

Department of the Navy

Drug Free Workplace Program Handbook

## TABLE OF CONTENTS

Section	Page
<b>1. Purpose</b>	4
<b>2. Definitions</b>	4
<b>3. Training and Education</b>	4
a. Supervisory Training	4
b. Employee Education	4
c. Drug Program Coordinator (DPC)	5
d. Collection Personnel	5
e. Civilian Employee Assistance Program Personnel	6
<b>4. General Program Provisions</b>	6
a. Announcement/Notice	6
b. Voluntary Self-Referral for Safe Harbor	6
c. Collection of Urine Specimens	8
d. Department of the Navy Test Designated Positions	8
e. Drug Testing	8
f. Types of Testing	9
<b>5. Random Testing</b>	9
a. Activity/Command Test Designated Positions	9
b. Test Designated Positions Database	10
c. Security Office Notification	10
d. Review of Test Designated Position Designation	11
e. Temporary Position Changes	11
<b>6. Random Testing Procedures</b>	11
a. Frequency	11
b. Testing Ratio	11
c. Procedures Prior to Collection	12
d. Deferral of Testing	13
e. Exemption During Treatment and Rehabilitation	14
f. Standard Collection Procedures	14
<b>7. Voluntary Testing</b>	14
<b>8. Reasonable Suspicion Testing</b>	
a. Determination of Reasonable Suspicion	15
b. Authorization	16
c. Types of Drugs	16
d. Documentation	16
e. Scheduling	16
f. Notification	16
g. Collection Procedures	17
<b>9. Accident or Unsafe Practice Testing</b>	17
a. Determination	17
b. Authorization	18
c. Types of Drugs	18
d. Documentation	18

e.	Scheduling	18
f.	Notification	18
g.	Standard Collection Procedures	19
<b>10.</b>	<b>Follow-Up Testing</b>	19
a.	Description	19
b.	Documentation	19
c.	Notification	20
d.	Frequency	20
e.	Deferral of Testing	20
f.	Collection Procedures	20
<b>11.</b>	<b>Pre-Employment Testing</b>	20
a.	Coverage	20
b.	Vacancy Announcements	21
c.	Notification	21
d.	Opportunity to Justify a Positive Test Result	22
e.	Standard Collection Procedures	22
f.	Test Results	22
<b>12.</b>	<b>Review of Drug Test Results</b>	24
a.	Receipt of Results	24
b.	Procedures	24
c.	Notification	25
d.	Positive Specimen Retest	26
<b>13.</b>	<b>Release of Drug Test Results</b>	26
<b>14.</b>	<b>Consequences of Action in the DFWP</b>	27
a.	Mandatory Administrative Actions	27
b.	Disciplinary/Adverse Action	27
c.	Consequences for other than Illegal Drug Use	27
d.	Disciplinary Action	28
e.	Advice and Guidance	28
<b>15.</b>	<b>Reasonable Accommodation Requirements</b>	28
<b>16.</b>	<b>Records and Reports</b>	29
a.	Records	29
b.	Maintenance of Records	30
c.	Employee Access to Records	30
d.	Statistical Report	30
<b>17.</b>	<b>Commencement of DFWP</b>	31

## APPENDICES

- A. Definitions
- B. Urine Collection Guide
- C. Notices, Specimen Letters, Forms, Agreements, Checklists
- D. Test Designated Position Handbook

1. **Purpose**. Subchapter 792.3 of the Department of the Navy (DON) Civilian Human Resources Manual (CHRM) sets forth DON policies, procedures, applicability and responsibilities relative to the Drug Free Workplace Program (DFWP). This handbook establishes requirements and procedures for implementing and administering the DON DFWP.

2. **Definitions**. Definitions are provided in Appendix A.

3. **Training and Education**

a. **Supervisory Training**. Activities/commands will provide training to assist supervisors and managers in recognizing and addressing the illegal use of drugs by agency employees. This training is required for all supervisors and managers by E.O. 12564. This training may be incorporated into the ongoing supervisory training program required of individuals within the first 6 months of assuming supervisory duties. After initial DFWP training supervisors will participate in DFWP training every three years. Such training should include information on:

(1) Department of the Navy policy on the illegal use of drugs.

(2) The supervisor's role in the DFWP.

(3) How to recognize, document, and deal with employee performance and conduct problems due to the illegal use of drugs.

(4) The role of the Drug Program Coordinator (DPC), Civilian Employee Assistance Program (CEAP) Administrator, and Medical Review Officer, drug testing laboratory and personnel staffs.

(5) The supervisor's responsibilities to offer CEAP services and take required administrative and disciplinary actions.

b. **Employee Education**. The activity/command will offer drug education to all personnel. This should include information on types and effects of drugs, symptoms of drug use and the effects of drug use on performance/conduct. Employees should be made aware of the opportunity to justify a positive or non-negative drug test with the Medical Review Officer (MRO) and be given information regarding the appropriate use of

prescriptions. Training must explain the relationship between the drug testing program and CEAP as well as relevant provisions of the DFWP such as treatment, rehabilitation, confidentiality, and "safe harbor." Particularly salient issues such as the range of disciplinary actions that can be taken for verified positive or non-negative test results, consequences of refusal to provide a specimen, failure to appear for testing or specimen adulteration/ substitution should also be covered.

(1) The drug education process may be accomplished through formal classroom sessions, distribution of written materials, employee forums, web based or video CD/DVD Interactive training, employee drug awareness days or other means deemed appropriate.

(2) The activity/command will provide employees traveling to or stationed in a foreign country with information on the use of over-the-counter medications that may produce positive drug test results. Employees should be cautioned however that the list might not be all-inclusive. These employees should be advised to refrain from using locally available medications unless they are certain that the medications will not produce a positive drug test result or they have a bona-fide prescription from a medical doctor.

(3) Employees should be advised that ingestion of hemp products will not be accepted as justification for positive marijuana test results.

(4) Under the Controlled Substances Act, a Schedule I drug is one that has no currently accepted medical use in treatment in the United States. A drug, which, as a matter of Federal Law, has no currently accepted medical use in treatment cannot form the basis of a legitimate medical explanation in a federally-mandated drug testing program.

c. Drug Program Coordinator (DPC). The DPC and the Alternate DPC must attend the OCHR sponsored DPC certification course.

d. Collection Personnel. Collection Personnel\Collection Site Coordinators (CSCs) must be trained in:

(1) Department of Health and Human Services (DHHS) Collection procedures and responsibilities.

(2) Confidentiality and Privacy Act requirements.

(3) DON policy and procedures for DFWP.

(4) Collectors must be retrained within 2 weeks of a laboratory specimen rejection for a fatal flaw.

e. CEAP personnel must be trained on CEAP requirements regarding the DFWP. (CHRM Subchapter 792.1)

#### **4. General Program Provisions**

##### **a. Announcement/Notice**

(1) DFWP Announcement. A copy of the General Notice of Drug Testing under the DON Drug-Free Workplace Program is included in CHRM 792.3, Appendix B, and must be issued to all new hires during the employee's orientation process.

(2) Individual Notice.

(a) Each employee in a Testing Designated Position (TDP) must be issued an individual notice 30 days before that employee is subject to unannounced random testing. Upon entering a TDP each employee shall receive an individual notice unless they occupied a TDP immediately prior to entering the new position. For employees not occupying a TDP immediately prior to entering the new position, the activity/command will not subject the employee to random testing for at least 30 days following issuance of the notice. The individual notice in Appendix C has been reviewed for legal sufficiency by the Department of Justice and any changes must be approved by the DON Drug Program Manager (DPM).

(b) Employees should sign and acknowledgment that they have received an Individual Notice of testing. If the employee refuses to sign the acknowledgment the employee's supervisor will note on the acknowledgment form that the employee received the notice and forward the form to the activity/command DPC. An employee's failure to sign the notice will not preclude testing of the employee.

(c) A signed acknowledgment or supervisor's note on the form must be retained by the activity/command DPC.

##### **b. Voluntary Self-Referral for Safe Harbor**

(1) E.O. 12564 requires agencies to provide an opportunity for assistance to those employees who voluntarily seek treatment

for drug use. This opportunity, termed "Safe Harbor" insulates the employee from discipline for admitted acts of using illegal drugs when the agency is unaware of such use. A sample Safe Harbor application is included in Appendix C. The Department of the Navy will offer Safe Harbor for any employee who meets all of the following conditions:

(a) Voluntarily identifies himself or herself as a user of illegal drugs to a supervisor or other higher level management official prior to being identified through other means and/or before being officially informed of an impending drug test.

(b) Obtains counseling and rehabilitation through the CEAP.

(c) Consents, in writing, to the release to appropriate management and CEAP officials of all counseling and rehabilitation records related to the illegal use of drugs.

(d) Agrees to follow-up testing by the activity/command as part of or as post treatment of counseling or rehabilitation.

(e) Subsequently refrains from illegal use of drugs.

All of these conditions must be documented in the agreement between the employee and the activity/command. Activities will provide a copy of this agreement to the activity DPC.

(2) An employee who admits to drug use after being notified that he or she is scheduled for a drug test or just after a specimen is collected, or who is found to use drugs on the basis of other appropriate evidence (e.g., direct observation or evidence obtained from an arrest or criminal conviction) is not eligible for Safe Harbor. Safe Harbor is for illegal users of drugs, not drug dealers or those involved in other drug-related misconduct.

(3) An employee who meets Safe Harbor conditions will not be subject to discipline for the admitted acts of illegal use of drugs, including possession, for personal use. However, if the employee occupies a TDP subject to random testing, he or she must immediately be removed from the TDP. (See paragraph 14(a)(2)).

(4) A supervisor will propose removal action against an employee who invokes Safe Harbor and subsequently tests positive

for illegal drugs. The subsequent positive drug test is deemed a second finding of illegal drug use.

(5) Safe Harbor does not protect the employee from actions taken resulting from a loss of security clearance.

c. Collection of Urine Specimens. Every civilian collection must be conducted following the instructions and guidance in CHRM Subchapter 792.3, and this Handbook. CHRM Subchapter 792.3 and this Handbook are to be used in conjunction with the DHHS Mandatory Guidelines for Federal Workplace Drug Testing Program and Urine Specimen Collection Handbook for the New Federal Drug Testing Custody and Control Form (OMB Number 0930-0158). Further guidance is provided in Appendix B of this Handbook.

d. Department of the Navy Test Designated Positions (TDPs)

(1) The list of Department of the Navy TDPs is provided at Appendix D along with the descriptions and justifications for including the positions on the list. DPCs can obtain a list of employees in TDPs for their activity/command through DCPDS. Contact your HRO or HRSC to request this information.

(2) Only positions identified as TDPs on the Department of the Navy TDP list will be included in the random drug testing program. See Appendix D for a full explanation.

(3) Additions to and deletions from the Department of the Navy TDP list. Requests for additions to and deletions from the TDP list will be processed following the procedures in Appendix D.

e. Drug testing

(1) Types of Drugs. In accordance with Federal regulations, the Department of the Navy tests employees and applicants for cocaine, marijuana, amphetamines, opiates, and phencyclidine (PCP). The Department of the Navy will also test for any other drug(s) or classes of drugs subsequently approved by DHHS for testing on an agency-wide basis. Per DHHS Guidelines, the Department of the Navy is also authorized to test for any drug on Schedules I or II of the Controlled Substances Act (CSA) in cases of reasonable suspicion and after an accident or unsafe practice (21 U.S.C. 812 as updated and republished under the provisions of that Act in 21 USC as implemented by 21 CFR 1308).

(2) Technical Guidelines for Drug Testing. E.O. 12564 granted DHHS the authority to issue mandatory scientific and technical guidelines for Federal civilian employee drug testing programs. DHHS certified laboratories will test all civilian specimens following the provisions of the DHHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (hereafter referred to as 'Guidelines'). All Medical Review Officers (MRO) will follow DHHS Guidelines and the Medical Review Officer Manual. Collectors\CSCs will follow DHHS Guidelines and DHHS, Substance Abuse and Mental Health Services Administration (SAMHSA) regulations for Federal Workplace Drug Testing Programs and use the Federal Drug Testing Custody and Control Form.

f. Types of Testing. The Department of the Navy program includes the following types of drug testing: (1) random testing of employees in TDPs; (2) reasonable suspicion testing; (3) accident or unsafe practice testing; (4) voluntary testing; (5) follow-up testing subsequent to counseling or rehabilitation; and (6) applicant testing.

**5. Random Testing**. Random testing is for those employees in TDPs.

a. Activity/Command Test Designated Positions

(1) Activities/commands will review individual positions to determine whether the series and basic titles match the series and titles set forth in Appendix D. Positions matching the basic titles and meeting the conditions of coverage regardless of parenthetical titles are TDPs. Some series are annotated with an asterisk "\*" and a statement which describes the limitations of coverage. If the position in question performs the duties as annotated, then that position is a TDP (see Appendix D).

(2) The DPC will compile the activity/command TDP list of positions. This forms the activity/command TDP pool for random testing. The list will contain at a minimum:

- (a) The incumbent's name, and social security number.
- (b) The position title, pay plan, and series.
- (c) Organizational code, and other organizational information, such as General Services Administration duty location.
- (d) Issue date of the 30-day notice letter.

- (e) Unit Identifier Code (UIC) and major claimant code.
- (f) TDP status.
- (g) Position sensitivity.

b. Test Designated Positions Database. The list of positions and incumbents must be maintained to ensure that it is current and accurate at all times. This information will be maintained in the DFWP computer system. The DPC should be advised by the Human Resources Office of any position where;

- (1) TDP positions are established or abolished.
- (2) Significant changes are made to the duties of any TDP position.
- (3) A personnel action results in a change of the incumbent of a TDP.
- (4) The organizational location of any TDP is changed.

c. Security Office Notification. The security office will notify the HRO when an employee is granted a Top Secret clearance, a Secret clearance with access to a Special Access Program, or when there is a change in the status of an incumbent previously possessing either. As appropriate, the HRO will request that a change be made in DCPDS and notify the DPC.

d. Review of Test Designated Position Designation

(1) Non-bargaining Unit Employee. An employee who believes his or her position has been wrongly designated as a position in the activity/command TDP pool may grieve this determination to the activity head/commander following grievance procedures in SECNAVINST 12771.1.

(2) Bargaining Unit Employee. A bargaining unit employee covered by a collective bargaining agreement who seeks review of the designation of his or her position as a TDP must grieve the designation under the negotiated grievance procedure, provided the agreement does not exclude these decisions from that procedure.

(3) Seeking review of the TDP determination, whether or not the employee is covered by a bargaining unit, will not exempt the employee from random testing during the review process or negotiated grievance procedure.

e. Temporary Position Changes

(1) An employee who is detailed, temporarily promoted or reassigned to a TDP through a personnel action documented by an SF-50 or SF-52 will be subject to random drug testing during that period, provided that the assignment is expected to exceed 30 days.

(2) Testing of an employee prior to temporary placement is not required. The employee will be issued an individual 30-day notice contained in Appendix C when he or she enters the position and be subject to unannounced random testing 30 days after receiving that notice. A new notice is not required if the employee is moving between TDPs.

(3) If an employee is temporarily promoted or reassigned out of a TDP for over 30 days, the employee should be issued another individual notice upon return to the position. However, if the employee is only detailed out of his or her permanent TDP, no notice is required since the employee remains in his or her permanent position.

**6. Random Testing Procedures**

a. Frequency. The frequency of testing will be determined by the Chief of Naval Operations (CNO), the Commandant of the Marine Corps (CMC), and the Assistant for Administration, Under Secretary of the Navy (AA/USN) and may be delegated to subordinate activities and commands. The optimum plan provides for varied testing days, times and dates. Testing once a year is not a deterrent. The Secretary of the Navy reserves the right to increase the frequency of testing based on Department of the Navy's mission needs and availability of resources.

b. Testing Ratio. The ratio of testing percentage of random tests is determined by the Department of Defense to optimize overall deterrence. The statistical sampling method to be used in random testing of TDPs is simple random sampling (SRS). Use of SRS ensures that all employees are equally likely to be selected each time a random selection is done. It is not appropriate to ensure each employee in a TDP is tested every year or to limit any employee to a specific number of tests. However, senior DON members, i.e., Executive level and Senior Executive Service civilians holding test designated positions who have not been randomly selected will be scheduled for at least one drug test during the year.

c. Procedures Prior to Collection

(1) Authorization. The activity head or commander will authorize the DPC to conduct random tests.

(2) Selection.

(a) The DON DFWP computer program will perform random selections of positions designated as TDPs. Not having this system operational will not preclude activities\commands from random testing.

(b) All pools should number more than one donor. All information will be strictly guarded to ensure that employees do not know in advance that random testing will be conducted. The identities of individuals selected will remain confidential.

(c) The DPC or alternate DPC will generate a list identifying employees selected for random testing from the activity/command TDP pool.

(3) Scheduling. The DPC will schedule the selectees for testing, preferably in the first half of the shift, at a rate that the collection team can process efficiently and effectively. DPCs may schedule testing at any time (i.e., 24 hour, 7 days a week).

(4) Notification

(a) Supervisor. The DPC will notify the selected employee's first-level supervisor prior to the actual time of collection. If the first level supervisor is unavailable, the next higher level of supervision will be contacted.

(b) DPC. The DPC should annotate the testing event record with the date and time the supervisor was contacted.

(c) The authority to direct an employee to drug testing or defer a drug test may be delegated in writing to the DPC. The DPC will annotate the list with date and time the supervisor was contacted. If the DPC was delegated to notify the employee to report for testing the following procedures will be used:

(1) The DPC will notify the selected employee.

(2) The checklist provided at Appendix C should be used.

(3) Annotate the checklist with the date and time the employee was notified to report for testing.

(4) If the employee is not available for testing and a deferral must be obtained, the DPC must contact the immediate supervisor or a supervisor within the employee's chain of command. If the DPC has been delegated the authority to defer, the DPC must document the deferral.

(d) Employee Notification

(1) Notification time to the employee should be sufficient to allow the employee to arrive at the collection site on time, in general, approximately 15 to 30 minutes prior to the scheduled collection. The supervisor or DPC will privately inform the employee of the time and location of the test. Appropriate adjustments should be made to notification time when the collection site is remote from the work site. Advance notice should be as brief as possible.

(2) The supervisor will explain to the employee that he or she is under no suspicion of using illegal drugs and that the employee's name was randomly selected. The supervisor should attempt to respond to any employee questions to avoid misunderstanding. Activities and commands should consider providing the employee with a checklist similar to the sample provided in Appendix C.

(3) The employee will be instructed to take appropriate photo identification to the test site. If the employee does not bring the required identification, the supervisor or DPC may identify the donor for the collector.

(4) The supervisor will discuss with a higher-level supervisor any problems that arise with regard to the employee reporting for the test as scheduled. If a deferral, as described immediately below, is necessary, the DPC will be notified as soon as possible.

d. Deferral of Testing

(1) An employee selected for random drug testing may be given a deferral from testing if the employee's first-line or higher-level supervisor concur that a compelling need exists.

That deferral must be noted. Grounds for deferral are that the employee is:

(a) In a non-duty status such as annual leave, sick leave, suspension, absent without leave, continuation of pay, end of the work day, etc. Any leave requests submitted after notice should be carefully scrutinized and documentation requested.

(b) In an official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

(c) Working a different shift.

(d) Performing a task or project that requires the employee's presence at the work site during the scheduled test time. The supervisor will inform the DPC of the deferral.

(2) If a deferral is authorized and the test is not administered that day, the supervisor will inform the employee that he or she may be tested within 60 days from the date of the deferral or the employee returns to duty or the work site.

e. Exemption during Treatment and Rehabilitation. While undergoing initial treatment or rehabilitation through the CEAP, and at the request of the CEAP Administrator, the employee may be exempted from random testing for a period not to exceed 60 days or as specified in an abeyance\last chance agreement or rehabilitation plan. Upon completion of the stipulated exemption, the employee will be included in a separate testing pool at the activity/command as follow-up to counseling or rehabilitation for illegal drug use for a period of at least 1 year, in addition to remaining in the regular random testing pool if occupying a TDP. See paragraph 13.

f. Standard Collection Procedures. These procedures must be followed to ensure strict chain of custody and specimen control. Specific procedures are provided in Appendix B.

## **7. Voluntary Testing**

a. To demonstrate a commitment to the DON's goal of a drug-free workplace and to set an example for others, an employee not in a TDP may volunteer to be included in the random testing program. This employee will then be included in the

pool of TDPs and will be subject to the conditions and procedures of random testing.

b. Each activity/command will establish a procedure for employees to volunteer for the random testing program. This procedure must inform the employee that he or she may withdraw from the random program at any time, even after being notified of an impending random drug test.

c. Appendix C provides a sample form for requesting voluntary drug testing and command acknowledgement.

## **8. Reasonable Suspicion Testing**

### **a. Determination of Reasonable Suspicion**

#### **(1) Employees in TDPs**

(a) A test may be authorized when management has a reasonable suspicion that any employee in a TDP is using illegal drugs. This belief must be based on specific objective facts and reasonable inferences drawn from those facts.

(b) Reasonable suspicion testing of employees in TDPs may be based upon, but is not limited to, the following factors:

(1) Observable phenomena such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug.

(2) Arrest or conviction for an on or off-duty drug-related offense or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking.

(3) Information provided either by reliable and credible sources or independently corroborated.

(4) Newly discovered evidence that the employee has tampered with a previous drug test.

(5) The temperature or color of the urine specimen or other evidence that indicates probable adulteration, tampering, or substitution.

(c) Although reasonable suspicion testing does not require certainty, mere "hunches" or "rumors" are not sufficient to meet this standard.

(2) Employees in non-TDPs. A test may only be authorized for an employee in a non-TDP when management has a reasonable suspicion that the employee is using drugs illegally on-duty or performing work while drug-impaired.

b. Authorization. If an employee is suspected of illegal use of drugs, the appropriate supervisor or management official will gather all information, facts, and circumstances leading to and supporting this suspicion. Approval for testing must be received from at least one level above the supervisor or manager requesting the test. Local instructions should provide specific procedures. If practicable, the decision to conduct a test will be made the same day the event or behavior occurred or as soon as management becomes aware of the event or behavior. The DPC will then be notified of the requirement to arrange for a test.

c. Types of Drugs. In addition to testing for cocaine, marijuana, amphetamines, opiates, and PCP, activities and commands performing a reasonable suspicion test are authorized to include any drug on Schedules I and II of the CSA. The activity/command must specify the drug or drugs for which they request the employee be tested on the Federal Custody and Control Document.

d. Documentation. The appropriate supervisor or manager will detail, in writing, the circumstances which warranted the test. At a minimum, the report will include the appropriate dates and times of reported drug-related incidents, reliable and/or credible sources of information, reasons leading to the test, and second-level supervisory concurrence. If the collection is being performed under direct observation the reason for this method of collection must also be documented. The DPC will retain a copy of this documentation. See Appendix C for a sample of a documentation report and notice letter.

e. Scheduling. When possible, the DPC will arrange for the collection to be conducted the same day as the test is approved by management. The test may be conducted without regard to the employee's regular work shift, etc., and overtime pay or compensatory time will be provided as needed in accordance with paragraph 9c(3).

f. Notification

(1) Supervisor

(a) The supervisor, if not directly involved in the reasonable suspicion determination, will be notified by the DPC that an emergency collection procedure has been initiated. If the immediate supervisor is not available, the next higher level of supervision will be contacted.

(b) The DPC will provide the supervisor with the time and location of the collection and any necessary information to be conveyed to the employee.

(2) Employee

(a) After the DPC confirms the time and location, the supervisor or management official will notify the employee of the test and issue the specific written notice that he or she is being tested for reasonable suspicion. A sample of that notice is included in Appendix C.

(b) The employee will be informed of the exact time and location of the test and directed to take appropriate photo identification to the test site. The supervisor or other management official will escort the employee to the site.

g. Collection Procedures

(1) The employee will provide a urine specimen under direct observation if there is specific reason to believe that the employee may alter or substitute the specimen.

(2) If there is no specific reason to believe that an employee may alter or substitute the specimen, standard unobserved collection procedures should be followed. Strict chain of custody and specimen control procedures should be followed as provided in Appendix B.

**9. Accident or Unsafe Practice Testing**

a. Determination. The Department of the Navy is committed to providing a safe and secure work environment. It also has a legitimate interest in determining the cause of serious on-the-job accidents or unsafe, on-duty, job-related activity so that it can undertake appropriate corrective measures. Drug testing after an accident or unsafe practice can provide invaluable information in furtherance of that interest.

Accordingly, employees may be subject to testing when, based on the circumstances of an on-the-job accident or unsafe, on-duty, job-related activity, their actions are reasonably suspected of having caused or contributed to an accident or unsafe practice that meets either of the following criteria:

(1) The accident or unsafe practice results in a death, or personal injury requiring hospitalization.

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

b. Authorization. If a supervisor or manager suspects that an employee has caused or contributed to an on-the-job accident or unsafe, on-duty, job-related activity that meets either of the criteria stated in paragraph 12a, he or she will gather all information, facts, and circumstances leading to the accident or unsafe practice. Approval for testing must be received from at least one level above the supervisor or manager requesting the test. If practicable, the decision to conduct a test will be made the same day the event or behavior occurs, or as soon as management becomes aware of the event or behavior. The DPC will then be notified of the requirement to schedule a test.

c. Types of Drugs. In addition to testing for cocaine, marijuana, amphetamines, opiates, and PCP, activities and commands performing post accident or unsafe practices testing are authorized to include any drug on Schedules I and II of the CSA. The activity/command must specify the drug or drugs for which the employee is being tested on the Federal Custody and Control Form.

d. Documentation. Once approval has been obtained for testing, the supervisor will prepare written documentation which, at a minimum, will include the date, time and circumstances surrounding the incident, the reasons leading to the test, second-level supervisory concurrence, findings of the test, and any action taken. Appendix C contains a sample incident report.

e. Scheduling. When possible the DPC will arrange for the collection on the same day as the incident giving rise to the test. The test may be conducted without regard to the employee's regular work shift, etc., and overtime pay or compensatory time will be provided as needed.

f. Notification

(1) Supervisor

(a) The supervisor, if unaware of the incident, will be notified by the DPC that an emergency collection procedure has been initiated. If the immediate supervisor is not available, the next higher level of supervision will be contacted.

(b) The DPC will provide the supervisor with the time and location of the collection and any necessary information to be conveyed to the employee.

(2) Employee

(a) After the DPC confirms the time and location, the supervisor or management official will notify the employee of the test and issue the specific written notice that the employee is being tested because of the accident or unsafe practice. A sample of that notice is included in Appendix C.

(b) The employee will be informed of the time and location of the test, directed to take appropriate photo identification, and escorted to the test site by the supervisor or other management official.

g. Standard Collection Procedures. These procedures must be followed to ensure strict chain of custody and specimen control. The specific procedures to be followed are provided in Appendix B.

**10. Follow-up Testing**

a. Description. All Department of the Navy employees referred through administrative action to counseling or rehabilitation through CEAP for illegal drug use will be subject to unannounced drug testing as a follow-up to his or her program. The employee will be tested for a period of at least 1 year or for such time as specified in an abeyance agreement, rehabilitation plan, or other form of written agreement. For employee in TDPs this testing is separate from the regular random testing conducted by the activity/command.

b. Documentation. The abeyance/last chance agreement, rehabilitation plan, or other form of written agreement will be retained and serve as evidence that the employee was aware of

the requirement for follow-up testing. A copy of any agreement must be furnished to the DPC.

c. Notification. The CEAP Administrator or Counselor will notify the supervisor or manager and the DPC in writing upon an employee's failure to complete the initial or in-patient counseling or rehabilitation, or completion of initial or in-patient counseling or rehabilitation for illegal drug use or as part of the rehabilitation process in order for follow-up testing to be initiated.

d. Frequency. Employees subject to follow-up testing will be tested at a frequency determined by the local activity/ command. The rate should not be specified in the agreement or rehabilitation plan, nor should the employee be given an additional notification time period other than what is needed for the employee to report to the testing site.

e. Deferral of Testing. The conditions of granting a deferral of follow-up testing are the same as those of random testing. See paragraph 6(d).

f. Collection Procedures. To ensure strict chain of custody and specimen control as provided in Appendix B, follow-up testing will be conducted under direct observation.

## **11. Pre-employment Testing**

### **a. Coverage**

(1) Pre-employment drug testing will be required of all individuals tentatively selected for a TDP.

(2) Selections may include those made under merit promotion procedures or any other personnel action resulting in the placement of an individual in a TDP (e.g., reassignment, promotion, and change to lower grade actions). Referrals from the Priority Placement Program (PPP) to a TDP are not excepted from pre-employment testing.

(3) Pre-employment testing is not required under the following conditions:

(a) The individual currently occupies a TDP within the Department of Defense.

(b) When an active duty military member is selected who will have a break in service from military to civilian duty that is three days or less.

(c) Reservist military personnel in a drilling status.

(d) The selection involves only a temporary position change of 30 days or less.

(4) Any exception to pre-employment testing must be documented and retained by the DPC.

(5) Pre-employment testing is not applicable to management directed actions including:

(a) Placement made under reduction-in-force (RIF) procedures.

(b) Management decisions to reassign, detail, demote, or upgrade security clearance.

(6) Activities and commands are not authorized to test applicants for non- TDP positions.

b. Vacancy Announcements

(1) Vacancy announcements for TDPs will contain the following statement:

"Successful completion of a pre-employment drug test is required. A tentative offer of employment will be rescinded if the applicant fails to report to the scheduled drug test appointment. Incumbents of drug testing designated positions will be subject to random testing. Drug test results will be provided to the employing activity/command."

(2) Failure of the vacancy announcement to contain such notice will not preclude testing if advance notice is provided to the applicant in some other manner, except orally. Other forms of notice are proper if a vacancy announcement is not used.

c. Notification

(1) The HRSC will notify the DPC that a drug test needs to be scheduled for a tentative selectee. The DPC will schedule a test and notify the HRSC of test, time, date and location of

scheduled test. Applicant notification may be delegated to the DPC if mutually agreed upon by DPC and HRSC. The HRSC will verify with the DPC that the selectee has not had a verified positive or non-negative drug test result within the last 6 months. If the selectee has not had a positive or non-negative drug test result within the last 6 months, the HRSC will inform the applicant of the date, time and location of the test, to bring appropriate photo identification and to be prepared to provide a drug test specimen. The selectee should also be informed that only the DPC can change the date or time of the test. The HRSC or DPC should document this notification.

(2) Failure to be at the test site at the designated time and date will result in a withdrawal of the tentative job offer. The drug test must be undertaken as soon after notification of the applicant as possible and no later than 48 hours. Where appropriate, applicants may be reimbursed for reasonable travel expenses by the employing activity/command (see Joint Travel Regulations for specific information).

(3) A written deferral for a drug test may be given to an applicant by the DPC if the applicant can provide suitable documentation for failure to report to the testing site in a timely manner.

d. Opportunity to Justify a Positive or Non-negative Test Result. Applicants will have an opportunity to justify a positive or non-negative test result to the MRO.

e. Standard Collection Procedures. These procedures must be followed to ensure strict chain-of-custody and specimen control. Specific procedures to be followed are provided in Appendix B.

f. Test Results. The MRO will notify the DPC of the test results and the DPC will inform the HRSC if the selectee is eligible for hire. The HRSC will document the eligibility in the selection package so that the process can continue. If an applicant has a verified positive or non-negative test result, the following procedures apply:

(1) Department of the Navy Employee Applicant:

(a) The DPC will notify the HRSC who will inform the selecting official so that another tentative selection can be made.

(b) The DPC will notify the applicant that a verified positive or non-negative drug test result precludes the activity/command from hiring or placing the applicant in the position. Also, the DPC will advise the applicant that he or she will not be considered for any other vacancies (including non-TDPs) at the activity/command or any other activity/command within the Department of the Navy for a period of 6 months from the date the positive or non-negative test was verified by the MRO.

(c) The DPC will notify the applicant's supervisor if the vacancy was at the employee's own activity/command.

(d) If the applicant is an employee from another Department of the Navy activity/command, the DPC will notify the activity head or commander who will notify the head of the employee's activity or command.

(e) If the applicant was tentatively selected from an OPM certificate, the following requirements apply:

1. Nonpreference Eligibles. Appointing Officers of local activities/commands are authorized to medically disqualify a nonpreference eligible for employment based on a verified positive or non-negative drug test. A nonpreference eligible disqualified by an appointing officer has a right, upon request, to request a review of that disqualification by the head of the local activity/command. The applicant must be given written notice of the specific reasons for his or her medical disqualification for the position and of the right to review by the activity/command head. (See CHRM Subchapter 339)

2. Preference Eligibles. Objections to preference eligibles, which are based on the results of a verified positive or non-negative pre-employment drug screen, are to be considered as medical disqualifications or passovers and referred to OPM for adjudication. Situations in which applicants refuse or ignore the requirement to take a preemployment drug test are to be handled as declinations. (See FPM Letter 339-18 of 1 December 1992.)

## (2) Other Applicants

(a) The DPC will notify the HRSC of a verified positive or non-negative pre-employment drug screen. The HRSC will inform

the selecting official so that another tentative selection can be made.

(b) The DPC will then notify the applicant that the verified positive or non-negative drug test precludes the activity/command from hiring the applicant. Also, the DPC will advise the applicant that he or she will not be considered for any vacancies (including non-TDPs) within the Department of the Navy for a period of 6 months from the date the non-negative test was verified by the MRO.

(c) If the applicant was tentatively selected from an OPM certificate, see 14f.

(3) Under 42 U.S.C. 290ee-1(b)(1), "[n]o person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior substance abuse." The Department of the Navy has determined that drug use within the past 6 months is deemed current use. Therefore, "prior substance abuse" excludes any individual who has obtained a verified positive or non-negative drug test result within any preceding 6-month period.

(4) Pre-employment drug test results can be used for hiring purposes for 6 months from the date of the verified result from the MRO. After that time a new pre-employment drug test must be done.

## **12. Review of Drug Test Results**

a. Receipt of Results. The drug testing laboratory will report all drug test results, positive, negative, and non-negative to the MRO.

### **b. Procedures**

(1) Negative Drug Test Results. The MRO will immediately forward all negative drug test results to the DPC with a copy to the DPM.

(2) Positive, or Non-negative Drug Test Results. The medical review of positive or non-negative test results by the MRO will be initiated and completed within the timeframe agreed upon by the DPM.

(a) The MRO will evaluate alternative medical explanations of a non-negative test result. This may include

conducting a medical interview with the individual, review of the individual's medical history, or consideration of other relevant biomedical factors.

(b) Any requests for medical information will be made by the MRO directly to the individual to ensure maximum confidentiality. If the information on the CCF is not sufficient to contact the individual the MRO will obtain the information necessary by contacting the DPM/DPC. The MRO will review all medical records, including valid prescriptions, made available by the tested individual when a non-negative test could have resulted from legally prescribed medications. The individual will have an opportunity to discuss the test results with the MRO, although a face-to-face interview is not required. Individuals are not entitled to present evidence to the MRO in a hearing or other similar administrative proceeding, however, the MRO has the discretion to accept evidence in any manner deemed efficient or necessary.

(c) Only the MRO is authorized to order a reanalysis of the original specimen should questions arise as to the accuracy or validity of a positive or non-negative test result. The request for reanalysis must be in writing. Since some drug levels may deteriorate or be lost during freezing and/or storage, a retest must only show that a drug or its metabolite is present to reconfirm its presence during retesting.

(d) Detailed scientific guidance is contained in the "Medical Review Officer Guide" prepared by DHHS and provided to each MRO.

#### c. Notification

(1) Negative Drug Test Results. The MRO will forward all negative drug test results to the DPC. DPCs may inform employees of their results. See paragraph 14.f. for information on applicant test results. Appendix C provides a sample notification letter.

(2) Verified Positive or Non-Negative Drug Test Results. If the MRO determines there is no medical justification for the positive, adulterated, or substituted test result, such result will be considered a verified positive, adulterated, substituted or invalid test result. The MRO will forward the report of the verified test result to the DPC and DPM. The DPC will notify the CEAP Administrator and the supervisor or management official having authority to take a personnel action against the

employee. The activity/command must receive the MRO letter and CCFs verifying the positive or non-negative test result before any personnel action can take place. See paragraph 11(f) for information on notification procedures regarding applicant test results.

d. Positive Specimen Retest. Donors may request the laboratory retest a positive specimen. The reanalysis by gas chromatography/mass spectrometry is not subject to a specific cut-off requirement but must provide data sufficient to confirm the presence of the drug or metabolite. The donor must request the retest in writing to the DPC and include the reasons for the retest. The DPC will request in writing that the MRO authorize a retest of the specimen.

### **13. Release of Test Results**

a. The laboratory will disclose test results only to the MRO. Any non-negative result which the MRO determines to be justified by legitimate medical use will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results are governed by the provisions of the Privacy Act, 5 U.S.C. 552a, et seq., as any record in a system of records and additionally restricted by Section 503 of P.L. 100-71. An employee's test results, retest results or a full documentation\litigation package may not be disclosed without prior written consent of the employee, unless the disclosure would be:

(1) To the MRO.

(2) After MRO review, to the DPM and activity and command DPCs.

(3) After MRO review, to the CEAP Administrator for purposes of counseling and rehabilitation.

(4) After MRO review, to any supervisor or management official within Department of the Navy having the authority to recommend, decide, or process an adverse personnel action against the employee or to an administrative tribunal in a review of an adverse personnel action.

(5) Under an order of a court of competent jurisdiction or required by the United States Government to defend against a challenge against an adverse personnel action.

b. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, for data collection or other purposes consistent with requirements to comply with 42 U.S.C. 503(2)(1) or Department of the Navy requirements. This form of disclosure may not include personal identifying information on any employee.

#### **14. Consequences of Actions in the DFWP**

##### **a. Mandatory Administrative Actions with a finding of Illegal Drug Use.**

(1) CEAP Referral. An employee found to use illegal drugs must be referred to the CEAP.

##### (2) Position Actions

(a) If the employee occupies a TDP, as defined in Appendix A, the employee must immediately be removed from the position through appropriate personnel action. The employee may be assigned to a non-TDP, if available.

(b) The activity head/commander may return the employee to duty in a TDP as part of a rehabilitation and counseling program if it would not endanger public safety or national security. This determination should be made after taking into consideration advice provided by the HRO, the activity/command DPC, MRO, CEAP personnel and the employee's supervisors.

b. Disciplinary/Adverse Action with a Finding of Illegal Drug Use. Activities/commands will initiate disciplinary action against an employee for the first instance of illegal drug use in accordance with CHRM Subchapter 752, except under circumstances set forth in paragraph 4(b) of this Handbook (Voluntary Referral for Safe Harbor). The activity/command will initiate disciplinary action up to and including removal for an employee who refuses mandatory CEAP counseling and/or rehabilitation as required by E.O. 12564 after having been found to use illegal drugs. The activity/command will propose removal for a second finding of illegal drug use.

##### **c. Consequences for Other than Illegal Drug Use.**

(1) Failure to Report to the Designated Collection Site. An employee who fails to appear for testing will be subject to

the same range of discipline as a verified positive drug test result.

(2) Refusal to be tested when required. An employee who refuses testing will be subject to the same range of discipline as a verified positive drug test result.

d. Disciplinary Action. Any disciplinary action taken must be consistent with the provisions of CHRM Subchapter 752 and the requirements of any applicable collective bargaining agreement.

e. Advice and Guidance. Advice and guidance on disciplinary or adverse actions will be provided by the HRO as necessary.

**15. Reasonable Accommodation Requirements**. Guidance on providing reasonable accommodation is provided by the Equal Employment Opportunity Commission in Notice 915.002, "Enforcement Guidance: on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act."

a. Under the Rehabilitation Act Amendments of 1992, the standards applied under Title I of the Americans with Disabilities Act (ADA) are applicable to Federal employees. ADA permits a covered employer to hold employees who have drug and alcohol problems to the same qualification standards for employment or job performance and behavior as other employees, even if any unsatisfactory performance or behavior is related to the employee's alcoholism or drug use. (29 U.S.C. 12114(c)(4))

(1) An individual who is currently engaging in the illegal use of drugs, when the agency acts on the basis of such use, is excluded from the definition of "individual with disabilities" in accordance with 29 CFR 1614.203(h).

(2) To be considered a request for reasonable accommodation, the employee must request accommodation before she or he has committed the misconduct that violates one of the agency's qualification standards for employment or job performance and behavior under which the agency uniformly imposes discipline. (Walsh v. USPS, 74 MSPR 627 (1997))

(3) Trafficking in drugs is misconduct that does not normally entitle an employee to reasonable accommodation. Accordingly, an employee who traffics in drugs will be subject to remedies as provided for in Appendix B of Implementing Directive 752-01.

b. Conduct that takes an employee outside the protection of the Rehabilitation Act. Similar to paragraph 'a' above, the MSPB has held that there are "...certain acts of misconduct which when committed by an employee who is an alcoholic or drug addict, take that employee outside the scope of the protecting legislation because the misconduct renders that person not a 'qualified' individual with disabilities." The type of misconduct that, standing alone, disqualifies a federal employee from his position is that which, by its very nature, strikes at the core of the job or the agency's mission, or is so egregious or notorious that an employee's ability to perform his duties or to represent the agency is hampered. (see Hougens v. U.S. Postal Service, 38 MSPR 135(1988)).

## **16. Records and Reports**

a. Records. All drug testing information on specific individuals is confidential and should be treated as such by anyone authorized to review or compile DFWP records. Records and information described in this paragraph will remain confidential, must be marked "For Official Use Only," and retained in a secure device with only authorized individuals who have a "need-to-know" having access.

(1) DPC. To efficiently implement this guidance and to make information readily available, the DPC will maintain all records relating to DFWP including: drug testing, retest, full documentation and any other authorized documentation necessary to support the program.

(2) HRSC. All records and information relating to the drug testing of selectees will be retained in recruiting, examining, and placement records.

(3) HRO. Disciplinary and adverse action records resulting from employee verified positive or non-negative drug test results will be maintained by the HRO.

(4) MRO. All drug test results and other related records necessary to perform the functions of the position will be maintained by the MRO.

(5) Employee Medical File. Drug test results may be retained in the employee medical file.

(6) Civilian Employee Assistance Program. If appropriate, drug test results may be retained in the employee counseling

records maintained by the CEAP Administrator. The CEAP Administrator will maintain only those records necessary to comply with the CHRM Subchapter 792.1. After an employee referral, the CEAP Administrator will maintain all records necessary to carry out his or her duties. All medical and/or treatment/rehabilitation records concerning the employee's drug abuse, including CEAP records of the identity, diagnosis, prognosis, or treatment, are confidential and must be marked "For Official Use Only." They may be disclosed only as authorized by 42 CFR Part 2, including the provision of written consent by the employee. By written consent, the patient may authorize the disclosure of these records to the patient's employer for verification of treatment or for a general evaluation of treatment progress. See 42 CFR. Part 2.1, et seq.

b. Maintenance of Records. The Department of the Navy will maintain the records of its DFWP consistent with its 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. 552 and SECNAVINST 5212.5D. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings or at the discretion of the Secretary of the Navy.

(1) Negative drug test records will be retained for 3 years unless otherwise covered by another record keeping system such as the Employee Medical File.

(2) Positive or non-negative drug test records are not authorized for disposal.

c. Employee Access to Records. Any employee (including any Federal employee applicant) who is the subject of a drug test will upon written request to the DPC, have access to any records relating to:

(1) Such employee's or applicant's drug test; and

(2) The results of any relevant laboratory certification, review, or revocation of certification proceedings, as referred to in 42 CFR Part 2.

Except as authorized by law, an applicant who is not already a Federal employee will not be entitled to this information.

d. Statistical Reports. The DPC will collect and compile anonymous statistical data for reporting the number of:

(1) Random, reasonable suspicion, accident or unsafe practice, follow-up, voluntary, or pre-employment tests administered.

(2) Verified positive or non-negative test results, by type of test.

(3) Voluntary drug counseling referrals.

(4) Involuntary drug counseling referrals.

(5) Disciplinary actions, terminations, employee applicant non-selection, or denials of employment offers from a verified positive or non-negative drug test result.

(6) Disciplinary actions, terminations, or denials of employment offers resulting from refusal to submit to testing.

(7) Disciplinary actions, terminations, or denials of employment offers resulting from alteration of specimens.

(8) Disciplinary actions, terminations, or denials of employment offers resulting from failure to complete a drug abuse counseling program.

(9) Employees who successfully complete rehabilitation under CEAP.

(10) Employee, manager, and supervisory drug training.

d. Statistical Report. This data, along with other pertinent information, will be compiled for inclusion in the Department of the Navy's annual report to the Department of Defense and the DHHS. The DHHS will use the data to assist in overall program evaluation and in reporting to Congress.

**17. Commencement of DFWP**. Activity heads/commanders may commence drug testing only after:

a. An activity/command DPC is appointed and has completed the OCHR DPC course. When using collection personnel or MRO services other than through the DON contract a waiver must be granted by OCHR and the collectors and MRO must be trained on the requirements of the DFWP and collection procedures. MROs

must meet all the requirements set forth in the DHHS Mandatory Guidelines.

b. Mandatory training on drug testing for supervisors and managers has been conducted.

c. The activity/command positions have been reviewed to confirm that the position series, titles and duties match those of the TDP.

d. Activity/command employees have been given a copy of the general notice and an individual notice complying with the requirements of E.O. 12564 and P.L. 100-71 has been given to individuals in TDPs. An individual notice must be given to each employee in a TDP at least 30 days before the employee is subject to unannounced random testing.

e. Bargaining obligations under 5 U.S.C., Chapter 71, have been satisfied.

f. A local activity/command instruction is issued.