

Nuclear Regulatory Commission

§ 26.35

in testing for drugs and drug metabolites.

(A) If a licensee or other entity implements lower cutoff levels, and the MRO determines that an individual has violated the FFD policy using the licensee's or other entity's more stringent cutoff levels, the individual shall be subject to all management actions and sanctions required by the licensee's or other entity's FFD policy and this part, as if the individual had a confirmed positive drug test result using the cutoff levels specified in this subpart. The licensee or other entity shall document the more stringent cutoff levels in any written policies and procedures in which cutoff levels for drug testing are described.

(B) The licensee or other entity shall uniformly apply the cutoff levels listed in § 26.163(a)(1) for initial drug testing and in § 26.163(b)(1) for confirmatory drug testing, or any more stringent cutoff levels implemented by the FFD program, to all tests performed under this part and equally to all individuals who are tested under this part, except as permitted in §§ 26.31(d)(1)(i), 26.163(a)(2), and 26.165(c)(2).

(C) In addition, the scientific and technical suitability of any more stringent cutoff levels must be evaluated and certified, in writing, by a forensic toxicologist who meets the requirements set forth in § 26.31(d)(1)(i)(D). Certification of the more stringent cutoff levels is not required if the HHS Guidelines are revised to lower the cutoff levels for the drug or drug metabolites in Federal workplace drug testing programs and the licensee or other entity implements the cutoff levels published in the HHS Guidelines, or if the licensee or other entity received written approval of the NRC to test for lower cutoff levels before April 30, 2008.

(4) *Alcohol testing.* Initial tests for alcohol must be administered by breath or oral fluids analysis using alcohol analysis devices that meet the requirements of § 26.91(a). If the initial test shows a BAC of 0.02 percent or greater, a confirmatory test for alcohol must be performed. The confirmatory test must be performed with an EBT that meets the requirements of § 26.91(b).

(5) *Medical conditions.* (i) If an individual has a medical condition that

makes collection of breath, oral fluids, or urine specimens difficult or hazardous, the MRO may authorize an alternative evaluation process, tailored to the individual case, to meet the requirements of this part for drug and alcohol testing. The alternative process must include measures to prevent subversion and achieve results that are comparable to those produced by urinalysis for drugs and breath analysis for alcohol.

(ii) If an individual requires medical attention, including, but not limited to, an injured worker in an emergency medical facility who is required to have a post-event test, treatment may not be delayed to conduct drug and alcohol testing.

(6) *Limitations of testing.* Specimens collected under NRC regulations may only be designated or approved for testing as described in this part and may not be used to conduct any other analysis or test without the written permission of the donor. Analyses and tests that may not be conducted include, but are not limited to, DNA testing, serological typing, or any other medical or genetic test used for diagnostic or specimen identification purposes.

[73 FR 17176, Mar. 31, 2008, as amended at 74 FR 38327, Aug. 3, 2009]

§ 26.33 Behavioral observation.

Licensees and other entities shall ensure that the individuals who are subject to this subpart are subject to behavioral observation. Behavioral observation must be performed by individuals who are trained under § 26.29 to detect behaviors that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty; or impairment from fatigue or any cause that, if left unattended, may constitute a risk to public health and safety or the common defense and security. Individuals who are subject to this subpart shall report any FFD concerns about other individuals to the personnel designated in the FFD policy.

§ 26.35 Employee assistance programs.

(a) Each licensee and other entity who is subject to this part shall maintain an EAP to strengthen the FFD