



United States Department of Agriculture


Departmental
Management

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Office of the
Assistant Secretary
for Administration

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Washington, DC
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TO: Mission Area Human Resource Directors

FROM: William P. Milton, Jr. 
Chief Human Capital Officer
Office of Human Resources Management

SUBJECT: USDA's Drug Free Workplace Program and "Recreational" Marijuana

The Office of Human Resources Management (OHRM) has received several inquiries from agencies concerning the applicability of the Department's policy prohibiting the use of marijuana by employees in states that have recently enacted initiatives permitting the use of marijuana for "recreational" purposes. In response, use of Marijuana for "recreational" purposes is not authorized under Federal law nor the Department's Drug Free Workplace Program policies set forth in Departmental Regulation 4430-792-2 – *Drug Free Workplace Program* (April 14, 2011) and the USDA Plan for a Drug Free Workplace (April 19, 2011). Accordingly, USDA testing procedures remain in full force and effect.

Under the USDA Drug Free Workplace Program, which comports with the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the Department of Health and Human Services' (DHHS) Substance Abuse and Mental Health Services Administration (SAMHSA), USDA agencies test for the following class of drugs and their metabolites: (a) Marijuana, Opiate (Codeine/Morphine, Morphine, 6-Acetylmorphine [heroin]) and PCP; and (b) Cocaine, Amphetamines (AMP/MAMP, Methamphetamine, MDMA [ecstasy]). These drugs are listed in the Controlled Substances Act (CSA), codified at 21 U.S.C. § 801 *et seq.*, as Schedule I and Schedule II drugs, respectively. Schedule I drugs are substances, or chemicals defined as drugs with no currently accepted medical use and a high potential for abuse. They are considered the most dangerous of all the drug schedules and invite potentially severe psychological or physical dependence. Schedule II drugs are substances or chemicals defined as drugs with a high potential for abuse, less abuse potential than Schedule I drugs, with use potentially leading to severe psychological or physical dependence.

The Federal organizations that provide USDA guidance concerning our drug testing programs reiterate that state initiatives on the "recreational" use of marijuana are counter to Federal law. SAMHSA's Medical Review Officer Manual for Federal Agency Workplace Testing Programs provides the following guidance to Federal agencies:

"State initiatives and laws, which make available to an individual a variety of illicit drugs by a physician's prescription or recommendation, do not make the use of these illicit drugs permissible under the Federal Drug-Free Workplace Program. These State initiatives and laws are inconsistent with Federal law and put the safety, health, and security of Federal workers and the American

public at risk. The use of any substance included in Schedule I of the CSA, whether for non-medical or ostensible medical purposes, is considered a violation of Federal law and the Federal Drug-Free Workplace Program. These drugs have no currently accepted medical use in treatment in the United States and their use is inconsistent with the performance of safety-sensitive, health-sensitive, and security-sensitive positions, and with drug-free workplace programs. The MRO [medical review officer] must not accept a prescription or the verbal or written recommendation of a physician for a Schedule I substance as a valid medical explanation for the presence of a Schedule I drug or metabolite in a Federal employee/applicant specimen.”

Similarly, SAMHSA’s Division of Workplace Programs has maintained that despite recent state law changes, marijuana continues to be defined as a Schedule I drug under the CSA and “[a]s such, federal civilian employees within the executive branch covered by the DFWP [Drug-Free Workplace Program] will continue to be tested for marijuana at the established cut-off levels noted in the Mandatory Guidelines.” The Department of Transportation’s (DOT) Office of Drug and Alcohol Policy and Compliance maintains that “state initiatives will have no bearing on the Department of Transportation’s regulated drug testing program. The Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40 – does not authorize the use of Schedule I drugs, including marijuana, for any reason.” This is especially relevant to USDA’s Drug Free Workplace Program because approximately 50 percent of USDA’s testing designated positions are personnel who have a Commercial Driver’s License (CDL). As such, these personnel fall under the DOT drug testing guidelines while performing duties requiring a CDL.

For further information on “recreational” use of marijuana, please contact Gerry Nagel, Drug Free Workplace Program Manager, at 202-720-9010 or gerald.nagel@dm.usda.gov. You may also visit the following links to learn more about the USDA Drug Free Workplace Program and testing requirements:

Departmental Regulation 4430-792-2 – Drug Free Workplace Program (April 14, 2011)
<http://www.ocio.usda.gov/sites/default/files/docs/2012/DR4430-792-2.pdf>

USDA Plan for a Drug Free Workplace (April 19, 2011)
<http://www.dm.usda.gov/employ/employeerelations/docs/DrugFreeWorkplacePlan.pdf>

Mandatory Guidelines for Federal Workplace Drug Testing Programs
<http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-26726.pdf>

Medical Review Officer Manual for Federal Agency Workplace Testing Programs
http://workplace.samhsa.gov/DrugTesting/pdf/MRO_Manual_2010_100908.pdf

Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40
http://www.dot.gov/sites/dot.dev/files/docs/PART40_2012.pdf