

U.S. Department of Energy
Washington, D.C.

ORDER

DOE O 3792.3

Approved: 07-29-88

Change 1: 8-21-92

This directive was reviewed and certified as current and necessary by Bruce M. Carnes, Director, Office of Management, Budget and Evaluation/Chief Financial Officer, 9-18-02.

SUBJECT: DRUG-FREE FEDERAL WORKPLACE TESTING IMPLEMENTATION PROGRAM

1. PURPOSE. To provide guidance and policy for the administration, application and implementation of laws. Executive orders, civil service regulations, mandatory guidelines, the Department of Energy (DOE) Drug-free Federal Workplace Plan and other regulations that facilitate the maintenance of a drug-free Federal workplace through the establishment of programs to test for the use of illegal drugs.

2. REFERENCES.

- a. DOE 3630.1B, LEAVE ADMINISTRATION, of 12-31-86, which provides guidance and DOE policy on the use of leave.
- b. DOE 3750.1, WORK FORCE DISCIPLINE, of 3-23-83, which provides guidance and DOE policy on adverse and disciplinary actions.
- c. DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81, which contains information on the Departmental grievance procedures.
- d. DOE 3792.1A, EMPLOYEE ASSISTANCE PROGRAM, of 5-18-92, which describes the Departmental employee assistance program.
- e. DOE 5484.1, ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION INFORMATION REPORTING REQUIREMENTS, of 2-24-81, which prescribes reporting requirements for various types of occurrences.
- f. DOE 5631.2B, PERSONNEL SECURITY PROGRAM, of 5-18-88, which describes supervisors' responsibilities under the personnel security program.
- g. Federal Personnel Manual (FPM) Chapter 731, Personnel Suitability, and FPM Chapter 732, Personnel Security, which describe position sensitivity.
- h. FPM Chapter 751, "Discipline", which describes procedures to be used in dealing with conduct problems.
- i. FPM Chapter 792, "Federal Employees Health and Counseling Programs", which describes the drug testing program and employee assistance program.
- j. "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by the Department of Health and Human Services (HHS) and maintained by the Office of Personnel, which describes guidelines and certification procedures for Federal drug testing programs.

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INITIATED BY:
Office of Personnel

- k. Executive Order 12564, of 9-15-85, which provides for drug testing programs.
- l. Executive Order 12356, of 4-2-82, which prescribes system for classifying, declassifying, and safeguarding national security information.
- m. Executive Order 10450, of 4-27-53, which provides security requirements for government employment.
- n. Title 5 U.S.C., section 8331(20), which identifies law enforcement officers.
- o. Title 5, U.S.C., section 552a, which contains instructions regarding the disclosure of information.
- p. Title 5, U.S.C., sections 2104 and 2105, which contain definitions of officers and employees.
- q. Title 21 U.S.C., section 802(6), which identifies controlled substances.
- r. Title 42, CFR, part 2, which discusses maintaining the confidentiality of treatment records.
- s. Title 29, CFR, part 1600, which implements the Rehabilitation Act of 1973.
- t. The Rehabilitation Act of 1973, which addresses agency development of reasonable accommodation procedures for handicapped employees.
- u. Local agreements negotiated between management and exclusive representatives of bargaining unit employees.
- v. Department of Energy Drug-free Federal Workplace Plan, approved by the Department of Justice and certified to Congress by the Secretary, Department of Health and Human Services, on 4-27-88. The plan, required by title 5, U.S.C., section 552, describes the actions that will be taken to comply with Executive Order 12564 and is the basis for this Order.

3. POLICY.

- a. DOE shall participate in the Federal effort to achieve workplaces free of illegal drug use through a program designed to offer users of illegal drugs a helping hand and, at the same time, demonstrate that illegal drugs will not be tolerated in the Federal workplace.
- b. The sale, use, or possession of illegal drugs, whether on or off duty, is not consistent with Federal employment and may be grounds for disciplinary action, up to and including removal.

- c. Persons who use illegal drugs are not suitable for Federal employment.
- d. Every effort shall be made to assist employees in becoming and remaining drug free. This includes, as appropriate, efforts to reassign or realign work, leave to obtain rehabilitation, and educational information regarding substance abuse.
- e. Effective monitoring and testing procedures shall be established in order to provide reasonable assurance that the foregoing policies are met.
- f. When establishing drug testing procedures pursuant to law, civil service regulation, HHS guidelines or DOE regulation, heads of field organizations and headquarters shall negotiate or consult with exclusive representatives as appropriate under labor-relations law or negotiated agreement.

4. DEFINITIONS.

- a. Applicant. Any individual tentatively selected for a sensitive position in DOE which is included in the random testing pool, including an individual who is currently employed by DOE or another Federal agency. An individual becomes an applicant when he or she is selected for a specific position, but employment is delayed pending meeting any required conditions of employment, such as obtaining a requisite security clearance or testing negative on a test for the use of illegal drugs.
- b. Collection site. A place where individuals present themselves for the purpose of providing urine specimens to be analyzed. The collection site may be located at a government or contractor facility, but must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection in privacy, security, temporary storage, and transportation of urine specimens to a drug testing laboratory.
- c. Due process in the employee relations context is the basic protection of a employee's constitutional and statutory rights through established procedures that ensure proper and fair administration of justice. In the drug testing context, "due process" would include, for example, procedures that would allow the employee to know of charges against him or her, that would allow the employee to respond to the charges and that allow for employee appeals of subsequent decisions. These "due process" procedures are fully described in DOE 3750.1; the term "due process" is simply a brief way of referring to those procedures.

- d. Employee. Any officer or employee of DOE as defined in title 5, U.S.C., sections 2104 and 2105.
- e. Illegal Drug. A controlled substance Included in Schedule I or II, as defined in title 21, U.S.C., Section 802(6), the possession of which is unlawful under chapter 13 of that title. The term does not refer to the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
- f. Reasonable Suspicion. An articulable belief drawn from specific and particularized facts and reasonable inferences from those facts that an employee uses illegal drugs. Such a belief may be based upon, among other things:
 - (1) Observable phenomena, such as direct observation of drug use and/or the physical symptoms of being under the influence of a drug;
 - (2) A pattern of abnormal conduct or erratic behavior;
 - (3) 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;
 - (4) Information provided either by reliable and credible sources or independently corroborated; or
 - (5) Newly discovered evidence that the employee has tampered with a previous drug test.
- g. Rehabilitation. A formalized treatment process aimed at the resolution of behavioral-medical problems, including alcoholism, drug abuse, and mental health disorders.
- h. Random testing. Unscheduled, unannounced testing and random sampling of employees in testing designated positions. The process will ensure that selections are not made in an arbitrary, capricious, or discriminatory manner.
- i. Occurrence. Any deviation from the planned or expected behavior or course of events in connection with any DOE or DOE-controlled operation if the deviation has environmental protection, safety, or health protection significance.

- j. Testing Designated Position. A position that has been placed in the random drug testing pool because the position meets at least one definition of "sensitive position" in E.O. 12564 and the position directly affects the national security, public safety, or public health.
5. RESPONSIBILITIES.
- a. Secretary.
 - (1) Provides general policy direction for the DOE drug-testing program;
 - (2) Approves or disapproves requests to include or exempt certain positions or groups of positions from the drug testing program; and
 - (3) Determines the percentage of employees to be tested under the provisions of Chapter I.
 - b. Assistant Secretary for Environment, Safety, and Health submits requests for laboratory certification to the Director of Administration.
 - c. General Counsel. Provides advice and assistance to Departmental managers, program officials, and the Inspector General regarding actions taken relating to the DOE drug testing program.
 - d. Assistant Secretary, Management and Administration. Ensures that the Department's drug testing program is operated in an objective manner and is based on concepts of efficiency and mission support.
 - e. Controller. Ensures that adequate funds are requested for conducting required drug testing programs, including reimbursing applicants for reasonable expenses incurred in travel to a drug testing facility, and to support the Employee Assistance Program.
 - f. Director of Administration.
 - (1) Develops, implements, and administers the DOE drug testing program;
 - (2) Provides for quarterly inspection of testing laboratories and takes appropriate action based on the results of such inspections.
 - (3) Recommends approval or disapproval of requests to exempt certain positions or groups of positions from the drug testing program;
 - (4) Concurs in requests to require an employee to undergo a test under the reasonable suspicion provision, as identified in Chapter I, Paragraph 2c(3), more than once in a 12-month period;

- (5) Requests approval from the Secretary of Health and Human Services, to use alternative test methods, test levels, or to include additional drugs or classes of drugs in the test;
- (6) Approves requests for exceptions to this directive; and
- (8) Identifies a Medical Review Officer as defined in the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

g. Heads of Field Organizations, the Inspector General, and the Deputy Director of Administration (for Headquarters).

- (1) Determine when an occurrence requiring notification within 72 hours shall lead to drug testing of involved employees;
- (2) Concur in a determination by a supervisor that an employee who has been determined to have used illegal drugs should be returned to sensitive duties;
- (3) Concur in a determination that the "reasonable suspicion" criteria for drug testing have been met; and
- (4) Approve administrative leave in accordance with Chapter I I 1, Paragraph 5d(2), up to 10 days. Requests for longer periods must have the concurrence of the Director of Personnel.

h. Director of Personnel.

- (1) Develops, promulgates, implements, and provides advice on policies, standards, and procedures concerning the DOE drug testing program, consistent with applicable civil service laws and regulations;
- (2) Maintains liaison with the Office of Personnel Management, Departments of Health and Human Services and Justice, and other organizations on drug testing policy as well as other personnel-related matters;
- (3) Evaluates the effectiveness of the DOE drug testing program;
- (4) Provides staff personnel to sit on the Position Designation Board;
- (5) Designates the Departmental Drug Testing Program Manager; and
- (6) Concurs in requests for administrative leave in excess of 10 days in accordance with Chapter III, paragraph 5d(2) (b).

i. Medical Review Officer.

- (1) Complies with the guidelines for Federal drug testing programs promulgated by the Department of Health and Human Services;
- (2) Receives and reviews drug test results for the purpose of determining use of illegal drugs;
- (3) Assures that an individual who has been tested positive has been afforded an opportunity to justify the test result;
- (4) Issues appropriate notices of determinations based on drug test results, consistent with confidentiality requirements; and
- (5) Reports summaries of all activities and findings on a regular basis.

j. Employee Assistance Program Coordinators.

- (1) Execute the responsibilities described in DOE 3792.1, EMPLOYEE ASSISTANCE PROGRAM.
- (2) Assure the removal and, if subsequently warranted, the reinstatement of the names of employees in the random drug testing pool; and
- (3) Administer the execution of a "Drug Use Acknowledgement" form as described in Chapter III, paragraph 5d.

k. Departmental Drug Testing Program Manager.

- (1) Manages the drug testing pool by:
 - (a) Issuing guidance describing categories of positions to be included in the drug testing pool;
 - (b) Requesting submission of position nominations for testing designated positions; and
 - (c) Chairing the Departmental Position Designation Board.
- (2) Manages information systems related to the Order by:
 - (a) Overseeing the automated system which randomly selects employees from the drug testing pool;
 - (b) Assembling and maintaining statistical information related to drug testing results; and

(c) Maintaining written inspection reports generated in accordance with subparagraph 5f(2).

(3) Issues notices to employees, including:

- (a) General informational notices to all employees 60 days prior to the Initiation of testing;
- (b) Annual reminder notices to all employees;
- (c) Specific notices to employees whose positions have been designated as TDP's; and
- (d) Individual notices of test schedule and location.

1. Managers and Supervisors.

- (1) Direct an employee to submit a urine specimen for testing if, in the view of the manager or supervisor, the appropriate authority under paragraph 5g, and, if needed, the Director of Administration, the "reasonable suspicion" or "occurrence" criteria for drug testing have been met;
- (2) Respond to grievances related to the drug testing program in accordance with DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, or local negotiated agreements;
- (3) Consult with the Employee Assistance Program Director and the servicing personnel office prior to taking actions following the determination of an employee's use of illegal drugs;
- (4) Make and implement a series of decisions on removal from sensitive duties, leave, and discipline subsequent to a first-time determination of an employee's use of illegal drugs;
- (5) Initiate separation action against an employee if that employee is determined on the basis of a second confirmed positive drug test to have used illegal drugs;
- (6) Make the initial recommendation that an employee who had been removed from sensitive duties may be returned to those duties; and
- (7) Make the decision as to whether direct observation will be required, as provided for in Chapter II, paragraph 6a.

m. Servicing Personnel Offices.

- (1) Provide day-to-day advice and guidance to managers and supervisors on matters relating to the DOE drug testing program;
- (2) Perform all phases of technical operational support to organizational units serviced in order to ensure that the provisions of this Order and other related Orders are followed consistently; and
- (3) Provide input to appropriate data systems (e.g. pay/pers) in order to ensure the accuracy of such systems.

BY ORDER OF THE SECRETARY OF ENERGY:



LAWRENCE F. DAVENPORT
Assistant Secretary
Management and Administration

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CHAPTER I

APPLICABILITY

1. GENERAL PROVISIONS,

- a. The determination as to whether an employee will be subject to drug detection urinalysis may be based either on the nature of the position the employee encumbers or upon factors personal to that employee such as a past history of the use of illegal drugs, a request for voluntary inclusion in the drug testing program, involvement in an occurrence, or actions that create a reasonable suspicion of the use of illegal drugs.
- b. Once an employee volunteers for, or a determination has been made that an employee will be subject to, drug testing based on the nature of the position the employee encumbers, the selection for testing will be done on a random basis with procedures taken to ensure that the process is not arbitrary, capricious, or discriminatory. No employees in the drug testing pool will be exempt from testing, except as provided for in Chapter II, paragraph 1b.
- c. The determination as to which specific positions will be designated as testing designated positions will be made in the following manner:
 - (1) As needed, the Departmental Drug Testing Program Manager will issue guidance describing the categories of positions that are to be included in the drug testing pool and will request the submission of nominations for testing designated positions.
 - (2) TDP subgroups will be differentiated between positions in each category based on their relative potential for adverse impact on the public health and safety and the national security. Incumbents of positions that have greater potential for adverse impact may be subject to more frequent testing than incumbents of positions with less potential for adverse impact. However, increased frequency may also be the result of a determination to test a higher percentage of incumbents in a given category.
 - (3) Nominations will be reviewed and recommendations for approval or disapproval will be made by a departmental position designation" board that will consist of a staffing specialist, an employee relations specialist, a position classification specialist, an Employee Assistance Program representative, a representative of the Office of Safeguards and Security, and the Departmental Drug Testing Program Manager. The Board will be chaired by the Departmental Drug Testing Program Manager. The Board will recommend the designation of a position as a testing designated position and the inclusion of a position in a given subgroup.

(4) The final approval of testing designated positions inclusions and subgroups will be made by the Secretary.

- d. Initially, a fixed percentage of testing designated positions will be tested each year. The Secretary may determine that a number greater or lesser than the initial percentage will be tested at any time. Statistical information will be retained to determine the percentage of confirmed positive tests obtained. This information will be one of the factors used in determining whether testing should be increased or decreased.
- e. Any employee who believes that his or her duties do not involve performance of the sensitive tasks ascribed to the position in that position's nomination, or that the procedures used to nominate were misapplied, may file a grievance pursuant to the provisions of DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, or negotiated local agreements, as applicable.
- f. In the event that the percentage of employees to be tested results in a less than whole number, the number will be rounded down; that is, if 25 percent of the employees in a group are to be tested and if the group consists of 33 employees, a total of 8 employees will be tested.
- g. The Departmental Drug Testing Program Manager will provide for a periodic review of all testing designated positions to ensure that they continue to meet the conditions for inclusion.

2. POSITIONS TO BE TESTED. The following categories of positions may be subject to testing:

- a. Sensitive positions, as described in E.O. 12564 and further defined by the Departmental Drug Testing Program Manager. Initially, positions will be included only if they are covered by categories 1 through 5 and directly affect the public health, public safety, or national security. Categories 1 through 5 are described in E.O. 12564 as follows:

(1) Category 1.

- (a) Chapter 731 Designation. Covers all employees whose positions have been designated Special -Sensitive, Critical -Sensitive, or Noncritical -Sensitive.
- (b) E.O. 10450 Designation. Covers employees with sensitive designations under E.O. 10450 who must be investigated.

(2) Category 2.

- (a) E.O. 12356 Access Designation. Covers employees who have been granted regular access to classified information under E.O. 12356.
- (b) E.O. 12356 - Ad Hoc Designation. Covers employees who may be granted ad hoc access to classified information under E.O. 12356.

(3) Category 3. (Presidential Appointee Designation). Covers employees appointed by the President.

(4) Category 4. (Law Enforcement Officer Designation). Covers only employees who meet the definition of law enforcement officers as defined in 5 U.S.C. 8331(20).

(5) Category 5.

- (a) Law Enforcement Designation. Covers Nuclear Materials Couriers and other positions determined to involve law enforcement.
- (b) National Security Designation. Covers printers or reproducers of sensitive materials and other positions determined to involve the national security.
- (c) Protection of Life or Property Designation. Covers pilots, heavy equipment operators, firefighters, guards, certain motor vehicle operators, medical personnel, facilities personnel assigned to the Secretary, and other positions determined to involve protection of life or property.
- (d) Public Health or Safety Designation. Covers employees with hands-on responsibilities that include:
 - 1 Production, use, storage, and disposal of hazardous substances;
 - 2 Construction, maintenance, and operation of power system;
 - 3 Other positions determined to involve the public health or safety.

- (e) Trust Designation. Covers positions determined to involve a high degree of trust.
- b. Volunteers. Employees who are not Incumbents of testing designated positions may volunteer to have their names included in the testing designated position pool. The employee's name will be added to the pool and the employee will be subject to random testing under the same manner and conditions as other members of the pool.
- c. Other Circumstances.
 - (1) As A Result of An Occurrence.
 - (a) If the occurrence requires immediate notification under the provisions of DOE 5484.1, ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION INFORMATION REPORTING REQUIREMENTS, all employees who could have affected relevant conditions which caused the occurrence sequence will be tested within 48 hours, unless the appropriate Head of the Departmental Element determines that it is not feasible to do so.
 - (b) If the occurrence requires notification within 72 hours under the provisions of DOE 5484.1, ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION INFORMATION REPORTING REQUIREMENTS, the appropriate Head of the Departmental Element will determine what tests, if any, should be conducted.
 - (c) If the occurrence does not fall within either of these two categories and if there is no reasonable suspicion that illegal drugs are involved, employees will not be tested.
 - (2) As A Result of Having An Established History of the Use of Illegal Drugs Within the Past Year. In this case, testing may only be required during or after counseling or rehabilitation through an Employee Assistance Program that has been offered. An employee who, on the basis of a drug test, has been determined to have used illegal drugs, may be offered an opportunity to sign a "Drug Use Acknowledgement" form. This means that the individual declares a commitment to cease the prohibited use of or involvement with illegal drugs. Additionally, signing the form means that the employee may be directed to take an observed drug test (urinalysis) at any time, without advanced notice, for a period of 1 year after the date the form is signed.
 - (3) Where Reasonable Suspicion Exists that An Employee Is Using Illegal Drugs.

- (a) The Head of the Departmental Element must concur in a finding of reasonable suspicion.
 - (b) If an employee has been required to undergo testing under the reasonable suspicion provision and the test results are negative, that employee may not be required to undergo testing under the reasonable suspicion provision during the next 12-month period without the concurrence of the Director of Administration.
 - (c) Determinations made in conformance with definitions in paragraphs 4f(1) or 4f(2), page 4, (reasonable suspicion based on observable phenomena or a pattern of abnormal conduct or erratic behavior) should rely on material contained in FPM chapter 751 as a guide.
 - (d) Patterns of approved leave usage may not be used to support a finding of reasonable suspicion.
- d. Applicants. Only applicants who have been tentatively selected for a specific testing designated position will be tested.

3. DRUGS FOR WHICH RANDOM TESTING WILL BE PERFORMED.

- a. Random testing will be performed to identify the use of the following drugs or classes of drugs:
 - (1) Marijuana;
 - (2) Cocaine;
 - (3) Opiates;
 - (4) Phencyclidine; and
 - (5) Amphetamines.
- b. Testing may also be performed for other drugs or classes of drugs in accordance with any agreement made between DOE and the Secretary of Health and Human Services.

CHAPTER II

ADMINISTRATIVE PROCEDURES

1. POSITION DESIGNATION FOR RANDOM TESTING.

- a. In accordance with Chapter I, paragraph 1b, all testing designated positions will be subject to testing, unless exempted as provided for in Chapter II, paragraph 1b.
- b. The Head of a Departmental Element may submit a request to the Director of Administration to exempt certain positions described in Chapter I, paragraph 2a, from drug testing on the basis of hardship due to the remote location of the duty station, the unavailability of on-site testing personnel, or the lack of an appropriate site for test administration. The Director of Administration will review the request for appropriateness and possible inconsistencies with other departmental elements and will recommend approval or disapproval of the request to the Secretary. The Secretary will determine whether or not to exempt the position or positions from the program.
- c. The Departmental Drug Testing Program Manager will provide the opportunity, on at least an annual basis, for Heads of Departmental Elements to nominate positions as testing designated positions or to recommend the elimination of positions already designated as testing designated positions.
- d. The Departmental Drug Testing Program Manager is responsible for inputting identifying information as described in Chapter V, paragraph 2a(1). into the random test pool database.

2. GENERAL NOTICES.

- a. A notice must be issued to all employees by the Departmental Drug Testing Program Manager at least 60 days prior to the initiation of testing and must contain, at a minimum, the following:
 - (1) A statement of the DOE policy, as delineated in paragraph 3, page 2, regarding the use of illegal drugs and the purpose of the drug testing program;
 - (2) That counseling and rehabilitative assistance are available through the Employee Assistance Program;

- (3) When actual testing will commence;
 - (4) Requirements for Testing Designation Positions;
 - (5) The general testing parameters;
 - (6) A copy of DOE 3792.3, DRUG-FREE FEDERAL WORKPLACE TESTING IMPLEMENTATION PROGRAM;
 - (7) Information that a separate Notice will be sent to individuals who occupy testing designated positions and to any others selected for testing under the provisions of Chapter I, paragraphs 2b or 2c; and
 - (8) That the Plan will include both voluntary and mandatory testing.
- b. On an annual basis, a reminder notice will be issued by the Departmental Drug Testing Program Manager to all employees containing, at a minimum, the DOE drug policy statement.

3. SPECIFIC NOTICES.

- a. At least 30 days prior to being included in the pool, any employee who encumbers a testing designated position or who has volunteered to be included in the testing pool, will be sent a specific written notice by the Departmental Drug Testing Program Manager. The notice must contain, at a minimum, the following:
- (1) The reason for the inclusion of the position as a testing designated position (i.e., identification of the appropriate Chapter I, paragraph 2a category);
 - (2) The employee's opportunity to voluntarily identify himself or herself as a user of illegal drugs, willing to undertake counseling and, as necessary, rehabilitation. In such cases, disciplinary action is not required. The decision whether to discipline a voluntary referral will be made by the Secretary or his or her designee on a case-by-case basis depending on the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the Department, in determining whether to discipline, shall consider that the employee has come forward voluntarily;
 - (3) The availability of drug abuse counseling and referral services, including the name and telephone number of the Local Employee Assistance Program counselor;

- (4) That the employee will have the opportunity, and procedures to be used, to submit supplemental medical documentation to support the legitimate use of an otherwise illegal drug or the use of a legal drug or other substance that may give a positive test result;
- (5) Assurance that the quality of testing procedures is tightly controlled, that the test used to confirm use of illegal drugs is highly reliable, and that the test results will be handled with maximum respect for individual confidentiality, consistent with safety and security;
- (6) The circumstances under which testing may occur;
- (7) The fact that privacy will be provided during testing, except in specific circumstances that will be enumerated when the employee is scheduled for testing;
- (8) The consequences of a determination of the use of illegal drugs or refusal to be tested, including removal from sensitive duties and/or disciplinary action;
- (9) The appeal and grievance procedures available to employees; and
- (10) That the employee will be subject to random testing no sooner than 30 days after the date of the notice.

4. RANDOM TESTING.

a. Incumbents of Testing Designated Positions.

- (1) Whether all employees in a group of testing designated positions are to be tested or only a sample of the group, the determination as to which specific employees are to be selected for testing at a particular time must be made on a random basis. This means that each employee's opportunity to be selected must be based on chance or the laws of probability. Under no circumstances will testing designated positions be selected for testing on the basis of a desire to test a particular individual employee.
- (2) The Departmental Drug Testing Program Manager will manage a DOE automated system which may be used to select employees to be tested on a-random basis.
- (3) If the randomly selected employee is absent on approved leave or is on official travel on the date he or she is scheduled for a drug test, his or her name will be returned to the random testing pool.

- (4) If the randomly selected employee has previously voluntarily identified himself or herself as a user of illegal drugs, willing to undertake counseling and, as necessary, rehabilitation, the EAP Coordinator will assure that the employee's name is removed from the drug testing pool while the employee is undergoing rehabilitation.

b. Applicants for Testing Designated Positions.

- (1) Applicants who have been tentatively selected for employment in testing designated positions will be scheduled for testing under the following conditions:
 - (a) If the applicant is a DOE employee who is not currently employed in a testing designated position, he or she will be scheduled for testing. In the event that the test is positive, the employee will be referred for counseling or rehabilitation. The test results will not be shared with the applicant's current supervisor.
 - (b) Applicants who currently reside or work within the local commuting area will be tested in the same manner as local employees.
 - (c) Applicants who currently reside or work within the local commuting area of another DOE office will be tested in the same manner as employees of that office.
 - (d) If an applicant resides or works in an area where no DOE office currently conducts testing, the servicing personnel office will identify the most cost-effective procedure for obtaining a specimen and testing. This may involve requiring the employee to report to a location outside his or her local commuting area (with reimbursement by DOE for reasonable travel expenses) or entering into an agreement with another Federal agency for collection and testing. This latter agreement may or may not involve reimbursement by DOE.
- (2) Vacancy announcements must clearly state: the fact that testing will be required before an offer of employment becomes final; that the successful applicant will be subject to future random, unannounced testing; and that a determination of the use of illegal drugs may lead to nonelection (based on a failure to meet conditions of employment) or disciplinary action, including removal from the Federal service.

- (3) Generally, applicants should be required to report for testing within 48 hours of receipt of the test schedule notice. Results will be shared with the applicant, but not with his or her current Federal supervisor or private employer.

5. NOTIFICATION OF TEST.

- a. When a list of names for random testing on a specific date has been selected, a copy of the list will be distributed to each employee's EAP Coordinator. The employee and the employee's supervisor will be notified of the date on which the employee is scheduled to be tested, in accordance with the provisions of Chapter V, paragraph 2a(3). Generally, the employee and the supervisor will be notified within 2 hours of the scheduled test. Variations on time and location will be made by the Head of the Departmental Element or his or her designee.
- b. Regardless of whether the test is random or is based on one of the other provisions of Chapter I, paragraph 2c or 2d, the notice must include, at a minimum, the following:
 - (1) That the employee may submit medical documentation supporting the use of a specific drug or other substance that may give the appearance of a positive test result. Such information will be secured in a sealed envelope marked with the appropriate specimen identification number. The contents of the envelope will be made available only to the Medical Review Officer and will be examined only in the event that the specimen yields a confirmed positive test result.
 - (2) That the employee may voluntarily identify himself or herself as a user of an illegal drug or as an abuser of a legal drug and request referral to the EAP. If the scheduling was based on incumbency in a sensitive position, the employee's name will be temporarily removed from the drug testing pool while the individual is undergoing rehabilitation. Self-identification does not preclude any appropriate personnel action that is in compliance with appropriate laws, regulations, and Departmental policies.
 - (3) The procedure to be used to report any reason why he or she will be unable to appear for testing as scheduled.
 - (4) The penalty for failure to appear as scheduled without specific authorization and for failure to provide an adequate urine sample.

- (5) A description of the testing procedures.
 - (6) That privacy will be provided during specimen collection except in specifically enumerated circumstances.
 - (7) That photo identification must be brought to the collection site. Acceptable forms of identification include Federal government identification badges, driver's licenses bearing a photograph, or proof of age forms issued by a State in lieu of a driver's license.
 - (8) That outer garments such as coats, jackets, sweaters, and purses or briefcases, but not wallets, will have to be left outside the collection stall.
 - (9) The procedures for notification of results.
 - (10) Grievance and appeal procedures.
 - (11) Procedures for the employee to submit other evidence for consideration in the event that the test result is confirmed positive.
- c. The notice of test scheduling may not be used as the notice of proposed disciplinary or adverse action in the event that an employee fails to appear for the test or fails to provide the required specimen.
 - d. Sick leave for the purpose of undergoing medical treatment, routine medical or dental appointment, or annual leave should be rescheduled if at all possible when it conflicts with a scheduled drug test. In the event that a supervisor believes that an employee is abusing sick leave in order to avoid the test, a leave restriction should be considered in accordance with DOE 3630.1B.
 - e. If the employee is in a leave status, on official travel, or is about to embark on official travel scheduled prior to the time the employee is to report for testing, the employee's supervisor will so notify the collection site person and the employee's name will be returned to the testing pool.

6. SPECIMEN COLLECTION PROCEDURES.

- a. In accordance with section 4(c) of Executive Order 12564, procedures for providing urine specimens must allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. The individual shall provide his or her specimen in the privacy of a stall or otherwise partitioned area that

allows for individual privacy. Direct observation shall be required only if the:

- (1) Individual has been determined, after due process requirements have been met, to have tampered with a sample; "
 - (2) Temperature of a provided specimen is outside acceptable ranges;
 - (3) Individual has been confirmed by DOE, after due process requirements have been met, to be a user of illegal drugs (self-identification as discussed in Chapter II subparagraph 5b(2) does not meet this requirement); or
 - (4) Employee supervisor determines that there may be other sufficient reason to believe that the specimen will be altered or substituted.
- b. Collection sites may be located at a government or contractor facility, but must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation of urine specimens. Appropriate waiting areas must be available and restroom facilities must be clean, well-lighted, and sufficiently secure to prevent compromise during the collection and storage of urine specimens. If possible, collection sites should not utilize public restrooms. If public restrooms must be used, they should be clearly marked as being closed to public use during the duration of the collection period.
- c. If the individual has not arrived at the collection site within 30 minutes of the assigned time and if the collection site is within a reasonable travel time of the individual duty station, the collection site person shall contact the supervisor of the individual in order to determine whether the individual can be rescheduled for a later time on the same day or if there is a reason for the non-appearance. The outcome of the conversation will be noted on the "Urine Sample Custody Document,"
- d. The individual to be tested shall provide his or her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy, except as provided for in subparagraph 6a. The collection site person shall be of the same sex as of the individual to be tested. The collection site person shall remain in the area, but outside the stall. Toilet bluing agents shall be placed in toilet tanks wherever possible so that the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water in the enclosure where urination occurs. The individual shall wash and dry his or her hands prior to urination. The individual to be tested shall be given a disposable specimen container that has been kept at room

temperature, asked to void into that container, and asked not to flush the toilet. If desired, a disposable specimen container with a wider mouth may be used to collect the specimen and the individual to be tested may then transfer the specimen to the regular container. The specimen is then handed to the collection site person who will flush the toilet and continue with the processing procedures.

- e. The collection site person shall ascertain that there is a sufficient amount of urine to conduct an initial test, a confirmatory test, and a retest. In accordance with the mandatory guidelines published by HHS, this amount will be considered to be at least 60 milliliters. If there is not at least 60 milliliters of urine, additional urine will be collected in a separate container. The individual may be given reasonable amounts of liquid and may be given a reasonable amount of time in which to provide the specimen required. The individual and the collection site person must keep the specimen in view at all times. When collection is complete, the partial specimens will be combined in a single container. In the event that the individual fails to provide 60 milliliters of urine, the amount will be noted on the "Urine Sample Custody Document." In this case, the collection site person will telephone the individual's supervisor who will determine the next appropriate action. This may include deciding to reschedule the individual for testing, to return the individual to his or her work site and initiate disciplinary action, or both.
- f. Upon receiving the specimen from the individual, the collection site Person will measure the temperature of the specimen. Every effort should be made to avoid possible claims of specimen contamination by using non-intrusive methods of temperature measurement. In the event that such methods are not feasible, a digital thermometer with a disposable sleeve should be used. The disposable sleeve should be kept as close to sterile as possible. The temperature measurement should be taken within 4 minutes of the time of urination and should be taken under the observation of both the collection site person and the individual being tested. The temperature and the time it was taken will be noted on the "Urine Sample Custody Document". If the temperature of the specimen is outside the range of 32.5-37.7°C or 90.5-99.8°F, this will be considered a reason to believe that the individual may have altered or substituted the specimen and another specimen will be taken immediately thereafter, under direct observation. In this case, both specimens will be forwarded for analysis. If the individual wishes, he or she may elect to have his or her body temperature taken orally to provide evidence to counter the reason to believe that substitution or adulteration has taken place. If the individual's body temperature is in conformance with the specimen temperature, a second, observed collection will not be made. If more than one collection is made, all will be subject to a temperature measurement.

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- g. The individual being tested should keep the specimen in view at all times after delivering it to the collection site person until it has been sealed and labeled. The collection site person shall place a tamper-proof seal over the cap and down both sides of the container. The individual to be tested will be asked to initial the seal where it crosses the bottom edge of the bottle cap. An identification label will then be securely affixed to the bottle. The label will show the identification number of the specimen, the date, and any other information required. The identification number must be so constructed as to identify the collection site as well as the specific specimen (e.g., NM-2345 may be used to identify specimen 2345 collected at an office in New Mexico). The individual shall be asked to sign the label on the specimen bottle. If the individual refuses to sign or initial as requested, the collection site person shall so note that fact on the "Urine Sample Custody Document".
- h. The collection site person will enter the identifying information on the collection site log. The log will contain the date, the collection site person's name, the specimen identification number, and any other information that may be required.
- i. The collection site person will complete the first page of the "Urine Sample Custody Document", including any appropriate comments, and will sign it. The individual who has been tested will provide any written comments he or she may wish to make and will also sign the document. If he or she refuses to sign the document, the site collection person will note that fact on the document. The top copy of the document will be given to the individual who has been tested. The sealed envelope containing pertinent medical and other information will be stapled to the remaining copy of the document which will be completed, as appropriate, by the collection site person.

CHAPTER III

DEALING WITH TEST RESULTS

1. REPORTING. The test results must be reported to the Medical Review Officer, in writing, within 5 working days after receipt of the specimens. The report must contain the specimen number carried on the "Urine Sample Custody Document," the laboratory accession number, and the results of the drug test. All specimens negative on the initial test shall be reported as negative. Reports may be submitted by teleprinter, facsimile, or other electronic means or by typed or handwritten copy in a manner consistent with the Privacy Act. A certified copy of the "Urine Sample Custody Document", signed by the laboratory director or laboratory certifying official, along with test documentation shall also be sent to the Medical Review Officer.
2. TEST RESULTS.
 - a. A confirmed positive test result does not automatically identify an employee as a user of illegal drugs. The Medical Review Officer will review test results to determine whether the results meet the conditions for positive identification.
 - b. The Medical Review Officer may be a Departmental or contractor employee. He or she must be a licensed physician with knowledge of substance abuse disorders, with the appropriate medical training to interpret and evaluate all test results together with the employee's medical history and other relevant biomedical information; and have detailed knowledge of possible alternative medical explanations for positive test results. The Medical Review Officer must review and interpret positive test results and undertake the examination of alternate medical explanations for that result. If there is any question as to the veracity of the test result, the Medical Review Officer has the authority to order a reanalysis of the specimen. Any individual whose test results in a determination of the use of illegal drugs may request a retest of the initial specimen. The Medical Review Officer must order a retest in these circumstances. The testing laboratory must provide information to assist in this review process by employing or having available a forensic toxicologist or someone with equal forensic experience in urine drug testing who can be called on when consultation is required.
 - c. Before the Medical Review Officer certifies a positive test result (as opposed to a determination of the use of illegal drugs) for opiates, he or she must verify that there is clinical evidence, in addition to the urine test, of illegal use of any opium, opiate, or opium derivative listed in Schedules I and II of section 802(6) of title 21 of the

United States Code. This requirement does not apply if the Gas Chromatography/Mass Spectrometry confirmation testing for opiates verifies the presence of 6-O-monoacetylmorphine.

3. DETERMINATIONS OF THE USE OF ILLEGAL DRUGS.

- a. The Medical Review Officer will review each confirmed positive test result. This review may include, in addition to the review described in paragraph 1 of this Chapter: a review of any information provided by the employee in the sealed envelope attached to the "Urine Sample Custody Document"; an employee medical interview; review of employee medical history; or the review of any other relevant biomedical factors.
- b. In the event that the Medical Review Officer determines that there is a legitimate medical explanation for the confirmed positive test result and deems that the result is consistent with legal drug use, the Medical Review Officer will certify that the test results do not meet the conditions for a determination of the use of illegal drugs.
- c. In the event that the Medical Review Officer deems the result to be scientifically insufficient, based on his or her review of inspection reports, quality control data, multiple samples, and other pertinent results, he or she will certify that the test results do not meet the conditions for a determination of the use of illegal drugs.
- d. In the event that a false positive occurs on a blind proficiency test within 2 weeks of the date the specimen was submitted to the laboratory, and if there is insufficient urine to conduct a retest on a specimen that was confirmed positive, the Medical Review Officer will certify that the test results do not meet the conditions for a determination of the use of illegal drugs.

4. NOTICES.

a. Determination of the Use of Illegal Drugs.

- (1) The Medical Review Officer shall issue a notification to the employee or applicant. In the event that the "Urine Sample Custody Document" identifies the test as being random or based on reasonable Suspicion or an occurrence, notifications shall be sent to the EAP Coordinator and the employee's supervisor. The notifications will be in the form of standard notices which, at a minimum, must include the information described in paragraphs 4a(4)(a), 4a(4)(b) and 4(a)(4)(c) of this Chapter.
- (2) The EAP Coordinator's notification must include the name of the individual whose specimen has met the conditions for a determination of the use of illegal drugs.

- (3) In addition to the results of the test, the supervisor must be informed of the appropriate regulations and policies regarding the confidentiality of this information and the name and telephone number of the appropriate EAP Coordinator.
- (4) The notification to the employee must contain the following:
 - (a) The results of the test.
 - (b) Information that the employee may request a retest of the specimen at the same laboratory or at any other certified laboratory. If the test is to be conducted at another laboratory, the cost of transporting and testing the specimen will be the responsibility of the employee. If the retest results do not meet the conditions established in the HHS Guidelines, the test results will be certified as not meeting the conditions for a determination of the use of illegal drugs.
 - (c) Information that the employee has the opportunity to obtain rehabilitation at the employee's expense. The name and telephone number of the EAP Coordinator also must be included and the employee must be told that the EAP Coordinator will be contacting the employee.
 - (d) Information that the employee's supervisor will contact the employee regarding other actions, including continuation of the employee in his or her current position or duties.
- b. If a determination of the use of illegal drugs is not made, the employee, the employee's supervisor, and the EAP Coordinator will be informed as provided by paragraphs 4a(2), 4a(3), and 4a(4)(a) of this Chapter.

5. RESPONSE TO A DETERMINATION OF THE USE OF ILLEGAL DRUGS.

- a. Supervisors are reminded of their responsibilities under DOE 5631.2B, upon receipt of information which may affect an employee's continuing eligibility for DOE access authorization.
- b. In accordance with the terms of Executive Order 12564, Section 5(d) (2), an agency must initiate action to remove any employee who has been found, on the basis of a drug test, to have used illegal drugs and has been found, on the basis of a second test, not to have refrained from such use. Therefore, any options that follow may be exercised only in the event of a first determination of the use of illegal drugs.
- c. The supervisor must consult with the EAP Coordinator and the servicing personnel officer in order to obtain the appropriate advice and guidance prior to initiating any action.

d. A supervisor shall make decisions in three separate areas. These are:

(1) Removal from Sensitive Duties.

- (a) The employee must immediately be removed from his or her sensitive duties. He or she may be returned to those duties if the supervisor determines that such a return will not adversely affect the public health and safety or the national security and if the Head of the Field Organization, the Inspector General, or the Deputy Director of Administration, as appropriate, concurs in that determination.
- (b) If the decision is made not to return the employee to sensitive duties at this time, the supervisor may reassign the employee to perform non-sensitive duties or may realign the employee's current duties so that no sensitive duties are involved.
- (c) Every effort will be made to continue an employee who is removed from sensitive duties in a pay status while he or she is undergoing rehabilitation. If this cannot be done at the employee's regular duty station, efforts will be made to effect a temporary reassignment or other accommodation.

(2) Leave Status.

- (a) The employee may not be placed on enforced leave. At the employee's request, the supervisor may place the employee on leave or leave without pay.
- (b) The supervisor may grant up to 10 days of administrative leave, in accordance with the provisions of DOE 3750.1, WORK FORCE DISCIPLINE. In the event that an extension is desired or necessary (e.g., if an adverse action is required and the employee cannot be placed in non-sensitive duties during the notice period), concurrence must be obtained from the Director of Personnel.

(3) Disciplinary Actions.

- (a) The supervisor will initiate appropriate disciplinary or adverse action based on the use of illegal drugs in conformance with DOE 3750.1, the Rehabilitation Act of 1973, and implementing regulations in 29 CFR, Part 1600.
- (b) Disciplinary action for the use of illegal drugs does not preclude initiating a disciplinary action for conduct which may

have led to a drug test-under the provisions of Chapter 1, paragraph 2c(1) or 2c(3).

- (c) If the action proposed is an indefinite suspension pending the employee's release from treatment or identification of an appropriate reassignment, the proposing official must notify the employee of the specific event that would terminate the suspension.
- (d) If an adverse action is proposed and the proposing official has reasonable cause to believe that the employee has committed a crime for which imprisonment may be proposed, the "crime provision" may be invoked and the notice period curtailed in accordance with DOE 3750.1, WORK FORCE DISCIPLINE.
- e. If the determination of the use of illegal drugs resulted from a test obtained under the provisions of Chapter 1, paragraph 2a (random testing based on sensitive duties), the employee must choose one of the alternative courses of action listed below. Failure to follow through on one of the courses of action may subject the employee to adverse action under the terms of DOE 3750.1, WORK FORCE DISCIPLINE.
 - (1) Obtain the counseling and appropriate rehabilitation suggested by the EAP Coordinator and execute a "Drug Use Acknowledgement" form stating that the employee will refrain from further use of illegal drugs and that the agency may conduct an unannounced, observed urinalysis test (in addition to any test scheduled in accordance with Chapter 1) to verify that the employee is abstaining from such use during the 12-month period following the conclusion of the rehabilitation program;
 - (2) Obtain counseling and appropriate rehabilitation other than that suggested by the EAP Coordinator, and execute a "Drug Use Acknowledgement" form stating that the employee will refrain from further use of illegal drugs and that the agency may conduct an unannounced, observed urinalysis test (in addition to any test scheduled in accordance with Chapter 1) to verify that the employee is abstaining from such use during the 12-month period following the conclusion of the rehabilitation program;
 - (3) Execute a "Drug Use Acknowledgement" form stating that the employee will refrain from further use of illegal drugs and that the agency may conduct an unannounced, observed urinalysis test (in addition to any test scheduled in accordance with Chapter 1) to verify that the employee is abstaining from such use during the 12-month period following the execution of such certification; or
 - (4) Resign from Federal service.

- f. If the determination of the use of illegal drugs resulted from a test obtained under the provisions of Chapter 1, paragraph 2b (volunteers), the employee may elect option 5e(1), 5e(2), or 5e(4) but may not elect option 5e(3) of this Chapter.
- g. If the determination of the use of illegal drugs resulted from a test obtained under the provisions of Chapter 1, paragraphs 2c(1) (occurrence) or 2c(3) (reasonable suspicion), the employee will be informed of his or her options at that time.
- h. If the determination of the use of illegal drugs resulted from a test obtained under the provisions of Chapter 1, paragraph 2d, (applicant) the Individual will not be selected for the position in question and will be referred for rehabilitation. Test results will not be shared with supervisory personnel.
- i. If the employee encumbers a sensitive position or has volunteered to be included in the testing pool and elects to undergo a period of rehabilitation, the EAP Coordinator will remove that employee's name from the testing pool for the duration of the period of rehabilitation.

6. RETURN TO SENSITIVE DUTIES.

- a. The determination as to when the employee may be returned to duty following rehabilitation will be made by the-supervisor. This determination requires concurrence by the Head of the Field Organization, Inspector General, or Deputy Director of Administration, as appropriate.
- b. If the employee encumbers a sensitive position and has undergone a period of rehabilitation, the employee must provide the EAP Coordinator with certification that he or she has successfully completed the course of rehabilitation. The head of the rehabilitation program or other source must certify to the EAP Coordinator that the employee has been subjected to a urinalysis that has resulted in a negative determination. This urinalysis need not meet the criteria for testing contained in this Order and will not be used, in and of itself, as a basis for disciplinary action. No additional drug tests may be performed as a condition of returning to sensitive duties.

7. FOLLOW-UP ACTIONS.

- a. If the employee has undergone a period of rehabilitation during which his or her name has been removed from the testing pool, the EAP Coordinator will assure the reinstatement of the employee's name in the pool after receiving the certification described in paragraph 6b of this Chapter.

- b. The fact that an employee has tested positive for the use of illegal drugs or has undergone a period of rehabilitation will not, in and of itself, be used as grounds for testing under the provisions of Chapter 1, paragraph 2c(3) (reasonable suspicion).

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CHAPTER IV

APPEALS AND REVIEW PROCEDURES

1. GENERAL PROVISIONS.

- a. All actions taken pursuant to this chapter must be in conformance with the provisions of title 5, U.S.C., chapter 75; Title 5, CFR, Part 752; DOE 3750.1 and applicable agreements negotiated between management and exclusive representatives of bargaining unit employees.
- b. This chapter does not cover actions related to the use of legal drugs and/or actions based upon management's determinations that an employee is unable to perform his or her job because of physical or mental disability. Neither does the chapter cover actions related to an employee's arrest or criminal conviction for the use, possession, or sale of illegal drugs.
- c. To the fullest extent possible, grievance and appeal procedures described in DOE 3771.1, DOE 3750.1, and negotiated agreements will be used to obtain review of actions taken under this chapter.

2. COVERAGE .

a. Employees.

- (1) All employees in the competitive service and preference eligibles in the excepted service who have one year of current continuous service are covered by the procedures described in this chapter. The exceptions and options created by the existence of negotiated agreements are listed in paragraph 4c.
- (2) Non-preference eligibles in the excepted service may not appeal adverse actions taken against them to the Merit Systems Protection Board. If in a bargaining unit, they are limited to the negotiated grievance procedure.
- (3) Members of the Senior Executive Service and employees appointed under Schedule C of the excepted service are excluded from coverage of DOE 3750.1, WORK FORCE DISCIPLINE and 3771.1, GRIEVANCE POLICY AND PROCEDURES.

b. Applicants.

- (1) Non-Federal applicants for Federal employment are covered by the procedures described in this chapter only if a determination is made that the applicant is unsuitable for Federal employment under the provisions of Title 5, CFR, Part 731.

(2) Federal employees in non-sensitive positions who apply for positions under this Order may grieve actions or events in conformance with the applicable grievance procedure. As in all grievance procedures, the applicant may not grieve non-selection for a position;

- c. Volunteers. Employees who volunteer to have their names included in the TDP pool do not waive any rights to request review, grieve, or appeal as described in this chapter.

3. REQUESTING REVIEW, GRIEVING, OR APPEALING SPECIFIC EVENTS.

- a. Drug Testing Process. There may be points in the drug testing process at which the employee believes that there is cause to complain about the effects of the drug testing process on the employee. However, the employee must not resort to "self help," that is, refuse to participate in the process, but must, instead, proceed with the process and complain at a later time. By proceeding with the process, the employee does not waive any rights to request review, grieve or appeal.
- b. Actions Resulting from Positive Test Results. After receiving test results confirming that an employee has used illegal drugs, management must initiate disciplinary action against that employee and must-relieve that employee from duties associated with any sensitive position. When management undertakes any of these actions, the employee must be informed of the grievance or appellate procedures available to him or her.

4. RECONSIDERATION REQUEST/GRIEVANCE/APPELLATE PROCEDURES.

- a. Written Request for Review/Reconsideration/Retest.
- (1) Any communication related to drug testing that places requirements on an employee will include procedures for obtaining review of those requirements.
- (2) Any notification to an employee or applicant of a determination of the use of illegal drugs will include procedures for obtaining a retest.
- (3) All requests for review or retest must include a copy of the document triggering the review request, a description of the specific events or processes in question, a description of the specific measures the requestor wishes enacted, and the requestor's telephone number. The request must be submitted to the Head of the Field Organization, the Inspector General, or the Deputy Director of Administration, as appropriate.

- (4) Failure to request review or retest does not constitute a waiver of rights to grieve or appeal disciplinary actions taken as a result of positive test results or actions undertaken further in the testing process.
- b. Administrative Grievance Procedures. The administrative grievance procedure is available to non-bargaining unit employees who wish to grieve management actions regarding their employment. Such actions may include non-disciplinary actions as well as disciplinary actions up to and including a 14-day suspension.
- c. Negotiated Grievance Procedures. Negotiated grievance procedures are available to bargaining unit employees whose exclusive representative has negotiated an agreement with DOE management that covers the actions being grieved. Those actions may include non-disciplinary actions as well as all disciplinary and adverse actions. Under Title 5, U.S.C., chapter 71, a bargaining unit employee subjected to an adverse action may choose either the negotiated grievance procedure or the appellate procedure before the Merit Systems Protection Board. Further, a bargaining unit employee may use either the EEO complaint procedure, if alleging discrimination related to the testing process or to actions resulting from the process, or the negotiated grievance procedure, but not both.
- d. Appellate Procedures. Employees in the competitive service, preference eligibles in the excepted service who have one year of current continuous service who have been subjected to adverse actions, and applicants determined to be unsuitable for Federal service may appeal these actions or determinations to the Merit Systems Protection Board.

CHAPTER V

INFORMATION SYSTEMS AND RECORDKEEPING

1. CONFIDENTIALITY OF INFORMATION.

- a. As part of the drug testing procedure, the individual must provide written consent to disclose confirmed positive test results to the Medical Review Officer. This consent must be obtained prior to the test itself. Consequently, refusal to consent to release of this information will be considered a refusal to take the test. Executing the consent form does not constitute a waiver of the individual's rights to protection from unauthorized disclosure of the information described on the form.
- b. Records of the identity, diagnosis, prognosis, or treatment of any patient that are maintained in connection with performance of a drug abuse prevention program must be maintained in accordance with DOE 3792.1 and other implementing regulations.
- c. Records regarding illegal drug use must be maintained in conformance with DOE 3750.1, the Privacy Act (Title 5, U.S.C, Section 552a), and local negotiated agreements.
- d. Any other disclosure may be made only with the written consent of the individual .

2. INFORMATION SYSTEMS.

a. Random Test Pool.

- (1) The random test pool shall be maintained by the Departmental Drug Testing Program Manager. Once the Secretary has approved testing designated positions, the Drug Testing Program Manager will be responsible for entering the appropriate information into the data system. This information will include information identifying the position designated for inclusion (title, series, organizational and geographic location, and position identification number), Information identifying the incumbent who will be subject to random drug testing (name and mailing address), and information identifying the supervisor and EAP Coordinator who must be notified when testing is scheduled (names and mailing addresses).
- (2) The Departmental Drug Testing Program Manager will be the only individual who has access to the entire random test pool data system. Each EAP Coordinator will have access to a random test pool EAP

subfile that relates to his or her organization. This subfile will allow the EAP Coordinator to arrange for temporary deletion and reinstatement of the names of any individuals who are undergoing rehabilitation for illegal drug use.

- (3) Based on approved percentages of individuals to be tested, a random selection of individuals in the testing pool will be made. A computer-generated list of individuals to be tested will be sent to the EAP Coordinator responsible for servicing those employees' organizational elements. A computer generated notice of scheduling for testing will be sent to each employee, and a copy of that notice will go to the appropriate supervisor. All lists and notices will be sent in "Eyes Only" envelopes. A summary of the total number of individuals to be tested at each organization will be put into the Drug-Free Federal Workplace Drug Testing Summary database.

b. Drug-Free Federal Workplace Drug Testing Summary.

- (1) A centralized, computerized file of the outcome of all drug tests performed at DOE will be maintained by the Departmental Drug Testing Program Manager. None of the information contained in this system will identify specific individuals.
- (2) The Medical Review Officer will submit periodic information to be determined by the Departmental Drug Testing Program Manager.

3. RECORD RETENTION. All records, including initial test records and chromatographic tracings, shall be retained by the laboratory in such a manner as to allow retrieval of all information pertaining to the individual urine specimens for a minimum period of 2 years after completion of testing of any given specimen.

8-21-92

SUBJECT: DRUG-FREE FEDERAL WORKPLACE TESTING IMPLEMENTATION PROGRAM

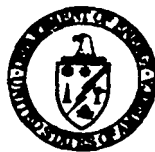
1. PURPOSE. To transmit revised pages to DOE 3792.3, DRUG-FREE FEDERAL WORKPLACE TESTING IMPLEMENTATION PROGRAM, of 7-29-88.
2. EXPLANATION OF CHANGE. To make editorial revisions to reflect only organizational title and routing symbol changes required by Notices in the SEN-6 series. No substantive changes have been made at this time. However, this Order will undergo substantive changes in the near future. If you have any questions about specific provisions of the Order, please consult appropriate staff members in the Office of Personnel.

3. FILING INSTRUCTIONS.

a.	<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
	1 and 2	7-29-88	1	8-21-92
	5 thru 9 (and 10)	7-29-88	5 thru 9 (and 10)	8-21-92
	I-1 and I-2	7-29-88	II-2	8-21-92
				7-29-88
	I-5 (and I-6)	7-29-88	I-5 and I-6)	8-21-92
	II-1 and II-2	7-29-88	II-1	8-21-92
			II-2	7-29-88
	III-3 thru III-6	7-29-88	III-3	7-29-88
			III-4	8-21-92
			III-5	7-29-88
			III-6	8-21-92
	IV-1 and IV-2	7-29-88	IV-1	7-29-88
			IV-2	8-21-92
	V-1 and V-2	7-29-88	V-1	8-21-92
			V-2	7-29-88

- b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



DOLORES L. ROZZI
Director of Administration
and Human Resource Management

DISTRIBUTION:
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DOE 3792.3

7-29-88

Change 1: 8-21-92

SUBJECT: DRUG-FREE FEDERAL WORKPLACE TESTING IMPLEMENTATION
PROGRAM

1. PURPOSE. To provide guidance and policy for the administration, application and implementation of laws, Executive orders, civil service regulations, mandatory guidelines, the Department of Energy (DOE) Drug-free Federal Workplace Plan and other regulations that facilitate the maintenance of a drug-free Federal workplace through the establishment of programs to test for the-use of illegal drugs.
2. REFERENCES.
 - a. DOE 3630.1B, LEAVE ADMINISTRATION, of 12-31-86 which provides guidance and DOE policy on the use of leave.
 - b. DOE 3750.1, WORK FORCE DISCIPLINE, of 3-23-83, which provides guidance and DOE policy on adverse and disciplinary actions.
 - c. DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81, which contains information on the Departmental grievance procedures.
 - d. DOE 3792.1A, EMPLOYEE ASSISTANCE PROGRAM, of 5-18-92, which describes the Departmental employee assistance program.
 - e. DOE 5484.1, ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION INFORMATION REPORTING REQUIREMENTS, of 2-24-81, which prescribes reporting requirements for various types of occurrences.
 - f. DOE 5631.2B, PERSONNEL SECURITY PROGRAM, of 5-18-88, which describes supervisors' responsibilities under the personnel security program.
 - g. Federal Personnel Manual (FPM) Chapter 731, Personnel Suitability, and FPM Chapter 732, Personnel Security, which describe position sensitivity.
 - h. FPM Chapter 751, "Discipline", which describes procedures to be used in dealing with conduct problems.
 - i. FPM Chapter 792, "Federal Employees Health and Counseling Programs", which describes the drug testing program and employee assistance program.
 - j. "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by the Department of Health and Human Services (HHS) and maintained by the Office of Personnel, which describes guidelines and certification procedures for Federal drug testing programs.

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Personnel

- k. Executive Order 12564, of 9-15-86, which provides for drug testing programs.
- l. Executive Order 12356, of 4-2-82, which prescribes system for classifying, declassifying, and safeguarding national security information.
- m. Executive Order 10450, of 4-27-53, which provides security requirements for government employment.
- n. Title 5 U.S.C., section 8331(20), which identifies law enforcement officers.
- o. Title 5, U.S.C., section 552a, which contains instructions regarding the disclosure of information.
- p. Title 5, U.S.C., sections 2104 and 2105, which contain definitions of officers and employees.
- q. Title 21 U.S.C., section 802(6), which identifies controlled substances.
- r. Title 42, CFR, part 2, which discusses maintaining the confidentiality of treatment records.
- s. Title 29, CFR, part 1600, which implements the Rehabilitation Act of 1973.
- t. The Rehabilitation Act of 1973, which addresses agency development of reasonable accommodation procedures for handicapped employees.
- u. Local agreements negotiated between management and exclusive representatives of bargaining unit employees.
- v. Department of Energy Drug-free Federal Workplace Plan, approved by the Department of Justice and certified to Congress by the Secretary, Department of Health and Human Services, on 4-27-88. The Plan, required by title 5, U.S.C., section 552, describes the actions that will be taken to comply with Executive Order 12564 and is the basis for this Order.

3. POLICY.

- a. DOE shall participate in the Federal effort to achieve workplaces free of illegal drug use through a program designed to offer users of illegal drugs a helping hand and, at the same time, demonstrate that illegal drugs will not be tolerated in the Federal workplace.
- b. The sale, use, or possession of illegal drugs, whether on or off duty, is not consistent with Federal employment and may be grounds for disciplinary action, up to and including removal.

- J. Testing Designated Position. A position that has been placed in the random drug testing pool because the position meets at least one definition of "sensitive position" in E.O. 12564 and the position directly affects the national security, public safety, or public health.

5. RESPONSIBILITIES

- a. Secretary.
- (1) Provides general policy direction for the DOE drug-testing program;
 - (2) Approves or disapproves requests to include or exempt certain positions or groups of positions from the drug testing program; and
 - (3) Determines the percentage of employees to be tested under the provisions of Chapter I.
- b. Assistant Secretary for Environment, Safety and Health submits requests for laboratory certification to the Director of Administration and Human Resource Management.
- c. General Counsel. Provides advice and assistance to Departmental managers, program officials, and the Inspector General regarding actions taken relating to the DOE drug testing program.
- d. Chief Financial Officer. Ensures that adequate funds are requested for conducting required drug testing programs, including reimbursing applicants for reasonable expenses incurred in travel to a drug testing facility, and to support the Employee Assistance Program.
- e. Director of Administration and Human Resource Management ensures that the Department's drug testing program is operated in an objective manner and is based on concepts of efficiency and mission support, and shall:
- (1) Develop, implement, and administer the DOE drug testing program;
 - (2) Provide for quarterly inspection of testing laboratories and take appropriate action based on the results of such inspections;
 - (3) Recommend approval or disapproval of requests to exempt certain positions or groups of positions from the drug testing program;
 - (4) Concur in requests to require an employee to undergo a test under the reasonable suspicion provision, as identified in Chapter I, paragraph 2c(3), more than once in a 12-month period;

- (5) Request approval from the Secretary of Health and Human Services, to use alternative test methods, test levels, or to include additional drugs or classes of drugs in the test;
- (6) Approve requests for exceptions to this directive;
- (7) Identify a Medical Review Officer as defined in the Mandatory Guidelines for Federal Workplace Drug Testing Programs; and
- (8) Carry out the responsibilities described in subparagraph f, below, for Headquarters.

f. Heads of Field Elements and the Inspector General.

- (1) Determine when an occurrence requiring notification within 72 hours shall lead to drug testing of involved employees;
- (2) Concur in a determination by a supervisor that an employee who has been determined to have used illegal drugs should be returned to sensitive duties;
- (3) Concur in a determination that the "reasonable suspicion" criteria for drug testing have been met; and
- (4) Approve administrative leave in accordance with Chapter III, paragraph 5d(2), up to 10 days. Requests for longer periods must have the concurrence of the Director of Personnel.

g. Director of Personnel.

- (1) Develops, promulgates, implements, and provides advice on policies, standards, and procedures concerning the DOE drug testing program, consistent with applicable civil service laws and regulations;
- (2) Maintains liaison with the Office of Personnel Management, Departments of Health and Human Services and Justice, and other organizations on drug testing policy as well as other personnel-related matters;
- (3) Evaluates the effectiveness of the DOE drug testing program;
- (4) Provides staff personnel to sit on the Position Designation Board;
- (5) Designates the Departmental Drug Testing Program Manager; and
- (6) Concurs in requests for administrative leave in excess of 10 days in accordance with Chapter III, paragraph 5d(2)(b).

| h. Medical Review Officer.

- (1) Complies with the guidelines for Federal drug testing programs promulgated by the Department of Health and Human Services;
- (2) Receives and reviews drug test results for the purpose of determining use of illegal drugs;
- (3) Assures that an individual who has been tested positive has been afforded an opportunity to justify the test result;
- (4) Issues appropriate notices of determinations based on drug test results, consistent with confidentiality requirements; and
- (5) Reports summaries of all activities and findings on a regular

| i. Employee Assistance Program Coordinators.

- (1) Execute the responsibilities described in DOE 3792.1A, EMPLOYEE ASSISTANCE PROGRAM.
- (2) Assure the removal and, if subsequently warranted, the reinstatement of the names of employees in the random drug testing pool; and
- (3) Administer the execution of a "Drug Use Acknowledgement" form as described in Chapter **III**, paragraph 5d.

| j. Departmental Drug Testing Program Manager.

- (1) Manages the drug testing pool by:
 - (a) Issuing guidance describing categories of positions to be included in the drug testing pool;
 - (b) Requesting submission of position nominations for testing designated positions; and
 - (c) Chairing the Departmental Position Designation Board.
- (2) Manages information systems related to the Order by:
 - (a) Overseeing the automated system which randomly selects employees from the drug testing pool;
 - (b) Assembling and maintaining statistical information related to drug testing results; and

- (c) Maintaining written inspection reports generated in accordance with paragraph 5e(2) above.
- (3) Issues notices to employees, including:
 - (a) General informational notices to all employees 60 days prior to the initiation of testing;
 - (b) Annual reminder notices to all employees;
 - (c) Specific notices to employees whose positions have been designated as TDP's; and
 - (d) Individual notices of test schedule and location.

k. Managers and Supervisors.

- (1) Direct an employee to submit a urine specimen for testing if, in the view of the manager or supervisor, the appropriate authority under paragraph 5h, and, if needed, the Director of Administration and Human Resource Management, the "reasonable suspicion" or "occurrence" criteria for drug testing have been met;
- (2) Respond to grievances related to the drug testing program in accordance with DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, or local negotiated agreements;
- (3) Consult with the Employee Assistance Program Director and the servicing personnel office prior to taking actions following the determination of an employee's use of illegal drugs;
- (4) Make and implement a series of decisions on removal from sensitive duties, leave, and discipline subsequent to a first-time determination of an employee's use of illegal drugs;
- (5) Initiate separation action against an employee if that employee is determined on the basis of a second confirmed positive drug test to have used illegal drugs;
- (6) Make the initial recommendation that an employee who had been removed from sensitive duties may be returned to those duties; and
- (7) Make the decision as to whether direct observation will be required, as provided for in Chapter II, paragraph 6a.

- I 1. Servicing Personnel Offices.
- (1) Provide day-to-day advice and guidance to managers and supervisors on matters relating to the DOE drug testing program;
 - (2) Perform all phases of technical operational support to organizational units serviced in order to ensure that the provisions of this Order and other related Orders are followed consistently; and
 - (3) Provide input to appropriate data systems (e.g., PAY/PERS) in order to ensure the accuracy of such systems.

BY ORDER OF THE SECRETARY OF ENERGY:



DOLORES L. ROZZI
Director of Administration
and Human Resource Management

CHAPTER I

APPLICABILITY

1. GENERAL PROVISIONS.

- a. The determination as to whether an employee will be subject to drug detection urinalysis may be based either on the nature of the position the employee encumbers or upon factors personal to that employee such as a past history of the use of illegal drugs, a request for voluntary inclusion in the drug testing program, involvement in an occurrence, or actions that create a reasonable suspicion of the use of illegal drugs.
- b. Once an employee volunteers for, or a determination has been made that an employee will be subject to, drug testing based on the nature of the position the employee encumbers, the selection for testing will be done on a random basis with procedures taken to ensure that the process is not arbitrary, capricious, or discriminatory. No employees in the drug testing pool will be exempt from testing, except as provided for in Chapter II, paragraph 1b.
- c. The determination as to which specific positions will be designated as testing designated positions will be made in the following manner:
 - (1) As needed, the Departmental Drug Testing Program Manager will issue guidance describing the categories of positions that are to be included in the drug testing pool and will request the submission of nominations for testing designated positions.
 - (2) TDP subgroups will be differentiated between positions in each category based on their relative potential for adverse impact on the public health and safety and the national security. Incumbents of positions that have greater potential for adverse impact may be subject to more frequent testing than incumbents of positions with less potential for adverse impact. However, increased frequency may also be the result of a determination to test a higher percentage of incumbents in a given category.
 - (3) Nominations will be reviewed and recommendations for approval or disapproval will be made by a Departmental position designation board that will consist of a staffing specialist, an employee relations specialist, a position classification specialist, an Employee Assistance Program representative, a representative of the Office of Security Affairs, and the Departmental Drug Testing Program Manager. The Board will be chaired by the Departmental Drug Testing Program Manager. The Board will recommend the designation of a position as a testing designated position and the inclusion of a position in a given subgroup.

- (4) The final approval of testing designated positions inclusions and subgroups will be made by the Secretary.
- d. Initially, a fixed percentage of testing designated positions will be tested each year. The Secretary may determine that a number greater or lesser than the initial percentage will be tested at any time. Statistical information will be retained to determine the percentage of confirmed positive tests obtained. This information will be one of the factors used in determining whether testing should be increased or decreased.
 - e. Any employee who believes that his or her duties do not involve performance of the sensitive tasks ascribed to the position in that position's nomination, or that the procedures used to nominate were misapplied, may file a grievance pursuant to the provisions of DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, or negotiated local agreements, as applicable.
 - f. In the event that the percentage of employees to be tested results in a less than whole number, the number will be rounded down; that is, if 25 percent of the employees in a group are to be tested and if the group consists of 33 employees, a total of 8 employees will be tested.
 - g. The Departmental Drug Testing Program Manager will provide for a periodic review of all testing designated positions to ensure that they continue to meet the conditions for inclusion.
2. POSITIONS TO BE TESTED. The following categories of positions may be subject to testing:
- a. Sensitive positions. as described in E.O. 12564 and further defined by the Departmental Drug Testing Program Manager. Initially, positions will be included only if they are covered by categories 1 through 5 and directly affect the public health, public safety, or national security. Categories 1 through 5 are described in E.O. 12564 as follows:
 - (1) Category 1.
 - (a) Chapter 731 Designation. Covers all employees whose positions have been designated Special -Sensitive, Critical -Sensitive, or Noncritical -Sensitive.
 - (b) E.O. 10450 Designation. Covers employees with sensitive designations under E.O. 10450 who must be investigated.

- (a) The Head of the Departmental Element must concur in a finding of reasonable suspicion.
 - (b) If an employee has been required to undergo testing under the reasonable suspicion provision and the test results are negative, that employee may not be required to undergo testing under the reasonable suspicion provision during the next 12-month period without the concurrence of the Director of Administration and Human Resource Management.
 - (c) Determinations made in conformance with definitions on page 4, paragraph 4f(1) or 4f(2), (reasonable suspicion based on observable phenomena or a pattern of abnormal conduct or erratic behavior) should rely on material contained in FPM chapter 751 as a guide.
 - (d) Patterns of approved leave usage may not be used to support a finding of reasonable suspicion.
- d. Applicants. Only applicants who have been tentatively selected for a specific testing designated position will be tested.

3. DRUGS FOR WHICH RANDOM TESTING WILL BE PERFORMED.

- a. Random testing will be performed to identify the use of the following drugs or classes of drugs:
 - (1) Marijuana;
 - (2) Cocaine;
 - (3) Opiates;
 - (4) Phencyclidine; and
 - (5) Amphetamines.
- b. Testing may also be performed for other drugs or classes of drugs in accordance with any agreement made between DOE and the Secretary of Health and Human Services.

CHAPTER 11

ADMINISTRATIVE PROCEDURES

1. POSITION DESIGNATION FOR RANDOM TESTING.

- a. In accordance with Chapter I, paragraph 1b, all testing designated positions will be subject to testing, unless exempted as provided for in Chapter II, paragraph 1b.
- b. The Head of a Departmental Element may submit a request to the Director of Administration and Human Resource Management to exempt certain positions described in Chapter I, paragraph 2a, from drug testing on the basis of hardship due to the remote location of the duty station, the unavailability of onsite testing personnel, or the lack of an appropriate site for test administration. The Director of Administration and Human Resource Management will review the request for appropriateness and possible inconsistencies with other Departmental elements and will recommend approval or disapproval of the request to the Secretary. The Secretary will determine whether or not to exempt the position or positions from the program.
- c. The Departmental Drug Testing Program Manager will provide the opportunity, on at least an annual basis, for Heads of Departmental Elements to nominate positions as testing designated positions or to recommend the elimination of positions already designated as testing designated positions.
- d. The Departmental Drug Testing Program Manager is responsible for inputting identifying information as described in Chapter V, paragraph 2a(1), into the random test pool database.

2. GENERAL NOTICES.

- a. A notice must be issued to all employees by the Departmental Drug Testing Program Manager at least 60 days prior to the initiation of testing and must contain, at a minimum, the following:
 - (1) A statement of the DOE policy, as delineated on page 2, paragraph 3, regarding the use of "illegal" drugs and the purpose of the drug testing program;
 - (2) That counseling and rehabilitative assistance are available through the Employee Assistance Program;

- (3) When actual testing will commence;
 - (4) Requirements for Testing Designation Positions;
 - (5) The general testing parameters;
 - (6) A copy of DOE 3792.3, DRUG-FREE FEDERAL WORKPLACE TESTING IMPLEMENTATION PROGRAM;
 - (7) Information that a separate Notice will be sent to individuals who occupy testing designated positions and to any others selected for testing under the provisions of Chapter I, paragraphs 2b or 2c; and
 - (8) That the Plan will include both voluntary and mandatory testing.
- b. On an annual basis, a reminder notice will be issued by the Departmental Drug Testing Program Manager to all employees containing, at a minimum the DOE drug policy statement.

3. SPECIFIC NOTICES.

- a. At least 30 days prior to being included in the pool, any employee who encumbers a testing designated-position or who has volunteered to be included in the testing pool, will be sent a specific written notice by the Departmental Drug Testing Program Manager." The notice must contain, at a minimum, the following:
- (1) The reason for the inclusion of the position as a testing designated position (i.e., identification of the appropriate Chapter I, paragraph 2a category);
 - (2) The employee's opportunity to voluntarily identify himself or herself as a user of illegal drugs, willing to undertake counseling and, as necessary, rehabilitation. In such cases, disciplinary action is not required. The decision whether to discipline a voluntary referral will be made by the Secretary or his or her designee on a case-by-case basis depending on the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the Department, in determining whether to discipline, shall consider that the employee has come forward voluntarily;
 - (3) The availability of drug abuse counseling and referral services, including the name and telephone number of the local Employee Assistance Program counselor;

- (3) In addition to the results of the test, the supervisor must be informed of the appropriate regulations and policies regarding the confidentiality of this information and the name and telephone number of the appropriate EAP Coordinator.
- (4) The notification to the employee must contain the following:
 - (a) The results of the test.
 - (b) Information that the employee may request a retest of the specimen at the same laboratory or at any other certified laboratory. If the test is to be conducted at another laboratory, the cost of transporting and testing the specimen will be the responsibility of the employee. If the retest results do not meet the conditions established in the HHS Guidelines, the test results will be certified as not meeting the conditions for a determination of the use of illegal drugs.
 - (c) Information that the employee has the opportunity to obtain rehabilitation at the employee's expense. The name and telephone number of the EAP Coordinator also must be included and the employee must be told that the EAP Coordinator will be contacting the employee.
 - (d) Information that the employee's supervisor will contact the employee regarding other actions, including continuation of the employee in his or her current position or duties.
- b. If a determination of the use of illegal drugs is not made, the employee, the employee's supervisor, and the EAP Coordinator will be informed as provided by paragraphs 4a(2), 4a(3), and 4a(4)(a) of this Chapter.

5. RESPONSE TO A DETERMINATION OF THE USE OF ILLEGAL DRUGS.

- a. Supervisors are reminded of their responsibilities under DOE 5631.2B, upon receipt of information which may affect an employee's continuing eligibility for DOE access authorization.
- b. In accordance with the terms of Executive Order 12564, Section 5(d) (2), an agency must initiate action to remove any employee who has been found, on the basis of a drug test, to have used illegal drugs and has been found, on the basis of a second test, not to have refrained from such use. Therefore, any options that follow may be exercised only in the event of a first determination of the use of illegal drugs.
- c. The supervisor must consult with the EAP Coordinator and the servicing personnel officer in order to obtain the appropriate advice and guidance prior to initiating any action.

d. A supervisor shall make decisions in three separate areas. These are:

(1) Removal from Sensitive Duties.

- (a) The employee must immediately be removed from his or her sensitive duties. He or she may be returned to those duties if the supervisor determines that such a return will not adversely affect the public health and safety or the national security and if the Head of the Field Element, the Inspector General, or the Director of Administration and Human Resource Management, as appropriate, concurs in that determination.
- (b) If the decision is made not to return the employee to sensitive duties at this time, the supervisor may reassign the employee to perform non-sensitive duties or may realign the employee's current duties so that no sensitive duties are involved.
- (c) Every effort will be made to continue an employee who is removed from sensitive duties in a pay status while he or she is undergoing rehabilitation. If this cannot be done at the employee's regular duty station, efforts will be made to effect a temporary reassignment or other accommodation.

(2) Leave Status.

- (a) The employee may not be placed on enforced leave. At the employee's request, the supervisor may place the employee on leave or leave without pay.
- (b) The supervisor may grant up to 10 days of administrative leave, in accordance with the provisions of DOE 3750.1, WORK FORCE DISCIPLINE. In the event that an extension is desired or necessary (e.g., if an adverse action is required and the employee cannot be placed in non-sensitive duties during the notice period), concurrence must be obtained from the Director of Personnel.

(3) Disciplinary Actions.

- (a) The supervisor will initiate appropriate disciplinary or adverse action based on the use of illegal drugs in conformance with DOE 3750.1, the Rehabilitation Act of 1973, and implementing regulations in 29 CFR, Part 1600.
- (b) Disciplinary action for the use of illegal drugs does not preclude initiating a disciplinary action for conduct which may

have led to a drug test under the provisions of Chapter 1, paragraphs 2c(1) or 2c(3).

- (c) If the action proposed is an indefinite suspension pending the employee's release from treatment or identification of an appropriate reassignment, the proposing official must notify the employee of the specific event that would terminate the suspension.
 - (d) If an adverse action is proposed and the proposing official has reasonable cause to believe that the employee has committed to a crime for which imprisonment may be proposed, the "crime provision" may be invoked and the notice period curtailed in accordance with DOE 3750.1, WORK FORCE DISCIPLINE.
- e. If the determination of the use of illegal drugs resulted from a test obtained under the provisions of Chapter I, paragraph 2a (random testing based on sensitive duties), the employee must choose one of the alternative courses of action listed below. Failure to follow through on one of the courses of action may subject the employee to adverse action under the terms of DOE 3750.1, WORK FORCE DISCIPLINE.
- (1) Obtain the counseling and appropriate rehabilitation suggested by the EAP Coordinator and execute a "Drug Use Acknowledgement" form stating that the employee will refrain from further use of illegal drugs and that the agency may conduct an unannounced, observed urinalysis test (in addition to any test scheduled in accordance with Chapter 1) to verify that the employee is abstaining from such use during the 12-month period following the conclusion of the rehabilitation program;
 - (2) Obtain counseling and appropriate rehabilitation other than that suggested by the EAP Coordinator, and execute a "Drug Use Acknowledgement" form stating that the employee will refrain from further use of illegal drugs and that the agency may conduct an unannounced, observed urinalysis test (in addition to any test scheduled in accordance with Chapter 1) to verify that the employee is abstaining from such use during the 12-month period following the conclusion of the rehabilitation program;
 - (3) Execute a "Drug Use Acknowledgement" form stating that the employee will refrain from further use of illegal drugs and that the agency may conduct an unannounced, observed urinalysis test (in addition to any test scheduled in accordance with Chapter 1) to verify that the employee is abstaining from such use during the 12-month period following the execution of such certification; or
 - (4) Resign from Federal service.

- f. If the determination of the use of illegal drugs resulted from a test obtained under the provisions of Chapter 1, paragraph 2b (volunteers), the employee may elect option 5e(1), 5e(2), or 5e(4) but may not elect option 5e(3) of this Chapter.
- g. If the determination of the use of illegal drugs resulted from a test obtained under the provisions of Chapter 1, paragraphs 2c(1) (occurrence) or 2c(3) (reasonable suspicion), the employee will be informed of his or her options at that time.
- h. If the determination of the use of illegal drugs resulted from a test obtained under the provisions of Chapter 1, paragraph 2d, (applicant) the individual will not be selected for the position in question and will be referred for rehabilitation. Test results will not be shared with supervisory personnel.
- i. If the employee encumbers a sensitive position or has volunteered to be included in the testing pool and elects to undergo a period of rehabilitation, the EAP Coordinator will remove that employee's name from the testing pool for the duration of the period of rehabilitation.

6. RETURN TO SENSITIVE DUTIES.

- a. The determination as to when the employee may be returned to duty following rehabilitation will be made by the supervisor. This determination requires concurrence by the Head of the Field Element, Inspector General, or Director of Administration and Human Resource Management, as appropriate.
- b. If the employee encumbers a sensitive position and has undergone a period of rehabilitation, the employee must provide the EAP Coordinator with certification that he or she has successfully completed the course of rehabilitation. The head of the rehabilitation program or other source must certify to the EAP Coordinator that the employee has been subjected to a urinalysis that has resulted in a negative determination. This urinalysis need not meet the criteria for testing contained in this Order and will not be used, in and of itself, as a basis for disciplinary action. No additional drug tests may be performed as a condition of returning to sensitive duties.

7. FOLLOWUP ACTIONS.

- a. **If** the employee has undergone a period of rehabilitation during which his or her name has been removed from the testing pool, the EAP Coordinator will assure the reinstatement of the employee's name in the pool after receiving the certification described in paragraph 6b of this Chapter.

CHAPTER IV

APPEALS AND REVIEW PROCEDURES

1. GENERAL PROVISIONS.

- a. All actions taken pursuant to this chapter must be in conformance with the provisions of title 5, U.S.C., chapter 75; Title 5, CFR, Part 752; DOE 3750.1 and applicable agreements negotiated between management and exclusive representatives of bargaining unit employees.
- b. This chapter does not cover actions related to the use of legal drugs and/or actions based upon management's determinations that an employee is unable to perform his or her job because of physical or mental disability. Neither does the chapter cover actions related to an employee's arrest or criminal conviction for the use, possession, or sale of illegal drugs.
- c. To the fullest extent possible, grievance and appeal procedures described in DOE 3771.1, DOE 3750.1, and negotiated agreements will be used to obtain review of actions taken under this chapter.

2. COVERAGE.

a. Employees.

- (1) All employees in the competitive service and preference eligibles in the excepted service who have one year of current continuous service are covered by the procedures described in this chapter. The exceptions and options created by the existence of negotiated agreements are listed in paragraph 4c below.
- (2) Non-preference eligibles in the excepted service may not appeal adverse actions taken against them to the Merit Systems Protection Board. If in a bargaining unit, they are limited to the negotiated grievance procedure.
- (3) Members of the Senior Executive Service and employees appointed under Schedule C of the excepted service are excluded from coverage of DOE 3750.1, WORK FORCE DISCIPLINE and 3771.1, GRIEVANCE POLICY AND PROCEDURES.

b. Applicants.

- (1) Non-Federal applicants for Federal employment are covered by the procedures described in this chapter only if a determination is made that the applicant is unsuitable for Federal employment under the provisions of Title 5, CFR, Part 731.

- (2) Federal employees in non-sensitive positions who apply for positions under this Order may grieve actions or events in conformance with the applicable grievance procedure. As in all grievance procedures, the applicant may not grieve non-selection for a position.
- c. Volunteers. Employees who volunteer to have their names included in the TDP pool do not waive any rights to request review, grieve, or appeal as described in this chapter.

3. REQUESTING REVIEW, GRIEVING, OR APPEALING SPECIFIC EVENTS.

- a. Drug Testing Process. There may be points in the drug testing process at which the employee believes that there is cause to complain about the effects of the drug testing process on the employee. However, the employee must not resort to "self help," that is, refuse to participate in the process, but must, instead, proceed with the process and complain at a later time. By proceeding with the process, the employee does not waive any rights to request review, grieve or appeal.
- b. Actions Resulting from Positive Test Results. After receiving test results confirming that an employee has used illegal drugs, management must initiate disciplinary action against that employee and must relieve that employee from duties associated with any sensitive position. When management undertakes any of these actions, the employee must be informed of the grievance or appellate procedures available to him or her.

4. RECONSIDERATION REQUEST/GRIEVANCE/APPELLATE PROCEDURES.

a. Written Request for Review/Reconsideration/Retest.

- (1) Any communication related to drug testing that places requirements on an employee will include procedures for obtaining review of those requirements.
- (2) Any notification to an employee or applicant of a determination of the use of illegal drugs will include procedures for obtaining a retest.
- (3) All requests for review or retest must include a copy of the document triggering the review request, a description of the specific events or processes in question, a description of the specific measures the requestor wishes enacted, and the requestor's telephone number. The request must be submitted to the Head of the Field Element, the Inspector General, or the Director of Administration and Human Resource Management, as appropriate.

CHAPTER V

INFORMATION SYSTEMS AND RECORDKEEPING

1. CONFIDENTIALITY OF INFORMATION.

- a. As part of the drug testing procedure, the individual must provide written consent to disclose confirmed positive test results to the Medical Review Officer. This consent must be obtained prior to the test itself. Consequently, refusal to consent to release of this information will be considered a refusal to take the test. Executing the consent form does not constitute a waiver of the individual's rights to protection from unauthorized disclosure of the information described on the form.
- b. Records of the identity, diagnosis, prognosis, or treatment of any patient that are maintained in connection with performance of a drug abuse prevention program must be maintained in accordance with DOE 3792.1A and other implementing regulations.
- c. Records regarding illegal drug use must be maintained in conformance with DOE 3750.1, the Privacy Act (Title 5, U. S. C., Section 552a), and local negotiated agreements.
- d. Any other disclosure may be made only with the written consent of the individual.

2. INFORMATION SYSTEMS.

a. Random Test Pool.

- (1) The random test pool shall be maintained by the Departmental Drug Testing Program Manager. Once the Secretary has approved testing designated positions, the Drug Testing Program Manager will be responsible for entering the appropriate information into the data system. This information will include information identifying the position designated for inclusion (title, series, organizational and geographic location, and position identification number), information identifying the incumbent who will be subject to random drug testing (name and mailing address), and information identifying the supervisor and EAP Coordinator who must be notified when testing is scheduled (names and mailing addresses).
- (2) The Departmental Drug Testing Program Manager will be the only individual who has access to the entire random test pool data system. Each EAP Coordinator will have access to a random test pool EAP

subfile that relates to his or her organization. This subfile will allow the EAP Coordinator to arrange for temporary deletion and reinstatement of the names of any individuals who are undergoing rehabilitation for illegal drug use.

- (3) Based on approved percentages of individuals to be tested, a random selection of individuals in the testing pool will be made. A computer-generated list of individuals to be tested will be sent to the EAP Coordinator responsible for servicing those employees' organizational elements. A computer generated notice of scheduling for testing will be sent to each employee, and a copy of that notice will go to the appropriate supervisor. All lists and notices will be sent in "Eyes Only" envelopes. A summary of the total number of individuals to be tested at each organization will be put into the Drug-Free Federal Workplace Drug Testing Summary database.

b. Drug-Free Federal Workplace Drug Testing Summary.

- (1) A centralized, computerized file of the outcome of all drug tests performed at DOE will be maintained by the Departmental Drug Testing Program Manager. None of the information contained in this system will identify specific individuals.
- (2) The Medical Review Officer will submit periodic information to be determined by the Departmental Drug Testing Program Manager.

3. RECORD RETENTION. All records, including initial test records and chromatographic tracings, shall be retained by the laboratory in such a manner as to allow retrieval of all information pertaining to the individual urine specimens for a minimum period of 2 years after completion of testing of any given specimen.