



Defense Health Agency **ADMINISTRATIVE INSTRUCTION**

NUMBER 34

Administratively reissued January 2015

A&MD

SUBJECT: Drug-Free Workplace Program

References: See Enclosure 1

1. **PURPOSE.** This Defense Health Agency Administrative Instruction (DHA-AI), based on the authority of References (a) and (b), and in accordance with the guidance in References (c) through (t), establishes DHA's objectives, policies, procedures, and implementation guidelines supporting the implementation and management of a DHA Drug Free Program (known as the "Program"), and to achieve a drug-free Federal workplace consistent with References (a) through (t).

2. **APPLICABILITY.** This AI applies to:

a. DHA federal civilians assigned permanent duties at DHA to include regional and field activities (remote locations). Eligibility for coverage under this AI will be determined as follows:

b. DHA is updating its AI to reflect the recent reorganization and agency name change from TRICARE Management Activity to Defense Health Agency. This reorganization has resulted in the movement of previously approved Testing Designated Positions (TDPs) (See attachment) from predecessor agencies to DHA. DHA is requesting concurrence with these positions by the Interagency Coordinating Group, Executive Committee (convened by the Office of National Drug Control Policy and including representatives of the Department of Health and Human Services (HHS), the Department of Justice (DoJ), and the Office of Personnel Management (OPM)). When concurrence has been received, DHA will begin random testing of these TDPs and will conduct a number of random tests annually that is equivalent to 50 percent of the full-time equivalents in the random testing pool.

c. DHA will review its applicable positions annually to determine if, as the result of reorganization or other action, it has acquired any positions that meet the criteria established in Reference (e). If so, DHA will seek concurrence by the Interagency Coordinating Group, Executive Committee to begin random testing of incumbents in those designated positions and will determine the frequency of testing at that time.

3. POLICY. The foundation of the Program is a policy pursuant to References (a) through (t) which offers a helping hand while clearly communicating that use of illegal drugs will not be tolerated in DHA. The Program was developed by DHA to provide a drug-free workplace program appropriate to DHA's mission and work force. The Program is based on a government-wide Model Program for a Comprehensive Drug-Free Workplace Program that was developed under the joint auspices of HHS, DoJ, and OPM.

a. Background.

(1) On September 15, 1986, President Reagan signed Executive Order 12564 (Reference (d)), establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off duty. In a letter to all Executive branch employees dated October 4, 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all Federal workers. The Executive Order recognized that illegal drug use seriously impaired a portion of the national work force, resulting in the loss of billions of dollars each year. As the largest employer in the Nation, the Federal Government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. DHA is concerned with the well-being of its employees, the successful accomplishment of its missions, and the need to maintain employee productivity. The intent of the Program is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is, quite simply, incompatible with Federal service.

(2) On July 11, 1987, Congress passed legislation affecting implementation of Reference (d) under Reference (f) in an attempt to establish uniformity among Federal agencies' drug testing programs, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program.

b. Statement of Policy.

(1) DHA, as established by Reference (b), is a Defense Agency, under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), through the Assistant Secretary of Defense for Health Affairs (ASD(HA)). The Director, DHA, is responsible for, among other duties, the TRICARE health program that delivers health benefits to those beneficiaries entitled to care. DHA has operational offices located in Aurora, Colorado; Bethesda, Maryland; Falls Church, Virginia; Fort Belvoir, Virginia; Fort Detrick, Maryland; and Great Lakes, Illinois. Within DHA, there are three geographic TRICARE Regional Offices (Rosslyn, Virginia; San Diego, California; and San Antonio, Texas) and three overseas TRICARE Area Offices (Sembach, Germany; Okinawa, Japan; and San Antonio, Texas).

(2) DHA is committed to the well-being of, and the delivery of high-quality health care for, all its beneficiaries and has a critical and compelling obligation to eliminate illegal drug use from its workplace.

(3) The mark of a successful drug-free workplace program depends on how well DHA can inform its employees of the hazards of drug use, and on how much assistance it can provide drug users. Equally important is the assurance to employees that personal dignity and privacy will be respected in reaching DHA's goal of a drug-free workplace. Therefore, this AI includes policies and procedures for: (1) employee assistance, (2) supervisory training, (3) employee education, and (4) identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

c. Nature, Frequency, and Type of Drug Testing.

(1) Reference (f) requires that the Program specify the nature, frequency, and type of drug testing to be instituted. The Program includes the following types of drug testing: (1) applicant testing, (2) random testing of those employees in sensitive positions that have been designated as TDPs, (3) reasonable suspicion testing, (4) accident or unsafe practice testing, (5) voluntary testing, and (6) testing as part of or as a follow-up to counseling or rehabilitation.

(2) The frequency of testing for random testing, voluntary testing, and follow-up testing is specified in paragraph (6) and paragraphs (9b) and (9c) of Enclosure 3. The Director, DHA, reserves the right to increase or decrease the frequency of testing based on the DHA's mission, need, availability of resources, and experience in the Program, consistent with the obligation to achieve a drug-free workplace under Reference (d).

d. Drugs for which Individuals are Tested. DHA is required to specify the drugs for which individuals shall be in compliance with this requirement. DHA has determined that DHA employees will be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine (PCP).

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.


6. INFORMATION REQUIREMENTS. See Enclosure 4.

7. RELEASABILITY. **Not cleared for public release.** This AI is available to DHA employees with Common Access Card authorization on the DHA Intranet.

8. EFFECTIVE DATE. This AI:

a. Is effective upon signature and certification by the Secretary, Department of Health and Human Services, in accordance with Reference (f).

b. Will expire 10 years from the date of signature if it has not been reissued or cancelled before this date in accordance with DoD Instruction 5025.01 (Reference (c)).



Douglas J. Robb, DO, MPH
Lieutenant General, USAF, MC, CFS
Director

Enclosures

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ENCLOSURE 1REFERENCES

- (a) DoD Directive 5136.01, "Assistant Secretary of Defense for Health Affairs (ASD(HA)),", September 30, 2013
- (b) DoD Directive 5136.13, "Defense Health Agency (DHA),", September 30, 2013
- (c) DoD Instruction 5025, "DoD Issuances Program," June 6, 2014, as amended
- (d) Executive Order 12564, "Drug-free Federal Workplace," September 15, 1986
- (e) Department of Health and Human Services 2013 Guidance for Selection of Testing Designated Positions (TDPs), May 6, 2013
- (f) Section 503 of the Supplemental Appropriations Act of 1987, Public Law (Pub. L.) 100-71, 101 Statute (Stat.) 391, 468-471, codified at Title 5, United States Code (U.S.C.), Section 7301 note (1987)
- (g) Sections 523 and 527 of the Public Health Service Act and implementing regulations at Title 42, Code of Federal Regulations (CFR), Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records
- (h) Civil Service Reform Act of 1978, Pub. L. 95-454
- (i) Title 42, U.S.C., Sec. 290ee-1
- (j) Title 42, U.S.C., Sec. 290dd-2
- (k) Mandatory Guidelines for Federal Workplace Drug Testing Programs, which includes Scientific and Technical Requirements and Certification of Laboratories Engaged in Urine Drug Testing, Title 53, Federal Register, 11970 (1988), as revised
- (l) The Privacy Act of 1974 (Title 5, U.S.C., Sec. 552a)
- (m) Executive Order 10450, "Security Requirements for Government Employment," April 27, 1953
- (n) Executive Order 12356, "National Security Information," April 2, 1982
- (o) Title 5, U.S.C., Sec. 8331(20)
- (p) Title 5, U.S.C., Sec. 8401(17)
- (q) Title 5, U.S.C., Sec. 7103(a) (10)
- (r) DoD 5400.11-R, Regulations Implementing the Privacy Act of 1974 for DHA, May 14, 2007
- (s) Federal Employees Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570.
- (t) DoD Instruction 1010.09, "DoD Civilian Employee Drug-Free Workplace Program," June 22, 2012

ENCLOSURE 2RESPONSIBILITIES

1. DRUG PROGRAM COORDINATOR. The DHA shall have a Drug Program Coordinator assigned to carry out the purposes of this program. The Drug Program Coordinator shall be responsible for implementing, directing, administering, and managing the Program for DHA. The Drug Program Coordinator shall serve as the principal contact with the laboratory and for collection activities in assuring the effective operation of the testing portion of the Program. In carrying out his/her responsibilities, the Drug Program Coordinator shall, among other duties:

- a. Arrange for all testing authorized under this AI.
- b. Ensure that all employees subject to random testing receive individual notice, as described in Enclosure 3, prior to implementation of the Program, and that such employees return a signed acknowledgment of receipt form.
- c. Document, through written inspection reports, all results of laboratory inspections conducted.
- d. Coordinate with and report to the Director, DHA, on Drug Program Coordinator activities and findings that may affect the reliability or accuracy of laboratory results.
- e. In coordination with the Employee Assistance Program (EAP) Administrator, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation, and
- f. Coordinate all Drug Program Coordinator duties in field offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.

2. EMPLOYEE ASSISTANCE PROGRAM ADMINISTRATOR. The EAP Administrator shall:

- a. Receive verified positive test results from the Medical Review Officer (MRO).
- b. Assume the lead role in the development, implementation, and evaluation of the EAP.
- c. Supervise and designate the agency's EAP Coordinator and counselors, and assist them in establishing field office EAPs, and
- d. Advise the DHA on the submission of annual statistical reports, and prepare consolidated reports on the DHA's EAP activity.

3. EMPLOYEE ASSISTANCE PROGRAM COORDINATOR. The EAP Coordinator shall:

- a. Implement and operate the EAP within the DHA assigned to the coordinator.
- b. Provide counseling and treatment services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation.
- c. Coordinate with the Director, DHA, the MRO and supervisors, as appropriate.
- d. Work with the Drug Program Coordinator to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace.
- e. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use.
- f. Monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in accordance with Reference (g).
- g. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs.
- h. Ensure that the provider of EAP services maintains a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs, and include the following information on each such organization:
 - (1) Name, address, and phone number.
 - (2) Types of services provided.
 - (3) The contact person's name and phone number.
 - (4) Fee structure, including insurance coverage.
 - (5) Client specialization.
 - (6) Periodically visit rehabilitative or treatment organizations to meet administrative and staff members and tour the site, ascertain the experience, certification, and educational level of staff, and determine the organization's policy concerning progress reports on clients and post-treatment follow-up, and
 - (7) Other pertinent information.

4. EMPLOYEE ASSISTANCE COUNSELORS. The Employee Assistance Counselors shall:

- a. Serve as the initial point of contact for employees who ask or are referred for counseling.
- b. 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.
- c. Meet the qualifications as determined by the EAP Administrator and be trained in counseling employees in the occupational setting, and in identifying drug use.
- d. Document and sign the treatment program prescribed for all employees referred for treatment, after obtaining the employee's signature on this document, and
- e. Coordinate with the EAP Coordinator when making referrals, and consider the following factors:
 - (1) Nature and severity of the problem.
 - (2) Location of the treatment.
 - (3) Cost of the treatment.
 - (4) Intensity of the treatment environment.
 - (5) Availability of inpatient/outpatient care.
 - (6) Other special needs, such as transportation and child care, and
 - (7) The preferences of the employee.

5. MEDICAL REVIEW OFFICER. The DHA shall have an MRO assigned to carry out the purposes of this AI. The MRO shall, among other duties:

- a. Receive all laboratory test results.
- b. Assure that an individual who has tested positive has been afforded an opportunity to discuss the test result in accordance with paragraph 10 of Enclosure 3.
- c. Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the EAP Administrator, and the appropriate DHA official, including a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings.

d. Confirm with the appropriate personnel official whether an individual who has been tentatively selected for employment with the DHA has obtained a verified positive test result.

e. Coordinate with and report to the DHA Drug Program Coordinator on all activities and findings on a regular basis.

6. SUPERVISORS. Supervisors will be trained to recognize and address illegal drug use by employees (Reference (s)) and will be provided information regarding referral of employees to the EAP; procedures and requirements for drug testing and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. Except as modified by the Director, DHA, to suit specific program responsibilities, first-line supervisors shall:

a. Attend training sessions on illegal drug-use in the workplace.

b. Initiate a drug test based on reasonable suspicion as described in paragraph 7 of Enclosure 3.

c. Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use.

d. Initiate appropriate disciplinary action upon a finding of illegal drug use, and

e. In conjunction with personnel specialists, assist higher-level supervisors and the EAP Administrator in evaluating employee performance and/or personnel problems that may be related to illegal drug use. A higher-level supervisor shall review and concur, in advance, with all tests ordered on the basis of a reasonable suspicion in accordance with paragraph 7 of Enclosure 3.

ENCLOSURE 3PROCEDURES1. EMPLOYEE ASSISTANCE PROGRAM.

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

(1) Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been verified positive, and monitor the employees' progress through treatment and rehabilitation.

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

(3) Ensure that confidentiality of test results and related medical treatment and rehabilitation records is maintained in accordance with paragraph 1 of Enclosure 4.

b. Referral and Availability.

(1) Any employee found to be using drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to DHA employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems. However, non-DHA employees are financially responsible, and should submit any associated claim to their medical insurance provider.

(2) In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to completion of the Program. The decision of the EAP Administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor failed to consider one or more of the factors in

paragraph 4(e) of Enclosure 2 in making a referral shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

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

d. Records and Confidentiality. All EAP operations shall be confidential in accordance with paragraph 4 of Enclosure 4.

e. Structure. The Human Resources Division (HRD) is responsible for oversight and implementation of the DHA EAP. Under the terms of the contract between DHA and the Federal Occupational Health Services with HHS, the latter will provide EAP services to DHA in support of the drug-free workplace program. The EAP must be administered along with DHA's promotion of the EAP. Employees and supervisors may contact EAP at (800) 222-0364 to speak with a counselor who will then assign them to a counselor within their geographic region.

2. SUPERVISORY TRAINING.

a. Objectives. As supervisors have a key role in establishing and monitoring a drug-free workplace, DHA shall provide training to assist supervisors and managers in recognizing and addressing illegal drug use by DHA employees (Reference (s)). The purpose of supervisory training is to understand:

- (1) DHA policies relevant to work performance problems, drug use, and the DHA EAP.
- (2) The responsibilities of offering EAP services.
- (3) How employee performance and behavioral changes should be recognized and documented.
- (4) The roles of the MRO, medical staff, supervisors, personnel, and EAP personnel.
- (5) The ways to use the DHA EAP.
- (6) How the EAP is linked to the performance appraisal and disciplinary processes, and
- (7) The process of reintegrating employees into the workforce.

b. Implementation. The Learning and Development Division, with assistance from HRD, shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the Program.

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

- (1) Overall DHA policy.
- (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 EAP.
- (4) How to recognize employees with possible problems.
- (5) Documentation of employee performance or behavior.
- (6) Skills in confronting employees with possible problems.
- (7) DHA procedures for referring employees to EAP.
- (8) Disciplinary actions and removal from sensitive positions as required by Reference (d).
- (9) Reintegration of employees into the workforce, and
- (10) Written materials which the supervisor can use at the work site.

3. EMPLOYEE EDUCATION.

a. Objectives. The EAP Administrator, in accordance with Reference (s), shall offer drug education to all DHA employees. Drug education should include education and training to all levels of the DHA organization on:

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

b. Means of Education. Drug education activities may include:

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

4. NOTICE.

a. General Notice. A general notice from the Director, DHA, announcing the testing program, as required by Reference (d), will be provided to all employees no later than 60 days prior to the implementation date of the Program. The notice shall be provided immediately upon approval of this AI by HHS pursuant to Reference (f), and shall explain:

- (1) The purpose of the Program.
- (2) That the Program will include both voluntary and mandatory testing.
- (3) That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that their position has been designated a TDP.
- (4) The availability and procedures necessary to obtain counseling and rehabilitation through the EAP.
- (5) The circumstances under which testing may occur.
- (6) That an opportunity will be afforded to submit medical documentation of lawful use of an otherwise illegal drug.
- (7) That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the MRO.
- (8) That positive test results verified by the MRO may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal in any adverse personnel action.
- (9) That all medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient, an authorizing court order, or otherwise as permitted by Federal law implemented at Reference (g).

b. Individual Notice. Thirty days prior to implementation, in addition to the information provided in the general notice, an individual notice will be distributed to all employees in TDPs explaining:

- (1) That the employee's position has been designated a "Testing Designated Position."
- (2) That the employee will have the opportunity to voluntarily admit to being a user of illegal drugs and to receive counseling or rehabilitation, in which case disciplinary action is not required (see paragraph 5(f) of Enclosure 3).
- (3) That the employee's position will be subject to random testing no sooner than 30 days following the notice.

c. Signed Acknowledgement. Each employee in a TDP shall be asked to acknowledge in writing that he/she has received and read the notice which states that the their position has been designated for random drug testing, and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal. If the employee refuses to sign the acknowledgement, the employee's supervisor shall note on the acknowledgement form that the employee received the notice. This acknowledgement, which is advisory only, shall be centrally collected by the DHA Employee/Labor Relations Branch, HRD. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this AI since the general 60-day notice will previously have notified all DHA employees of the requirement to be drug-free.

d. Administrative Relief. If an employee believes his or her position has been wrongly designated as a TDP, that employee may file an administrative appeal to the Chief, HRD, who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing, to the Chief, HRD, within 15 days of notification, setting forth all relevant information. The Chief, HRD, shall review the appeal based upon the criteria applied in designating that employee's position as a TDP, and may consult with the employees supervisor and/or the Directorate Director. The decision of the Chief, HRD, is final and is not subject to further administrative review.

5. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES.

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

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

b. Mandatory Administrative Actions. The DHA shall refer an employee found to use illegal drugs to the EAP and, if the employee occupies a sensitive position, immediately remove the employee from that position without regard to whether it is a TDP. At the discretion of the Director, DHA; however, and as part of successful participation in an EAP, an employee may return to duty in a sensitive position if the employee's return would not endanger public health or safety or national security.

c. Range of Consequences. Disciplinary action taken against an employee found to use illegal drugs may include the full range of disciplinary actions, including reducing the employee in pay or grade, or removal. The severity of the action chosen will depend on the circumstances of each case, and will be consistent with Reference (d). DHA shall initiate disciplinary action against any employee found to use illegal drugs, but shall not discipline an employee who voluntarily admits to illegal drug use in accordance with paragraph 5(f) of Enclosure 3. Such disciplinary action, consistent with the requirements of any governing collective bargaining agreement, and Reference (h), as well as other applicable statutes, regulation, and DoD or DHA directives may include any of the following measures, but, depending on various situational factors, some disciplinary action must be initiated, such as:

- (1) Suspending the employee for 14 days or less.
- (2) Suspending the employee for 15 days or more.
- (3) Suspending the employee until the employee successfully completes the EAP or until DHA determines that action other than suspension is more appropriate.
- (4) Reducing the employee in pay or grade.
- (5) Removing the employee from Federal service.

d. Initiation of Mandatory Removal from Service. DHA shall initiate action to remove an employee for:

- (1) Refusing to obtain counseling or rehabilitation through an EAP as required by Reference (d) after having been found to use illegal drugs;
- (2) Not refraining from illegal drug use after a first finding of such use. All letters to propose and decide on a separation action should be worked out in consultation with the DHA Management Employee Labor Relations Branch, HRD.

e. Refusal to Take a Drug Test when Required. An employee who refuses to be tested when so required will be subject to the full range of disciplinary actions, including dismissal. No applicant who refuses to be tested shall be extended an offer of employment. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

f. Voluntary Referral.

(1) Under Reference (d), DHA is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except that such discipline is not required for an employee who meets the following conditions: (1) voluntarily admits his or her drug use; (2) completes counseling or an EAP; and (3) thereafter refrains from drug use. A fundamental purpose of the Program is to assist employees who themselves are seeking treatment for drug use. Because Reference (d) permits an agency to create a "safe harbor" for an employee who meets all three of the conditions described, DHA has decided to create such a "safe harbor" and will not initiate a disciplinary action against employees who satisfy the provisions of this section; however, if the employee is in a sensitive position, they will be temporarily removed and have their security clearance suspended.

(2) The voluntary referral option allows any employee to step forward to identify him/herself as an illegal drug user for the purposes of entering a drug treatment program under the EAP. In stepping forward, consistent with paragraph 9(b) of Enclosure 3, an employee may volunteer for a drug test as a means of self-identification. Although this self-identification test may yield a verified positive test result, such result shall not subject an employee to discipline, assuming the three safe harbor requirements are met.

(3) Safe harbor is not available to an employee who requests protection under this provision after: (1) being asked to provide a urine sample in accordance with this program; or (2) having been found to have used illegal drugs pursuant to paragraphs 5(a)(1) and 5(a)(2) of Enclosure 3.

6. RANDOM TESTING.

a. Sensitive Positions Designated for Random Testing. Reference (d) requires random testing for employees in sensitive positions, subject to DHA criteria. As specified in paragraph 6(b) of Enclosure 3, the Director, DHA, will determine if a position is a TDP subject to random testing using the factors listed and Reference (e). As of October 1, 2014, a number of positions (See attachment) will move into DHA from organizations in which they had been approved as TDPs. Random drug testing of incumbents in these positions will begin upon notification of concurrence by the Interagency Coordinating Group, Executive Committee.

b. Determining the TDP. Among the factors the Director, DHA, will consider in designating a position a TDP is the extent to which the position:

- (1) Is considered inconsistent with illegal drug use.
- (2) Is engaged in law enforcement.
- (3) Must foster public trust by preserving employee reputation for integrity, honesty, and responsibility.

(4) Has national security responsibilities.

(5) Has drug interdiction responsibilities, or

(6) Has positions which:

(a) Authorize employees to carry firearms.

(b) Give employees access to sensitive information.

(c) Authorize employees to engage in law enforcement.

(d) Require employees, as a condition of employment, to obtain a "Top Secret" security clearance, or

(e) Require employees to engage in activities affecting public health or safety. These positions are characterized by critical safety or security responsibilities as related to the mission of the DHA. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions are identified for random testing because they require the highest degree of trust and confidence. The Director, DHA, reserves the right to add or delete positions determined to be TDPs pursuant to the criteria established in Reference (d) and this program. Moreover, the Director, DHA, has determined, pursuant to Reference (i), that all positions which have been or will be designated as TDPs under this program are "sensitive positions" and are therefore exempt from coverage under Reference (j).

c. Implementing Random Testing. In implementing the program of random testing, the Drug Program Coordinator shall:

(1) Ensure that the means of random selection remain confidential, and

(2) Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy DHA's duty to achieve a drug-free work force.

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

e. Deferral of Testing. An employee selected for random drug testing may obtain a deferral of testing if the employee's first-line and higher-level supervisors concur that a compelling need necessitates a deferral on the grounds that the employee is:

(1) In a leave status (sick, annual, administrative, or leave without pay), or

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

An employee whose random drug test is deferred will be subject to an unannounced test within the following 60 days.

7. REASONABLE SUSPICION TESTING.

a. Reasonable Suspicion Testing. This may be required of any employee in a position which is designated for random testing when there is 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 reasonable suspicion of on-duty use or on-duty impairment. Grounds for reasonable suspicion testing may be based upon, among other things:

(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) 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.

b. Procedures.

(1) If an employee is suspected of using illegal drugs, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. This information will be presented to the next level supervisor or a higher-level individual above the supervisor making the finding that a reasonable suspicion of illegal drug use exists. The Drug Program Coordinator and the DHA Office of General Counsel shall be informed immediately.

(2) When higher-level concurrence (e.g., usually 2nd level supervisor) 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.

c. Obtaining the Sample. The employee may be asked to provide the urine sample under observation in accordance with the criteria in paragraph 10 of Enclosure 3.

d. Supervisory Training. In accordance with paragraph 2 of Enclosure 3, supervisors will be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training; however, shall not invalidate otherwise proper reasonable suspicion testing.

8. APPLICANT TESTING.

a. Objectives. The testing of applicants for TDPs is strongly encouraged and preferred by the Interagency Coordinating Group, Executive Committee.

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

c. Procedures. The Drug Program Coordinator shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, no later than 48 hours after notice to the applicant. Applicants shall be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be reviewed only by the MRO to determine whether the individual is licitly using an otherwise illegal drug.

d. Personnel Officials. Upon notification that an individual has been tentatively selected for employment with DHA, the Chief, HRD, shall assure after consultation with the MRO that a drug test has been conducted on that individual and determine whether the test result is a verified positive result.

e. Consequences. The DHA will decline to extend a final offer of employment to any applicant with a verified positive test result, and such applicant may not reapply to DHA for a period of six months. The Human Resources Specialist working on the applicant's certificate shall be directed to object to the applicant on the basis of failure to pass the physical, due to a lack of personal characteristics necessary for public employment or failure to support the goals of DHA. DHA shall inform such applicant that a confirmed presence of an illegal drug in the applicant's urine precludes DHA from hiring the applicant.

9. ADDITIONAL TYPES OF DRUG TESTING.

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

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

If an employee is suspected of having caused or contributed to an accident meeting the above criteria, the appropriate supervisor will present the facts leading to this suspicion to the Drug Testing Coordinator 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.

b. Voluntary Testing. In order to demonstrate their commitment to the DHA's goal of a drug-free workplace, and to set an example for other Federal employees, employees not in TDPs may volunteer for unannounced random testing by notifying the Drug Program Coordinator. These employees will then be included in the pool of TDPs subject to random testing, and be subject to the same conditions and procedures, including the provisions of paragraph 5(f) of Enclosure 3. Volunteers shall remain in the TDPs pool until they withdraw from participation by notifying the Drug Program Coordinator of such intent at least 48 hours prior to a scheduled test.

c. Follow-up Testing. All employees referred through administrative channels that undergo counseling or a rehabilitation program for illegal drug use through the EAP will be subject to unannounced testing following completion of such a program for a period of one year. Such employees shall be tested at the frequency stipulated in the abeyance contract or, as an alternative, at a minimum of once a month. Such testing is distinct from testing which may be imposed as a component of the EAP. The employee must have a reentry program and a follow-up agreement before returning to work.

10. TEST PROCEDURES IN GENERAL.

a. Mandatory Guidelines for Federal Workplace Drug Testing. DHA shall adhere to Reference (k) promulgated by HHS and consistent with the authority granted by Reference (d) and to the requirements of Reference (f). DHA's drug testing component shall have professionally trained collection personnel, quality assurance requirements for urinalysis

procedures, and strict confidentiality requirements.

b. Privacy Assured. In accordance with Reference (r), any individual subject to testing under this program shall be permitted to provide urine specimens in private and in a rest room stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested; however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided when:

(1) The individual:

- (a) Has previously been found by DHA to be an illegal drug user, or
- (b) Has previously tampered with a sample, or

(2) Facts and circumstances suggest that the individual is:

- (a) 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 established in Reference (k), or
- (b) Shows signs of contaminants.

c. Failure to Appear for Testing. Failure to appear for testing without a deferral will be considered refusal to participate in testing and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the Drug Program Coordinator to obtain guidance on action to be taken.

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

- (1) A valid prescription, or
- (2) A verification from the individual's physician verifying a valid prescription.

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

e. Employee Counseling and Assistance. While participating in a counseling or rehabilitation program, and at the request of the Program, the employee may be exempted from the random TDPs pool for a period not to exceed 60 days, or for a time period specified in an abeyance contract or rehabilitation program approved by the Director, DHA. Upon completion of the Program, the employee immediately shall be subject to follow-up testing pursuant to paragraph 9(c) of Enclosure 3.

f. Savings Clause. To the extent that any of the procedures specified in this section are inconsistent with any of those specified in Reference (k) or any subsequent amendment thereto, such Reference (k) or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

ENCLOSURE 4INFORMATION REQUIREMENTS1. CONFIDENTIALITY OF TEST RESULTS.

a. The laboratory may disclose laboratory test results only to the MRO or the staff of the MRO. Any positive result which the MRO justifies by acceptable and appropriate medical or scientific documentation to account for the result, other than the intentional ingestion of an illegal drug, will be treated as a negative test result and may not be released for purposes of identifying illegal drug use.

b. Test results will be protected under the provisions of References (l) and (r) and may not be released. The MRO may maintain only those records necessary for compliance with this AI. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, except that the disclosure of the results of any audit may not include personal identifying information on any employee.

c. In order to comply with Reference (l), the results of a drug test of a DHA employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be:

(1) To the MRO.

(2) To the EAP Administrator in which the employee is receiving counseling or treatment or is otherwise participating.

(3) To any supervisory or management official within DHA having authority to take adverse personnel action against such employee, or

(4) Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

d. For purposes of this Section, "management official" includes any management, government, security, or personnel official whose duties necessitate review of the test results in order to process adverse personnel action against the employee. In addition, test results with all identifying information removed shall also be made available to DHA personnel, including the Drug Program Coordinator, for data collection and other activities necessary to comply with Reference (f).

2. EMPLOYEE ACCESS TO RECORDS. Any employee who is the subject of a drug test will, upon written request, have access to any records relating to:

a. Such employee's drug test, and

b. The results of any relevant certification, review, or revocation-of-certification proceedings, as referred to in Reference (f). One exception applies when as authorized by law an applicant who is the subject of a drug test shall not be entitled to this information.

3. CONFIDENTIALITY OF RECORDS IN GENERAL.

a. All drug-testing information specifically relating to individuals is confidential and should be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this AI and to make information readily retrievable, the Drug Program Coordinator shall maintain all records relating to reasonable suspicion testing, suspicion of tampering with evidence, and any other authorized documentation necessary to implement this order.

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

4. EMPLOYEE ASSISTANCE PROGRAM RECORDS. The EAP Administrator shall maintain only those records necessary to comply with Reference (d). After an employee is referred to an EAP counselor, the EAP coordinator will maintain all records necessary to carry out its duties. All medical and/or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized (Reference (g)), including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress.

5. MAINTENANCE OF RECORDS. DHA shall establish or amend a recordkeeping system to maintain the records of the Program consistent with DHA's Privacy Act System of Records and with all applicable Federal laws, rules, and regulations regarding confidentiality of records including Reference (l). If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Deputy Director, DHA. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of this AI, and include:

- a. Notices of verified positive test results referred by the MRO.
- b. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen.
- c. Anonymous statistical reports, and

d. Other documents the Drug Program Coordinator, MRO, or EAP Administrator deems necessary for efficient compliance with this AI.

6. RECORDS MAINTAINED BY GOVERNMENT CONTRACTORS. Any contractor hired to satisfy any part of this AI shall comply with the confidentiality requirements of this order, and all applicable Federal laws, rules, regulations, and guidelines.

7. STATISTICAL INFORMATION.

a. The Chief, Management Employee Labor Relations Branch, shall collect and compile anonymous statistical data for reporting the number of:

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

(2) Verified positive test results.

(3) Voluntary drug counseling referrals.

(4) Involuntary drug counseling referrals.

(5) Terminations or denial of employment offers resulting from refusal to submit to testing.

(6) Terminations or denial of employment offers resulting from alteration of specimens.

(7) Terminations or denial of employment offers resulting from failure to complete a drug abuse counseling program, and

(8) Employees who successfully complete EAP.

b. This data, along with other pertinent information, shall be compiled for inclusion in the DHA annual report to Congress required by Reference (f). This data shall also be provided to HHS semi-annually to assist in overall program evaluation and to determine whether changes to Reference (f) may be required.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AI	Administrative Instruction
CFR	Code of Federal Regulations
DHA	Defense Health Agency
DoD	Department of Defense
DoJ	Department of Justice
EAP	Employee Assistance Program
HHS	Department of Health and Human Services
HRD	Human Resources Division
MRO	Medical Review Officer
OPM	Office of Personnel Management
TDP	Testing Designated Position
U.S.C.	United States Code

PART II. DEFINITIONS

Applicant. Any individual tentatively selected for a Testing Designated Position, and who has not, immediately prior to the selection, been subject to random testing.

Drug Program Coordinator. The Drug Program Coordinator shall be responsible for implementing, directing, administering, and managing the drug program for DHA.

Employee Assistance Program (EAP). The EAP 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. The EAP is provided to DHA through an agreement between DHA and the Federal Occupational Health agency within the Department of Health and Human Services.

Employee Assistance Program Administrator. The individual responsible for ensuring the development, implementation, and review of the agency EAP.

EAP Coordinator. The individual designated by the EAP Administrator to be responsible for implementing and operating the EAP within the DHA component assigned to the coordinator, by providing counseling, treatment, and education services to employees and supervisors regarding the EAP.

Employee Assistance Counselors. The Employee Assistance Counselors shall serve as the initial points of contact for employees who ask or are referred for counseling.

Medical Review Officer (MRO). The individual responsible for receiving laboratory results generated from the DHA Drug-Free Workplace Program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

illegal drugs. A controlled substance included in Schedule I (no medical use and high abuse potential, e.g., heroin, marijuana), or Schedule II (drugs with accepted medical uses but with high abuse potential, e.g., cocaine), as defined by Sec. 802(6) of Title 21, U.S.C., 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.

management official. Any management, government, security, or personnel official whose duties necessitate review of the test results in order to process adverse personnel action against the employee.

random testing. A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Testing may either be:

Uniform, or unannounced testing of testing designated employees occupying a specified area, element, or position; or

Statistically random sampling of such employees based on a neutral criterion, such as Social Security numbers.

employees in sensitive positions. Categories:

Employees in positions designated by the Director, DHA, as Special Sensitive, Critical Sensitive, or Noncritical-Sensitive; or employees in positions designated by the Director, DHA, as sensitive in accordance with Reference (m).

Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the Director, DHA, under Reference (k).

Individuals serving under Presidential appointments.

Law enforcement officers as defined in References (o) and (p).

Other positions that the Director, DHA, determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

supervisor. An employee, as described in Reference (q), 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.

testing designated positions (TDPs). Federal civilian positions within DHA which have been designated for random testing under paragraph 6(b) of Enclosure 3.

verified positive test result. A test result that was positive on an initial Food and Drug Administration-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by the HHS), and reviewed and verified by the MRO in accordance with this AI and Reference (k).

Interagency Coordinating Group, Executive Committee. The Executive Committee consists of representatives of the Division of Workplace Programs, HHS; the Civil Division, DoJ; and OPM. Certification and oversight of Federal Agency Programs is accomplished under a delegation of authority by an Interagency Coordinating Group, Executive Committee, convened by the Division of Workplace Programs.