

DEPARTMENT OF THE INTERIOR  
**DEPARTMENTAL MANUAL**

Personnel

Part 370 DM Addition to FPM

Federal Employees Health

Chapter 792 and Counseling Programs

370 DM 792, 1.1

Subchapter 1. General Provisions

1.1 Policy. Progressive personnel management and effective program administration cannot be accomplished without healthy employees. Good staff utilization involves effectively using, conserving, and developing human resources to accomplish the Department's missions with minimum costs, and to meet national, social, and economic objectives. Occupational health and employee health programs are an integral part of personnel management and a responsibility of every supervisor and manager. It is the policy of the Department to provide occupational health programs to deal constructively with the health of its employees. In carrying out the objectives of the Federal Employees Health and Counseling Programs, the local representatives of bureaus and offices of this Department shall cooperate with Federal Executive Boards and other interagency committees and organizations, as appropriate, to provide as many health services as possible for employees of this Department. Health services of the scope defined in this chapter shall be provided for employees, consistent with the provisions of OMB Circular A-72.

1.2 Scope. The extent of these services to be provided at each work location will be determined by bureaus after consulting with the Chief, Division of Medical and Health Services, Office of Personnel, who is the Department's Medical Director, and shall be in accord with the working conditions and number of employees at that work location. Where the extent of such services will be in conflict with the limitations of this chapter, the Medical Director will be consulted and his/her approval secured. Where joint facilities are established involving two or more bureaus, consultations may be held with the Medical Director to resolve differences which cannot be settled among the bureaus concerned.



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Subchapter 2. Responsibilities

2.1 Departmental Responsibility. The Assistant Secretary - Policy, Budget and Administration exercises the authority of the Secretary to promote and maintain the physical and mental fitness of all employees in the Department. The Director of Personnel is responsible for reviewing existing programs and assuring that health programs are available to deal constructively with health and well-being of all employees.

2.2 Occupational Health Service Officer. The Chief, Division of Medical and Health Services, Office of Personnel, is designated as the Medical Director of the Department. He/she serves as senior Medical Director and counselor for the Department and is responsible for planning, organizing, and directing the Departmentwide health and medical program and serves as the technical expert and advisor to Departmental officials on matters pertaining to health and health hazards. He/she has the authority and responsibility for development, coordination, implementation and direction of health and medical policy, practices, and procedures so as to provide the Department with a complete health and medical program. The Medical Director shall be responsible for conducting evaluations and making surveys of the health programs for bureaus and offices of the Department. He/she will assist the bureaus in establishing health programs with services provided at work locations in the states, District of Columbia, the Territories and Possessions, and Puerto Rico.

2.3 Health Service Coordinators. Each bureau shall appoint a Health Service Coordinator and notify the Medical Director of the person appointed and of any subsequent changes as they occur. The Health Service Coordinator is the contact person for the bureau with the Medical Director and acts as liaison with the various organizations involved in occupational health programs. The Health Service Coordinator is responsible for ensuring that occupational health programs are established and maintained to deal constructively with the health of employees in relation to their work.



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Subchapter 3. Program Implementation

3.1 Establishing and Operating Programs. In locations where there are employees of only one bureau, that bureau may provide health service programs in accordance with the provisions of this chapter. Where two or more bureaus have employees in the same area, cooperative arrangements may be made to provide occupational health services. Such arrangements shall be reported to and coordinated through the Medical Director, who may either approve the arrangement, or if necessary, enter into an agreement on behalf of the Department with the costs allocated to the participating bureaus on an equitable basis. In localities where it is deemed feasible to participate with other Federal agencies in providing health services, arrangements shall be made in accordance with OMB Circular A-72, regulations of the Office of Personnel Management, and the provisions of this chapter. Bureaus when instituting new health programs (innovative programs or programs in new locations) must secure the approval of the Medical Director who will consult, as required by law with appropriate authorities of the U.S. Public Health Service. (See 5 U.S.C. 7901). A bureau or bureaus may request the Medical Director to plan, coordinate, or direct their health programs to ensure that minimum acceptable medical standards are maintained and adequate health services are offered at reasonable costs. When such a request is made and approved, the bureau or bureaus concerned will be responsible for funding and providing personnel ceiling as well as clinic space and equipment. Operational administration, coordination, and direction of the health clinic will be a responsibility of the Bureau Health Service Coordinator and in cases where two or more bureaus have cooperative arrangements, responsibility shall be assigned to the Health Service Coordinator of the bureau having the most participating employees.

3.2 Criteria for Establishment of Health Programs. Such programs will ultimately provide health services of the scope specified in this chapter for all employees of any Federal Department or agency in the same or nearby building. Bureaus likewise, will provide health services of the scope specified in this chapter for employees who work in groups of less than 300 where it is determined that working conditions involving the safety and health of the employee warrant such provisions.

3.3 Methods. Health services for employees may be provided by:

A. Employment on a full or part-time basis of physicians, nurses, or other technical personnel using facilities provided by the bureau or the Department; or

B. Entering into an appropriate agreement with another Federal Department or agency for the provision of such services; or

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C. Entering into an appropriate agreement with qualified private or public sources for professional services, including consulting services or facilities. This alternative may be most appropriate in cases where there are less than 300 Federal employees in a given area.

3.4 Employee Medical Records. Where a health unit is operated by a bureau, and is under the control of a physician or a registered nurse under medical supervision, the actual records of a medical examination and other miscellaneous medical records including SF-93, Report of Medical History, if used, should be retained by the health unit and be held confidential. Otherwise, these records must be kept in a separate locked cabinet during the employee's service with the bureau and may not be made a part of the Official Personnel Folder. They may not be made available to personnel other than those who require them to carry out an assigned responsibility. Parts D, E, and F of SF-78, Certificate of Medical Examination, are not considered to be a medical record and are filed in the Official Personnel Folder. Medical records are to be held strictly confidential by the professional staff of the health unit. Disclosure of such health record contents is permissible only with the written consent of the employee or upon the order of a competent court. Upon the request of the Office of Worker's Compensation Programs, Department of Labor, disclosure of a medical record related to a job-connected injury is permitted provided that no other information in the employee's medical record is disclosed.

3.5 Financing Health Programs.

A. Occupational Health Services. Bureaus should budget funds to be utilized in occupational health programs for all their employees including those in locations where there are less than 300 of their employees. Bureaus may utilize cooperative arrangements in the interest of economy, negotiation of the lowest per capita cost where such is the common denominator in cost determinations and where such arrangements will result in serving a greater number of employees at a minimum of cost. Other individual employee medical services authorized in this chapter, such as fitness for duty examinations, preventive health services such as immunizations and similar procedures to prevent occupational diseases and illnesses, other medical services necessitated by reason of the conditions of employment and accident prevention measures, will be financed from bureau appropriations.

B. Job-related Injuries. Employees who sustain personal injuries or diseases while in the performance of duty are provided medical and other services, appliances, supplies, and vocational rehabilitation in permanent disability cases under regulations issued by the Department of Labor. Expense for treatment and medical care for job-related injuries will continue to be provided in accordance with the Federal Employees Compensation Act. (See 370 DM 810)

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3.6 Health Service Reports and Agreements.

A. Bureaus which establish internal occupational health service programs or cooperate with other Federal agencies and Departments under specific agreements will obtain appropriate operative reports reflecting (1) the nature, content, and scope of services rendered; (2) the cost of services; (3) the basis for determining the level of health services; (4) the occupational hazards of health risks of the work environment that may justify revised costs.

B. The Medical Director shall submit an annual evaluation report to the Director of Personnel. In compliance with the provision of OMB Circular A-72, he/she shall also submit an annual report to the Office of Personnel Management concerning the extent, staffing, facilities, and operating results of occupational health programs of the Department.





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Subchapter 4. Elements of the Program

4.1 Therapeutic Services. Initial diagnosis and first treatment of injury, illness, or dental conditions that become necessary during working hours and that are within the competence of the professional staff and facilities of the health service unit, if available, may be provided at the request of or on behalf of the employee.

4.2 Emergency Care. Employees requesting emergency treatment of illnesses, injuries, or dental conditions not incurred in the performance of duty will be given such care or treatment as is required to save life or limb, or to provide for the safety and comfort of the employee until definitive medical care is obtainable. Employees requesting treatment for job-related injuries shall be treated as required immediately, and referred to the nearest qualified physician or Government medical facility. An employee injured by accident while in the performance of duty has the right to select a physician of his/her choice to provide necessary treatment. Generally 25 miles from the place of injury, employing agency, or the employee's home is a reasonable distance to travel for medical care; however, other pertinent factors must also be considered. A qualified physician includes doctors of medicine, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

4.3 Preemployment Physical Examination. Before bureau or bureaus organizationally maintaining their own health units offer to perform preemployment physical examinations, clearance must be first secured from the Medical Director. A health unit's responsibility will otherwise be limited to reviewing the report of a preemployment examination done elsewhere and paid for by the applicant and making a recommendation as to whether the employee is physically qualified for the position for which the employee is being considered. In this request, the following should be considered:

A. The Office of Personnel Management advises that minimum physical standards be established in order to encourage employment of the handicapped.

B. When the physical demands of a position are such that an appointing officer can adequately describe and assess them by the use of SF-177, Statement of Physical Ability for Light Duty Work, the appointing officer must waive any existing requirement of a medical examination for personnel actions involving General Schedule positions in the competitive service, and similar positions in Schedule B of the excepted service, with the following exceptions:

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- (1) Positions involving operation of motor vehicles, e.g. truck drivers, crane operators.
- (2) Positions which may involve some food handling.
- (3) Positions involving exceptional physical or mental stress.
- (4) Positions involving direct physical contacts with people, e.g. nurses and physical therapists.
- (5) Positions involving hazardous work above ground level or around power-driven machinery.
- (6) Positions which may entail strenuous exertion or hazardous duty which otherwise have physical demands more arduous than those described in the SF-177, e.g. firefighters, smoke jumpers, and law enforcement agents.

C. The Department is empowered to require medical standards for employment above and beyond the minimum established by the Office of Personnel Management, in particular for positions in which the environment and duties of the occupation so warrant.

D. In health units where the physician is required to perform routine preemployment examinations, the physical examination shall be conducted according to the established format.

E. The function of the health unit physician in reviewing the preemployment examination form is only advisory. The final decision rests with the Medical Director, or in case of appeal, with the Office of Personnel Management.

4.4 In-service Physical Examination. In-service physical examinations may be performed in the following categories:

A. In-service Examinations. Periodic in-service physical examinations of employees such as motor vehicle operator, promotion or reassignment to a position which has unusual physical demands such as those listed in 370 DM 792, 4.3B, foreign duty, and occupational health examination.

B. Fitness for Duty Examinations. Fitness for duty physical examinations within the capabilities of health unit resources (See 22 CG 32 and 41 CG 531).

4.5 Other Employee Services.

A. Health Counseling. Health counseling shall be provided to employees presenting symptoms of disease or if necessary for the prevention of disease.

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B. Referrals. Employees shall be referred upon their request, to private physicians, dentists, and other community resources.

C. Treatment Prescribed by Private Physicians. Health units may provide treatment and administration of medication to employees as prescribed by their private physician. The orders for such treatment or medication shall be stated in writing and signed by the employee's private physician. The medication is to be furnished by the employee. These services must be within the professional competence of the health unit.

D. Preventive Health Service. Preventive health services shall be provided to: (1) conduct disease screening examinations; (2) offer immunizations; (3) promote health education and encourage employees to maintain personal health; and (4) deal with occupational hazards and their effects on the work environment.

E. Visits to Health Units. Employees shall inform their supervisors of any visits to the health unit. Periodic bed rest in the health unit is authorized only when prescribed by the health unit physician or a written request of the employee's private physician. Such periodic bed rest may be authorized without charge to leave, not to exceed one hour a day.

F. Other Programs. Formal alcoholism, drug abuse, mental health, and other medical and health programs may also be provided. Health units may coordinate with various programs such as those provided by the American Mental Health Association and other organizations in presenting their special programs to the employees served.



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370 DM 792. 5.1

Subchapter 5. Alcoholism and Drug Abuse Program

5.1 Purpose. Employees who are afflicted with alcoholism, alcohol abuse, drug dependency, and substance abuse shall receive the same careful consideration and respect as employees who have any other illness. The purpose of the Alcoholism and Drug Abuse Program is to provide guidance in overcoming these problems by assisting the employee who needs and asks for help.

5.2 Policy. The Department recognizes alcoholism, alcohol abuse, drug dependency, and substance abuse as illnesses or health problems that impair work performance. Excessive absences, poor work decisions, and high accident rates are just a few indicators manifested by a troubled employee. Therefore, when an employee's work performance, attendance, conduct, or reliability is impaired because of alcohol, drugs, or related behavioral problems, appropriate action must be taken under provisions of the Department's employee health and counseling programs.

5.3 Definitions. The following definitions complement those provided in FPM Supplement 792-2.

A. Drug abuser is a person who takes a drug or substance with known abuse potential, not for medical or health reasons, but for the purpose of achieving some physiological or physical and oftentimes harmful effects. Whether the drug or substance is a narcotic, tranquilizer, stimulant, hallucinogen, etc., is of less concern to the Department than the fact that an employee has work performance and productivity problems.

B. Rehabilitated problem drinker or drug abuser is a person who has successfully abstained from alcohol or drugs. In the case of the problem drinker, the alcohol intake has been under control to the extent that conduct and job performance are considered acceptable.

C. The troubled employee is an employee whose work performance or behavior is frequently, or increasingly, adversely affected because of what appears to be personal problems.

5.4 Program Guidelines.

A. Problem Identification. Poor work performance and poor conduct may be caused by alcoholism, drug abuse, or behavioral problems. Use of drugs or substances with abuse potential or excessive intake of alcohol is frequently a symptom or result of some personal problem or lack of suitable social adjustment which culminates in an organic physical disorder. Consequently, the earlier a troubled employee is identified and assistance offered, the greater is the chance for success in treatment and rehabilitation. The Department recognizes that supervisors do not have the professional qualifications to diagnose medical and health problems; therefore

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they are required to seek advice and assistance from designated qualified personnel. Efforts in liaison and referral should be made with the type of medical/community services that can allay the problem.

B. Employee Assistance. When an employee sincerely seeks treatment and help, the Department shall provide assistance and create an atmosphere of understanding. Troubled employees should be encouraged to seek help from the designated program administrators and/or advisors, health services, personnel staff, or the supervisor. In dealing with the troubled employee, there is a need to be understanding, frank and firm. However, acceptable job performance and conduct are the responsibilities of the employee.

C. Rehabilitation. One of the most important aspects of a successful recovery is the motivation of the employee to undergo treatment, rather than the treatment itself. When the employee accepts a management offer of assistance or self-refers, he/she shall be permitted a reasonable amount of administrative leave to communicate with the program advisor. Another important aspect of successful recovery is the rehabilitation phase. In this regard appropriate community resources shall be utilized. When a troubled employee is participating in an approved program of treatment and rehabilitation, use of leave (sick, annual or leave without pay) shall ordinarily be approved for such purpose.

D. Privacy. Confidentiality of information and records shall be strictly maintained. The fact or appearance of invasion of privacy must be avoided and the employee's dignity and self-respect shall be guarded.

E. Disciplinary Actions. The Department shall not condone activities of employees that are contrary to existing regulations or laws. This program supplements existing personnel rules and regulations and shall be executed as a nondisciplinary procedure. It shall not jeopardize the employee's right to disability retirement if the condition warrants. Further, no employee may be denied or deprived of job security or promotion opportunities solely on the grounds of prior alcohol abuse, drug abuse, or alcoholism, nor when a troubled employee requests counseling and referral assistance from designated personnel except as limited by Section 413 (c)(2) of Public Law 92-255 relating to sensitive positions.

5.5 Responsibilities.

A. Program Responsibility. The Director of Personnel is responsible for the Department's Alcoholism and Drug Abuse Program.

B. Department's Program Administrator. The Chief, Division of Medical and Health Services, who is the Department's Program Administrator, shall be responsible for:

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- (1) Developing and implementing a Departmentwide program.
- (2) Providing guidance and assistance to bureaus.
- (3) Evaluating the program's effectiveness, and making reports to the Director of Personnel and the Office of Personnel Management.
- (4) Providing program review and consulting services to bureaus.
- (5) Maintaining liaison and cooperation with Federal agencies, industry, state and local government organizations, professional groups, and civic organizations.
- (6) Assuring that adequate training courses are available.
- (7) Coordinating other management actions regarding employees with alcoholism, drug or substance abuse, alcohol abuse, drug dependence, or behavioral problems such as coordinating with the Office of Personnel Management, the Merit Systems Protection Board, or the Office of Workers Compensation Programs.

C. Heads of Bureaus. Heads of bureaus are responsible for implementing the program to meet their organizational and operational needs at headquarters and field locations. Each bureau head shall designate a Bureau Program Administrator to ensure the establishment and maintenance of an effective program for bureau employees. The name of the Bureau Program Administrator shall be provided to the Department's Administrator as well as changes as they occur.

D. Bureau Program Administrators. Bureau Program Administrators are responsible for:

- (1) Providing program review and consultative services at the bureau and subordinate levels.
- (2) Developing and maintaining bureau counseling capability.
- (3) Providing an effective means for early identification of the troubled employee.
- (4) Cooperating with unions and where exclusive recognitions exist, consulting and negotiating on the appropriate elements.
- (5) Maintaining liaison and cooperation with Federal agencies, industry, State and local government organizations, professional groups, and civic organizations.

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(6) Assuring that training courses provided in and outside the bureau are made available to employees.

(7) Evaluating the bureau's program and reporting the results to the Department's Program Administrator.

E. Heads of Field Installations. Heads of field installations or officials with appointing authority shall designate a Program Advisor for their facilities.

F. Program Advisors. Program Advisors are responsible for:

(1) As appropriate, being acquainted with community resources for helping employees with drinking, drug or behavioral problems.

(2) Providing assistance and advice to employees and referring employees to treatment agencies. Where one is available, the medical staff will do the referral work.

(3) Encouraging and helping employees to obtain assistance from treatment programs.

(4) Maintaining continuing follow-up of all cases.

(5) Advising employees who seek help for members of their immediate families.

(6) Keeping in complete confidence any discussions with a troubled employee or the employee's family.

G. Supervisors. The key factor to the success of the program largely depends on how the supervisor reacts to employee behavioral and job performance problems. When an employee becomes deficient in work performance and/or behavior, the supervisor has the responsibility for confronting the employee and for providing the opportunities to correct the problem. Early intervention will generally be helpful in the treatment and rehabilitation of troubled employees; it may even be life saving. Supervisors must avoid making diagnosis or remarks that the employee is an alcoholic, drug abuser, etc. This is a decision to be made by a professionally trained person only. Supervisors are responsible for:

(1) Being alert to and aware of changes in personal appearance.

(2) Being alert, through continuing observation, to changes in the work and/or behavior of employees. Early recognition and identification are essential.



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(3) Documenting examples of changes in job performance, conduct, or attendance patterns.

(4) Referring to the Program Administrator and/or Advisor, or medical staff any employee whose job performance or conduct is not acceptable after measures to correct such performance have not been successful. The Program Administrator, Advisor or medical staff will try to determine whether the cause is due to alcohol, drug or behavioral problems.

(5) Consulting with the medical or personnel staffs as well as with the Program Administrator or Advisor regarding appropriate assistance for the troubled employee.

(6) Recommending and/or granting leave for treatment and rehabilitation on the same basis that it is granted for any other illness.

(7) Providing the necessary support to an employee who has entered a treatment program. When an employee has an occasional relapse during the treatment phase but shows continued overall improvement, the supervisor shall provide encouragement and assistance to the employee to continue treatment.

(8) Continuing observation of performance and initiating appropriate corrective action if it keeps on deteriorating.

(9) Taking immediate action when there is good reason to believe that an employee is involved in criminal conduct such as selling drugs or other substances with abuse potential or stealing to support a drug habit. Supervisors shall report such occurrence through a management level at which exercise of discretion is normally expected and through which reports of other types of criminal activities are made.

**5.6 Role of Medical Personnel.**

**A. Physician Involvement includes:**

(1) Forming a medical impression as to the seriousness of the employee's illness.

(2) Providing professional expertise.

(3) Assessing the underlying cause or causes which are an important factor in determining the medical management of the employee toward rehabilitation.

(4) Providing medical advice to the employee and supervisor until rehabilitation has been accomplished or until a decision has been made to reassign, demote, or terminate the employee.

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B. Where health services are not directly available within the Department or under contract to the Department.

(1) The Program Administrator, Advisor or servicing personnel office shall seek available services of a Federal agency that has an agreement to provide such services.

(2) Where health services cannot be obtained from a cooperating Federal agency, private and/or community services shall be utilized in accordance with OMB Circular A-72.

5.7 Role of Labor Organizations.

A. Department Level Coordination. The Department will continue to seek union support in dealing with this program. Timely consultation with the unions will be conducted by the Department through the Division of Labor Management Relations, Office of Personnel.

B. Bureau and Local Level Coordination. At organization levels where there are National Consultation Rights with a labor organization, there shall be timely consultation on appropriate elements of this program. At organization levels where exclusive recognitions exist, the labor organization must be accorded the right to meet, confer, and where appropriate, negotiate on the appropriate elements of the program. Union representatives may be included in orientation and training programs, if given to general employee groups and supervisors, on this subject. There should be cooperation offered by supervisors to shop stewards and other union representatives. However, the objective of motivating an employee to accept needed treatment or otherwise to seek correction of job performance deficiencies is essentially a management responsibility.

5.8 Confidentiality of Information. Confidentiality of information and all records and reports concerning the troubled employee must be strictly maintained. In addition, in accordance with Public Law 92-255 and its implementing regulations in 5 CFR 294.401:

A. Personnel performing a drug abuse prevention function are subject to the provisions of confidentiality of information as well as to the stated penalties for violating them. All personnel designated or expected to perform a drug abuse prevention function should be thoroughly familiar with Section 408 of Public Law 92-255 and 5 CFR 294.401. Additionally, anyone, regardless of program responsibility, who provides counseling to an employee regarding drug abuse is considered performing a drug abuse prevention function. Therefore, anyone who is not designated to perform drug abuse prevention functions should discontinue such activities.

B. Anyone performing drug abuse prevention functions shall not disclose any information to law enforcement authorities, and should not seek

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to elicit information relating to crimes or criminal conduct from employees. Personnel performing drug abuse prevention functions are not bound to assist employees who persist in discussing illegal activities and legal counsel should be sought when this occurs. The employee should be warned that continued disclosure of illegal activities will result in termination of counseling services. Should termination of services occur and the employee was referred by management, the manager or supervisor should be advised of the action.

5.9 Records and Reports.

A. Records. Records containing medical information shall be maintained according to requirements prescribed in FPM 293. Official personnel folders shall not include references to problem drinking or drug abuse except when such information is part of specific charges leading to disciplinary or separation actions.

B. Reports. The bureau Program Administrator is responsible for coordinating the bureau's consolidated report on the program. (This reporting requirement has been assigned report control symbol 0058-OPM-AN.) Each bureau report will be forwarded to the Department's Program Administrator who is responsible for submitting the consolidated, Departmental report to the Office of Personnel Management.



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Subchapter 6. Employee Counseling Program

6.1 Policy. Alcoholism, alcohol abuse, drug dependency, substance abuse and other illnesses or health problems impair work performance. Excessive absences, poor work decisions, and high accident rates are a few indicators manifested by a troubled employee. An Employee Counseling Program shall be provided to assist employees who need and ask for help in overcoming these problems.

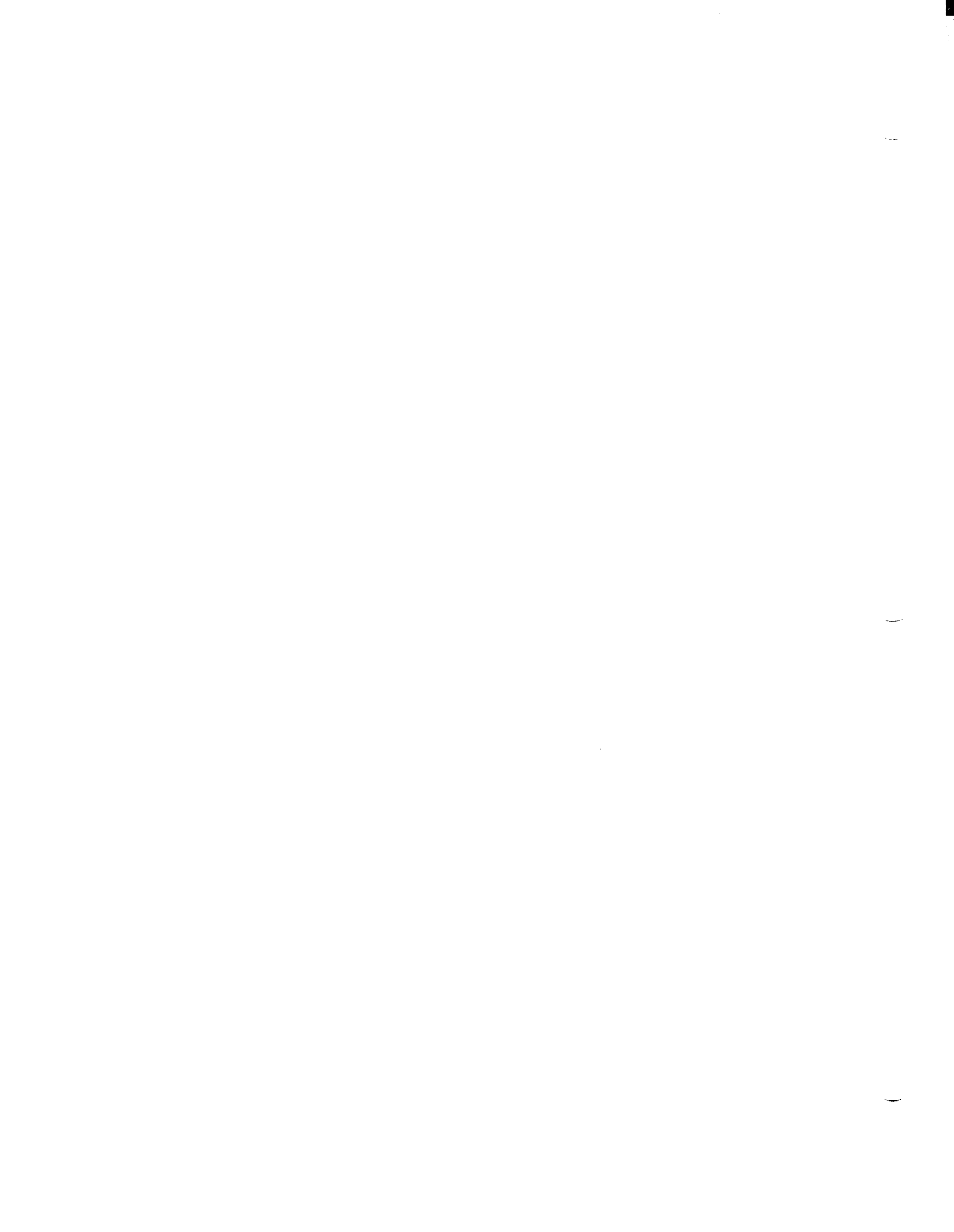
6.2 Responsibilities. The responsibilities covered in 370 DM 792, 5.5 are applicable to the Employee Counseling Program.

6.3 Definitions. The definitions given in 370 DM 792, 5.3 are applicable to the Employee Counseling Program.

6.4 Roles of Medical Personnel and Labor Organizations. The roles of medical personnel and labor organizations in the Employee Counseling Program are the same as in the Alcoholism and Drug Abuse Program as explained in 370 DM 792, 5.6 and 370 DM 792, 5.7.

6.5 Confidentiality of Information. The confidentiality of information in the Employee Counseling Program is also governed by Public Law 92-255 and implementing regulations as explained in 370 DM 702, 5.8.

6.6 Records and Reports. Records and reports of the Employee Counseling Program are to be given the same treatment as those maintained under the Alcoholism and Drug Abuse Program (370 DM 792, 5.9).



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Subchapter 7. Medical Surveillance Program

7.1 Authority. The Department's authority for developing and implementing a medical surveillance program is contained in the Occupational Safety and Health Act of 1970 (Public Law 91-596, Section 6 (b)(7)), 29 CFR Part 1960, and Executive Order 12196.

7.2 Definition. Medical surveillance is a program entailing medical evaluations of employees who may have been exposed to harmful agents in their work environment. Harmful agents may be in the form of: chemicals (liquids, solids, or gases); electromagnetic and ionizing radiation; noise, vibration, temperature and pressure extremes; and biological organisms.

7.3 Responsibilities. The following have responsibilities in the implementation of a Departmentwide Medical Surveillance Program.

A. Secretary of the Interior. The Secretary of the Interior is responsible for providing a safe and healthful work environment for all of the Department's employees.

B. Assistant Secretary - Policy, Budget and Administration (PBA). The Assistant Secretary - PBA, through the Director of Personnel, is responsible for the Department's Medical Surveillance Program. The Assistant Secretary - PBA also is responsible for determining whether employees may be reassigned in mass to a safe workplace and/or closing a workplace because of hazardous conditions that may affect the health and welfare of the employees concerned.

C. Director of Personnel. The Director of Personnel is responsible for assuring that the employee's rights are safeguarded and ensuring any personnel action recommended under this program is in accordance with existing directives and regulations.

D. Department Medical Director. The Department's Medical Director, Office of Personnel, is responsible for the effective implementation of the Department's Medical Surveillance Program. The Medical Director shall take necessary action, as required, to assure that the Department's Medical Surveillance Program is implemented by the bureaus/offices in a consistent manner which meets Departmental requirements as promulgated by the National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), and the Office of Personnel Management (OPM). The Medical Director initiates special evaluations, as required, to assure that the program meets current policies.

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E. Department Safety Manager. The Department Safety Manager, Office of Acquisition and Property Management, will assist the Medical Director by providing effective oversight of the Medical Surveillance Program. The Department Safety Manager is responsible for maintaining continual oversight by means of analysis of bureau Action Plans and the Quarterly Status Reports (485 DM 7.2B and 7.3), review of the annual OMB Circular A-123, and the triennial bureau/office Safety and Environmental Health Program Evaluations (485 DM 7.4A).

F. Heads of Bureaus. The head of each bureau is responsible for establishing, implementing, and monitoring a medical surveillance program. They have the responsibility for providing a healthful workplace for employees who are required to work in environments where harmful conditions exist as determined by individuals qualified to make these determinations.

G. Bureau Personnel Officers. Each bureau personnel officer is responsible for determining whether an employee can be reassigned, retired, terminated, or what other personnel action needs to be taken where medical surveillance examinations/tests indicate that an employee will be harmed if he/she continues in his/her position and work environment. The personnel officer coordinates with the Medical Director whose medical recommendations usually form the basis of the personnel action in these situations.

H. Managers/Supervisors. Managers and supervisors, especially first line supervisors, are responsible for the well being of employees under their purview and for advising employees, either directly or indirectly, about hazardous conditions in the workplace that have been identified and of protective measures that must be taken.

I. Employees. Employees are responsible for working in a safe manner as prescribed in 29 CFR Part 1960. This includes, when necessary, wearing of personal protective equipment, the safe handling of toxic materials, and proper usage of hazardous equipment.

7.4 Elements of the Medical Surveillance Program. An effective Medical Surveillance Program includes, but is not limited to, the following essential elements.

A. The effectiveness of the Medical Surveillance Program is dependent on close coordination of the environmental health, medical, personnel, and safety staffs along with managers and supervisors at all levels especially first line supervisors.



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B. Employees who are exposed to harmful environmental factors should be identified and evaluated by professionally qualified industrial hygienists.

C. The Department considers medical examinations and/or testing to be mandatory under certain situations or circumstances. (5 CFR Part 339); therefore, those employees who are working in positions which may be hazardous may be required to undergo medical examinations and/or testing at the direction of the Department Medical Director.

7.5 Bureau Medical Surveillance Program. Each bureau will prepare a Medical Surveillance Program for review and approval by the Department Medical Director. The program must provide for the following:

A. Coverage of elements indicated in 370 DM 792, 7.4 , and

B. Identification of those occupations by series which have inherent hazards. Employees who are employed in these occupational series may be candidates for inclusion in the bureau Medical Surveillance Program.

C. Contract employees are not covered by the Department's Medical Surveillance Program. Contractors, however, may be required to implement medical surveillance programs for their employees if specified in contracts negotiated by the Department.

7.6 Fitness for Duty Examinations. When an employee exhibits debilitating symptoms as revealed by the surveillance medical examination and/or test, he/she may be directed to undergo a fitness for duty examination. Based on the medical determination by the Department Medical Director, the employee may be referred to the bureau personnel officer for reassignment, termination, or other appropriate action in accordance with existing directives.



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Part 370: Departmental Human Resources  
Management Program

Part 370, Chapter 792-8

Chapter 792: Federal Employees Health and Counseling Programs  
Subchapter 8: HIV/AIDS in the Workplace  
Originating Office: Office of Personnel  
Office of the Secretary

1. What Is HIV/AIDS?

Acquired Immune Deficiency Syndrome (AIDS) is an infection resulting from the presence of the Human Immuno-Deficiency Virus (HIV). As the virus becomes more active, the body's immune system begins to fail and the person is likely to develop infections, malignancies, or other health problems, which lead to the diagnosis of AIDS. Only through education and prevention can we stop its spread. As HIV/AIDS research continues, and individuals with HIV/AIDS live longer productive lives, there is an increased likelihood of working with an employee living with AIDS.

2. What Am I Entitled to If I Have HIV/AIDS?

As an employee, I

- Will be treated in the same non-discriminatory manner as any other employee with a similar chronic illness.
- Will be subject to the same conduct and performance requirements as other employees.
- Am covered by the same legal protections as other employees with disabilities.
- Am entitled to the protections of the Privacy Act.
- May request sick or annual leave or leave-without-pay to pursue medical care or to recuperate from the effects of my medical condition.

- May be eligible for disability retirement if my medical condition warrants and I have the requisite years of Federal service to qualify.
- May have my ability to perform job duties evaluated by an appropriate medical authority.

3. *What Are My Responsibilities As a Supervisor or Manager Towards Employees With HIV/AIDS?*

As a supervisor or manager, I will

- Make decisions with respect to entitlement to reasonable accommodation and implement such decisions in accordance with the Rehabilitation Act of 1973 (29 U.S.C. 794). The reasonable accommodations may include changes in work assignments such as job restructuring, reassignments, liberal leave or flexible work schedules to the extent permitted under the Rehabilitation Act.
- Address situations, through counseling and other means, where fellow employees express reluctance or threaten refusal to work with HIV/AIDS employees.
- Grant leave in the same manner as I would for other employees including any leave entitlements under the Family and Medical Leave Act (Public Law 103-3) and the Federal Employees Family Friendly Leave Act (Public Law 103-388).
- Obtain medical information on a need-to-know basis when necessary for making and implementing personnel management decisions.

4. *What Role Does The Department Play When An Employee Has HIV/AIDS?*

The role of the Department of the Interior is to:

- Comply with all requirements of the Occupational Safety and Health Administration (OSHA) Occupational Exposure to Bloodborne Pathogens Standards (29 CFR 1910.1030).

- Upon request of the employee, provide referrals to community testing and counseling services, treatment and other resources as appropriate through the Department and bureau Employee Assistance Programs (EAPs).
- When appropriate, provide counseling to employees who have apprehensions or other related concerns regarding the communicability of the disease.
- Take appropriate action when employees threaten or disrupt the organization's work by reluctance or refusal to work with HIV/AIDS employees.
- Implement ongoing HIV/AIDS education and prevention programs as appropriate.
- Negotiate, as appropriate, the impact and the implementation of this policy on a local level, or work through the labor-management partnerships with union representatives.



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**DRUG FREE WORKPLACE POLICY AND PROCEDURES**

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**Subchapter 9 Drug Free Workplace**

- 9.1 Introduction
- 9.2 Policy
- 9.3 Authorities
- 9.4 Scope
- 9.5 Definitions
- 9.6 Responsibilities
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**Subchapter 10 Drug Testing Procedures**

- 10.1 General
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- 10.3 Privacy Assured
- 10.4 Failure to Appear
- 10.5 Opportunity to Justify a Positive Test Result
- 10.6 Exemption from Testing
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- 10.8 Random Testing
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- 10.13 Records





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370 DM 792.9.1

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**Subchapter 9. Drug Free Workplace.**

**9.1 Introduction.** On September 15, 1986, the President signed Executive Order 12564, Drug Free Federal Workplace, establishing a policy against the use of illegal drugs by Federal employees, whether on duty or off duty.

**A.** On July 11, 1987, Congress passed legislation effecting implementation of the Executive Order under 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), (hereafter, "the Act"), in an attempt to establish uniformity among Federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program.

**B.** The Executive Order recognized that illegal drug use is having serious adverse effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year. The Federal Government, as the largest employer in the Nation, has a compelling proprietary interest in establishing reasonable conditions of employment including a plan designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and dealers that illegal drugs will not be tolerated in the Federal workplace.

**C.** The use of illegal drugs by Federal employees, on or off duty, cannot be tolerated. Employees who use illegal drugs, on or off duty, are less productive, have more on-the-job accidents, and a higher absenteeism rate than employees who do not use drugs and, thus, impair the Department's function to serve as an able custodian of the Nation's natural resources.

**D.** Drug usage could result in loss of life, injury, and damage or destruction of property. Emergency personnel must perform duties instantly and independently during times of crises with minimal supervision. For example, law enforcement officers and firefighters must be alert and ready to respond to emergency situations instantaneously.

**E.** Drug-using employees who interact with private industry could market for personal gain: (1) proprietary commercial and financial information of private entities in connection with mineral exploration and development; (2) advance notice of Departmental initiatives concerning leasing activities on Federal lands; (3) advance notice on planned Departmental land acquisition activities; and (4) proprietary data, including bid prices, in connection with procurements by the Department of goods and services. Further, drug usage could lead to intentional or unintentional law enforcement omissions or regulatory

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determinations benefiting particular entities, or intentional misfeasance in the expectation of kickbacks or other pecuniary benefits.

F. Further, drug usage by certain employees could result in impairment of judgment, skills or vigilance, leading to defeat or improper compromise in enforcement, collection activities and litigation (e.g., in the surface mining and fish and wildlife areas). Defeat or improper compromise would allow continued illegal activities, depletion of the nation's natural resources (including migratory birds and endangered species), and thwart the recompense to the public (in the form of civil and criminal penalties) for statutory violations of natural resources laws.

G. Drug usage by certain administrative, technical, and fiscal employees has the potential for exceptionally grave impact involving functions of major importance to the agency's mission with major program responsibilities affecting the efficiency of the service. Drug use has the potential for misuse of computer and communications technology for criminal purposes. There is also the potential for major errors which could result in improper payments, unnecessary purchases or other improper actions.

9.2 **Policy.** It is the policy of the Department that the use of illegal drugs, on or off duty, will not be tolerated. It is the responsibility of every employee to comply with this policy. The Department will promote this policy through its Drug Free Workplace Plan. The plan shall complement the alcohol and troubled employee program described in 370 DM 792.5. The overall plan will consist of:

A. **Education and Training.** Consistent with 370 DM 412.4.9, training will be provided for supervisors to assist in identifying and addressing illegal drug use by employees. Training may be accomplished through various means, including contracting out to private organizations, HHS courses, in-house training courses, and employee assistance program training in cooperation with designated Employee Assistance Program (EAP) Administrators, or other designated individuals(s). Training will include information regarding referral of employees to the EAP, procedures and requirements for drug testing and signs of possible drug use. Such training will also include information to make supervisors more sensitive to employee drug behavior and help supervisors recognize and document facts that give rise to a reasonable suspicion that an employee may be using illegal drugs.

B. **Counseling.** Counseling referral will be available to employees who either request counseling or are referred by a supervisor. The referral may or may not be as a result of a positive drug test.

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C. Drugs To Be Tested For. At a minimum, employees will be tested for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). Additional categories of drugs may be included at the discretion of the Medical Review Official in accordance with HHS guidelines.

D. Labor Organizations. The active participation and support of labor organizations can contribute to the success of this program. Management will seek ways in which recognized bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe agreements already reached, will include union representatives in general orientation and training programs, and will continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978.

9.3 Authorities.

- A. Executive Order 12564, Drug Free Federal Workplace;
- B. Executive Order 10450, Security Requirements for Government Employment;
- C. Section 503 of the Supplemental Appropriations Act of 1987, P. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987);
- D. Scientific and Technical Guidelines for Drug Testing Programs, Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), Department of Health and Human Services (HHS), as amended;
- E. Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies, Alcohol, (ADAMHA), (HHS), as amended;
- F. Civil Service Reform Act of 1978, P. L. 95-454;
- G. 42 CFR Part 2, establishing requirements for assuring the confidentiality of alcohol and drug-abuse patient treatment records;
- H. The Privacy Act of 1974 (5 U.S.C. Section 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain;

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I. 43 CFR Part 2, implementing the Privacy Act of 1974 within the Department;

J. Federal Employees Substance Abuse Education and Treatment Act of 1986, P. L. 99-570 (5 U.S.C. 7361, et. seq.)

9.4 Scope.

A. Incumbents of testing designated positions shall be subject to drug testing by appropriate methods. The Secretary or his/her designee may determine that positions are appropriate for designation as "sensitive" at a later date.

B. Nature, Frequency, and Type of Drug Testing to Be Implemented.

(1) The Department's program includes the following types of drug tests: (1) voluntary testing; (2) random testing of employees in testing designated positions; (3) reasonable suspicion testing; (4) applicant testing; (5) accident or unsafe practice testing and (6) testing as part of or as a follow-up to counseling or rehabilitation.

(2) An employee may be found to use illegal drugs on the basis of any appropriate evidence, including but not limited to direct observation, evidence obtained from an arrest or a criminal conviction, a verified positive test result, or an employee's voluntary admission.

(3) This program is intended to achieve a drug-free workplace, while at the same time offering rehabilitative assistance to employees who use illegal drugs. The severity of the disciplinary action taken against an employee found using illegal drugs will depend on the facts and circumstances of the case and will be consistent with the Executive Order. These include the full range of disciplinary actions up to and including removal.

(4) The annual frequency of random testing of the testing designated positions will be a reasonable percentage but generally estimated to be in the range of 15 percent Departmentwide. The Secretary or his/her designee may increase or decrease the frequency of testing based on the Department's mission, need, availability of resources, and experience in the program, consistent with the duty to achieve a drug free workplace under the Executive Order.

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**9.5 Definitions.**

A. "Applicant" means any individual tentatively selected for employment and includes any individual who has been tentatively identified for placement in a testing designated position and who has not, immediately prior to the placement, been subject to random testing. Employees currently occupying testing designated positions (TDPs) who apply and are tentatively selected for another TDP, are considered to be applicants and therefore subject to applicant testing. In cases of directed management assignment into TDPs, where for the "good of the service" an individual is placed into a TDP, the individual is not considered to be an applicant for purposes of applicant testing.

B. "Drug Program Coordinator (DPC)" means an official in each bureau headquarters assigned to carry out the purposes of this plan by the bureau head.

C. "Employee Assistance Program (EAP)" means the Department's counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

D. "Employee Assistance Program Administrator" means the individual responsible for ensuring the development, implementation and review of the Department EAP.

E. "Employee Assistance Program Coordinator" means the bureau official (designated by the bureau head) responsible for implementing and operating the EAP within the bureau component assigned to the coordinator, by providing counseling, treatment, and education services to employees and supervisors.

F. "Medical Review Official (MRO)" means the official who is responsible for receiving laboratory results and who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

G. "Illegal Drugs" means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 14 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.

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H. "Management Official" means an employee required or authorized by the Department to formulate, determine, or influence the policies of the Department (5 U.S.C. 7103(a)(11)).

I. "Random Testing" means a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform-unannounced testing of employees occupying a specified area, element or position, or may be a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

J. "Employees in Sensitive Positions" means:

(1) Employees in positions designated by the Secretary or his/her designee as Special Sensitive, Critical Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual; employees in positions designated by the Secretary or his/her designee as sensitive in accordance with Executive Order No. 10450, as amended;

(2) Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness under Section 4 of Executive Order No. 12356;

(3) Individuals serving under Presidential appointments;

(4) Law enforcement officers as defined in 5 U.S.C. 8331(20) and 8401(17); or

(5) Other positions that the Secretary or his/her designee determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

K. "Supervisor" means 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 independent judgement (5 U.S.C. 7103(a)(10)).

L. "Testing Designated Positions" means employee positions which have been designated for random testing.

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M. **"Verified Positive Test Result"** means 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 test approved by HHS), evaluated by the Medical Review Official and determined by him/her that there is no justification under 370 DM 792, 10.5.

9.6 Responsibilities.

A. **Secretary or Designee.** The Secretary or his/her designee shall be responsible for approving positions to be subject to drug testing and for assuring that resources are provided for the program. As necessary provide approval for discretionary funding of demand reduction activities.

B. **Director of Program Services.** The Director of Program Services shall oversee the administration of this program in achieving the objective of a drug free workplace with due consideration of the rights of the Government, the employee, and the general public.

C. **Drug Program Manager.** The Drug Program Manager (DPM) will provide technical management and guidance to the Director of Program Services and bureau heads. The DPM coordinates with bureau Drug Program Coordinators, Medical Review Official and the Employee Assistance Program Administrator, regarding their duties and responsibilities under the plan. Additionally, the DPM will initiate disciplinary action advising appropriate bureau heads in writing of all verified positive test results. The DPM will inform bureau Drug Program Coordinators of the results of all drug testing. The DPM will coordinate all drug testing activities in field offices and Headquarters and with the assistance of the EAP Administrator, publicize and disseminate drug program educational materials. The DPM will act as the Contracting Officer's Technical Representative (COTR) for collection and laboratory testing contracts and ensure that contractors are performing all functions in accordance with HHS technical and scientific guidelines. The Drug Program Manager is in the chain of review of disciplinary actions, once they are initiated.

D. **Bureau/Office Heads.** Each bureau/office head shall:

(1) Provide Employee Assistance Programs (EAP) emphasizing high level direction, education, counseling, referral to rehabilitation, and coordination with available community resources;

(2) Arrange supervisory training to assist in identifying and addressing illegal drug use by agency employees;

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(3) Provide for self-referrals as well as supervisory referrals to treatment services with maximum respect for individual confidentiality, consistent with safety and security issues;

(4) Provide for testing pursuant to this plan;

(5) Designate appropriate personnel to serve as Drug Program Coordinators and EAP staff;

(6) Ensure compliance with all confidentiality requirements;

(7) Provide test results to the employee's supervisor for the initiation of discipline; and

(8) Ensure compliance with the requirements of the Privacy Act of 1974 for Employee Assistance Program records maintained on individuals (see Part 383 DM).

E. Servicing Personnel Officers shall assure that each employee receives a copy of the procedure and shall provide such oversight as is necessary to assure that the chain of custody procedures are followed.

F. Medical Review Official. The Medical Review Official shall, among other duties:

(1) Receive from the laboratory the original chain of custody forms for each specimen collected. Assure that an individual for whom a confirmed positive test has been reported is afforded an opportunity to justify the test results. In reviewing the laboratory results, the MRO may conduct a medical interview with the individual, review the individual's medical history, or review other relevant biomedical factors. Individuals are not entitled to present evidence in a trial type administrative proceeding. The MRO must review all medical records that the tested individual submits when a confirmed positive test could have resulted from legally prescribed medication.

(2) If any question arises as to accuracy and validity of a confirmed positive test result the MRO should, in collaboration with the laboratory director and consultants, review the laboratory records to determine whether the required procedures were followed.

(3) If there is no reasonable medical reason (e.g., legitimate prescription) or other reason to account for the positive result, the test is deemed to be



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verified positive and will be disclosed to the Drug Program Manager and EAP Administrator, as required by the Agency Plan. Any medical information provided by the individual that is not specifically related to use of illegal drugs, will be treated as confidential and will not be disclosed to the EAP Administrator or DPM.

(4) If it is determined with reasonable certainty that there is a legitimate medical explanation or other reason to account for the confirmed positive laboratory findings, the test will be deemed to be negative and no information identifying the specific employee will be disclosed. Any medical information provided by the individual will be treated as confidential.

(5) All results, both positives and negatives, will be reported to the Drug Program Manager. Further, in cases of positives the MRO will also report same to the Departmental Employee Assistance Program Administrator.

(6) To ensure adequate documentation, a screening report on all positive drug tests as reported by the laboratory, will be prepared and maintained by the MRO. In cases where the MRO determines the positive is medically justified every effort will be made to obtain written documentation (prescriptions, letters from physicians, etc.) to support the decision. However, the final decision on documentation requirements rests with the MRO.

(7) In cases of negative results, a screening report will be prepared and maintained by the MRO when omissions on the chain of custody form could question the forensic validity of the result. A recollection and retesting can be ordered by the MRO.

(8) A quarterly inspection of the MRO's records will be conducted by an independent second physician to verify the accuracy and sufficiency of the MRO's records. A report of the findings will be sent to the Director of Program Services.

**G. Supervisors.** Supervisors will be trained to recognize and address illegal drug use by employees, and 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. Except as modified by the Secretary or his/her designee, to suit specific program responsibilities, first-line supervisors shall:

- (1) Attend training sessions on illegal drug use in the workplace;
- (2) Initiate a reasonable suspicion test, after first making appropriate

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factual observations and documenting those observations and obtaining approval from a higher level supervisor consistent with 370 DM 792, 10.9;

(3) Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use;

(4) Initiate appropriate disciplinary action upon a finding of illegal drug use by a subordinate; and

(5) In conjunction with personnel specialists, assist higher level supervisors and the EAP Administrator in evaluating employee performance and/or personnel problems that may be related to illegal drug use. Higher level supervisors and the servicing personnel officer shall review and concur in advance, with all reasonable suspicion tests ordered under their supervision.

**H. Drug Program Coordinator (DPC).** Each bureau shall have a Drug Program Coordinator (DPC) assigned to carry out the purposes of this plan. The DPC shall be responsible for implementing, directing, administering, and managing the drug program within the bureau. The DPC shall serve as the principal contact with the DPM in assuring the effective operation of the collection portion of the program. In carrying out this responsibility, the DPC shall, among other duties:

(1) Arrange for employee notifications and collection arrangements for drug testing authorized under this order;

(2) Ensure that all employees subject to random testing receive individual notice prior to implementation of the program, and that such employees return a signed acknowledgement of receipt;

(3) In coordination with the EAP Administrator, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation;

(4) Coordinate drug free workplace activities in field offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives; and

(5) The bureau Drug Program Coordinators will inform servicing personnel officers of the results of applicant testing and will inform other management officials with a need-to-know of all verified positive test results.

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**I. Employee Assistance Program Administrator. The EAP Administrator shall:**

- (1) Coordinate the development, implementation, and evaluation of the EAP. (See Appendix A);
- (2) Supervise and designate the headquarters EAP Coordinator and counselors, and assist them in establishing field office EAP's; and
- (3) Advise bureaus on the submission of annual statistical reports, and prepare consolidated reports on the Department's EAP activity.

**J. Employee Assistance Program Coordinator. The Employee Assistance Program Coordinator in each bureau shall:**

- (1) Implement and operate the EAP within the bureau component assigned to the coordinator;
- (2) Provide counseling and treatment services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;
- (3) Coordinate with the bureau, the MRO and supervisors, as appropriate;
- (4) Work with the DPC to provide educational materials and training to managers, supervisors, union representatives, and employees on illegal drugs in the workplace;
- (5) Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
- (6) Monitor the progress of referred employees during and after the rehabilitation period;
- (7) Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;
- (8) Maintain a list of rehabilitation or treatment organizations which

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provide counseling and rehabilitative programs, and include the following information on each such organization:

- (a) Name, address, and telephone number;
- (b) Types of services provided;
- (c) Hours of operation, including emergency hours;
- (d) The contact person's name and telephone number;
- (e) Fee structure, including insurance coverage;
- (f) Client specialization; and
- (g) Other pertinent information.

K. Employee Assistance Counselors. The Employee Assistance Counselors shall:

- (1) Serve as the initial point of contact for employees who ask or are referred for counseling;
- (2) Be familiar with all applicable law and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program;
- (3) Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and
- (4) In making referrals, consider the:
  - (a) Nature and severity of the problem;
  - (b) Location of the treatment;
  - (c) Cost of the treatment;

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- (d) Intensity of the treatment environment;
- (e) Availability of inpatient/outpatient care;
- (f) Other special needs, such as transportation and child care; and
- (g) Other special circumstances of the employee.

L. **Site Coordinator.** The Site Coordinator (SC) is a DOI employee designated by the Bureau DPC or other appropriate management official, at all DOI locations where testing is scheduled to be conducted. The SC responsibilities include coordinating the scheduling of employees selected for random testing with the appropriate supervisor, as necessary assisting in the collection duties, completing and forwarding employee collection records to the DPM and assisting with any required logistical arrangements.

M. **General Program Provisions.** Bureau heads shall develop implementation procedures to enable field offices to implement all aspects of this order, taking into account the unique geographical, personnel, budgetary and other relevant factors of the bureau. With approval of the Drug Program Manager, testing may proceed under this order as soon as any field office or operating site is prepared to commence with testing. Such procedures shall also encourage cooperation and coordination among components, to conserve resources and efficiently implement this plan.

9.7 **Advance Notification.**

A. **General Notice.** A general notice from the Secretary announcing the testing program, as required by Section 4(a) of Executive Order 12564, will be provided to all employees at least sixty (60) days prior to the implementation date of the plan. The notice shall be provided immediately upon completion of the congressional certification procedures pursuant to Section 503 of the Act and shall explain:

- (1) The purpose of the Drug Free Workplace Plan;
- (2) That the plan will include both voluntary and mandatory testing;
- (3) That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that their position has been designated a testing designated position;

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- (4) The availability and procedures necessary to obtain counseling and rehabilitation through the EAP;
- (5) The circumstances under which testing may occur;
- (6) That opportunity will be afforded to submit medical documentation of lawful use of an otherwise illegal drug;
- (7) That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the MRO;
- (8) That positive test results verified by the MRO may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal reviewing an adverse personnel action; and
- (9) That all medical and rehabilitation records in an EAP will be deemed confidential patient records and may not be disclosed without the prior written consent of the patient.

B. Individual Notice. In addition to the general notice, an individual notice will be distributed to all employees in testing designated positions explaining, in addition to the information provided above:

- (1) That the employee's position has been designated a "testing designated position;"
- (2) That the employee will have the opportunity to voluntarily identify himself/herself as a user of illegal drugs and to receive counseling or rehabilitation, in which case disciplinary action is not required; and
- (3) That the employee's position will be subject to random testing no sooner than thirty days thereafter.

The individual notice will also include a statement to be signed by each employee that the employee has 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.

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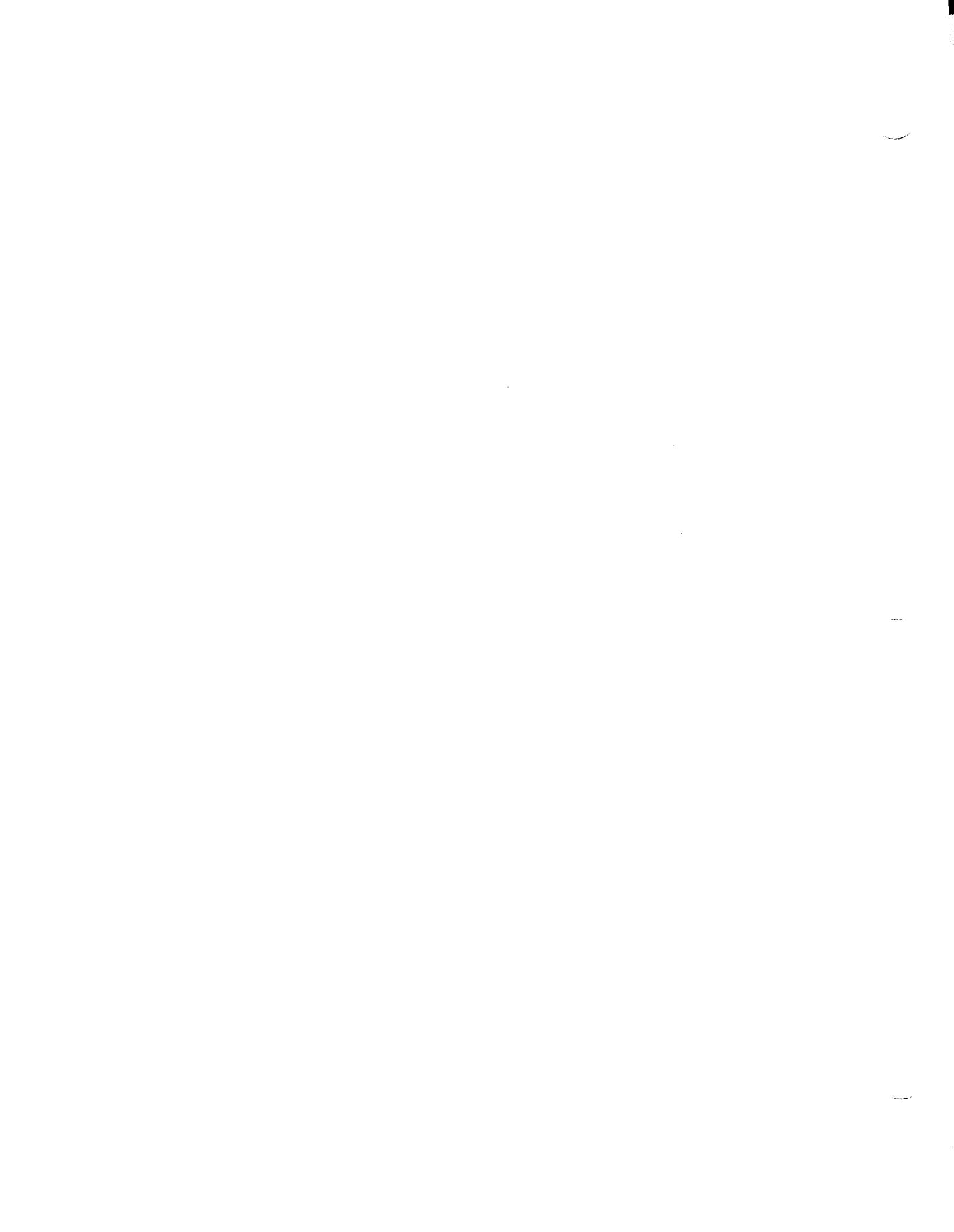
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C. If the employee refuses to sign the acknowledgement, the employee's supervisor or other appropriate official shall note on the acknowledgement form that the employee received the notice. This acknowledgement shall be centrally collected for easy retrieval by the DPC. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this plan, since the general sixty-day notice will previously have notified all agency employees of the requirement to be drug free.

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

A. Employees in a Bargaining Unit Covered by a Collective Bargaining Agreement. The right of an employee covered by a collective bargaining agreement to appeal the designation of his/her position as a TDP is subject to the provisions of the Federal Service Labor Management Relations Statute. Unless the negotiated grievance procedure provides otherwise, it is the sole and exclusive procedure available for the appeal.

B. Appeal Rights of Other Employees. If the appeal is not subject to a negotiated grievance procedure, the employee may file an administrative appeal to the Assistant Secretary - Policy, Management and Budget. The appeal must be submitted by the employee, in writing, to the bureau head within 15 days of notification, setting forth all relevant information. Bureau heads are delegated authority to deny appeals found to lack merit but refer those with merit along with recommendations to the Assistant Secretary - Policy, Management and Budget for a decision. The Assistant Secretary - Policy, Management and Budget shall review the forwarded appeal and render a decision. The decision is final and is not subject to further administrative review.





**Relationship to Other Programs**

**I. Employee Assistance Program (EAP)**

**A. Function.** The Department's EAP plays an important role in preventing and resolving employee drug use by: demonstrating the commitment to eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however shall not be involved in the collection of urine samples or the reporting of test results. Further details of EAP operations are found in 370 DM 792.5. Specifically, the EAP shall:

(1) 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;

(2) Provide needed education and training to all levels of the Department on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues; and

(3) Ensure that confidentiality of test results and related medical treatment and rehabilitation records are maintained.

**B. Referral and Availability.**

(1) Any employee found to be using illegal drugs 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, as well as education and training regarding illegal drug use. The EAP is available not only to employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems. The EAP Administrator shall be responsible for oversight and implementation of the EAP, and will provide, with the support of the Director of Program Services, high level direction and promotion of the EAP.

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(2) In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to completion of the program. The decision of the EAP Administrator 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, and assertions that the counselor failed to consider factors in making a referral shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

C. Leave Allowance. Employees shall be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session, up to a maximum of six sessions, during the assessment/referral phase of rehabilitation. Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

D. Records of Confidentiality. All EAP operations shall be confidential in accordance with provisions of this plan relating to records and confidentiality.

E. Structure. The EAP Administrator shall be responsible for oversight and implementation of the EAP, and will provide, with the support of the Director of Program Services, high level direction and promotion of the EAP.

## II. Supervisory Training

A. Objectives. Since supervisors have a key role in establishing and monitoring a drug free workplace, bureaus shall provide training to assist supervisors and managers in recognizing and addressing illegal drug use by agency employees. The purpose of supervisory training is to understand:

- (1) Departmental policies relevant to work performance problems, drug use, and the EAP;
- (2) The responsibilities of offering EAP services;
- (3) How employee performance and behavioral changes should be recognized and documented;

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- (4) The roles of the medical staff, supervisors, personnel, and EAP personnel;
  - (5) The ways to use EAP;
  - (6) How the EAP is linked to the performance appraisal and the disciplinary processes; and
  - (7) The process of reintegrating employees into the workforce.

B. **Implementation.** The bureau head shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the Drug Free Workplace Plan. Copies of the training packages are to be sent to the Director of Program Services.

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

- (1) Overall Departmental policy;
- (2) The prevalence of various employee problems with respect to drugs and alcohol;
- (3) The EAP approach to handling problems;
- (4) How to recognize employees with possible problems;
- (5) Documentation of employee performance or behavior, including referral for drug testing based on reasonable suspicion pursuant to 370 DM 792, 10.9;
- (6) How to approach the employee;
- (7) How to use the EAP;
- (8) Disciplinary actions, and removals from sensitive positions as required by Section 5(c) of the Executive Order;

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- (9) Reintegration of employees into the workforce; and
- (10) Written materials which the supervisor can use at the work site.

Failure to receive such training shall not invalidate otherwise proper reasonable suspicion testing.

**III. Employee Education**

**A. Objectives.** The EAP Administrator shall offer drug education to all employees. Drug education should include education and training to all levels of the bureau on:

- (1) Types and effects of drugs;
- (2) Symptoms of drug use, and the effects on performance and conduct;
- (3) The relationship of the EAP to the drug testing program; and
- (4) Other relevant treatment, rehabilitation, and confidentiality issues.

**B. Means of Education.** Drug education activities may include:

- (1) Distribution of written materials;
- (2) Videotapes;
- (3) Lunchtime employee forums; and
- (4) Employee drug awareness days.

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Subchapter 10. Drug Testing Procedures.

10.1 General. Individuals may be selected for testing in one or more of the categories listed below. For the protection of the individual and the Department in certain cases the individual may be required to provide a second specimen for testing. For example, if a specimen is collected and determined not to be testable, i.e., shipped to wrong laboratory, lost in shipping, urine leaked out, no chain of custody form, etc., a new specimen will be recollected from the donor. The recollection requirement does not apply to specimens determined by the laboratory to be adulterated (see section 10.12E). Also, if a specimen is received by the laboratory with omitted information on the chain of custody which could question the forensic validity of the specimen result, a second specimen may be collected. However, if the omitted information can be collected then a second specimen will not be necessary. The omitted information must be collected before the specimen is analyzed by the laboratory.

- A. Random Testing. All employees in testing designated positions (TDPs) are subject to selection for random drug testing.
- B. Voluntary Testing. Employees may volunteer for unannounced testing by notifying the servicing personnel office of their desire to do so.
- C. Reasonable Suspicion Testing. Reasonable suspicion testing may be based upon, among other things, the criteria described under 370 DM 792, 10.9A.
- D. Accident or Unsafe Practice Testing. Accident or unsafe practice testing may be based upon, among other things, the criteria described under 370 DM 792,10.11A.
- E. Follow-up Testing. All employees who undergo counseling or rehabilitation programs for illegal drug use will be subject to unannounced testing, both during and after such a program.
- F. Applicant Testing. Drug testing is required for all individuals who are tentatively selected for employment in testing designated positions. Individuals tentatively placed in a testing designated position may also be subjected to testing.

10.2 Technical Guidelines. The Department 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 Department's drug testing program shall have professionally trained collection personnel, a

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laboratory certification program, rigorous analytical standards and quality assurance requirements for urinalysis procedures and strict confidentiality requirements.

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

- A. Facts and circumstances suggest that the individual has altered or tampered with a urine specimen, such as when the temperature of the specimen is outside the acceptable range established in the mandatory guidelines;
- B. Facts and circumstances suggest that the individual has equipment or implements capable of tampering or altering urine samples; or
- C. The individual has previously tampered with a sample.

**10.4 Failure to Appear.** 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, and the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the DPC to obtain guidance on action to be taken.

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

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

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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 or the staff of the MRO shall immediately contact the EAP Administrator and Drug Program Manager, upon obtaining a verified positive test result.

**10.6 Exemption from Testing.** While participating in a counseling or rehabilitation program, and at the request of the program administrator, the employee may be exempted from the random testing designated position pool for a period not to exceed sixty days, or for a time period specified in an abeyance agreement or rehabilitation plan approved by the bureau head or his/her designee. Upon completion of the program, the employee shall be immediately subject to follow-up testing pursuant to 370 DM 792, 10.11C.

**10.7 Savings Provision.** 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 HHS Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

**10.8 Random Testing**

**A. Employees in Testing Designated Positions.** The Executive Order requires random testing for employees in sensitive positions that have been designated as testing designated positions. The Department has determined that certain positions are testing designated positions for random testing.

**B. Determining the Testing Designated Position.** Among the factors considered in determining a testing designated position, are:

- (1) the extent to which the Department:
  - (a) Considers its mission inconsistent with illegal drug use;
  - (b) Is engaged in law enforcement;
  - (c) Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;

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- (d) Has national security responsibilities;
  - (e) Has drug interdiction responsibilities; or
- (2) the extent to which the position considered -
- (a) Authorizes employees to carry firearms;
  - (b) Gives employees access to sensitive information;
  - (c) Authorizes employees to engage in law enforcement;
  - (d) Requires employees, as a condition of employment, to obtain a security clearance; or
  - (e) Requires employees to engage in activities affecting public health or safety.

These positions are characterized by critical safety or security responsibilities as related to the mission of the Department. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions are singled out for random testing because they require the highest degree of trust and confidence.

The Secretary reserves the right to add or delete positions determined to be testing designated positions pursuant to the criteria established in the Executive Order and this plan. Moreover, pursuant to 42 U.S.C. 290ee-1(b)(2), and the pertinent provisions of the Federal Personnel Manual, the Secretary has determined that all positions which have been or will be designated as testing designated positions under this plan are "sensitive positions," and are therefore exempt from coverage under 42 U.S.C. 290ee-1(b)(1), which provides that no person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the basis of prior drug abuse.

C. Implementing Random Testing. An organizational element other than the Drug Program Coordination Staff will be responsible for the random selection of employees for random testing. The names of employees selected will be provided to the Drug Program Manager for testing purposes. In implementing the program of random testing the Drug Program Manager (DPM) shall:



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

D. 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.

E. Deferral of Testing. The time from random selection to actual testing should not exceed 14 calendar days. Individuals not available for testing within the 14-day period, i.e., on leave, travel, etc., will be exempted from testing and placed back in the random pool. The supervisor will be required to document in writing why the employee was not available for testing and report same in writing to the Director of Program Services.

#### 10.9 Reasonable Suspicion Testing

##### A. Grounds.

(1) For employees in testing designated positions, testing may be required where there is reasonable suspicion of drug use based on, 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;

(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.

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(2) For employees not occupying testing designated positions, testing may be required only based on reasonable suspicion of on-duty drug use or drug related impairment. For these employees, such testing may be based on:

(a) Observable phenomena of on-duty drug use or impairment, 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 while on duty;  
or

(c) Information of on-duty drug use or impairment provided either by reliable and credible sources or independently corroborated.

(3) Although reasonable suspicion testing does not require certainty, mere "hunches" are insufficient to justify mandatory testing.

Finally, visual observation for all reasonable suspicion tests, regardless of the circumstances, 370 DM 792, 10.3 is not required.

**B. 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. The first line supervisor will present this information to the second line supervisor. If the second level supervisor agrees, he/she will present the facts to the servicing personnel officer. The servicing personnel officer shall contact the bureau Drug Program Coordinator (DPC) who will in turn contact the Department's Drug Program Coordination Staff Manager. The Drug Program Manager, in consultation with the bureau DPC and Solicitor's Office, will provide a recommendation to the bureau head or designee as to whether or not a reasonable suspicion test is warranted. If the test is warranted, the Drug Program Manager will coordinate the actual collection of the specimen with the servicing personnel officer.

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

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C. Obtaining the Sample. The employee may be asked to provide the urine sample under observation in accordance with the criteria set forth in 370 DM 792, 10.3.

10.10 Applicant Testing

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

B. Extent of Testing. Drug testing shall be required of all individuals tentatively selected for employment in a testing designated position.

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

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

Applicants will be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug. They will be informed that such information will be reviewed only by the MRO or his/her designee to determine whether the individual is licitly using an otherwise illegal drug. The MRO will present his findings to the Drug Program Manager, who will contact the Drug Program Coordinator. The DPC will notify the servicing personnel officer, who will provide the applicant with a final determination.

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E. Personnel Officials. Upon notification that an individual has been tentatively selected for employment in a testing designated position with the Department, the servicing personnel officer shall assure, after consultation with the DPC, that a drug test has been conducted on that individual and indicate whether the test result is a verified positive result.

F. Consequences. The Department will decline to extend a final offer of employment to any applicant with a verified positive test result and such applicant may not reapply to the Department for a period of six months. The Personnel Officer working on the applicant's certificate shall 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 Department. The servicing personnel officer shall inform the applicant that a confirmed presence of an illegal drug in the applicant's urine precludes the Department from hiring the applicant.

10.11 Other Types of Testing.

A. Accident or Unsafe Practice Testing. The Department of the Interior is committed to providing a safe and secure working environment. It also has a legitimate interest in determining the cause of serious accidents so that it can undertake appropriate corrective measures. 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:

(1) The accident results in a death or personal injury requiring immediate hospitalization; or

(2) The accident results in damage to government or private property estimated to be in excess of \$10,000.

If an employee is suspected of having caused or contributed to an accident meeting either of the criteria stated above, the appropriate supervisor will present the facts and circumstances leading to and supporting this suspicion to the appropriate bureau personnel officer, who will confer with the bureau head or designee to approve the test. Once approval has been obtained and arrangements made with the bureau Drug Program Coordinator and Drug Program Manager for testing, the supervisor will prepare a written report detailing the facts and circumstances that warranted the test.

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B. **Voluntary Testing.** In order to demonstrate their commitment to the Department's goal of a drug free workplace and to set an example for other Federal employees, employees not in testing designated positions may volunteer for unannounced random testing by notifying the bureau DPC and their servicing personnel office. These employees will then be included in the pool of testing designated positions subject to random testing, and be subject to the same conditions, procedures and consequences for a finding of illegal drug use.

Volunteers shall remain in the TDP pool for the duration of the position which the employee holds, or until the employee withdraws from participation by notifying the DPC of such intent at least 48 hours prior to a scheduled test.

C. **Follow-up Testing.** All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through the 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 stipulated in an abeyance contract with a minimum frequency of once per quarter year. Such testing is distinct from testing which may be imposed as a component of the EAP.

10.12 **Finding of Drug Use and Consequences.**

A. **Determination.** An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

- (1) Direct observation;
- (2) Evidence obtained from an arrest or criminal conviction;
- (3) A verified positive test result; or
- (4) An employee's voluntary admission.

B. **Mandatory Administrative Actions.** The Department shall refer any employee found to be using illegal drugs to an Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate. The Department shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, until the employee successfully completes rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, the bureau head may, in his/her discretion, after consultation with the Medical

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Review Official, 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. Access to national security data will not be considered until rehabilitation is completed and a favorable background investigation has been completed and approved by the Department Security Officer.

C. 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, and will include the full range of disciplinary actions, including removal. The Department shall initiate disciplinary action against any employee found to use illegal drugs, provided that such action is not required for an employee who voluntarily admits to illegal drug use, and obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.

Such disciplinary action shall be taken consistent with the procedures of the Civil Service Reform Act and other statutes, 370 DM 752, and OPM regulations, and may include any of the following measures: written reprimand, suspension, demotion, or removal. Advice of the Solicitor's Office on discipline shall be obtained prior to initiating action.

D. Initiation of Mandatory Removal From Service. The bureau shall initiate action to remove an employee for:

(1) Refusing to obtain counseling or rehabilitation through an Employee Assistance Program, as required by the Executive Order after having been found to use illegal drugs; or

(2) Having been found not to have refrained from illegal drug use after a first finding of illegal drug use.

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

E. Refusal to Take Drug Test When Required.

(1) An employee who refuses to be tested when so required will be subject to the full range of disciplinary action including removal.

(2) No applicant who refuses to be tested shall be extended an offer of employment.

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(3) Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral. Under Executive Order 12564, the Department is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except: if an employee (1) voluntarily admits his/her drug use prior to notification of selection for random testing; (2) completes counseling or in an EAP; and (3) thereafter refrains from drug use; such discipline is not required.

(1) The decision whether to discipline a voluntary referral will be made by the bureau head or his/her designee on a case by case basis depending upon 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.

(2) The self-referral option allows any employee to step forward and identify him/herself as an illegal drug user for the purpose of entering a drug treatment program under the EAP. In stepping forward, an employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result shall merely constitute an identification for purposes of this section.

(3) The key to the provision's rehabilitative effectiveness is an employee's willingness to admit his/her problem. This provision will not be available to an employee who is asked to provide a urine sample when required or who is found to have used illegal drugs pursuant to 370 DM 792, 10.12A(1) or 10.12A(2), and who thereafter requests protection under this provision.

10.13 Records.

A. 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 U.S.C. 522a, and Section 503(e) of the Act, and may not be released in violation of either Act. The MRO or his/her designee, may maintain only those records necessary for compliance with this order. Any

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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 personal identifying information on any employee. To comply with Section 503(e) of the Act, the results of a drug test of an employee may not be disclosed without prior written consent of such employee, unless the disclosure would be:

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

For purposes of this Section, "management official" also includes any staff official whose duties necessitate review of the test results in order to process a disciplinary action against the employee.

In addition, test results with all identifying information removed shall also be made available to Department officials, including the DPC, for data collection and other necessary activities to comply with Section 503(f) of the Act.

**B. 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:

- (1) Such employee's drug test; and
- (2) The results of any relevant certification, review, or revocation proceedings.

**C. Confidentiality of Records in General.** All drug testing information specifically relating to individuals is confidential and should be treated as such by anyone authorized to review or compile program records. In order to



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efficiently implement this program and to make information readily retrievable, the DPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this program.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the servicing personnel office. Such records and information shall remain confidential, locked in a safe, with only authorized individuals who have a "need-to-know" having access to them.

**D. Employee Assistance Program Records.** The EAP Administrator shall maintain only those records necessary to comply with this order. After an employee is 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.

**E. Maintenance of Records.** The Department shall maintain records of the Drug Free Workplace Program consistent with OPM's Privacy Act System of Records and with all applicable Federal laws, rules and regulations regarding confidentiality of records including the Privacy Act 5 U.S.C. 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the bureau head. The record keeping system should capture sufficient documents to meet the operational and statistical needs of this issuance, and include:

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

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F. Records Maintained by Government Contractors. Any contractor hired to satisfy any part of this issuance shall comply with the confidentiality requirements of this subchapter, and all applicable Federal laws, rules, regulations and guidelines including the Privacy Act of 1974.

G. Statistical Information. The DPC shall collect and compile anonymous statistical data for reporting the number of:

- (1) Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered;
- (2) Verified positive test results;
- (3) Voluntary drug counseling referrals;
- (4) Involuntary drug counseling referrals;
- (5) Terminations or denial of employment offers resulting from refusal to submit to testing;
- (6) Terminations or denial of employment offers resulting from alteration of specimens;
- (7) Terminations or denial of employment offers resulting from failure to complete a drug abuse counseling program; and
- (8) Employees who successfully complete the Employee Assistance Program.

This data along with other pertinent information, shall be compiled for inclusion in the Department's annual report to Congress pursuant to Section 503(f) of P. L. 100-71. This data shall also be provided to HHS on a semiannual basis to assist overall program evaluation and to determine whether changes to the HHS Guidelines may be required.

H. Records Retention Schedule. Disposition instructions for program records will comply with requirements established by the National Archives and Records Administration.