



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

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## **PERSONNEL BULLETIN NO: 17-15**

**Subject:** Drug-Free and Alcohol-Free Workplace Plan

**1. Purpose.** The purpose of this policy is to update the Department of the Interior's (DOI) Drug-Free and Alcohol-Free Workplace policy as well as to establish DOI policy and guidance for the overall administration of authorized drug testing procedures in accordance with applicable laws and regulations. The following policy and procedures promote the successful accomplishment of the DOI mission by supporting employee productivity and well-being. This policy supersedes Personnel Bulletin 12-10.

### **2. Authorities.**

- A. 5 U.S.C. Chapters 7361 and 7362 – Drug Abuse, Alcohol Abuse and Alcoholism.
- B. Executive Order 12564, Drug-Free Federal Workplace, dated September 15, 1986.
- C. Executive Order 10450, Security Requirements for Government, dated April 27, 1953, as amended.
- D. Supplemental Appropriations Act of 1987, Public Law 100-71, 101 Stat. 468, Sec. 503, codified at 5 U.S.C. § 7301 note (1987), as amended.
- E. Mandatory Guidelines for Federal Workplace Drug Testing Programs, Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).
- F. Civil Service Reform Act of 1978, Public Law 95-454.
- G. Privacy Act of 1974 (5 U.S.C. § 552a)
- H. 43 CFR Part 2 – Implementing the Privacy Act of 1974 within DOI.
- I. Federal Employees Substance Abuse Education and Treatment Act of 1986, Public Law 99-570 (5 U.S.C. § 7361, et. seq.).
- J. 5 CFR Part 792 – Federal Employees Health and Counseling Programs.
- K. 42 CFR Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records.
- L. Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, and implementing regulations:

- (1) 49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
  - (2) 14 CFR Part 120 – Drug and Alcohol Testing Program (Aeronautics and Space).
  - (3) 46 CFR Part 16 – Chemical Testing (Marine).
  - (4) 46 CFR Part 4 – Marine Casualties and Investigations.
  - (5) 49 CFR Part 382 – Transportation Controlled Substances and Alcohol Use and Testing (Commercial Motor Vehicles).
  - (6) 49 CFR Part 219 – Control of Alcohol and Drug Use (Railroad).
- M. Comptroller General Decision B-187074, Use of Appropriated Funds, dated November 7, 1977.
- N. 370 DM 752 – Discipline and Adverse Actions.

### **3. Definitions.**

- A. Applicant. Any individual tentatively selected for employment in a Testing Designated Position with DOI, and who has not, immediately prior to the selection, been subject to random testing.
- B. Illegal Drugs. A controlled substance included in Schedule I or II, as defined by Section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" includes the use of a controlled substance that has authorized uses under the law, such as Schedule II prescription medications (e.g., opioids, codeine, morphine, etc.), if they are used without a valid prescription or other legal authorization.
- C. Random Testing. A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs, and may either be: (1) uniform--unannounced testing of testing designated employees occupying a specified area, element or position; or (2) a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.
- D. Testing Designated Positions (TDPs). Positions that require pre-employment drug testing and that are subject to random testing. At DOI, TDPs are the following positions:
- (1) Employees in positions designated by DOI as Special Sensitive, Critical Sensitive, or Noncritical-Sensitive under 5 CFR Part 1400, or employees in positions designated by the Agency head as sensitive in accordance with Executive Order No. 10450, as amended;

- (2) Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the Agency head under Section 4 of Executive Order No. 13526;
- (3) Individuals serving under Presidential appointments;
- (4) Law enforcement officers as defined in 5 U.S.C. §8331(20) and 8401(17);
- (5) Other positions that DOI determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence;<sup>i</sup> and
- (6) Positions covered by the Omnibus Transportation Employee Testing Act of 1991.<sup>ii</sup>

E. Verified Positive Test Result. A test result that was positive on an initial FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay (or other confirmatory tests approved by HHS), and reviewed and verified by the Medical Review Officer (as defined in Section 5.E.), in accordance with this policy and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

#### **4. Drug- and Alcohol-Free Workplace.**

A. Introduction. On September 15, 1986, the President signed Executive Order 12564, Drug-Free Federal Workplace, establishing a policy against the use of illegal drugs by Federal employees, whether on duty or off duty. Executive Order 12564 and subsequent legislation<sup>iii</sup> established uniformity among Federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal government's drug testing program.

B. Policy. DOI supports the goal of a drug- and alcohol-free Federal workplace. The use of illegal drugs, on or off duty, will not be tolerated. Additionally, alcohol possession and/or consumption while on duty and reporting to duty while intoxicated or under the influence of alcohol will not be tolerated.

- (1) Education and Training. Consistent with Executive Order 12564, training will be provided for all supervisors<sup>iv</sup> to assist in identifying and addressing illegal drug use by employees. Training may be accomplished through various means, including contracting with private organizations, HHS courses, in-house training courses, and Employee Assistance Program (EAP) training in cooperation with designated EAP Administrators,<sup>v</sup> Substance Abuse Program (SAP) Administrators, or other designated individuals.<sup>vi</sup> Supervisory training may be presented as a separate course, or be included as part of an ongoing supervisory training program.<sup>vii</sup>

Training should be provided as soon as possible after a person assumes supervisory responsibility.<sup>viii</sup> The EAP Administrator will offer drug and alcohol education to all employees.<sup>ix</sup>

- (2) Counseling. Counseling referral will be available to employees who either request counseling or are referred by a supervisor. The referral may or may not be as a result of a positive drug/alcohol test.
- (3) Drugs to be Tested For. Employees or applicants will be tested for marijuana, cocaine, opioids (e.g., codeine, morphine, oxycodone, oxymorphone, hydrocodone, hydromorphone, 6-acetylmorphine, etc.), amphetamines, and phencyclidine (PCP). Additional categories of “illegal” drugs may be included at the direction of the Medical Review Officer in accordance with HHS guidelines (e.g., synthetic, designer, as well as hallucinogenic drugs). A specimen may be tested for additional drugs, on a case-by-case basis, when DOI is conducting a specimen collection for reasonable suspicion, post-accident, or unsafe practice testing.
- (4) Labor organizations’ active participation and support can contribute to the success of this program. Management will, as deemed appropriate, seek ways in which recognized bargaining unit representatives might assist in program implementation such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Further, management will continue to observe agreements already reached, include union representatives in general orientation and training programs as applicable, and continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978.

## **5. Responsibilities.**

- A. The Secretary or his or her Designee. The Secretary or his or her designee shall be responsible for approving positions subject to drug and alcohol testing and for assuring that resources are provided for the program, providing approval for discretionary funding of demand reduction activities as necessary.
- B. Bureau Directors and equivalent Office Heads. The head of each Bureau/Office is responsible for the proper establishment of a drug-free and alcohol-free workplace and utilization of approved Departmental drug and alcohol testing procedures. Bureau/Office Heads have responsibility for implementing supervisory training, and developing a training package that will inform all employees and supervisors of the Drug-Free and Alcohol-Free Workplace Plan.
- C. DOI Drug Program Manager (DPM). The DOI Drug Program Manager will provide technical management and guidance to the Bureau/Office heads. The DOI DPM coordinates with Bureau/Office Drug Program Coordinators, the Medical Review Officer and the Employee Assistance Program Administrator

regarding their duties and responsibilities under this policy. The DPM must advise appropriate Bureau/Office heads in writing of all verified positive test results. The DOI DPM will also inform Bureau/Office Drug Program Coordinators of the results of all drug testing. Moreover, the DOI DPM will coordinate all drug testing activities in field offices and headquarters and with the assistance of the EAP Administrator, publicize and disseminate drug program educational materials. The DOI DPM will act as the Contracting Officer's Technical Representative (COTR) for collection, laboratory testing and medical review officer contracts and ensure that contractors are performing all functions in accordance with HHS technical and scientific guidelines.

- D. Drug Program Coordinator (DPC). Each Bureau/Office shall have a Drug Program Coordinator assigned to carry out the requirements of this policy. The DPC shall be responsible for implementing, directing, administering, and managing the drug program within the Bureau/Office. The DPC shall serve as the principal contact with the DPM in assuring the effective operation of the collection portion of the program.<sup>x</sup>
- E. Medical Review Officer. The Medical Review Officer is the individual responsible for receiving laboratory results generated from the Drug-Free Workplace Program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.
- F. Employee Assistance Program/Substance Abuse Program (EAP/SAP).<sup>xi</sup> The EAP/SAP plays an important role in preventing and resolving employee drug and alcohol use by: demonstrating DOI's commitment to eliminating illegal drug use and/or alcohol abuse; providing employees an opportunity, with appropriate assistance, to discontinue their drug use and/or alcohol abuse; providing educational materials to supervisors and employees on drug use and/or alcohol abuse issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however, will not be involved in the collection of urine samples or the initial reporting of test results.<sup>xii</sup>
- G. Supervisors. Supervisors have a key role in establishing and monitoring a drug-free and alcohol-free workplace. Supervisors must complete training required under this policy and promptly address violations of this policy when they arise.

## **6. Drug and Alcohol Testing Procedures.**

Individuals may be selected for testing in one or more of the categories listed below. For the protection of the individual and the Department, in certain cases the individual may be required to provide a second specimen for testing.<sup>xiii</sup>

- A. Random Testing. All employees in testing designated positions (TDPs) are subject to selection for random drug testing.
- B. Voluntary Testing. Employees may volunteer for selection to be subject to random drug testing by notifying their servicing human resources office (SHRO) of their desire to participate.
- C. Reasonable Suspicion Testing. Reasonable suspicion testing may be required of any employee in a TDP when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty drug use or impairment. Employees in positions covered by the Omnibus Transportation Employee Testing Act of 1991 are also subject to alcohol testing when required.
- D. Injury, Illness, Unsafe, or Unhealthful Practice Testing. DOI is committed to providing a safe and secure working environment. It also has a legitimate interest in determining the cause of serious accidents so that it can undertake appropriate corrective measures; thus, post-accident drug and alcohol testing can provide invaluable information. Accordingly, employees may be subject to testing when, based upon the circumstances of an accident, their actions are reasonably suspected of having caused or contributed to an accident that meets the following criteria:
  - (1) The accident results in a death or personal injury requiring immediate hospitalization; or
  - (2) The accident results in damage to government or private property estimated to be in excess of \$10,000.

If an employee is suspected of having caused or contributed to an accident meeting either of these criteria, the appropriate supervisor will present the facts and circumstances leading to and supporting this suspicion to the appropriate Bureau/Office SHRO, who will confer with the Bureau/Office head or designee to approve the test. Once approval has been obtained and arrangements made with the Bureau/Office DPC and DOI DPM for testing, the supervisor will prepare a written report detailing the facts and circumstances that warranted the test. Employees in positions covered by the Omnibus Transportation Employee Testing Act of 1991 are also subject to additional post-accident drug and alcohol testing requirements in line with governing regulations.

- E. Follow-up Testing. All employees who are referred through administrative channels to undergo counseling or rehabilitation programs for illegal drug use, as well as employees in positions covered by the Omnibus Transportation Employee Testing Act of 1991 who undergo counseling or rehabilitation programs for alcohol abuse, will be subject to unannounced testing, both during and after such a program.

- F. Applicant Testing. Drug testing is required for all individuals who are tentatively selected for employment in TDPs. Individuals temporarily assigned to a TDP may also be subjected to testing.

**7. Split Sample.** All specimens in the Federal government, including DOI, are collected as split samples, wherein the urine specimen is divided into two containers. The purpose of the split sample is to allow the employee the opportunity to have the specimen retested at a different certified laboratory in cases where the employee alleges the test results were inaccurate.

**8. Technical Guidelines.** The Department will adhere to all scientific and technical guidelines for drug testing programs promulgated by HHS, consistent with the authority granted by Executive Order 12564 and to the requirements of Section 503 of the Supplemental Appropriations Act. DOI's drug testing program shall have professionally trained collection personnel, a laboratory certification program, rigorous analytical standards and quality assurance requirements for urinalysis procedures and strict confidentiality requirements. All breathalyzers or Blood Alcohol Tests will be administered by trained personnel.

**9. Privacy Assured.** Any individual subject to drug testing will be permitted to provide urine specimens in a private restroom stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender, however, may observe the individual providing the urine specimen when such personnel have been notified by management that there is reason to believe the individual may alter or substitute the specimen to be provided. This would occur when:

- A. DOI authorizes a direct observed collection when a donor's previous drug test result was reported by the MRO as drug positive, adulterated, substituted, invalid without a legitimate medical reason, or cancelled because the split specimen failed to reconfirm the primary specimen results or could not be tested; or
- B. At the collection site, an immediate collection of a second urine sample is required in one of the following situations:
- (1) The temperature of the specimen collected during a routine collection is outside the acceptable temperature range;
  - (2) There is an indication that the donor has tampered with the specimen (e.g., abnormal physical characteristic such as unusual color, excessive foaming when shaken, and unusual odor);
  - (3) The conduct of the donor clearly indicates an attempt to adulterate or substitute the specimen; or
  - (4) The donor brought an item to the collection site for the purpose of adulteration, substitution, and/or dilution of a urine specimen.

**10. Failure to Appear.** Failure to appear for testing without a deferral will be considered refusal to participate in testing. Employees may be subjected to the full range of disciplinary actions, including removal from Federal service, if they refuse to be tested. If the employee is not removed, he or she will be referred to the EAP and required to submit to follow-up testing. Applicants who refuse to be tested will have their offer of employment cancelled. If an individual fails to appear at the collection site at the assigned time, the collector should contact the DPC to obtain guidance on action to be taken.

**11. Opportunity to Justify a Positive Test Result.** When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the HHS Guidelines. For example, the MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include, but is not limited to:

- a. A valid prescription; or
- b. A certification from the individual's physician verifying a valid prescription.

Individuals are not entitled to present evidence to the MRO in a trial type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO or the staff of the MRO shall immediately contact the DPM upon obtaining a verified positive test result.

**12. Exemption from Testing.** While participating in a counseling or rehabilitation program, and at the request of the program administrator, the employee may be exempt from the random TDP pool for a period not to exceed sixty days, or for a time period specified in an abeyance agreement or rehabilitation plan approved by the Bureau/Office head or his or her designee. Upon completion of the program, the employee will be immediately subject to follow-up testing as described in Sections 6.E. and 17.B.

**13. Savings Provision.** To the extent that any of the procedures specified in this policy are inconsistent with any of those specified in the Scientific and Technical Guidelines promulgated by HHS, or any subsequent amendment thereto, such HHS Guidelines or amendments shall supersede the procedures specified in this policy, only to the extent of the inconsistency.

#### **14. Random Testing.**

- A. Employees Subject to Random Testing. Employees in TDPs as defined in Section 3.D. are subject to random testing.

- B. Implementing Random Testing. An organizational element other than the Drug-Free Workplace Program staff will be responsible for the random selection of employees for random testing. The names of employees selected will be provided to the DOI DPM for testing purposes.<sup>xiv</sup>
- C. Notification of Selection. An individual selected for random testing will be notified the same day the test is scheduled, preferably within two hours of the scheduled testing. The individual's supervisor should explain to the employee that he/she is under no suspicion of taking drugs and that the employee's name was selected randomly.
- D. Deferral of Testing. The time from random selection to actual testing should not exceed 14 calendar days. Individuals not available for testing within the 14-day period, i.e., on leave, travel, etc., will be exempt from testing and placed back in the random pool. The supervisor will be required to document in writing why the employee was not available for testing and submit the information to the DPM.

## **15. Reasonable Suspicion Testing**

### **A. Grounds.**

- (1) For employees in TDPs, testing may be required where there is reasonable suspicion of drug use (for all employees in TDPs) or alcohol use (for employees in TDPs covered by the Omnibus Transportation Employee Testing Act of 1991) based on, among other things:
  - a. Observable phenomena, such as direct observation of drug/alcohol use or possession and/or the physical symptoms of being under the influence of a drug or alcohol;
  - b. A pattern of abnormal conduct or erratic behavior;
  - c. Arrest or conviction for a drug related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
  - d. Information provided either by reliable and creditable sources or independently corroborated; or
  - e. Newly discovered evidence that the employee has tampered with a previous drug test.
- (2) For employees not occupying TDPs, testing may be required only when there is reasonable suspicion of on-duty drug use or drug related impairment.<sup>xv</sup>
- (3) Although reasonable suspicion testing does not require certainty, mere "hunches" are insufficient to justify mandatory testing.

- B. Procedures. If an employee is suspected of using illegal drugs or alcohol, the appropriate supervisor will gather all information, facts, and circumstances leading up to and supporting this suspicion. The first line supervisor will present this information to the second line supervisor. If the second level supervisor agrees, the information will be given to the servicing Human Resources Officer (SHRO). The SHRO shall contact the Bureau/Office DPC who will in turn contact the DPM. The DPM, in consultation with the DPC and Solicitor's Office, will provide a recommendation to the Bureau/Office head or designee as to whether or not a reasonable suspicion test is warranted. If the test is warranted, the Drug-Free Workplace Program staff will coordinate the collection of the specimen with the SHRO.

When suspicion has been established, the appropriate supervisor will promptly detail, for the record and in writing, the circumstances which formed the basis to warrant the testing. A written report will be prepared by the supervisor to include, at a minimum, the appropriate dates and times of reported drug related incidents, reliable/credible sources of information that lead to the determination to order the test, findings of the test, and the action taken.

- C. Obtaining the Sample. The employee may be asked to provide the urine sample under observation in accordance with the criteria set forth in Section 9 above. Employees covered by the Omnibus Transportation Employee Testing Act of 1991 may have a breathalyzer or blood alcohol test administered.

## 16. Applicant Testing

- A. Objectives. To maintain the high professional standards of DOI's workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed in TPDs. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within DOI, and will provide for a safer work environment.
- B. Extent of Testing. Drug testing is required of all individuals tentatively selected for employment in a TDP.
- C. Vacancy Announcements. Every vacancy announcement for positions designated for applicant testing will state:

**“This position is subject to both pre-employment and random drug testing as a condition of employment. Applicants will not be appointed to the position if a verified positive drug test is received.”**

In addition, each individual tentatively selected for a position will be notified that appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement/notice will not preclude applicant testing if advance written notice is provided to applicants in some other manner.

- D. Procedures. The SHRO will direct applicants to an appropriate collection facility. The drug test must be undertaken as soon as possible after notification and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for necessary travel expenses.

Applicants will be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug. They will be informed that such information will be reviewed only by the MRO or his or her designee to determine whether the individual is licitly using an otherwise illegal drug, as defined in Section 3.B. The MRO will present his or her findings to the Drug-Free Workplace Program staff, who will contact the Bureau/Office DPC. The DPC will notify the SHRO, who will provide the applicant with a final determination.

- E. Human Resources Officials. Upon notification that an individual has been tentatively selected for employment in a TDP with DOI, the SHRO will ensure, after consultation with the DPC, that a drug test has been conducted on that individual and indicate whether the test result is a verified positive result.
- F. Consequences. DOI will decline to extend a final offer of employment to any applicant with a verified positive test result and such applicant may not reapply to the Department for a period of six months. The SHRO working on the applicant's certificate will object to the applicant on the basis of failure to pass the physical, a lack of personal characteristics necessary to relate to the public employment, or failure to support the goals of the Department. The SHRO must inform the applicant, in writing, that a confirmed presence of an illegal drug, as defined in Section 3.B., in the applicant's urine precludes DOI from hiring the applicant.

## **17. Other Types of Testing**

- A. Voluntary Testing. In order to demonstrate their commitment to the Department's goal of a drug-free workplace and to set an example for other Federal employees, employees not in TDPs may volunteer for unannounced random testing by notifying the Bureau/Office DPC and their SHRO. These employees will then be included in the pool of TDPs subject to random testing, and be subject to the same conditions, procedures and consequences for a finding of illegal drug use.

Volunteers shall remain in the TDP pool for the duration of the position which the employee holds, or until the employee withdraws from participation by notifying the DPC and their SHRO of such intent before a scheduled test.

- B. Follow-up Testing. All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through the EAP or SAP, will be subject to unannounced testing following completion of such a program for a period of one year (or longer, if so ordered by the rehabilitation program). The amount of follow-up testing that an employee must undergo is determined by the rehabilitation program. In the absence of an abeyance contract

or EAP recommendation, employees will be tested at a minimum frequency of once per quarter year. Follow-up testing is distinct from testing which may be imposed as a component of the EAP or SAP process. A return-to-duty test is required for any employee in a position covered by the Omnibus Transportation Employee Testing Act of 1991.

## **18. Finding of Illegal Drug or Alcohol Possession/Use and Consequences.**

- A. Determination. An employee may be found to use or possess illegal drugs or to use or possess alcohol on duty (without authorization) on the basis of any appropriate evidence including, but not limited to:
- (1) Direct observation;
  - (2) Evidence obtained from an arrest or criminal conviction;
  - (3) A verified positive test result; and
  - (4) An employee's voluntary admission.
- B. Mandatory Administrative Actions. DOI shall refer an employee found to use/possess illegal drugs or to use/possess alcohol on duty to the EAP/SAP. Employees found to use/possess illegal drugs or to use/possess alcohol on duty (for employees covered by the Omnibus Transportation Employee Testing Act of 1991) will not be allowed to remain on duty in a TDP until successful completion of a rehabilitation program through EAP/SAP. At the discretion of DOI, and as part of an EAP rehabilitation program, an employee may return to duty in a TDP if the employee's return would not endanger public health or safety or national security.
- C. Range of Consequences. DOI will initiate disciplinary action against any employee found to use illegal drugs. Disciplinary action taken against an employee found to use illegal drugs and/or alcohol possession/use may include the full range of disciplinary actions, including removal. The severity of the action chosen will depend on the circumstances of each case, and will be consistent with Executive Order 12564 and 370 DM 752.<sup>xvi</sup>
- Such action is not required for an employee who voluntarily admits to illegal drug use, and obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.
- D. Initiation of Mandatory Removal from Service. The Bureau/Office will initiate action to remove an employee for:
- (1) Refusing to obtain counseling or rehabilitation through an EAP/SAP, as required by Executive Order 12564 or other authorities, after having been found to use illegal drugs, as defined in Section 3.B.; or

- (2) Not refraining from illegal drug use after a first finding of such use.

All notices to propose and decide on a disciplinary action should only be issued after ample review and consultation with the SHRO pursuant to delegated authorities.

E. Refusal to Take Drug or Alcohol Test When Required.

- (1) An employee who refuses to be tested when so required will be subject to the full range of disciplinary action including removal. An employee who remains employed with DOI after a refusal will be referred to the EAP/SAP and will be required to undergo follow-up testing.
- (2) An applicant who refuses to be tested will not be extended an offer of employment.
- (3) Attempts to alter or substitute the specimen provided will be deemed a refusal to take the test when required.

F. Voluntary Referral (Safe Harbor).

- (1) Executive Order 12564 requires DOI to initiate action to discipline any employee found to use illegal drugs in every circumstance except when an employee meets all three of the following conditions:
  - a. Voluntarily identifies himself/herself to management as a user of illegal drugs, prior to being identified through other means;
  - b. Successfully completes counseling and rehabilitation monitored by an EAP, including follow-up testing; and
  - c. Refrains from using illegal drugs after successful completion of counseling and rehabilitation.
- (2) This voluntary referral option allows any employee to step forward and identify himself/herself as an illegal drug user for the purpose of entering a drug-treatment program monitored by the EAP.
- (3) The key to this provision's rehabilitative effectiveness is an employee's willingness to overcome denial by voluntarily admitting his/her drug-use problem to himself/herself and to management and others. Therefore, this provision is not available to an employee who is asked to provide a urine sample under random, reasonable-suspicion, post-accident or unsafe practice testing, and who thereafter (i.e., just before or after the sample is collected) admits his/her drug use.
- (4) An employee who requests safe harbor under the provisions of this program must be aware that he/she may be relieved from performing

sensitive duties. Further, the security officer will be advised of the safe harbor request and this information may then be used to determine whether the employee will retain his/her security clearance. This review could lead to the revocation of an employee's security clearance and removal from the federal service for failure to meet a condition of employment, i.e., maintaining a security clearance.

## **19. Records.**

- A. Confidentiality of Test Results. The laboratory may disclose confirmed laboratory test results only to the Medical Review Officer (MRO). Any positive result which the MRO justifies by licit and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug, will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results will be protected under the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), and Section 503(e) of the Supplemental Appropriations Act of 1987, P.L. 100-71, 101 Stat. 468, Section 503, codified at 5 U.S.C. 7301 note (1987), and may not be released in violation of either Act. The MRO or his or her designee may maintain only those records necessary for compliance with this order. Any records of the MRO, including drug test results, may be released to any management official for purposes of processing a disciplinary action against the employee, and for auditing the activities of the MRO, except that the disclosure of the results of any audit may not include personal identifying information on any employee.

To comply with Section 503(e) of the Supplemental Appropriations Act of 1987, the results of a drug test of an employee may not be disclosed without prior written consent of such employee, unless the disclosure would be:

- (1) To the MRO;
- (2) To the Employee Assistance Program/Substance Abuse Program (EAP/SAP) Administrator where the employee is receiving counseling or treatment or is otherwise participating;
- (3) To the Drug Program Coordinator (DPC) or any supervisory or management official within the DOI having authority to initiate or decide a proposed adverse personnel action against such employee; or
- (4) Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge to any adverse personnel action.

In addition, test results with all identifying information removed will also be made available to Department officials, including the DPC, for data collection and

other necessary activities to comply with Section 503(f) of the Supplemental Appropriations Act of 1987.

B. Employee Access to Records. Any employee who is the subject of a drug test will, upon written request, have access to any records relating to:

- (1) His/her own drug test; and
- (2) The results of any relevant certification, review, or revocation proceedings.

C. Confidentiality of Records. Drug testing information specifically relating to individuals is confidential and should be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this program and to make information readily available, the DPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this program.

All records and information (electronic or paper) of the personnel actions taken on employees with verified positive test results should be forwarded to the SHRO. Such records and information will remain confidential, locked in a safe (if paper) or in a secure database (if electronic), with only authorized individuals who have a “need-to-know” having access to them.

D. Employee Assistance Program Records. The EAP/SAP Administrator will maintain only those records necessary to comply with this order. After an employee is referred to an EAP or SAP, the EAP/SAP Administrator will maintain all records necessary to carry out the program’s duties.

All medical and/or rehabilitation records concerning the employee’s drug abuse, including EAP/SAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 CFR Part 2 or 49 CFR Part 40 Subpart P, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient’s employer for verification of treatment or for a general evaluation of treatment progress.

E. Maintenance of Records. The Department will maintain records of the Drug-Free Workplace Program consistent with OPM’s Privacy Act System of Records and with all applicable Federal laws, rules and regulations regarding confidentiality of records including the Privacy Act of 1974 (5 U.S.C. § 552a). If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Bureau/Office head.<sup>xvii</sup>

F. Records Maintained by Government Contractors. Any contractor hired to satisfy any part of this issuance shall comply with the confidentiality requirements of this

policy, and all applicable Federal laws, rules, regulations, and guidelines including the Privacy Act of 1974 (5 U.S.C. § 552a).

- G. Statistical Information. The DPC will collect and compile anonymous statistical data<sup>xviii</sup> for inclusion in DOI's annual report to Congress pursuant to Section 503(f) of P.L. 100-71. The data shall also be provided to HHS on a semiannual basis to assist overall program evaluation and to determine whether changes to the HHS Guidelines may be required.
- H. Records Retention Schedule. Disposition instructions for program records will comply with requirements established by the National Archives and Records Administration.

**20. Review of Designation.** If an employee believes his or her position has been wrongly designated as a TDP, the avenue of appeal depends upon whether or not the employee is covered by a collective bargaining agreement.

- A. Employees in a Bargaining Unit Covered by a Collective Bargaining Agreement. Where an employee is in a bargaining unit and covered by a collective bargaining agreement (CBA), the applicable negotiated grievance procedure is the sole and exclusive avenue available for an appeal, unless the CBA states otherwise.
- B. Appeal Rights of Non-Bargaining Unit Employees. If the appeal is not subject to a negotiated grievance procedure, the employee may file an administrative grievance pursuant to the procedures outlined in 370 DM 771, Administrative Grievance Procedures.

**21. Point-of-Contact.** The Departmental point of contact on this policy is the Office of Human Resources, Workforce Relations Division, 202-208-5310.

  
Raymond A. Limon  
Director, Office of Human Resources

## End Notes

<sup>i</sup> (1) Fire fighters; (2) Dive teams; (3) Medical personnel; (4) Lifeguards; (5) Search and rescue personnel; (6) Explosive handlers; or (7) Pressurized container operators.

<sup>ii</sup> (1) Employees in the aviation industry 14 CFR Part 120; (2) Commercial driver's license holders (CDL) 49 CFR Part 382; (3) Employees working in the railroad industry 49 CFR Part 219; (4) Employees operating commercial vessels 46 CFR Part 16 and 46 CFR Part 4.

<sup>iii</sup> On July 11, 1987, Congress passed legislation effecting implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, P.L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301 note (1987), (hereafter, "the Act") and the Omnibus Transportation Employee Testing Act of 1991.

<sup>iv</sup> An employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to address their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment. 5 U.S.C. §7103 (a) (10).

<sup>v</sup> The individual responsible for ensuring the development, implementation, and review of the agency EAP.

<sup>vi</sup> Training will include information regarding referral of employees to the EAP/SAP, procedures and requirements for drug testing and signs of possible drug use or alcohol abuse. Such training will also include information to make supervisors more sensitive to the symptoms of employee drug and alcohol use and help supervisors recognize and document facts that give rise to a reasonable suspicion that an employee may be using illegal drugs or alcohol.

<sup>vii</sup> The purpose of supervisory training is to understand: (1) DOI policies relevant to work performance problems, drug use, and EAP; (2) The responsibilities of offering EAP services; (3) How employee performance and behavioral changes should be recognized and documented; (4) The roles of the Medical Review Officer, medical staff, supervisors, personnel, and EAP personnel; (5) The ways to use EAP; (6) How the EAP is linked to the performance appraisal and the disciplinary process; and (7) The process of reintegrating employees into the workforce.

<sup>viii</sup> Training courses should include: (1) Overall DOI Drug-Free Workplace and Drug Testing Procedures policy; (2) The prevalence of various employee problems with respect to drugs and alcohol; (3) The EAP approach to handling problems including the supervisor's role and relationship to EAP; (4) How to recognize employees with possible problems; (5) Documentation of employee performance or behavior; (6) Skills in confronting employees with possible problems; (7) DOI procedures for referring employees to EAP; (8) Disciplinary action and removals from sensitive positions as required by Section 5(c) of Executive Order 12564; (9) Reintegration of employees into the workforce; and (10) Written materials which the supervisor can use at the work site.

<sup>ix</sup> Drug education should include education and training: (1) Types and effects of drugs; (2) Symptoms of drug use and the effects on performance and conduct; (3) The relationship of the EAP to drug testing; and (4) Other relevant treatment, rehabilitation, and confidentiality issues. Means of Education Drug education activities may include: a. Distribution of written materials; b. Videotapes, DVDs, webinars, or other on-line training; c. Lunchtime employee forums; and d. Employee drug awareness days.

<sup>x</sup> In carrying out this responsibility, the DPC shall, among other duties: a. Arrange for employee notifications and collection arrangements for drug testing authorized under this plan; b. In coordination with the EAP, publicize and disseminate drug program education materials, and oversee training and education sessions regarding drug use and rehabilitation; c. Coordinate Drug-Free Workplace activities in

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field offices wherever possible to conserve resources and to efficiently and expeditiously accomplish reliable an accurate testing objectives; and d. Inform SHROs of the results of applicant testing.

<sup>xi</sup> The EAP is a DOI-offered counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems. EAP also monitors the progress of employees while in treatment for substance abuse. The SAP is a program authorized by the Omnibus Transportation Employee Testing Act of 1991 for employees covered by that Act. It offers services similar to EAP and also monitors employees while they are in treatment for substance abuse.

<sup>xii</sup> Specifically, the EAP should: (1) Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been verified positive, and monitor the employees' progress through treatment and rehabilitation; (2) Provide needed education and training to all levels of the DOI on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP to drug testing, and related treatment, rehabilitation, and confidentiality issues; (3) Ensure that confidentiality of test results and related medical treatment and rehabilitation records are maintained in accordance with Section 19; (4) Referral and Availability. Any employee found to be using drugs will be referred to the EAP. The EAP shall be administered separately from the testing program, and should be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to DOI employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems. In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to completion of the program. The decision of the EAP Administrator will be final and should not be subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor failed to consider specific factors in making a referral should not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment; e. Leave Allowance. Employees will be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session, during the assessment/referral phase of rehabilitation. Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

<sup>xiii</sup> For example, if a specimen is collected and determined not to be testable (e.g., shipped to wrong laboratory, lost in shipping, urine leaked out, no custody and control form, etc.), a new specimen will be recollected from the donor. The recollection requirement does not apply to specimens determined by the laboratory to be adulterated. Also, if a specimen is received by the laboratory with omitted information on the custody and control form which could question the forensic validity of the specimen result, a second specimen may be collected. However, if the omitted information can be collected then a second specimen will not be necessary. The omitted information must be collected before the specimen is analyzed by the laboratory.

<sup>xiv</sup> In implementing the program of random testing the DPM should: ensure that the means of random selection remains confidential; and periodically evaluate whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the duty to achieve a drug-free work force.

<sup>xv</sup> For these employees, such testing may be based on: (1) Observable phenomena of on-duty use or impairment, such as direct observation of drug possession and/or the physical symptoms of being under the influence of a drug; (2) A pattern of abnormal conduct or erratic behavior while on duty; or (3) Information of on-duty use or impairment provided either by reliable and credible sources or independently corroborated.

<sup>xvi</sup> Such disciplinary action, consistent with the requirements of any governing collective bargaining agreement and the Civil Service Reform Act of 1978 and other statutes, DOI orders, and regulations, may include any of the following measures, but some disciplinary action must be initiated: (1) Reprimanding the

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employee in writing; (2) Suspending the employee for 14 days or less; (3) Suspending the employee for 15 days or more; (4) Suspending the employee until he/she successfully completes the EAP or SAP program or until the DOI determines that action other than suspension is more appropriate; or (5) Removing the employee from service.

<sup>xvii</sup> The record keeping system should capture sufficient documents to meet the operational and statistical needs of this issuance, and include: (1) Notices of verified positive test results referred by the MRO; (2) Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen; (3) Anonymous statistical reports; and (4) Other documents the DOI DPC, Bureau/Office DPC, MRO, or EAP Administrator deems necessary for efficient compliance with this order.

<sup>xviii</sup> Data collected will include: (1) Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered; (2) Verified positive test results; (3) Voluntary drug counseling referrals; (4) Involuntary drug counseling referrals; (5) Terminations or denial of employment offers resulting from refusal to submit to testing; (6) Terminations or denial of employment offers resulting from alteration of specimens; (7) Terminations or denial of employment offers resulting from failure to complete drug abuse counseling program; and (8) Successful completions of EAP/SAP programs.