

DRUG FREE WORKPLACE PROGRAM (DFWP)

Directive # 2007

09/21/2001

1. PURPOSE

This directive establishes and implements the policy for the Agency for International Development (USAID), Office of the Inspector General (OIG) Drug free Workplace Program (DFWP) in accordance with the provisions set forth in this directive, sections 5.C.1. through 5.C.2. This directive has been established to increase the number (from two to five) of drugs for which individuals are tested. .

2. GENERAL

Executive Order 12564 established a goal of achieving a drug free federal workplace and made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off duty. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987) established uniformity among Federal agency drug-testing programs. The Secretary of HHS certified the USAID Drug free Workplace Plan on September 14, 1990.

3. SUPERSESSION

This Directive supersedes the Drug free Workplace Program Policy, Directive #213, dated 3/11/97.

4. POLICY

The USAID/OIG will not tolerate the possession, use, or distribution of illegal drugs and is committed to the eradication of them from the workplace. A drug free environment is essential to mission accomplishment. The use of illegal drugs, or unlawful use of prescription drugs, undermines the quality of job performance, endangers the safety of others, and brings discredit to the OIG, USAID, and the Federal Government.

5. PROCEDURES

A. Nature, Frequency and Type of Drug Testing to be instituted.

The USAID/OIG DFWP includes the following types of drug testing: (1) random testing of employees in testing designated positions (TDPs); (2) reasonable suspicion testing; (3) applicant testing; (4) accident or unsafe practice testing; and (5) testing as part of, or as a follow-up to counseling or rehabilitation. In compliance with the Plan, drug tests will be administered to all TDPs at an annual frequency of 10 percent.

B. Drugs for which Individuals Are Tested

These drugs are marijuana, cocaine, amphetamines, opiates and phencyclidine (PCP).

C. References/Authorities

1. Agency for International Development Drug free Workplace Plan (as revised 7/94), and authorities cited therein.
2. Inspector General Act of 1978 as amended, P.L. 95-452;

D. Definitions

1. USAID - refers to the Agency for International Development.
2. OIG - refers to the USAID Office of the Inspector General. The Inspector General is the highest level of management in USAID/OIG and makes final decisions regarding DFWP disciplinary actions.
3. USAID Office of Security (USAID/SEC) - This component of USAID investigates information that may be related to illegal drug use and may suspend, revoke, reduce and/or reinstate an employee's security clearance if necessary depending on the circumstances of the case.
4. Drug free Workplace Program (DFWP) - The USAID/OIG DFWP is a comprehensive program, balanced between offering a helping hand to employees who are using drugs illegally and at the same time making clear that illegal drug use will not be tolerated.
5. Drug Program Coordinator (DPC) - The DPC is responsible for the implementation, direction, administration, and management of the USAID/OIG DFWP, and is appointed by the Inspector General. The DPC makes disciplinary recommendations to the Inspector General.

6. Drug Program Manager (DPM) - The individual who handles the day-to-day management, coordination and implementation of the USAID/OIG DFWP, and is appointed by the DPC.

7. Employee Assistance Program (EAP) - the counseling programs which offer assessment, short term counseling, referral services to employees for a wide range of problems to include drug problems, and which monitors the progress of employees while in treatment.

8. "Employee in a Sensitive Position" - an employee cleared for access to information classified at secret or above.

9. FAM - refers to the Department of State Foreign Affairs Manual.

10. Illegal Drugs - a controlled substance included in Schedule I or II, as defined by 21 USC 802(6), the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

11. Management Official - an employee required or authorized by USAID/OIG to formulate, determine or influence the policies of the USAID/OIG.

12. Medical Review Officer (MRO) - the individual responsible for receiving laboratory results generated from the USAID/OIG's DFWP. The MRO must be a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with the individual's medical history and any other relevant biomedical information.

13. OIG Management/Personnel Services Division (OIG/M/PS) - In conjunction with the DPM, provides needed education and training to all levels of the USAID/OIG on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, and related treatment, rehabilitation, and confidentiality issues.

14. Random Testing - a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing is a statistically random sampling of employees occupying TDPs based on a neutral criterion, such as social security numbers.

15. Safe Harbor - in accordance with Section J.6. of this directive, a component of the DFWP that provides immunity to any employee who: 1) voluntarily admits to drug use; 2) completes counseling or rehabilitation through EAP; and 3) thereafter refrains from illegal drug use.

16. Supervisor - an employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of judgment.

17. Testing Designated Position (TDP) - a position cleared for access to information classified at secret or above.

18. Verified Positive Test Result - a test result that has been screened positive by an FDA approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by HHS), evaluated by the MRO and determined by the MRO to be unjustified under 3 FAM 056.2-4.

E. Employee Assistance Programs

1. Function

The EAP of the Department of State, which consists of the Alcohol and Drug Awareness Program (ADAP) and the Employee Consultation Service (ECS), provides service to USAID/OIG employees. The EAP plays an important role in preventing, and resolving employee drug use by: (1) demonstrating commitment to eliminating illegal drug use; (2) providing employees an opportunity (with appropriate assistance) to discontinue their drug use; (3) assisting supervisors in confronting employees who have performance and/or conduct problems, and making referrals to appropriate treatment and rehabilitative facilities; and (4) through follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however, shall not be involved in the collection of urine samples or the initial reporting of test results. Specifically, the EAP shall:

a. Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been confirmed positive, and monitor the employees progress through treatment and rehabilitation; and b. Ensure that confidentiality of counseling and related medical treatment and rehabilitation records are maintained.

2. Structure

The Associate Medical Director for Mental Health Programs serves as the EAP Administrator and is responsible for oversight and implementation of the Department of State EAP. The EAP Administrator provides such services to

USAID/OIG employees, and will provide, with the support of the Medical Director and the Under Secretary for Management, high-level direction and promotion of the EAP.

3. Referral and Availability

The first time any employee is found to be using drugs, he or she shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals.

In the event the employee is not satisfied with the program of treatment or rehabilitation, the employee may notify the EAP Administrator prior to completion of the program. The decision of the EAP Administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment.

4. Leave and Allowance

Employees shall be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session, and up to three (3) hours, exclusive of travel time, during the assessment/referral phase of rehabilitation. However, absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

5. Records and Confidentiality

All EAP operations shall be confidential in accordance with section XIV of USAID's Drug free Workplace Plan relative to records and confidentiality.

F. Supervisory Training

1. Objectives Supervisors

have a key role in monitoring a drug free workplace. The USAID/OIG shall provide training to assist supervisors and managers in recognizing and addressing illegal drug use by USAID/OIG employees. This training is mandatory for all supervisors and managers. The purpose of supervisory training is to enable supervisors to understand and have a working knowledge of all items listed in this directive, section F.3.a. through F.3.i. below.

2. Implementation

Via the formal programs and courses administered by OIG/M/PS and the DPM, the DPC shall be responsible for implementing mandatory supervisory training. The DPM shall develop a training package to ensure that all employees and supervisors are fully informed of the USAID/OIG DFWP.

3. Training Package

Supervisory training shall be required of all supervisors and may be presented as a separate course, or be included as part of an on-going supervisory training program. Training shall be provided as soon as possible after a person assumes supervisory responsibility. Training courses should include:

a. Overall USAID/OIG policies as they pertain to the USAID/OIG DFWP; b. The roles of the DPC, DPM, MRO, OIG/M/PS staff, EAP, and the supervisor's role with respect to the USAID/OIG DFWP; c. The prevalence of various employee problems with respect to drugs; d. The EAP approach to handling problems, and when to offer EAP services; e. How to recognize and document employee performance and behavioral changes related to drugs; f. How the EAP is linked to the performance appraisal and the disciplinary process; g. Disciplinary action, and removals from sensitive positions as required by Section 5 (C) of the Executive Order; h. How to approach the employee; i. The process of re-integrating employees into the workforce.

G. Employee Education

1. Objectives

The DPC shall offer drug education opportunities to all USAID/OIG employees. Drug education should include education and training to all levels of the USAID/OIG on issues such as:

a. Overall USAID/OIG policies as they pertain to the USAID/OIG DFWP; b. Types and effects of drugs; c. Symptoms of drug use, and the effects on performance and conduct; d. Other relevant treatment, rehabilitation, confidentiality issues, and "Safe Harbor" provisions of the DFWP.

2. Means of Education

Druguse education may consist of:

a. Distribution of written materials; b. Videotapes; c. Lunchtime employee forums; and d. Employee drug awareness days.

H. Special Duties and Responsibilities

1. Drug Program Coordinator The USAID Inspector General will appoint the DPC. The DPC is responsible for the implementation, direction, administration, and management of the USAID/OIG DFWP. The DPC also makes recommendations regarding disciplinary procedures. The Inspector General will make final decisions regarding disciplinary actions. The DPC must be trained with regard to items listed in this directive, section F.3.a. through F.3.i. above, and the following: a. Collection and chain of custody procedures; b. General information on drug testing laboratory procedures; c. Required records and reports; d. Confidentiality and Privacy Act requirements;

2. Drug Program Manager

The DPC shall appoint a DPM to handle the day-to-day management, coordination and implementation of the USAID/OIG's DFWP. The DPM shall have primary responsibility for assuring the effective operation of the testing portion of the program. In carrying-out this responsibility, the DPM shall, among other duties:

a. Arrange for all testing authorized under this order; b. Insure that all employees subject to random testing receive an individual 30-day notice (attachment (a)) of the implementation of random testing prior to implementation, and that such employees return a signed form acknowledging receipt (attachment (a)), and retain documentation verifying receipt of each notice; c. Upon receipt of a verified positive test result from the MRO, transmit the test result to the appropriate management official empowered to initiate disciplinary action; d. Document, through written inspection reports, all results of laboratory inspections conducted; e. Coordinate with and report to the DPC on activities and findings that may affect the reliability or accuracy of laboratory results; f. In coordination with OIG/M/PS, publicize and disseminate drug program educational materials, and oversee training, to include mandatory training for supervisors and managers, and education sessions regarding drug use and rehabilitation; g. Coordinate all drug testing related activities throughout USAID/OIG wherever possible to conserve resources and to accomplish reliable and accurate testing objectives in an expeditious manner; h. Establish and maintain a USAID/OIG list identifying each position and occupant in the TDP pool; i. Authorize deferrals of random and follow-up testing; j. Arrange specimen collection from the pools of employees in TDPs and volunteers per random selection collection; k. Receive and maintain (where applicable) confidential records of all drug test results from the MRO on behalf of the DPC. Ensure that drug test results are transmitted/released only to those authorized to receive them and that such transmissions are made in a manner to ensure their confidentiality; l. Ensure that all tested employees are notified in writing of negative drug test results; and m. Inform the OIG/M/PS of applicant test results.

The DPM must be trained with regard to items listed in this directive, sections F.3.a. through F.3.i. and H.1.a. through H.1.d above.

3. Medical Review Official (MRO)

The DPC shall identify an MRO to carryout the purposes of the Executive Order. The MRO shall, among other duties:

a. Receive all laboratory test results; b. Assure that an individual who has tested positive has been afforded an opportunity to justify the test result in accordance with section XIII.D. of the USAID Drug free Workplace Plan; c. Consistent with confidentiality requirements, immediately refer written determinations regarding all verified positive test results to the DPM, including a positive drug test result form indicating that the positive result is "unjustified" together with all relevant documentation and a summary of findings; d. Coordinate with and report to the DPM on all activities and findings on a regular basis.

4. Supervisors

Supervisors will attend mandatory training to address illegal drug use by employees. Supervisors will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. First-line supervisors shall:

a. Attend mandatory training sessions on illegal drug use in the workplace as it pertains to the DFWP; b. Document job performance and behavior that is below standard, in a timely manner, and refer employees to the EAP or, if appropriate, OIG/M/PS Employee Relations, for determination regarding reasonable suspicion of drug use; c. Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use; d. In conjunction with personnel specialists, assist second-line supervisors in evaluating employee performance and or personnel problems that may be related to illegal drug use. e. Notify individual employees of a scheduled drug test; f. Initiate a reasonable suspicion test, after first making appropriate factual observation and obtaining approval from a higher level supervisor as discussed in this directive, section 5.L.

5. Implementation

Each Division and Office will ensure that the DFWP is efficiently and effectively implemented in accordance with the USAID/OIG DFWP policy delineated in this directive.

6. Wherever existing facilities are inadequate to implement this program, the DPC shall:

a. Designate the DPM to serve as Administrative Contracting Officer for the administration of all related contracts; b. Ensure that contractors chosen to perform the drug screening tests are duly certified pursuant to the HHS guidelines and that all contracts conform to the technical specifications of the HHS guidelines.

I. Notice

1. General Notice

As required by the USAID Drug free Workplace Plan (section VII.A.), the Inspector General will issue a general notice to each USAID/OIG employee. This general notice (attachment (b)) announces the commencement of the DFWP and implementation of the USAID Drug free Workplace Plan. The general notice informs each USAID/OIG employee that drug testing may begin no sooner than 60 days after the date of the notice. All testing will be carried out in accordance with the USAID Drug free Workplace Plan, the HHS Mandatory Guidelines for the Federal Workplace Drug Testing Programs and other applicable statutory and regulatory authorities. Effective January 1997, a copy of the USAID Drug free Workplace Plan is provided to all USAID/OIG employees via the LAN.

2. Individual Notice

As required by the USAID Drug free Workplace Plan (section VII.B.) and in addition to the general notice, an individual notice (attachment (c)) will be distributed to all employees in TDPs.

3. Signed Acknowledgement

As required by the USAID Drug free Workplace Plan (section VII.C.), each employee in a TDP shall be asked to sign a written acknowledgement that they received and read the notice which states that the employee's position has been designated for random drug testing; and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal.

4. Administrative Relief

If an employee believes his or her position has been wrongly designated a TDP, that employee may file an administrative appeal to the DPC who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing, to the DPC within 15 days of the individual notice, setting forth all relevant information. The DPC shall review the appeal based upon the criteria applied in designating that employee's position as a TDP. The DPC's decision is final and is not subject to further administrative review. The fact that

the employee seeks review of the TDP determination will not exempt the employee from inclusion in the TDP pool during the review process.

5. Temporary Position Change

a. An employee who is detailed or temporarily promoted or reassigned to a TDP through a personnel action documented by an SF-50 or SF-52, will be subject to random drug testing during that period, providing that the assignment is expected to exceed 30 days. b. Since testing of the employee prior to temporary placement will not be required, the employee will be issued the individual 30-day notice upon entering the position. (A new notice is not required if the employee is moving between two TDPs) The employee will be subject to unannounced random testing 30-days after receiving the notice. c. If the employee is temporarily promoted or reassigned out of a TDP for over 30 days, the employee should be issued another individual 30-day notice upon reentry. If the employee is detailed out of the permanent TDP, no notice is required because the employee remains in the permanent position.

J. Finding of Drug Use and Disciplinary Consequences

1. Determination An employee may be found to be using illegal drugs on the basis of any appropriate evidence including, but not limited to: a. Direct observation; b. Evidence obtained from an arrest or criminal conviction; c. A verified positive test result; or d. An employee's voluntary admission.

2. Mandatory Administrative Actions

USAID/OIG shall refer an employee found to use illegal drugs to the EAP and, if the employee is performing duties requiring access to classified information, immediately remove the employee from that position without regard to whether it is a TDP. The USAID Security Director is designated as the official who has discretion to return the employee to a sensitive position upon a finding of drug use as r

3. Range of Consequences

The severity of the disciplinary action taken against an employee found to use illegal drugs will depend on the circumstances of each case, and will be consistent with the Executive Order. The USAID/OIG shall initiate disciplinary action (up to and including removal) against any employee found to use illegal drugs, but shall not discipline an employee who voluntarily admits, under "Safe Harbor," to illegal drug use. Such disciplinary action may include any of the following measures but some disciplinary action must be initiated:

- a. Reprimanding the employee in writing;
- b. Placing the employee in an enforced leave status;

- c. Suspending the employee for 14 days or less;
- d. Suspending the employee for 15 days or more;
- e. Suspending the employee until the employee successfully completes the EAP or until the USAID/OIG determines that action other than suspension is more appropriate;
- f. Removing the employee from service.

4. Initiation of Mandatory Removal From Service

In coordination with the DPC, the AIG/M shall initiate a personnel action to remove an employee for:

- a. Refusing to obtain counseling or rehabilitation through an EAP as required by the Executive Order after having been found to use illegal drugs; b. Having been found not to have refrained from illegal drug use after a first finding of illegal drug use.

5. Refusal to Take Drug Test when Required

- a. An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including removal. However, such action will not be initiated during the pursuit of available legal or administrative remedies by the employee. b. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

6. Voluntary Self-Referral for Safe Harbor

A fundamental purpose of the USAID/OIG's drug testing program is to assist employees who are seeking treatment for drug use. In accordance with the Order, the USAID/OIG has decided to create such a "safe harbor." Under Executive Order 12564, the USAID/OIG is not required to initiate action to discipline an employee if the employee (1) voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means; (2) obtains counseling or rehabilitation through an EAP, and (3) thereafter refrains from illegal use of drugs.

- a. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit his or her problem -- this provision will not be available to an employee who is asked to provide a urine sample, or who is found to have used illegal drugs prescient to sections VIII (A)(1), or VIII (A)(2) and who there after requests protection under this provision. b. An employee who meets the "Safe Harbor" conditions will not be subject to discipline for the admitted acts of illegal use of drugs, including possession incident to such personal use. If the employee occupies a TDP the employee must be placed in a non-TDP if available. As part of a rehabilitation or counseling program, however, it is up to the discretion of the

Inspector General to allow an employee to return to duty in a sensitive position, if it is determined that this action would not pose a danger to public health or safety or the national security.

K. Random Testing

1. Covered Employees for Random Drug Testing The Executive Order requires random testing for "employees in sensitive positions." Consistent with the determination of the Department of State, all USAID/OIG employees who are cleared for access to information classified at Secret or above are "employees in sensitive positions."

2. The DPM will complete and maintain the USAID/OIG TDP list, which forms the USAID/OIG TDP pool for random testing. This list shall contain at a minimum:

- a. The incumbent's name, social security number;
- b. The position title, pay plan, and series; and
- c. Division/Office.

3. Implementing Random Testing

In implementing the program of random testing the DPM shall:

- a. Ensure that the means of random selection remains confidential; and
- b. Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the USAID/OIG duty to achieve a drug free work force.

4. The list of positions and incumbents must be maintained to ensure that it is current and accurate at all times. OIG/M/PS Division Chief will notify the DPM when:

- a. Positions are established or abolished;
- b. Significant changes are made to the duties of any position. The position must then be reviewed to determine if it meets the criteria for designation as a TDP;
- c. A personnel action results in a change of incumbent of a TDP; d. The organizational location of any TDP is changed.

5. Notification of Selection

An individual selected for random testing, and the individual's first-line supervisor, shall be notified the same day the test is scheduled, preferably, within two hours of the scheduled testing. The supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employee's name was selected randomly.

a. The DPM will notify the selected employee's first-level supervisor approximately 2 hours prior to the actual time of collection and provide the supervisor with a copy of the Random Drug Testing Program Checklist for Supervisor's (attachment (d)). If the first-level supervisor is unavailable, the next higher level of supervision will be contacted. The DPM will annotate the list with the date and time the supervisor was contacted. b. Approximately 15 to 30 minutes prior to the scheduled collection, the supervisor will privately inform the employee of the exact time and location of the test. In the event the collection site is distant from the work site, appropriate adjustments (generally no more than 60 minutes) will be made to the notification time so long as the advance notice is as brief a time as possible. c. The supervisor will respond to any employee questions to avoid misunderstanding and provide the employee with a copy of the Random Drug Testing Program Checklist for Employees (attachment (e)). The supervisor will instruct the employee to take an appropriate photo identification to the test site and will confirm that the employee possess such identification. The supervisor will discuss with a higher-level supervisor any problem that may arise with regard to the employee reporting for the test as scheduled. If a deferral, as described immediately below is required, the supervisor will contact the DPM and submit the required written documentation within two days of the scheduled collection.

7. Deferral of Testing

An employee selected for random drug testing may obtain a deferral of testing if the employee's AIG and DAIG concur that a compelling need necessitates a deferral. For example, a test may be deferred for an employee who is:

- a. Absent in an approved leave status (sick, annual, administrative or leave without pay);
- b. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification; An employee whose random drug test is deferred will be subject to an unannounced test within the following 60 days.

L. Reasonable Suspicion Testing.

Reasonable Suspicion Testing may be required of any employee in a TDP when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment.

1. Grounds. Reasonable suspicion testing may be based upon, among other things:

a. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug; b. A pattern of abnormal conduct or erratic behavior which is consistent with the use of illegal drugs or drug related impairment; c. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking; d. Information provided either by reliable and credible sources or independently corroborated; or e. Newly discovered evidence that the employee has tampered with a previous drug test.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

2. Procedures. If an employee is suspected of using illegal drugs, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. All evidence supporting this finding will be submitted through the DPC. The DPC (in conjunction with the DPM and OIG/M/PS Employee Relations when needed) will review the case to determine sufficiency of documentation supporting the reasonable suspicion finding. The decision to conduct a test will be made by the DPC the same day the event or behavior occurs or as soon as management becomes aware of the event or behavior. Immediately upon approval, but no later than 24 hours after the event which caused the determination by the DPC that action be taken regarding the employee, the DPM will be directed to such notice is at attachment (f). If the DPC determines that reasonable suspicion has been established, and as immediate follow-up to the test, the appropriate supervisor/manager will detail in writing the circumstances that warranted the test. At a minimum, the report will include the appropriate dates and times of the reported drug-related incidents, reliable and/or credible sources of information, reasons leading to the test, the higher level concurrence, findings of the test, and any action taken. The DPM will retain a copy of this documentation. arrange a test.

3. Obtaining the sample. The employee may be asked to provide the urine sample under observation in accordance with the criteria in section 5.O.2. of this directive.

4. Supervisory Training. Supervisors will be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training, however, shall not invalidate otherwise proper reasonable suspicion testing.

M. Applicant Testing

1. Objective

To maintain the high professional standards of the USAID/OIG workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed on the employment rolls of the USAID/OIG. This will have a positive effect on reducing instances of illegal drug use by employees working within the USAID/OIG, and will provide for a safer work environment.

2. Extent of Testing

USAID/OIG conducts thorough security investigations of all candidates selected for the Foreign Service, and of all Civil Service applicants selected for positions requiring a security clearance of "secret" or above. The security clearance process is an effective pre-employment screening device for uncovering many problems bearing on applicant suitability (including current and/or past patterns of drug abuse) and will be USAID's primary method of preventing the employment of individuals who abuse drugs. In addition, pre-employment drug testing shall be required of all individuals selected for employment in positions with either a statutory or regulatory requirement for pre-employment drug testing (i.e., drivers) and/or for positions that may be designated at the discretion of the Inspector General particularly sensitive because of the nature of the work.

3. Vacancy Announcements

Every vacancy announcement for positions designated for applicant testing shall state: "All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment." In addition, the applicant will be notified that selection to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain the above statement notice will not preclude applicant testing if advance written notice is provided to applicants in some other manner.

4. Procedures

The DPM shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and normally within 48 hours of notification.

Applicants will be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be reviewed only by the MRO to determine whether the individual is legally using an otherwise illegal drug.

5. Consequences

The USAID/OIG will decline to extend a final offer of employment to any applicant with a verified positive result, and such applicant may not reapply to

USAID/OIG for a period of six months. The OIG/M/PS Division Chief will object to the applicant on the basis of failure to pass the physical, a lack of personal characteristics necessary to relate to public employment, or failure to support the goals of the USAID/OIG. The USAID/OIG shall inform the applicant that a confirmed presence of drugs in the applicant's urine precludes the USAID/OIG from hiring the applicant.

N. Additional Types of Drug Testing

1. Accident or Unsafe Practice Testing

The USAID/OIG is committed to providing a safe and secure work environment. It also has a legitimate interest in determining the cause of serious accidents so that it can undertake appropriate corrective measures. Post accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based upon the circumstances of the accident, their actions are reasonably suspected of having caused or contributed to an accident that meets either of the following criteria:

- a. The accident results in a death or personal injury requiring immediate hospitalization, or;
- b. The accident results in damage to government or private property estimated to be in excess of \$10,000.

If an employee is suspected of having caused or contributed to an accident meeting either of the criteria stated above, the appropriate supervisor will present the facts and circumstances leading to and supporting this suspicion to the appropriate management official for investigation; who in turn will report his/her findings to the DPC. If appropriate, arrangements will be made by the DPM for testing. The supervisor will be instructed to prepare a written report detailing the facts and circumstances that warranted the testing.

2. Follow-up Testing

All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through EAP will be subject to unannounced testing following completion of such a program for a period of one year. Such employees shall be tested at a frequency to be stipulated in an abeyance contract executed with the employee prior to entry into a counseling or rehabilitation program. Such testing is in addition to any testing that may be imposed as a component of the EAP.

O. Test Procedures General

1. Technical Guidelines for Drug Testing

The USAID/OIG shall adhere to all scientific and technical guidelines for drug testing programs promulgated by HHS consistent with the authority granted by Executive Order 12564, and to the requirements of Section 503 of the Act. The USAID/OIG's drug testing program shall have professionally trained collection personnel, a laboratory certification program, rigorous analytical standards and quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

2. Privacy Assured

Any individual subject to testing under this directive, shall be permitted to provide urine specimens in private, and in a rest room stall or similar enclosure so that the employee is not visually observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided when:

- a. Facts and circumstances suggest that the individual is an illegal drug user;
- b. Facts and circumstances suggest that the individual is under the influence of drugs at the time of the test;
- c. The individual has previously been found by USAID to be an illegal drug user;
- d. Facts and circumstances suggest that the individual has equipment or implements capable of tampering or altering urine samples; or
- e. The individual has previously tampered with a sample. Any such reason must be documented in writing and retained with the collection records by the DPM and/or in the adverse action files.

3. Failure to Appear for Testing

Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the full range of disciplinary actions, including dismissal. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the DPM to obtain guidance on what action should be taken. An employee should be given a reasonable amount of time to provide the sample. If an employee is unable to provide at least 30 milliliters of urine, the temperature of the first sample should be checked and the partial specimen should be placed in a secure area. The following steps should then be taken:

- a. If the employee is unable to void, the employee will be asked to drink sufficient fluids to facilitate urination. The employee will be required to remain at the collection site within view of the Collection Site Coordinator until the sample is provided.
- b. When the employee is ready to provide the second specimen, the employee shall void in the catch container and the temperature of that sample

shall be checked. Once it is determined to be within the acceptable temperature range, both the first and second samples shall be combined in a single container. Under either of these conditions, the DPM may elect to release the employee. This release is not considered a deferral.

4. Opportunity to Justify a Positive Test Result

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

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

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary. If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO shall immediately contact the DPM, upon obtaining a verified positive test result.

5. Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, the employee may be exempted from the random testing designated pool for a period not to exceed sixty days, or for a time period specified in an abeyance contract or rehabilitation plan approved by the DPC. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to section 5.N.2. of this directive.

6. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Scientific and Technical Guidelines promulgated by the Department of Health and Human Services or any subsequent amendment thereto (such as HHS Guidelines, or USAID Drug free Workplace Plan or any amendment thereto), shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

P. Records and Reports

1. Confidentiality of Test Results

The laboratory may disclose confirmed laboratory test results only to the MRO. Any positive result which the MRO justifies by licit and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test Results will be protected under the provisions of the Privacy Act, 5 USC 552a, et sea., and Section 503 (e) of the Act, and may not be released in violation of either Act. The MRO may maintain only those records necessary for compliance with this order. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, except that the disclosure of the results of any audit may not include information identifying any employee.

The results of a drug test of an USAID/OIG employee may not be disclosed without the prior written consent of such employee, except:

- a. To the MRO;
- b. To the DPM;
- c. To the Administrator of the EAP in which the employee is receiving counseling or treatment or is otherwise participating;
- d. To any management official within USAID/OIG having authority to take adverse personnel action against such employee; or
- e. Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

For purposes of this Section, "management official" includes any management or government official whose duties necessitate review of the test results in order to process adverse personnel action against the employee. In addition, test results with all identifying information removed shall also be made available to USAID/OIG personnel, including the DPC and DPM, for data collection and other activities necessary to comply with Section 503(f) of the Act.

2. Employee Access to Records

Any employee who is the subject of a drug test shall, upon written request, have access to any records relating to:

- a. Such employee's drug test; and
- b. The results of any relevant certification, review, or revocation of proceedings, as referred to in Section 503(a) (I) (A) (ii) (III) of the Act. However, except as authorized by law an applicant who is the subject of a drug test shall not be entitled to this information.

3. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential except as set forth in this policy directive and should be treated as such by anyone authorized to review or compile program records. In order to implement this policy directive efficiently and to make information readily retrievable, the DPM shall maintain all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this order. All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the DPC. Such records shall remain confidential except as set forth in this policy directive, locked in a combination safe, with only authorized individuals who have a "need-to-know" having access to them.

4. Employment Assistance Program Records

The EAP Administrator shall maintain only those records necessary to comply with this program. After an employee has been referred to an EAP, the EAP will maintain all records necessary to carry out its duties. All, medical and or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 CFR Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress. (42 CFR Sections 2.1 et seq. (1996).

5. Maintenance of Records

USAID/OIG shall establish or amend, a record keeping system to maintain the records of the USAID/OIG DFWP consistent with the USAID/OIG's Privacy Act System of Records and with all applicable Federal laws, rules, and regulations regarding confidentiality of records including the Privacy Act 5 USC Section 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the General Counsel. The record keeping system should capture sufficient documents to meet the operational and statistical needs of this policy directive, and include:

- a. Notices of verified positive test results referred by the MRO;
- b. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;
- c. Anonymous statistical reports; and
- d. Other documents the DPC, DPM, MRO, or EAP Administrator deems necessary for efficient compliance with this program.

6. Records Maintained by Government Contractors

Any contractor hired to satisfy any part of this policy directive shall comply with the confidentiality requirements of this policy directive, and all applicable Federal laws, rules, regulations and guidelines.

7. Statistical Information

The DPM shall collect and compile anonymous statistical data for reporting the number of:

- a. Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered;
- b. Verified positive test results;
- c. Voluntary drug counseling referrals;
- d. Involuntary drug counseling referrals;
- e. Terminations or denial of employment offers resulting to submit to testing;
- f. Terminations or denial of employment offers resulting from alteration of specimens;
- g. Terminations or denial of employment offers resulting from failure to complete a drug abuse counseling program; and
- h. Employees who successfully complete EAP.

This data, along with other pertinent information shall be compiled for inclusion in the Department of State's annual report to Congress required by Section 503(f) of the Act. This data shall also be provided to HHS on a semi-annual basis to assist in overall program evaluation and to determine whether changes to the HHS Guidelines may be required.

6. APPLICABILITY

This directive is applicable to all OIG employees.

7. EFFECTIVE

This directive is effective immediately until rescinded or superseded by the Inspector General.

Everett L. Mosley
Inspector General

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