

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL REGULATION		Number: 4430-792-2
SUBJECT: Drug-Free Workplace Program	DATE: April 14, 2011	
	OPI: Office of Human Resources Management	

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1. PURPOSE

This regulation establishes the policy and procedures for managing the Drug-Free Federal Workplace Program (DFWP) and the Transportation Workplace Drug and Alcohol Testing Program within the Department of Agriculture (USDA).

2. SPECIAL INSTRUCTIONS/CANCELLATIONS

- a. This regulation supersedes Departmental Regulation (DR) 4430-792-2 dated August 25, 2003.
- b. The principle changes to DR 4430-792-2 are as follows:

(1) All employees are subject to drug testing, when, based upon circumstances,

are involved in Safety-Related Incidents.

- (2) Added time limit for completion of drug and alcohol tests for post-accident or Safety-Related Incidents.
- (3) Added max time for Follow-Up testing of employees in DOT Testing Designated Positions (TDPs).
- (4) Changed position nomenclature to reflect current terminology and changed responsibilities to reflect current duties.
- (5) Clarified requirements for reasonable suspicion, and accident, un-safe practice testing.
- (6) Added Executive Order 12356 on National Security Information as an authority for the program.
- (7) Changed applicant (pre-employment/pre-assignment) testing requirement to include all TDPs.
- (8) Deleted Technical Review Panel as these functions are handled by the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services.

3. POLICY

USDA supports the goal of a drug and alcohol-free Federal workplace. In light of its responsibility to protect the agricultural economy, the nation's food supply, and the natural resources of this country, USDA has a compelling obligation to eliminate illegal drug use from its workplace. It is essential that the development and implementation of policies affecting the production, harvesting, sale, marketing, research and use of agricultural commodities and natural resources under the auspices of USDA be established in a drug-free environment. In addition, the safe operation of USDA large and passenger carrying vehicles mandates that those entrusted with that responsibility are not impaired by alcohol or any illegal substance. The USDA Employee Assistance Program (EAP) is a vital part of this effort.

4. DEFINITIONS

- a. Agency Drug Testing Liaison (ADTL). The person appointed by the Agency Head to serve as the liaison with the Agency Head, DFWP Manager and the supervisors and employees of their agency on the Drug-Free Workplace Program.
- b. Alcohol Use. The consumption of any beverage, mixture, or preparation (including any medication) containing alcohol.

- c. Applicant. Any individual tentatively selected for employment with USDA in an Executive Order (EO) testing designated position (TDP) as listed in Appendix A, or a position requiring a commercial driver's license (CDL). Also, any individual within USDA tentatively selected for movement into an EO TDP as listed in Appendix A, or a position requiring a CDL, who has not been subject to random testing immediately prior to the selection.
- d. Commercial Driver's License (CDL). A permit issued by the appropriate State to operate a commercial motor vehicle.
- e. Commercial Motor Vehicle. A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - (1) Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - (2) Has a gross vehicle weight rating of 26,001 or more pounds;
 - (3) Is designed to transport 16 or more passengers, including the driver; and
 - (4) Is of any size and is used in the transportation of hazardous materials requiring placards.
- f. Employee Assistance Program (EAP). EAP means the USDA confidential 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.
- g. Employee Assistance Program Coordinator. Employee Assistance Program Coordinator means the individual designated by USDA agencies to be responsible for implementing and operating the EAP within their agency.
- h. Department of Transportation Testing Designated Position (DOT TDP). A position designated for random drug and alcohol testing because a CDL is required to perform the duties of the position.
- i. Executive Order Testing Designated Position (EO TDP). A Sensitive Position designated by the Secretary of Agriculture as:
 - (1) Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive under chapter 731 of the Federal Personnel Manual, or designated as sensitive in accordance with Executive Order No. 10450, as amended;
 - (2) Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of

trustworthiness by the Secretary of Agriculture under Section 4 of Executive Order No. 12356;

- (3) Individuals serving under Presidential appointments;
 - (4) Law enforcement as defined in 5 U.S.C. Section 8331 (20) and 8401 (17); or
 - (5) Other positions that the Secretary of Agriculture determines involves 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.
- j. Illegal Drug. A controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term “illegal drugs” does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law. The following drugs or categories of drugs constitute the basis of the USDA drug testing program, and will be tested for in each sample:
- (1) Marijuana;
 - (2) Cocaine;
 - (3) Opiates (Codeine, Morphine & 6-Monoacetylmorphine);
 - (4) Amphetamines (Methamphetamine, Methylenedioxyamphetamine (MDA) & Methylenedioxymethamphetamine (MDMA)); and
 - (5) Phencyclidine (PCP).
- When conducting reasonable suspicion, accident or unsafe practice testing, a Federal agency may test an employee for any drug identified in Schedule I or II of the Controlled Substances Act. If the Agency wants to test for any other drug on a routine basis for applicant, random, voluntary and follow-up testing, advance written approval from the Secretary, Department of Health and Human Services (HHS) is required.
- Federal agency drug testing programs shall have validity tests performed on urine specimens as, provided in section 2.4(g) of the Mandatory Guidelines and Proposed Revisions to Mandatory Guidelines for Federal Workplace Drug Testing Programs (April 13, 2004).
- k. Management Official. An employee required or authorized by the USDA to formulate, determine, or influence USDA policies as per 5 U.S.C. Section 7103(a)(11).

- l. Medical Review Officer (MRO). A licensed physician with appropriate medical training in substance abuse disorders to evaluate and interpret all positive test results received from the drug testing laboratory together with an individual's medical history and any other relevant biomedical information.
- m. Random Drug Testing. A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be:
 - (1) Uniform unannounced testing of employees occupying Testing Designated Positions in a specified area, organizational element or position; or
 - (2) A statistically random sampling of a percentage of such employees based on a neutral criterion, such as social security numbers.
- n. Reasonable Suspicion Testing. Reasonable suspicion testing may be required of any employee in a position which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether **on or off duty**. Reasonable suspicion testing may also be required of **any employee** in any position when there is a reasonable suspicion of **on-duty use or on-duty impairment**. Testing may be based upon, among other things:
 - (1) Observable phenomena, such as direct observation of drug use or possession and/or the physical symptom(s) of being under the influence of a drug;
 - (2) A pattern of abnormal conduct or erratic behavior;
 - (3) Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
 - (4) Information provided either by reliable and credible sources or independently corroborated; or
 - (5) Newly discovered evidence that the employee has tampered with a previous drug test.
- Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.
- o. Safe Harbor. Under Executive Order 12564, the USDA is required to initiate action to discipline any employee found to use illegal drugs in every circumstance. A fundamental purpose of the USDA's Drug Free Workplace Plan is to assist employees who themselves are seeking treatment for drug use. For

this reason, the USDA will not initiate disciplinary action against any employee who meets all three of the following conditions:

- (1) Voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means;
- (2) Obtains counseling or rehabilitation through an EAP; and
- (3) Thereafter refrains from using illegal drugs.

An employee who admits to illegal drug use after being notified that he/she is scheduled for a drug test or just after a sample is collected, or who is found to use illegal drugs on the basis of other appropriate evidence, e.g., evidence obtained from a criminal conviction, reasonable suspicion and/or accident unsafe practice, is not eligible for “safe harbor.”

- p. Substance Abuse Professional (SAP). A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addictions counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders. They make recommendations concerning education, treatment, follow-up testing, and aftercare.
- q. Supervisor. An employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment.
- r. Testing Designated Positions (TDPs). An employment position within USDA which has been designated for random testing. These positions are characterized by critical safety or security responsibilities as related to the mission of USDA. 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.
- s. Verified Positive Test Result. A drug test result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentration and reviewed and verified by the MRO in accordance with this plan and the Mandatory Guidelines for Federal Workplace Drug Testing Programs. This can include adulterated and substituted results. Also, an alcohol breath test result of 0.04 or greater administered by a Breath Alcohol Technician (BAT).

- t. Validity Testing. The testing of every specimen for creatinine concentration, (specific gravity if creatinine is less than 20 mg/dl), pH, and for oxidizing adulterants. This testing is done to insure the sample was produced by the metabolic process of the human body and to insure that no other outside contaminants were added to the specimen to try and defeat the drug test.

5. AUTHORITIES

- a. 7 CFR Part 2, Delegations of Authority by the Assistant Secretary for Administration;
- b. Executive Order 12564, dated September 15, 1986, Drug-Free Federal Workplace;
- c. Executive Order 10450, dated April 27, 1953, Security Requirements for Government Employees, as amended;
- d. Executive Order 12356, dated April 2, 1982, National Security Information;
- e. Section 503 of the supplemental Appropriations Act of 1987, P.L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. Section 7301 note (1987);
- f. Mandatory Guidelines for Federal Workplace Drug Testing Programs, which includes Scientific and Technical Requirements and Certification of Laboratories Engaged in Urine Drug Testing, 53 FR 11970 (1988) as revised in 59 FR 29908 (1994), as revised in 69 FR 19644 (2004) and as revised in 73 FR 71858 (2008);
- g. 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;
- h. Civil Service Reform Act of 1978, Pub. L. 95-454;
- i. Section 503 of the supplemental Appropriations Act of 1987, P.L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. Section 7301 note (1987);
- j. Public Law 102-143, the Omnibus Transportation Employee Testing Act of 1991;
- k. Department of Transportation 49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing August 1, 2001, and June 25, 2008;
- l. 7 CFR Part 1, Subpart G, implementing the Privacy Act of 1974 within the USDA;
- m. Federal Employees Substance Abuse Education and Treatment Act of 1986, P.L., 99-570;

- n. Sections 523 and 527 of the Public Health Service Act and implementing regulations at 42 CFR Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records;
- o. Department of Transportation 49 CFR Part 382 – Controlled Substances and Alcohol Use and Testing August 17, 2001;
- p. USDA Plan for a Drug Free Workplace as revised; and
- q. DR-4430-792-1, USDA Employee Assistant Program.

Guidance – Sections c, d and e of Paragraph 6 of the USDA Departmental Regulation, Safety Management Program DR 4410-004 dated November 18, 2005.

6. RESPONSIBILITIES

a. The Assistant Secretary for Administration (ASA) will:

Advise the Secretary of Agriculture, Mission Areas/Agency Heads, and Staff Office Directors regarding DFWP policies and procedures, and provide program oversight.

- (1) Ensure USDA Plan for a Drug Free Workplace is efficiently and effectively accomplished in accordance with the Executive Order and all other applicable laws and regulations;
- (2) Develop policies and procedures to enable the efficient and swift implementation of the Plan for a Drug Free Workplace at headquarters and field locations, taking into account the unique geographical, personnel, budgetary and other relevant factors of the field offices;
- (3) Contract for drug testing services or ride other federal agency drug testing contracts ensuring that contractors chosen to perform the drug testing services are HHS accredited and that all contracts conform to the technical specifications of the HHS guidelines as referenced in Section 5.f;
- (4) Establish, by contract or with USDA employees as deemed appropriate, the function and specific responsibilities of the MRO as required by the HHS guidelines contained in Section 5.f. and the position of the USDA DFWP Manager;
- (5) Approve agency requests for additional applicant testing under Section XI of this Plan; and

(6) Review and issue decisions on TDP appeals.

b. The Director, Office of Human Resources Management (OHRM) will:

Advise the ASA in planning, developing and implementing policies and procedures regarding the DFWP.

c. The Employee Relations Officer, OHRM will:

- (1) Direct, administer and manage the implementation of this program in accordance with applicable laws, regulations, and guidelines through the DFWP Manager;
- (2) Decide upon requests from Agency Heads to exempt positions from testing on the basis of hardship due to remote location, unavailability of onsite testing personnel, or the lack of an appropriate site for the test to be administered (this authority can be delegated to the DFWP Manager at the discretion of the Employee Relations Officer, OHRM).
- (3) Coordinate with, and report to HHS on drug testing activities and/or findings that may affect the reliability or accuracy of drug testing results;
- (4) Respond to agency requests to temporarily defer personnel from testing under this program. This authority can be delegated to the USDA Drug Free Workplace Program Manager to insure continuity in day-to-day operations at the discretion of the Employee Relations Officer, OHRM;
- (5) Receive positive EO TDP random and applicant tests from DFWP Manager;
- (6) Periodically review agency actions taken against employees who are found with a positive test under this program; and
- (7) Initiate action under Section 7(f) of this Regulation in cases where the authority to take action rests with the Director, Office of Human Resources Management of the Office of the Assistant Secretary for Administration, Office of the Secretary.

d. The USDA Drug Free Workplace Program (DFWP) Manager will:

- (1) Administer and manage the implementation of this program in accordance with applicable laws, regulations and guidelines; serve as the principal contact with all internal and external organizations on the DFWP, and arrange for all drug and alcohol testing required by this program;

- (2) Ensure that all current employees in positions that are reclassified as TDP and are then subject to random testing receive individual notices as described in Section VII(B) of this USDA Plan for a Drug Free Workplace. All TDP positions that are advertised to be filled will state that the position is subject to random drug testing and a pre-employment test will be required of the applicant selected for the position.
- (3) Conduct laboratory inspections, as appropriate, and document all results of laboratory inspections conducted;
- (4) Coordinate with and report through the Employee Relations Officer and Deputy Director OHRM to the ASA on DWFP Manager Activities and findings that may affect the reliability or accuracy of laboratory results;
- (5) Assure that the Drug-Free Workplace Program is publicized throughout the Department, that drug program educational materials are disseminated, and that training and education regarding drug use and rehabilitation are provided to supervisors and employees;
- (6) Coordinate with the Agency Drug Testing Liaisons in field offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives;
- (7) Upon receipt of a verified positive test result from the Medical Review Officer (MRO), assure that agencies have an EAP available, and that employees are referred to the program. Notify the Chief, Personnel Security Branch of those employees with a positive test who have a security clearance (the DFWP manager has access to USDA Security Entry Tracking System to verify personnel with security clearance);
- (8) Report verified positive Executive Order (EO) TDP random or applicant test results to Employee Relations Officer, OHRM and to the appropriate Mission Area/Agency Personnel Officer through the ADTL for action consistent with HHS and DFWP plan guidelines;
- (9) Report verified positive Department of Transportation (DOT) TDP test results to the appropriate Mission Area/Agency Personnel Officer through the ADTL for action consistent with DOT regulations;
- (10) Provide training to newly identified Agency Drug Testing Liaison (ADTL) on the USDA Plan for a Drug Free Workplace and procedures for accessing the drug testing collection contractor's website for requesting and tracking drug tests on their employees. Also, provide on-going guidance and updates on programmatic changes from HHS and serve as a resource for the ADTLs;

- (11) Inform and consult with appropriate supervisory and management personnel on appropriate actions regarding employees with positive drug test results;
- (12) Monitor and assist the ADTL in coordination with the collection contractor to exhaust all possibilities for collection to include; establishing new sites as close as possible to the employee to be tested and/or provide a collector to travel to the employee's location to conduct an on-site collection;
- (13) Report monthly to the Employee Relations Officer, OHRM the status of all requested drug tests. Respond to all reporting requirements and report on a regular basis to the ASA on all Drug-Free Workplace Program activities; and
- (14) As the EAP Manager, manage the delivery of the EAP for drug related issues as defined in the USDA Plan for a Drug Free Workplace.

e. Agency Heads will:

- (1) Designate in writing to the Employee Relations Officer (OHRM) an Employee Assistance Program Coordinator and an Agency Drug Testing Liaison (ADTL) to coordinate the agency EAP and DFWP with the Agency Head, Employee Relations Branch, OHRM, the DFWP Manager, EAP personnel, agency supervisors and employees;
- (2) Require employees to present themselves for testing when scheduled, and ensure that employees subject to random testing receive notification of scheduled testing in a timely manner;
- (3) Ensure that agency employee relations officers consult with appropriate supervisory and management officials on proposed actions, and with EAP personnel on referrals regarding employees with positive test results;
- (4) Publicize the DFWP through distribution of educational materials and other means, and provide training and education regarding drug use and rehabilitation to supervisors and employees;
- (5) Implement an effective EAP in accordance with applicable laws, regulations and guidelines;
- (6) Recommend additions, deletions, or changes to this program, or to the positions designated for testing; and
- (7) Recommend exempting positions from drug testing on the basis of hardship due to remote location, unavailability of onsite testing, or the

lack of an appropriate site for the test to be administered, to the Employee Relations Officer, OHRM and the DFWP Manager after coordination with the collection contractor to exhaust all possibilities for collection to include; establishing new sites as close as possible to the employee to be tested and/or provide a collector to travel to the employee's location to conduct an on-site collection;

- (8) Ensure that supervisory training and employee education is delivered within their agency in accordance with the USDA Plan for a Drug Free Workplace Sections IV and V; and
- (9) Make recommendations for additional applicant testing (if any) within their agency to the ASA, as outlined in the USDA Plan for a Drug Free Workplace Sections Section XI.

f. Employee Assistance Program Coordinator will:

- (1) Implement and operate the EAP within their agency according to DR 4430-792-1 Employee Assistance Program and the USDA Plan for a Drug Free Workplace as related to drug and alcohol issues. Ensure that EAP is available to all employees, and ensure that supervisors and employees know how to access the program;
- (2) Coordinate with the Department EAP Manager (DFWP Manager), the Employee Relations Officer, union representatives, and supervisors, as appropriate on drug testing issues;
- (3) Work with the Department EAP Manager (DFWP Manager) to provide educational materials and training on illegal drugs in the workplace to managers, supervisors, and employees;
- (4) Advise supervisors of employees with performance and/or personnel problems that may be related to illegal drug use in the services available through the EAP; and
- (5) Monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records.

g. Employee Assistance Counselors will:

- (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) Meet the qualifications as described in the agency EAP contract and be trained in counseling employees in the occupational setting, and in identifying drug use;
- (4) Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and
- (5) In making referrals, consider the—
 - (a) Nature and severity of the problem;
 - (b) Location of the treatment;
 - (c) Cost of the treatment;
 - (d) Intensity of the treatment environment;
 - (e) Availability of inpatient/outpatient care;
 - (f) Other special needs, such as transportation and child care; and
 - (g) The preferences of the employee.

h. Agency Drug Testing Liaisons will:

- (1) Arrange for employees to present themselves for drug testing when so instructed by the DFWP Manager or Agency Head;
- (2) Ensure that notices are delivered to employees subject to random testing;
- (3) As assigned by the Agency Head, provide staff support in the responsibilities of the Agency Head covered in Section 6e of this Regulation including, but not limited to, distribution of educational materials and providing training and education on drug use and rehabilitation;
- (4) Assist the DFWP Manager with the coordination of all drug testing duties within their Agency;
- (5) Coordinate with the collection contractor to exhaust all possibilities for collection to include; establishing new sites as close as possible to the

employee to be tested and/or provide a collector to travel to the employee's location to conduct an on-site collection; and

- (6) Provide monthly report of drug testing activities to the Agency Head and the DFWP manager. See example at Appendix B.

i. Medical Review Officer (MRO) will:

- (1) Receive all laboratory test results;
- (2) Assure that an individual testing positive is afforded an opportunity to justify the test result in accordance with applicable laws, regulations, and guidelines; and
- (3) Consistent with confidentiality requirements, refer all test results to the USDA DFWP Manager and for verified positive test results, a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings; and
- (4) Report test results of individuals subject to applicant testing to the DFWP Manager who will insure notification to the appropriate personnel official.

j. Mission Area/Agency Personnel Officers will:

- (1) Make determinations regarding EO and DOT reasonable suspicion and accident/unsafe practice testing in cases involving employees in their jurisdiction. This authority may be re-delegated to personnel officers or management officials one organizational level below the agency personnel officer;
- (2) Consistent with the USDA Plan for a Drug Free Workplace, receive all verified positive test results from the DFWP Manager through the Agency Drug Testing Liaison;
- (3) Take appropriate action regarding any security clearance on those employees with verified non-negative (positive, adulterated or substituted) results; and
- (4) Inform and consult with appropriate supervisory and management personnel on appropriate actions including disciplinary and/or adverse actions as outlined in Section 7.f. of this regulation regarding employees with verified non-negative (positive, adulterated or substituted) results.

k. Department and Agency Training Officers will:

Ensure that supervisory training and employee education is delivered within their areas of responsibility in accordance with Sections 7b and 7c of this regulation.

1. 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. Working with personnel specialists as appropriate, first line supervisors will:

- (1) Be trained on illegal drug use in the workplace;
- (2) Initiate procedures for a reasonable suspicion test in accordance with Appendix C of this Regulation (Section X of the USDA Plan for a Drug Free Workplace) after first making appropriate factual observations, documenting those observations and obtaining appropriate concurrence. However, failure of supervisors to receive training on reasonable suspicion testing procedures shall not invalidate otherwise proper reasonable suspicion testing;
- (3) Refer employees to the EAP for counseling and rehabilitation, upon a finding of illegal drug use;
- (4) Initiate appropriate disciplinary action upon receiving a finding of illegal drug use by a subordinate;
- (5) Assist higher-level supervisors, personnel official, and the EAP Counselor in evaluating employee performance, conduct, and or personal problems that may be related to illegal drug use; and
- (6) A higher-level supervisor shall review and concur, in advance, with all tests ordered on the basis of a reasonable suspicion in accordance with Section 7(d)(4).

7. PROGRAM ADMINISTRATION

a. Employee Assistance Program (EAP)

EAP's provide educational materials to supervisors and employees on drug use issues and assist supervisors in confronting employees who have performance and/or conduct problems. EAP counselors and substance abuse professionals (SAP) provide confidential assessment, short-term counseling, and referral services to employees with substance abuse problems. The counselor assists employees in treatment and will work with them during the rehabilitation period to track their progress and encourage successful completion of the program.

b. Supervisory Training

Since supervisors have a key role in establishing and monitoring a drug-free workplace, USDA will provide training to assist supervisors and managers in recognizing and addressing illegal drug use by agency employees.

Each USDA agency, with the assistance of the DFWP (EAP) Manager as necessary, will be responsible for implementing supervisory training designed to ensure that all supervisors are fully informed of the USDA Drug-Free Workplace Plan. Training will be provided as soon as possible after a person assumes supervisory responsibility. A variety of training delivery methods such as formal training sessions, teleconferences, and self-instruction through Internet training programs (AgLearn: Search for drug testing in the catalog), video tapes, audio tapes, and written materials may be used. Training courses should be based on the forty (40) goals and learning objectives developed as a part of the USDA Generic Training Project and should also include:

- (1) Departmental policy relating to drug use and EAP;
- (2) The prevalence of various employee problems with respect to drugs and alcohol;
- (3) The EAP approach to handling problems including the supervisor's role and relationship to the EAP;
- (4) How to recognize employees with possible problems;
- (5) The roles of the medical staff, supervisors, personnel and EAP personnel;
- (6) How to document employee performance or behavior;
- (7) Skills in confronting employees with possible problems;
- (8) Agency procedures for referring employees to the EAP;
- (9) Disciplinary action, and removals from sensitive positions as required by Section 5(c) of the Executive Order;
- (10) How to arrange for details from sensitive positions;
- (11) Reintegration of employees into the workforce; and
- (12) Written materials which the supervisor can use at the work site.

c. Employee Education

Agency training programs, with assistance from EAP, as necessary, will offer on-going drug education to all USDA employees. Drug education presented to employees will be based upon the goals and learning objectives developed for this area as part of the USDA Generic Training Project. Employees are to receive ongoing drug education programs to include:

- (1) The types and effects of drugs;
- (2) The 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 treatment, rehabilitation, and confidentiality issues.

Agency training officers and EAP personnel can make this information available through various educational activities such as distribution of written materials; videotapes, DVD's and Internet Training programs (AgLearn: Search for drug testing in the catalog), lunchtime employee forums; employee drug awareness days; and formal training sessions.

d. Substance Abuse Testing

The USDA DFWP program provides for drug testing of employees as described below. In addition, DOT regulations also mandate alcohol testing for employees required to have a commercial driver's license (CDL).

- (1) Random Unannounced Drug Testing. Employees occupying EO and DOT TDPs;
- (2) Random Unannounced Alcohol Testing. Employees occupying DOT TDPs;
- (3) Applicant Drug Testing. Applicant tests are required for all EO and all DOT TDPs. If the result is a verified positive, a final offer of employment will not be extended to any outside applicant and such applicant may not re-apply to USDA for a period of six months. For applicants who are currently employed by USDA, satisfactory completion of a rehabilitation program and a minimum of 6 months waiting period from the date of the reported verified positive result is required before they can re-apply.
- (4) Employees Suspected of Using Illegal Drugs or Alcohol.
 - (a) Employees in EO TDP's. Drug testing may be required of any employee in a position which is designated for random testing

when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty.

- (b) Employees not in EO TDP's. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment.
 - (c) Employees in DOT TDP's. Reasonable suspicion alcohol and/or drug testing may be required of an employee required to have a CDL. The decision to test must be based on direct observation of specific, contemporaneous articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations must be made by a supervisor who is trained in detecting the signs and symptoms of possible alcohol/drug use.
- (5) Employees Involved in Safety-Related Incidents.
- (a) All Employees. Employees may be subject to testing when, based upon the circumstances of an accident, their actions are reasonably suspected of having caused or contributed to an accident that results in a death or personal injury requiring immediate hospitalization, or results in damage to government or private property estimated to be in excess of \$10,000.
 - (b) Employees in DOT TDP's. After an accident involving a Commercial Motor Vehicle (CMV) the surviving driver will be tested for alcohol and controlled substances if the accident involved the loss of human life, or if the driver receives a citation under State or local law for a moving traffic violation arising from the accident.

Certain drugs stay in a person's system for a limited time. Therefore, all tests must be completed within 32 hours of the accident. If this is not done, documentation as to why the test was not accomplished must be provided to the Agency Head and the DFWP Manager. For alcohol testing the test must be completed within 2 hours. If this is not done, documentation as to why the test was not accomplished must be provided to the Agency Head and the DFWP Manager. If the alcohol test is still not completed within 8 hours, the agency shall cease trying to administer the test and provide documentation as to why it was not completed.

If an employee is suspected of having caused or contributed to an accident meeting the above criteria, the appropriate supervisor will present the facts and circumstances leading to and supporting this suspicion to the Mission Area Personnel Officer or delegated Personnel Officer (or equivalent administrator) for approval. Once approval has been obtained and

arrangements made for testing, the supervisor will prepare a written report detailing the facts and circumstances that warranted the testing.

- (6) Executive Order Voluntary Testing. Employees not in an EO TDP may volunteer for drug testing. The voluntary program allows individual to demonstrate their commitment to the goal of a drug-free workplace and set an example for other employees by being subject to all the rules, regulations, and requirements of those employees in an EO TDP.
- (7) Return to Duty and follow-up testing.
 - (a) Employees in EO TDP's. Employees may be returned to duty after completion of rehabilitation through an EAP. Employees will be subject to follow-up testing for two years after they complete a counseling or rehabilitation program. During this period, the employee will be tested at least three times. Such testing is distinct from testing which may be imposed as a component of the EAP.
 - (b) Employees in DOT TDP's. A driver found to have engaged in prohibited conduct will be subject to return-to-duty testing and then follow-up testing consisting of at least six tests in the first 12 months following the driver's return to duty. The SAP for each employee may require a greater number of tests and may also require follow-up testing for the 48 months following the first 12 month period. The return-to-duty and follow-up tests will be observed collections.

e. Referral and Counseling

- (1) Employees in EO TDP's. Employees found to use drugs illegally will be referred to an EAP. An employee who occupies a TDP may not be allowed to remain on duty in that position until successful completion of rehabilitation through an EAP.
- (2) Employees in DOT TDP's. Employees, who engage in prohibited alcohol conduct and/or have a verified positive drug result, must be immediately removed from their safety-sensitive functions. Employees cannot return to safety-sensitive duties until they have been evaluated by a substance abuse professional (SAP), have complied with any treatment recommendations, and have a negative result on a return-to-duty alcohol or drug test (based on the substance originally reported as positive).
- (3) Employees not in TDP's. Employees not in a TDP found to use drugs illegally will be referred to an EAP.

- f. Disciplinary or Adverse Action. Agency officials must refer employees to the EAP and also initiate disciplinary or adverse action upon the first finding of illegal drug use and/or prohibited alcohol conduct. The severity of the disciplinary or adverse action is dependent on the circumstances of each case and is consistent with the EO, DOT regulations, Department Personnel Manual Chapter 751, and the Civil Service Reform Act of 1978.

Such disciplinary or adverse action may include any of the following measures but some disciplinary or adverse action must be initiated:

- (1) Reprimanding the employee in writing;
- (2) Placing the employee in enforced leave status;
- (3) Suspending the employee without pay;
- (4) Reducing the employee in grade or rate of pay; and
- (5) Removing the employee from service.

Agency officials must initiate action to remove employees from the Federal Service when employees:

- (1) Refuse to obtain counseling or rehabilitation through the EAP;
- (2) Fail to refrain from illegal drug use and/or prohibited alcohol conduct after a first finding;
- (3) Refuse testing when so required;
- (4) Attempt to alter or substitute specimens; or
- (5) Distribute or sell illegal drugs.

8. INQUIRIES

Direct all inquiries to the Office of Human Resources Management, Drug Free Workplace Program, Room 302W, The Whitten Building, Washington, DC 20250; telephone number 202-720-9010. A copy of the complete Plan for a Drug Free Workplace approved by the Department of Health and Human Services is available on the Web at: <http://www.usda.gov/da/shmd/dfwp.htm>.

END

APPENDIX A

POSITION TITLES DESIGNATED FOR RANDOM TESTING

1. Agency Heads

Incumbents serve as the top cadre of management personnel of USDA in both career and non-career positions. They manage and supervise agencies of the Department, participate at the highest levels in policy formulation and direction, and make extremely complex and sensitive decisions requiring a high degree of public trust and confidence.

Drug usage could result in actions and decisions which could lead to a failure to implement laws and program delivery which could negatively impact the protection of life and property or public health and safety or lead to the waste of public funds. This could lead to a loss of trust and confidence in USDA and the American Government by the public and foreign governments.

2. Aircraft Mechanic

(GS-1670, WG-8852 or any other occupational series in which the incumbent may perform the duties described below)

Incumbents are involved in the overhaul, installation, maintenance, modification, test, and/or repair of aircraft systems, electronic equipment, instrumentation, flight control, and survival equipment. These duties require keen sensory perception and neuromuscular coordination. Incumbents must exercise sound judgment to ensure aircraft safety and operation.

Drug usage could result in loss of life, injury or destruction of property. For example, if an aircraft mechanic failed to properly conduct pre-flight inspections, mechanical failure could result and cause a crash endangering the pilot, passengers, and other personnel on the ground and in the surrounding airspace.

3. Aircraft Operator

(AD-404, GS-486, GS-2181, GM-2150 or any other occupational series in which the incumbent may perform the duties described below)

Incumbents are required to operate aircraft used in agricultural programs for such purposes as crop spraying, fire fighting, insect control, animal damage control, and aerial surveillance and photography. Aircraft operators make critical judgments which are substantially more demanding than what would be required of operators of aircraft carrying only passengers. Flying in agricultural situations usually requires operating in and out of less developed airfields, over rural and mountainous terrain, and at low altitudes necessitating acute awareness and instantaneous decision making.

Drug usage produces diminished mental and neuromuscular coordination which could lead to the inability to properly operate the aircraft. Inability to properly operate aircraft could in turn result in the loss of life and damage to, or destruction of property. Drug usage could endanger the aircraft operator, as well as all other passengers and pilots in the airspace and personnel on the ground.

4. Small Craft Operator

(WG-5786 or any other occupational series in which the incumbent may perform the duties described below)

Incumbents are required to operate small oar, sail or mechanically propelled craft, generally under 55 meters (180 feet) in length, to transport personnel including high level state and Federal officials, supplies, and equipment. They also control harbor pollution, remove aquatic plants, conduct hydrographic surveys of rivers and harbors, or carry out similar functions. The operations are characterized by regular daily tours of duty followed by employees' physical departure from the boat rather than watch and watch, which is characteristic of maritime industry practices. This work requires the ability to steer and navigate the small craft, operate the engines and, in some assignments, to make operating repairs to the engines and the boat itself. Vessels must be operated in a safe manner in order not to endanger lives and/or to risk loss of property.

Drug usage diminishes the mental and neuromuscular capacity necessary to operate vessels of this size. This, in turn, leads to the operator's inability to properly control the vessel leading to a possible loss of life, personal injury, or destruction of property.

5. Criminal Investigator

GS-1811

Incumbents perform, advise on, and administer investigations concerning suspected violations of Federal statutes and regulations. Close coordination must be maintained with U.S. Attorneys, military security, and local, state and Federal law enforcement officials. Incumbents interrogate witnesses and suspects, serve subpoenas, testify before grand juries, administer oaths, and conduct searches for physical and documentary evidence.

Some incumbents carry and use firearms in the performance of their duties. The conduct of these duties requires the highest level of personal integrity and credibility since it involves investigating and charging others who are accused of wrongdoing or violation of the law. These duties also require extensive exercise of sound personal judgment.

Drug usage could result in loss of life or injury and improper adjudication of criminal or administrative actions. For example, if criminal investigators fail to obtain key data, ascertain witness veracity, follow legal procedures, or execute rules of evidence properly, sensitive and costly investigations could be compromised. Additionally, improper or unauthorized use of weapons could result in loss of life. The high level of personal integrity required of criminal investigators is not consistent with the use of illegal drugs.

6. Departmental Medical Director or other like positions

GS-602

The incumbents, as the Chief Medical Officer of the Department, or other GS-602 medical officers, are responsible for a variety of functions including operation of the Health Units, dispensing medications, and emergency treatment of patients. The incumbent must recognize patients' adverse signs and symptoms and react swiftly. This includes taking resuscitative measures in case of cardiac or respiratory arrest. These duties require keen sensory perception, judgment, and neuromuscular coordination.

Drug usage could result in the loss of the patients' life or injury to the patient. Additionally, the incumbent's access to medication and participation in assessing the drug usage of USDA employees requires the utmost personal integrity. Improper or illegal drug usage is not consistent with these responsibilities.

7. Drug Free Workplace Program Personnel

Employee Relations Officer
Drug Free Workplace Program Manager and staff
Medical Review Officer
Agency Drug Testing Liaisons
Counselors to Drug Abusers

Incumbents in these positions are directly involved in the administration and day-to-day operation of the Drug Free Workplace Program. As such they are in positions having access to sensitive employee and drug testing program information.

Drug usage by the incumbents could result in incorrect decisions, embarrassment to USDA, or the release of information which could undermine the program. Therefore, the incumbents have a responsibility to demonstrate the absence of use of illegal drugs to maintain the credibility and employee confidence in the program.

8. Employees authorized to carry firearms

Incumbents preserve and protect government employees and property. They also are authorized to carry firearms for self protection in remote locations such as U.S. Forests.

Illegal drug use calls to doubt the integrity and credibility of the employee and their ability to perform their duties of protecting persons, property or themselves. Drug usage produces diminished mental and neuromuscular capacity. This could lead to life-threatening lapses in judgment or ability.

9. Employees directly involved in drug-interdiction duties

Incumbents are involved in: (1) detecting cannabis cultivation activity occurring on National Forest lands; (2) investigating cannabis and other controlled substance violations; (3) apprehending and prosecuting offenders; (4) eradicating cannabis plants and cultivating sites; and (5) cooperating with other Federal, State and local law enforcement agencies in controlled substance investigations where there is a mutual interest.

Illegal drug use could have serious effects on the agency's interdiction responsibilities. A drug user's indifference to the agency's basic responsibility and mission or activity complicity with malefactors can facilitate illicit drug activity on National Forest lands. The employee may suffer from impaired perception and judgment leading to possible loss of life, personal injury, or destruction of property.

10. Employees with Top Secret Security Clearances

Incumbents have access to national security information with Top Secret classification, serve in sensitive Foreign Service or overseas positions which require a Top Secret security clearance, or are involved in duties demanding the highest degree of public trust.

Drug usage could result in inability to properly perform the duties of their positions, indiscretions while under the influence of drugs, or susceptibility to financial considerations which could cause an incumbent to be susceptible to releasing the classified information or otherwise compromising national security for personal gain.

11. Employees stationed at Plum Island Animal Disease Center with special access to the biocontainment laboratories (a Biocontainment Science Lab Level 3 – BSL3) or employees with special access at other BSL3 laboratories.

Incumbents with special access to the biocontainment laboratories either work within the confines of the biocontainment laboratories, or have frequent access to the biocontainment laboratories, although their primary work site may be in other buildings. This special access authorizes the incumbents to move freely without supervision or escort throughout the entire biocontainment facility (approximately 250,000 sq. ft. of Laboratory/Mechanical space and Animal Rooms), which allows them access to dangerous and exotic disease agents which pose a high individual risk of life-threatening disease. United States law mandates that certain etiologic microorganisms which are foreign to the United States may only be studied at the Plum Island Animal Disease Center. The microorganisms included exhibit varying degrees of pathogenicity/infectivity for man (in some cases unknown). The risk of extensive damage to the United States livestock industry by exposure to these disease agents is extremely high.

Drug use could result in accidental or deliberate violation of biological safety regulations and procedures which could be potentially disastrous to human safety and economic welfare of the United States.

12. Fire Protection and Prevention Personnel

GS-081

Incumbents are responsible for performing work in controlling and extinguishing fires and rescuing persons endangered by fire. Hazards encountered may involve burns and other effects of heat, smoke inhalation, falling materials, explosion, and exposure to toxic materials. Incumbents must be prepared to deal with fire victims in varying states of fright and panic. Also, they may be required to operate or ride on fire trucks at high speed under adverse conditions. These duties require keen sensory perception and neuromuscular coordination.

Drug usage could result in loss of life or injury and damage to, or destruction of property. Use of illegal drugs by a fire fighter could endanger fire victims, employees in the fire vicinity, other fire fighters and all property threatened by fire.

13. Guard

GS-085

Incumbents preserve and protect government employees and property. They must maintain a high standard of conduct at all times, must be mentally alert and aware of their surroundings, and be ready to act to provide protective measures at any time. A high level of integrity and credibility are necessary in discharging the duties of the position. Incumbents are expected to remain calm under pressure, think rationally, and respond intelligently, despite adverse circumstances, and deal effectively in interpersonal confrontations. They often carry firearms in the line of duty.

Illegal drug use calls to doubt the integrity and credibility of the employee and their ability to perform their duties of protecting persons and property. Drug usage produces diminished mental and neuromuscular capacity. This could lead to life-threatening lapses in judgment or ability. For example, if a guard failed to exercise sound observation powers and judgment and used a weapon improperly, needless injury or death could result.

14. Job Corps Center Staff (Includes any occupational series in which the incumbent may perform the duties described below)

Each Center staff member sees students every day, and each staff member is responsible for the safety of every student, including administering CPR and/or first aid whenever needed. Each staff member is required to receive training in CPR and first aid. In addition, staff members may be required to operate motor vehicles to transport students for both routine and emergency purposes, as students are prohibited from possessing privately owned vehicles on campus. These staff members are required to possess a valid driver's license. Staff members who are not in such positions in practice almost always possess a valid driver's license due to the remote location of Centers and their absence of staff housing. These staff members also in practice frequently are called upon to drive students for a wide variety of purposes.

Drug usage by Center staff members could result in the loss of students' lives or injury to the students. Also, all Center staff personnel are responsible for administering the Zero Tolerance

for Drug Policy. Improper or illegal drug use is inconsistent with assisting others in becoming and remaining drug-free.

15. Motor Vehicle Operator Include only operators of passenger carrying vehicles

WG-5703

Incumbents operate motor vehicles such as buses, trucks, passenger vans, and other passenger carrying vehicles as their predominant duty and responsibility. The vehicles are used to move people and equipment including providing chauffeur services to high level officials. Vehicles must be operated in a safe manner to avoid endangering lives of the public or passengers, or risking the loss of property.

Drug usage produces diminished mental and neuromuscular capacity. This could in turn lead to the operators' inability to properly control the vehicle, leading to the possible loss of life, personal injury, or destruction of property. For example, if the driver of a passenger carrying shuttle failed to notice a traffic light, death or serious injury could result to USDA employees and the general public. The use of illegal drugs is therefore inconsistent with the responsibility of safe vehicle operation.

16. Nurse, Practical (Vocational) Nurse, Health Technician, Nursing Assistant

GS-610, GS-620, GS-699, & GS-621

Excluding those positions not having responsibility for patient care, drug testing or access to controlled substances

Incumbents provide care to people with injuries and illnesses, administer injections, and must be able to recognize patients; adverse signs and symptoms to be able to react swiftly in emergency situations. This includes taking resuscitative measures in case of cardiac or respiratory arrest when a physician is not present or immediately available. They must be able to provide emergency treatment to accident victims. These duties require keen sensory perception and neuromuscular coordination.

Drug usage could result in the loss of patients' lives or injury to the patient. Additionally, the incumbent's access to medication requires the utmost personal integrity on their part concerning drug usage.

17. Other Personnel with Access to Controlled Substances

Incumbents have access to controlled substances. As a result, incumbents must maintain the highest level of personal integrity in order that full confidence can be placed in the integrity of the agency.

Drug abuse could result in diminished mental capacity, or personal use of the controlled substance to which incumbents have access. Additionally, incumbents who are drug users are highly vulnerable to extortion, which could result in the unauthorized release of these substances.

18. Presidential Appointees

These are individuals appointed by the President with the advice and consent of the Senate. They serve the American public in the highest levels of the Department in positions such as Secretary of Agriculture, Deputy Secretary of Agriculture, Assistant and Under Secretaries and Agency Heads. They participate with the President and the Congress in developing public policy in the many areas within the scope of USDA, make the most complex and sensitive decisions, and require the highest degree of public trust and confidence.

Drug usage could result in loss of trust and confidence by the American public and governments throughout the world. In addition, drug usage by incumbents in these positions will have a direct and negative effect on USDA and the American Government, national security, and the efficiency, effectiveness, and cost of USDA programs.

19. Special-Sensitive Positions

Incumbents of these positions are designated as such under criteria found at 5 CFR 732.201 and the Office of Personnel Management position sensitivity designation guidance. Individuals serve in positions of the highest level of sensitivity with the potential for the greatest degree of damage to the national security. Most occupants of these positions require access to Top Secret national security information in accordance with Executive Order 10450 and 12968, or access to sensitive compartmented information under authority of Director of Central Intelligence Directive 6/4.

These positions also include any ADP-Computer position that meets the above criteria or is determined by the head of a USDA agency to impose a risk in terms of ADP-Computer security above that at the critical-sensitive level. Incumbents are in positions that have potential for inestimable impact involving duties especially critical to the agency mission. They have broad scope and authority (e.g., overall direction of a major Federal program) or other extremely important responsibilities which affect the overall efficiency of the service.

Drug usage could result in one's inability to properly perform the duties of their position or indiscretions while under the influence of drugs. Drug usage could cause incumbents to be subject to increased financial need which may cause them to be susceptible to compromising national security information or otherwise compromising national security for personal use.

20. Employees required to have a Commercial Drivers License (CDL)

As required by the Department of Transportation (DOT) Regulations (49 CFR e. al.), all applicants for and employees of positions in which they are required to have a CDL to perform their duties are subject to random alcohol and drug testing. (Not subject to applicant alcohol testing).

See DOT Regulation 49 CFR e. al. for justification.

http://www.dot.gov/ost/dapc/NEW_DOCS/part40.html?proc

APPENDIX B:
DRUG TEST RESULTS MONTHLY REPORT
REPORT EXAMPLE FOR FOREST SERVICE (B-2)
REPORT EXAMPLE FOR ALL AGENCIES EXCEPT FS (B-3)

APPENDIX B
 MONTHLY REPORT OF DRUG TESTING ACTIVITIES
 AGENCY NAME
 MONTH

Name	ID (last 5)	MODE DOT/NDOT	TEST FOR D, A	TEST TYPE	FOR ORG/LEVEL	POSITION	TESTED	REASON NOT TESTED
DOE, JOHN	12345	DOT	D,A	RAN	01-00-0009	FORESTRY TECH	Y	
DOE, JANE	56789	NDOT	D,A	PRE	01-02-0000	ENGR EQUIP OPR	Y	
MAJOR, MAJOR	12347	NDOT	D,A	RAN	01-02-0000	MTR VEH OPR	N	TDY-WILL BE TESTED UPON RTN
GATOR, ALI	12348	DOT	D,A	RAN	01-15-0005	SUPVY FOR TECH	N	ON FIRE LINE - TESTED UPON RTN

REPORT EXAMPLE FOR FOREST SERVICE
 USE FOR BOTH NDOT AND DOT TESTING

APPENDIX B
 MONTHLY REPORT OF DRUG TESTING ACTIVITIES
 AGENCY NAME
 MONTH

Name	ID (last 5)	MODE DOT/NDOT	TEST FOR D, A	TEST TYPE	POSITION	TESTED	REASON NOT TESTED
DOE, JOHN	12345	DOT	D,A	RAN	MTR VEH OPR	Y	
DOE, JANE	56789	NDOT	D	PRE	WLDF BIOLGST	Y	
MAJOR, MAJOR	12347	NDOT	D	RAN	BIOL SCI TECH (WLDF	N	TDY-WILL BE TESTED UPON RTN
GATOR, ALI	12348	NDOT	D	RAN	BIOL SCI TECH (WLDF	N	SEASONAL EMPLOYEE

REPORT EXAMPLE FOR ALL AGENCIES EXCEPT FS
 USE FOR BOTH NDOT AND DOT TESTING

APPENDIX C

X. REASONABLE SUSPICION TESTING-USDA Plan for a Drug Free Workplace

A. Grounds

Reasonable suspicion testing may be required of any employee in a position which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment. In addition there shall be grounds for reasonable suspicion testing of any employee if the employee is the focus of a criminal investigation into the illegal use, possession, distribution or trafficking of controlled substances.

Reasonable suspicion testing may be conducted for the drugs listed in Appendix D of this Regulation or for any drug listed in Schedule I or II of the Controlled Substances Act as specified in the HHS Guidelines (Mandatory Guidelines for Federal Workplace Drug Testing Programs: (November 25, 2008, Subpart C Section 3.2 (a)), contained in Appendix E of this Regulation. Testing may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptom(s) of being under the influence of a drug;
2. A pattern of abnormal conduct or erratic behavior;
3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
4. Information provided either by reliable and credible sources or independently corroborated; or
5. Newly discovered evidence that the employee has tampered with a previous drug test.

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

B. Procedures

If an employee is suspected of using illegal drugs, the appropriate supervisor or management official will gather all information, facts, and circumstances leading to and supporting this suspicion. Mission Area Personnel Officers may make the determination of reasonable suspicion in cases involving employees within their jurisdiction. This authority may be delegated to Personnel Officers (or equivalent administrator) one level below the Mission Area Personnel Officer. Competent medical and legal authorities may be consulted if necessary.

C. Obtaining the Sample

The employee may be required to provide the urine sample under observation in accordance with the criteria in Appendix F of this Regulation.

D. Documentation

When higher-level concurrence of a reasonable suspicion determination has been made, the appropriate supervisor will promptly prepare a written report detailing the circumstances which formed the basis to warrant the testing. This report should include the appropriate dates and times of reported drug related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken.

E. Supervisory Training

In accordance with Section 6 l of this Regulation, supervisors will be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training, however, shall not invalidate otherwise proper reasonable suspicion.

APPENDIX D

DRUGS FOR WHICH INDIVIDUALS ARE TESTED

The following drugs or categories of drug constitute the basis of the USDA drug testing program, and will be tested for in each sample:

1. Marijuana
2. Cocaine
3. Opiates
4. Amphetamines
5. Phencyclidine (PCP)

When conducting reasonable suspicion, post accident, or unsafe practice testing, a Federal agency may have a urine specimen tested for any drug listed in Schedule I or II of the Controlled Substances Act.

Federal agency drug testing programs shall have validity tests performed on urine specimens as, provided in Subpart C Section 3.1(c) of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (November 25, 2008).

APPENDIX E

**MANDATORY GUIDELINES for FEDERAL WORKPLACE DRUG TESTING
PROGRAMS**

LINKS TO GUIDELINES

<http://edocket.access.gpo.gov/2008/pdf/e8-26726.pdf>

<http://edocket.access.gpo.gov/2008/pdf/z8-26726.pdf>

<http://edocket.access.gpo.gov/2010/pdf/2010-10118.pdf>

APPENDIX F**TEST PROCEDURES IN GENERAL****Privacy Assured**

Any individual subject to testing under this Regulation will 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, however, may observe the individual provide the urine specimen when there is reasonable, articulable, and individualized suspicion that the employee may tamper with the specimen to be provided and when directed to do so by the DFWP Manager. In all such cases, the collection site personnel must be of the same sex as the individual providing the sample.

Collection site personnel or the DFWP Manager may have reason to believe that a particular individual may alter or substitute the specimen to be provided when:

1. The individual—
 - a. Is being tested pursuant to Section X relating to reasonable suspicion testing;
 - b. Has previously been found by USDA to be an illegal drug user; or
 - c. Has previously tampered with a sample; or
2. Facts and circumstances suggest that the individual—
 - a. Is an illegal drug user;
 - b. Is under the influence of drugs at the time of the test; or
 - c. Has equipment or implements capable of tampering with or altering urine samples; or
3. The specimen—
 - a. Has a temperature outside the range of 32.5-37.7 degrees C/90.5-99.8 degrees F; or
 - b. Shows signs of contaminants.

In cases of observation, the reasons therefore must be documented by the collection site personnel (on the Chain of Custody) or the DFWP Manager and submitted to the MRO. Submission of the documentation will normally be completed after the observed collection has been approved.