-control form;

(2) Methods to address “problem” collections, including, but not limited to, collections involving “shy bladder” and attempts to tamper with a specimen;

(3) How to correct problems in collections; and

(4) The collector’s responsibility for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(b) *Alcohol collector qualifications.* Alcohol collectors shall be knowledgeable of the requirements of this part and the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to alcohol collection procedures. Collectors shall receive qualification training meeting the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) The alcohol testing requirements of this part;

(2) Operation of the particular alcohol testing device(s) [i.e., the alcohol screening devices (ASDs) or EBTs] to be used, consistent with the most recent version of the manufacturers’ instructions;

(3) Methods to address “problem” collections, including, but not limited to, collections involving “shy lung” and attempts to tamper with a specimen;

(4) How to correct problems in collections; and