United States
Nuclear Regulatory Commission

NRC Drug-Free Workplace Plan

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Office of Human Resources

November 1997

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**United States
Nuclear Regulatory Commission**

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November 1997

ABSTRACT

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment that all Federal employees refrain from using illegal drugs on or off duty. On July 11, 1987, Congress passed legislation affecting implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100-71 (the "Act"). The Nuclear Regulatory Commission first issued the NRC Drug Testing Plan to set forth objectives, policies, procedures, and implementation guidelines to achieve a drug-free Federal workplace, consistent with the Executive Order and Section 503 of the Act. Revision 1, titled, "NRC Drug-Free Workplace Plan," supersedes the previous version and its supplements and incorporates changes to reflect current guidance from the Department of Justice, the Department of Health and Human Services, as well as other guidance.

 

CONTENTS

	<u>Page</u>
ABSTRACT	iii
I. INTRODUCTION	1
A. Background	1
B. Statement of Policy	1
C. Nature, Frequency, and Type of Drug Testing	2
D. Drugs for Which Individuals Are Tested	3
E. Scope	3
F. Union Rights	3
G. References	3
II. DEFINITIONS	5
III. EMPLOYEE ASSISTANCE PROGRAMS	6
A. Function	6
B. Referral and Availability	7
C. Leave Allowance	8
D. Records and Confidentiality	8
E. Structure	8
IV. SUPERVISORY TRAINING	9
A. Objectives	9
B. Implementation	9
C. Training Package	9

CONTENTS (Continued)

	<u>Page</u>
V. EMPLOYEE EDUCATION	10
A. Objectives	10
B. Means of Education	10
VI. SPECIAL DUTIES AND RESPONSIBILITIES	11
A. Drug Program Coordinator	11
B. Assistant Drug Program Coordinator	11
C. Employee Assistance Program Manager	12
D. Drug Rehabilitation Assessment Coordinator	13
E. Medical Review Officer	14
F. Supervisors	14
G. Implementation	15
H. General Program/Structural Provisions	15
I. Government Contractors	15
VII. NOTICE	16
A. General Notice	16
B. Individual Notice	16
C. Acknowledgment	17
D. Administrative Relief	17
VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES	17
A. Determination	17
B. Mandatory Administrative Actions	18
C. Range of Consequences	18
D. Initiation of Mandatory Removal From Service	18

CONTENTS (Continued)

	<u>Page</u>
E. Refusal To Take Drug Test When Required	19
F. Voluntary Referral	19
IX. RANDOM TESTING	20
A. Positions Designated for Random Drug Testing	20
B. Testing-Designated Positions Within the Sensitive Employee Pool	20
C. Determining the Testing-Designated Position	20
D. Implementing Random Testing	21
E. Notification of Selection	21
F. Excuse from Testing	21
X. REASONABLE SUSPICION TESTING	22
A. Individuals Subject to Reasonable Suspicion Testing	22
B. Grounds	22
C. Procedures	22
D. Obtaining the Sample	23
E. Supervisory Training	23
XI. APPLICANT TESTING	23
A. Objectives	23
B. Extent of Testing	23
C. Vacancy Announcements	23
D. Procedures	24
E. Consequences	24

CONTENTS (Continued)

	<u>Page</u>
XII. ADDITIONAL TYPES OF DRUG TESTING	24
A. Injury, Illness, Unsafe, or Unhealthful Practice Testing	24
B. Voluntary Testing	25
C. Follow-up Testing	25
XIII. TEST PROCEDURES IN GENERAL	25
A. Technical Guidelines for Drug Testing	25
B. Assurance of Privacy	26
C. Failure To Appear for Testing	27
D. Opportunity To Justify a Positive Test Result	27
E. Testing Status During Rehabilitation	27
F. Savings Clause	27
XIV. RECORDS AND REPORTS	28
A. Confidentiality of Test Results	28
B. Access to Records	28
C. Confidentiality of Records in General	29
D. Employee Assistance Program Records	29
E. Maintenance of Records	29
F. Records Maintained by Government Contractors	30
G. Statistical Information	30
APPENDIX A	
Criteria, Frequency, and Justification for Testing-Designated Positions	
APPENDIX B	
Drugs for Which Individuals Are Tested	

I. INTRODUCTION

A. Background

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment that all Federal employees 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 is seriously impairing a significant 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. The NRC is concerned with the well-being of its employees, the successful accomplishment of Agency missions, and the need to maintain employee productivity. The intent of the policy 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.

On July 11, 1987, Congress passed legislation affecting implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301(1987) (hereafter, "the Act"). The objective of this legislation was to establish uniformity among Federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal government's drug testing program.

The purpose of the NRC Drug-Free Workplace Plan is to set forth objectives, policies, procedures, and implementation guidelines to achieve a drug-free Federal workplace, consistent with the Executive Order and Section 503 of the Act.

B. Statement of Policy

It is NRC policy that its workplace be free from the illegal use, possession, or distribution of controlled substances (21 U.S.C. Chapter 13, as specified in Schedules I through V, as defined in 21 U.S.C. § 802(6) and listed in 21 U.S.C. § 812(b)) by the officers and employees of NRC. The possession and distribution of controlled substances will be dealt with promptly in accordance with legal and administrative disciplinary procedures. However, the policy's primary goal is to ensure that illegal drug use is eliminated and that the NRC workplace is safe, healthful, productive, and secure.

The NRC, as a result of its national security and public health and safety responsibilities as well as the sensitive nature of its work, has a compelling obligation to detect and eliminate illegal drug use from its workplace.

The NRC regulates the civilian uses of nuclear materials and energy by licensing persons and companies: (1) to build and operate nuclear reactors, fuel cycle and other facilities; (2) to own and use nuclear materials (e.g., by universities, hospitals, doctors, and industry); (3) to transport nuclear materials; and (4) to store spent fuel and radioactive waste. The NRC through careful inspection must ensure that these activities are conducted in a manner consistent with the public health and safety, environmental quality, national security, and antitrust laws.

All NRC inspectors and many other employees who require immediate and unescorted access into vital or protected areas of nuclear power plants, fuel cycle facilities, and uranium enrichment facilities to conduct thorough and uninhibited inspections and investigations are subject to drug testing. These areas contain systems, devices, or materials, the failure, destruction, or release of which could directly or indirectly endanger public health and safety by exposure to radiation. Others subject to drug testing include (1) members of emergency response teams who, as part of the NRC's public health and safety responsibilities, immediately respond to and investigate significant operational events and accidents involving reactor and nonreactor facilities; (2) employees having access to Sensitive Compartmented Information (SCI) and/or Foreign Intelligence Information (FII), or who require access more than once or twice a year to classified information (e.g., National Security Information or Restricted Data); and (3) motor vehicle operators whose principal duties or backup duties include the driving of Government vehicles to transport passengers.

Impaired judgment or reliability, inappropriate behavior, or similar aberrant actions by any employees in testing-designated positions resulting from illegal drug use could have disastrous, immediate, and long-term effects upon public health and safety, the quality of the nation's environment, and the nation's security.

The mark of a successful drug-free workplace program depends in large part on how well the NRC informs its employees of the hazards of illegal drug use, and on the type and quality of assistance it can provide drug abusers. Equally important is the employees' confidence that the NRC will respect the personal dignity and privacy of the individual in reaching its goal of a drug-free work-place. Consistent with these goals, this plan includes policies and procedures for: (1) employee assistance and protection of his/her personal privacy and legal rights, (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

Section 503 of the Act requires the NRC Plan to specify the nature, frequency, and type of drug testing to be instituted. The NRC Plan includes the following types of drug testing: (1) applicant testing; (2) random testing of those employees in sensitive positions which have

been determined to be testing-designated positions; (3) reasonable suspicion testing; (4) injury, illness, unsafe, or unhealthful practice testing; (5) voluntary testing; and (6) testing as part of or as a follow-up to counseling or rehabilitation.

The frequency of random testing, voluntary testing, and follow-up testing is specified in Appendix A and Section XII, respectively. The Commission reserves the right to increase or decrease the rate and frequency of testing based on the Agency's mission, need, availability of resources, and experience in the program, consistent with the duty to achieve a drug-free workplace under the Executive Order.

D. Drugs for Which Individuals Are Tested

Section 503 of the Act requires the NRC Plan to specify the drugs for which individuals shall be tested. These are listed in Appendix B.

E. Scope

This Plan applies to all employees of and applicants to the Nuclear Regulatory Commission.

F. Union Rights

The active participation and support of the National Treasury Employees Union (which serves as the exclusive representative of NRC's bargaining unit employees) can contribute to the success of this program. Management will seek ways in which bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe agreements already reached, will include union representatives in general orientation programs, and will continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978.

G. References

1. Authorities

- a. Executive Order 12564 (1987).
- b. Executive Order 12958 (1995).
- c. Executive Order 10450 (1953) and Executive Order 12968 (1995).
- d. Mandatory Guidelines for Federal Workplace Drug Testing Programs, which includes Scientific and Technical Requirements and Certification of Laboratories Engaged in Urine Drug Testing, 53 FR 11970 (1988) as revised (1994).

- e. Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies, Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), Department of Health and Human Services (HHS), as amended (59 Fed. Reg. 29925-29929 (1994)).
 - f. Civil Service Reform Act of 1978, Pub. L. 95-454.
 - g. 42 CFR Part 2, establishing requirements for assuring the confidentiality of alcohol and drug abuse patient treatment records.
 - h. The Privacy Act of 1974 (5 U.S.C. Section 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain.
 - i. 10 CFR Part 9, implementing the Privacy Act of 1974 within the NRC.
 - j. Anti-Drug Abuse Act of 1986, Pub. L. 99-570 as amended, Pub. L. 100-690.
 - k. NRC Announcement No. 94, "Drug Testing Policy Statement," dated July 9, 1987.
 - l. Section 628 of the Treasury, Postal Service, and General Government Appropriations Act of 1989, Pub. L. 100-440, as amended.
2. Guidance
- a. Pub. L. 91-616, The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, providing guidance to Federal agencies in establishing alcoholism and drug abuse programs and Pub. L. 92-255, The Drug Abuse and Treatment Act, providing employee counseling services programs for Federal employees with alcohol or drug problems.
 - b. 5 CFR Part 792, providing guidance for developing and maintaining appropriate prevention, treatment, and rehabilitation programs and services for alcoholism and drug abuse among Federal employees.
 - c. NRC Management Directive 10.122 (formerly Manual Chapter and Appendix 4161), "Employee Health Services Program."
 - d. Guidelines to agencies, departments, and instrumentalities in establishing a drug-free workplace pursuant to Pub. L. 100-440
 - e. "NRC Drug Testing Manual," NUREG/BR-0136, Revision 4, December 1995.

II. DEFINITIONS

- A. "Applicant" means any individual from outside the NRC who is seriously being considered for employment in a testing-designated position with the NRC.
- B. "Employee Assistance Program (EAP)" means the NRC-based 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.
- C. "Employee Assistance Program Manager" means the individual responsible for the day-to-day implementation and review of the agency EAP.
- D. "Drug Rehabilitation Assessment Coordinator" means the individual designated by the Director, Office of Human Resources, who provides initial assessment of employees referred to the EAP as the result of a positive drug test and employees who self-refer under the voluntary referral, or "safe harbor," provision of this plan (Section VIII.F). The Drug Rehabilitation Assessment Coordinator is a specialist in the diagnosis and treatment of addictive disease. NRC contracts for this function and the contract is monitored directly by the EAP Manager, who oversees the day-to-day activities of the Drug Rehabilitation Assessment Coordinator and acts as liaison between the contractor and the Drug Program Coordinator.
- E. "Medical Review Officer" means the individual responsible for receiving laboratory results generated from the NRC Drug Testing Program. This official is a licensed physician with knowledge of substance abuse disorders and has 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. NRC contracts for these services.
- F. "Illegal Drug" means a controlled substance included in Schedule I or II of the Controlled Substances Act, as defined by Section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title (21 U.S.C. § 801 et seq.). The term "illegal drug" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
- G. "Management Official" means an employee required or authorized by the NRC to formulate, determine, or influence the policies of the NRC (5 U.S.C. § 7103(a)(11)).
- H. "Random Testing" means a system of drug testing imposed without suspicion that a particular individual is using illegal drugs. Random testing may either be uniform unannounced testing of testing-designated employees occupying a specified area, site, element or position, or may be a statistically random sampling of such employees based on a neutral criterion.

I. "Employees in Sensitive Positions" means:

1. Employees in positions designated by the Commission as sensitive in accordance with Executive Order No.10450 (April 29, 1953), as amended;
2. Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the Commission under Section 4 of Executive Order No.12958 (April 20, 1995), Section 3.1 of Executive Order No.12968 (August 2, 1995), and Section 145 of the Atomic Energy Act of 1954, as amended;
3. Individuals serving under Presidential appointments; or
4. Employees in other positions that the Commission determines involve national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

J. "Supervisor" means an employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment (5 U.S.C. § 7103 (a)(10)).

K. "Testing-Designated Positions" means employment positions within the NRC that have been designated for random testing under Section IX.B. of this Plan.

L. "Verified Positive Test Result" means a test result that has been screened positive by an FDA-approved immunoassay test, confirmed by gas chromatography/mass spectrometry assay (or other confirmatory tests approved by HHS), evaluated by the Medical Review Officer, and determined by him or her to be unjustified under Section XIII of this Plan.

III. EMPLOYEE ASSISTANCE PROGRAMS

A. Function

The NRC Employee Assistance Program (EAP) plays an important role in maintaining a drug-free workplace by publicizing the agency's alcohol and drug abuse policy and reiterating its stance as an agency with zero tolerance for illegal drug use. The EAP offers assistance to employees and family members dealing with alcohol, drug, and emotional or other problems. Specifically, the EAP:

1. Provides crisis intervention, confidential short-term counseling and follow-up, and referral to community resources, on a 24-hour basis, to employees with alcohol, drug, mental health, and other personal problems.

2. Provides assessment, referral to an appropriate treatment or drug education program, and program monitoring for those employees who have a positive drug test under this Plan or who self-refer under the "safe harbor" provision.
3. Provides education and training to all levels of NRC personnel on types and effects of drugs; symptoms of alcohol and drug abuse and impact on performance and conduct; relationship of the EAP to the drug testing program; and related treatment, rehabilitation, and confidentiality issues.
4. Provides education and training to managers and supervisors to clarify their role and responsibilities in recognizing the symptoms of alcohol and drug abuse on the job and familiarizes them with the procedures for confronting and referring individuals for treatment.
5. Provides counseling and assistance to families of employees with alcohol or drug problems and to employees with family members who have alcohol or drug problems.
6. Ensures that confidentiality of employee records, including drug test results and related medical treatment and rehabilitation records, is maintained in accordance with Section XIV.

The EAP is not involved in the collection of urine samples for drug testing purposes.

B. Referral and Availability

The EAP is administered separately from the drug testing program and is available to all employees without regard to a finding of drug use. EAP services are also available to family members of employees, when feasible. Employees may self-refer, they may be referred by a management official or the health center staff or they may be referred as the result of a positive drug test.

Employees found to be using illegal drugs are referred to the Drug Rehabilitation Assessment Coordinator (DRAC) as a representative of the EAP. The DRAC performs an addiction assessment and, after making a diagnosis, refers the employee to an appropriate treatment or drug education program and monitors the employee's participation in the program. In the event an employee is not satisfied with the program of treatment, he or she may seek review of the DRAC's referral by notifying the EAP Manager before completing the program. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment. Assertions that the DRAC failed to consider any factors in making a referral (such as the nature and severity of the employee's problem, the location and cost of treatment, the intensity of the treatment environment, availability of inpatient/outpatient care, the employee's preference, or other special needs of the employee such as transportation and child

care) 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. Following completion of rehabilitation by the employee, the DRAC makes a recommendation for frequency of follow-up testing to the Drug Program Coordinator.

C. Leave Allowance

Employees shall be allowed a reasonable period of excused absence, as determined by the EAP Manager in consultation with the appropriate management officials, for each counseling session 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

Employees who enter the EAP are treated in a confidential manner. All communications and records are handled in accordance with Section XIV of the Plan.

E. Structure

1. The Director, Office of Human Resources (HR), who reports to the Deputy Executive Director for Management Services, has responsibility for planning and implementing policies, programs, and services to provide for the effective organization, utilization, and development of the agency's human resources. The Director, HR, is responsible for oversight of the NRC Employee Assistance Program and provides, with the support of the Commission, high-level direction and promotion of the EAP.
2. The NRC EAP is located in the Office of the Director, HR, and falls under the immediate supervision of the EAP Manager.
3. The Director, HR, provides direction to the EAP Manager and contractor personnel in the development, implementation, and evaluation of the Employee Assistance Program, both at Headquarters and in the regional and field offices.
4. The EAP Manager is responsible for the development, implementation, and evaluation of the EAP. In-house and contractor personnel provide crisis intervention, short-term counseling and follow-up, referral to area resources, supervisory consultation and mandatory training, and employee education on addiction and mental health issues. The EAP Manager serves as liaison with other EAP's in Government and industry, professional groups in the field of substance abuse and mental health, and community resources at Headquarters and in the field; provides information for program assessment reports required by NRC and the Office of Personnel Management; and monitors contracts with providers of addiction and mental health services.

5. Contract personnel carry out the functions of the Drug Rehabilitation Assessment Coordinator (DRAC), as the representative of the NRC EAP, and supplement the evaluation, counseling, referral, and education services provided by the EAP.

IV. SUPERVISORY TRAINING

A. Objectives

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

1. NRC policies relevant to work performance problems, illegal drug use, and the 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 medical staff supervisors, personnel, and EAP personnel;
5. The ways to use the NRC EAP;
6. How the EAP is linked to the performance appraisal and the disciplinary process; and
7. The process of reintegrating employees into the workforce following treatment.

B. Implementation

The Office of Human Resources 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 NRC Drug-Free Workplace Plan.

C. Training Package

Supervisory training shall continue to 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 will include:

1. Overall NRC policy;
2. The prevalence of various employee problems with respect to drugs (and alcohol);
3. The EAP approach to handling problems;

4. How to recognize employees with possible problems;
5. Documentation of employee performance or behavior;
6. How to approach the employee;
7. How to use the EAP;
8. Disciplinary action and removal from sensitive positions as required by Section 5(c) of the Executive Order;
9. Reintegration of employees into the workforce; and
10. Written materials that the supervisor can use at the work site.

V. EMPLOYEE EDUCATION

A. Objectives

The Office of Human Resources shall continue to offer drug education to all NRC employees. Drug education will include education and training to all levels of the NRC on:

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

B. Means of Education

Drug education activities may include:

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

VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. Drug Program Coordinator

NRC's Drug Program Coordinator (DPC) shall be responsible for implementing and managing the drug program within the NRC. The DPC function is vested in the Executive Director for Operations (EDO) or designee. The EDO serves as the administrative head of the NRC. In carrying out this responsibility, the DPC shall, among other duties:

1. Ensure that all NRC employees receive a notice announcing the testing program no later than 60 days prior to the implementation date of the Plan;
2. Ensure that all employees subject to random testing receive individual notice as described in Section VII.B of this Plan, prior to implementation of the program;
3. Direct the EAP Manager to publicize and disseminate drug program educational materials and to oversee training and education sessions regarding drug use and rehabilitation;
4. Receive verified positive test results through the Headquarters Assistant Drug Program Coordinator from the Medical Review Officer;
5. Coordinate with the employee, EAP staff and supervisory management officials to determine or initiate appropriate personnel actions;
6. Provide direction, as necessary, to the NRC Assistant Drug Program Coordinators; and
7. Coordinate with and report to the Commission on drug program activities.

B. Assistant Drug Program Coordinator

1. NRC's Headquarters Assistant Drug Program Coordinator (ADPC) shall be responsible for directing and administering the collecting and testing portions of the drug program for NRC. The Headquarters ADPC function is vested in the Office of Administration, in the Director, Division of Facilities and Security, or designee. In carrying out this responsibility, the Headquarters ADPC shall, among other duties:
 - a. Arrange for all testing authorized under this Plan;
 - b. Generate random test lists for Headquarters and Regions and remote sites;
 - c. Coordinate with NRC's specimen collection contractor(s) on schedules, lists, and locations;
 - d. Maintain/retain all NRC drug program collection and test records (e.g., test lists, signed acknowledgment forms from 30-day notice, test results (negative and positive) for NRC employees and applicants);

- e. Arrange to document through written reports all results of laboratory inspections conducted;
 - f. Report findings to DPC that may affect the reliability or accuracy of laboratory results; and
 - g. Provide program direction and coordinate with Regional ADPCs wherever necessary to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.
 - h. Oversee administration of the contracts with the Medical Review Officer, specimen collection contractor, and testing laboratories.
2. NRC's Regional ADPCs, as well as the Headquarters ADPC, shall:
- a. On the actual drug testing date, notify the appropriate management official located at the specific site;
 - b. Notify the selected employee's supervisor approximately 1 hour prior to actual collection;
 - c. When necessary, contact the supervisor of testing alternates;
 - d. Aid in confirming positive identification of the individual to be tested, when necessary; and
 - e. Forward all drug-testing-related records to the Headquarters ADPC for storage and retention.

C. Employee Assistance Program Manager

This responsibility is vested in the Office of Human Resources. The EAP Manager shall:

- 1. Assume the lead role in the implementation and evaluation of the EAP;
- 2. Advise NRC components on the submission of annual statistical reports and prepare consolidated reports on the NRC's EAP activity;
- 3. Work with the DPC to provide educational materials and training on illegal drugs in the workplace to managers, supervisors, and employees;
- 4. 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;

5. Oversee administration of the contract with the Drug Rehabilitation Assessment Coordinator; and
6. Counsel supervisors of employees whose performance and/or conduct problems may be related to illegal drug use.

D. Drug Rehabilitation Assessment Coordinator

The Drug Rehabilitation Assessment Coordinator (an NRC contractor) shall:

1. Receive notification from the DPC when the DPC receives a verified positive test result from the Headquarters ADPC.
2. Serve as the initial point of contact for employees who ask for or are referred to drug counseling in accordance with Section VIII.F.
3. Provide initial assessment and referral services to employees who have had a positive drug test under this Plan or who voluntarily refer under the "safe harbor" provision (Section VIII.F).
4. Be familiar with all applicable laws and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program.
5. Be trained in counseling employees in the occupational setting and in identifying drug use.
6. Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document.
7. In making referrals, consider the
 - a. Nature and severity of the problem;
 - b. Location of the treatment;
 - c. Cost of the treatment;
 - d. Intensity of the treatment environment;
 - e. Availability of inpatient/outpatient care;
 - f. Other special needs, such as transportation and child care; and
 - g. Preferences of the employee.
8. Monitor the progress of referred employees during and after the rehabilitation period.
9. Maintain a list of rehabilitation or treatment organizations that provide counseling and rehabilitative programs, and include the following information on each organization:

- a. Name, address, and phone number;
 - b. Types of services provided;
 - c. Hours of operation, including emergency hours;
 - d. The contact person's name and phone number;
 - e. Fee structure, including insurance coverage;
 - f. Client specialization; and
 - g. Other pertinent information.
10. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience, certification, and educational level of staff and the organization's policy concerning progress reports on clients and post-treatment follow-up.
 11. Provide data necessary for contract monitoring to the EAP Manager.

E. Medical Review Officer

The NRC shall have a Medical Review Officer (MRO) assigned to carry out the purposes of this Plan. The MRO shall, among other duties:

1. Receive all laboratory test results;
2. Assure that an individual who has tested positive has been afforded an opportunity to justify the test result in accordance with Section XIII.D of this Plan;
3. Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the Headquarters ADPC, including a positive drug test result form indicating that the positive result is "unjustified," together with all relevant documentation and a summary of findings;
4. Confirm with the Headquarters ADPC whether an individual who has been tentatively selected for employment with the NRC has obtained a verified positive test result; and
5. Coordinate with and report to the Headquarters ADPC on all activities and findings on a regular basis.

F. Supervisors

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

1. Attend training sessions on illegal drug use in the workplace;
2. Initiate a reasonable suspicion test after first making appropriate factual observations and documenting those observations and obtaining approval from the Office Director or above;

3. Refer employees, or ensure that employees have been referred, to the Drug Rehabilitation Assessment Coordinator for assistance in obtaining counseling and rehabilitation upon findings of illegal drug use;
4. Receive notification from the Drug Program Coordinator (DPC) upon a finding of illegal drug use;
5. Initiate appropriate disciplinary action upon a finding of illegal drug use; and
6. In conjunction with employee assistance and labor relations specialists, assist higher-level supervisors in evaluating employee performance and/or conduct problems that may be related to illegal drug use.

An Office Director or above shall review and concur, in advance, in the decision of a first-line supervisor to direct an employee to be tested for the presence of drugs as a result of reasonable suspicion.

G. Implementation

At the direction of the Commission, the DPC shall implement the NRC Drug Testing Plan within NRC, and ensure that the Plan is efficiently and effectively accomplished in accordance with Executive Order 12564 and all other applicable regulations.

H. General Program/Structural Provisions

The DPC shall develop implementation procedures to enable NRC to efficiently and swiftly implement all aspects of this Plan, taking into account the unique geographical, personnel, budgetary, and other relevant factors of the Regional offices.

I. Government Contractors

Wherever existing facilities are inadequate to implement this Plan, a representative(s) of the Office of Administration's Division of Facilities and Security and the Office of Human Resources, as appropriate, shall:

1. Act as the Contracting Officer for the administration of all related contracts;
2. Verify that contractors chosen to perform the drug screening tests are duly certified pursuant to the Department of Health and Human Services (HHS) Guidelines (59 Fed. Reg. 29926-29929, 1994, "Mandatory Guidelines for Federal Workplace Drug Testing Programs") and that all contracts conform to the technical specifications of the HHS Guidelines; and
3. Ensure that contractors or NRC employees fulfill the responsibilities of the MRO and the DPC.

VII. NOTICE

A. General Notice

A general notice from the Commission announcing the testing program, as required by Executive Order 12564, Section 4(a), was provided to all employees no later than 60 days prior to the implementation date of the Plan. The notice was provided immediately upon completion of Congressional certification procedures prescribed in Sections 503(a)(1)(A), 503(a)(1)(B), and 503(a)(1)(C) of the Act, and explained:

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

B. Individual Notice

In addition to the general notice, an individual notice will be distributed either by written memorandum or electronic mail (E-mail) message to all employees in testing-designated positions explaining, in addition to the information provided above:

1. That the employee's position has been designated a "testing-designated position;"
2. That the employee will have the opportunity to voluntarily identify himself or herself as a user of illegal drugs and to receive counseling or rehabilitation, and will not be removed or suspended on that account; and
3. That the employee's position will be subject to random testing no sooner than 30 days from the date of the notice.

C. Acknowledgment

Acknowledgment of the notice shall be demonstrated by signing and returning the written notice or by opening the E-mail message. If a written notice is used and the employee refuses to sign the acknowledgment, the employee's supervisor shall note on the acknowledgment form that the employee received the notice.

D. Administrative Relief

If an employee believes his or her position has been wrongly designated a testing-designated position (TDP), that employee may file an administrative appeal to the Drug Program Coordinator (DPC), who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing, to the DPC within 15 days of the notification in VII.B. above, setting forth all relevant information. The DPC shall review the appeal based on the criteria applied in designating that employee's position as a TDP. The DPC's decision is final and is not subject to further administrative review.

VIII. 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 NRC shall refer an employee found to use illegal drugs to the Drug Rehabilitation Assessment Coordinator as the representative of EAP, and may immediately remove the employee from his or her position without regard to whether it is a testing-designated position. At the discretion of the DPC, however, and as part of an EAP, an employee may return to duty in his/her normal position if the employee's return would not endanger public health or safety or national security.

C. Range of Consequences

The degree of severity of the disciplinary action initiated against an employee found to use illegal drugs will depend on the circumstances of each case, will be consistent with the Executive Order, and will include the full range of disciplinary actions, including removal. In addition, an employee's access authorization (security clearance) and/or employment clearance may be suspended under 10 CFR Part 10. The NRC shall initiate disciplinary action against any employee found to use illegal drugs, except if that employee voluntarily admits to illegal drug use in accordance with subsection VIII.F. of this Plan. The policy regarding such disciplinary action, consistent with the requirements of the Collective Bargaining Agreement between NRC and NTEU, the Civil Service Reform Act, and other statutes, NRC policies, and regulations, will be as follows:

1. Any employee found to be using, selling, or possessing illegal drugs while in a duty status may be removed from the NRC.
2. Any employee found to be using, selling, or possessing illegal drugs while off duty may be removed, reduced in pay or grade, or suspended without pay, depending on the circumstances. If suspended, the employee will be required to undergo rehabilitation, and be subject to possible reassignment.

In addition, any employee determined to have a verified positive test result must receive, at a minimum, two (2) hours of drug education by an NRC-approved drug treatment provider or health educator.

D. Initiation of Mandatory Removal From Service

The NRC shall initiate action to remove an employee found to use illegal drugs for:

1. Refusal to undergo counseling or rehabilitation and to successfully complete rehabilitation or drug education through an Employee Assistance Program as required by the Executive Order; or
2. A second finding of illegal drug use.

All letters to propose and decide on a removal action shall be concurred in by the Office of Human Resources and the Office of the General Counsel.

E. Refusal To Take Drug Test When Required

1. An employee who refuses to be tested when so required will be subject to reassignment, suspension, or removal from the NRC.
2. An applicant who refuses to be tested shall not be extended an offer of employment.
3. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral

Under Executive Order 12564, the NRC is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except one. If an employee (a) voluntarily admits his or her drug use (in accordance with 3. below), (b) completes counseling or a rehabilitation program, and (c) hereafter refrains from drug use, initiation of such discipline is not required (Executive Order 12564, Section 3(b), Section 5(b)).

1. Because the Order permits an agency to create a "safe harbor" for an employee who meets all three of these conditions, the NRC has decided to create such a "safe harbor" and will not initiate disciplinary action against employees who satisfy the provisions of this Section of this Plan.
2. A fundamental purpose of the NRC's Drug-Free Workplace Plan is to assist employees who themselves are seeking treatment for drug use. For this reason, the NRC will not suspend or remove on that account any employee who meets all aspects of the above circumstance.

This self-referral option allows any employee to step forward and identify himself/herself as an illegal drug user for the purpose of entering a drug treatment program under the EAP. In stepping forward, and consistent with Section XII.B., any employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result shall not subject the employee to discipline assuming the three "safe harbor" requirements are met.

3. Since the key to this provision 5 rehabilitative effectiveness is an employee's willingness to admit his or her problem, this provision will not be available to an employee unless that employee voluntarily discloses illegal drug use to a supervisory official in his/her management chain by close of business on the day prior to the day he or she is required to provide a urine sample. This prevents employees from identifying themselves as illegal drug users on the day they officially or unofficially find out that they are scheduled for drug testing. This "safe harbor" provision is also not available to employees found to have used illegal drugs pursuant to Sections VIII.A.1. and 2.

IX. RANDOM TESTING

A. Positions Designated for Random Drug Testing

The criteria and procedures applied in designating positions for drug testing, including the justification for such criteria and procedures, are listed in Appendix A.

B. Testing-Designated Positions Within the Sensitive Employee Pool

The Executive Order requires random testing for those employees in sensitive positions that have been determined to be testing-designated positions. Appendix A includes the criteria and procedures used in designating such positions for random testing, pursuant to the Act, including the justification for such criteria and procedures.

C. Determining the Testing-Designated Position

Among the factors the NRC has considered in determining a testing-designated position are the extent to which the NRC:

1. Considers its mission inconsistent with illegal drug use;
2. Must foster public trust by preserving employee reputation for integrity, honesty, and responsibility; and
3. Has national security responsibilities.

NRC has also considered the extent to which the position:

1. Gives employees access to sensitive information;
2. Requires employees, as a condition of employment, to obtain an employment/security clearance; and
3. Requires employees to engage in activities affecting public health or safety.

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

The Commission reserves the right to add or delete positions determined to be testing-designated positions pursuant to the criteria established in the Executive Order and this Plan. Moreover, pursuant to 42 U.S.C. § 290ee-1(b)(2), and the pertinent provisions of the Code of

Federal Regulations, the Commission has determined that all positions that have been or will be designated as testing-designated positions under this Plan are "sensitive positions," and are therefore exempted from coverage under 42 U.S.C. § 290ee-1(b)(1), which provides that no person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the basis of prior drug abuse.

D. Implementing Random Testing

In implementing the program of random testing, the Drug Program Coordinator shall:

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

The number of sensitive employees occupying testing-designated positions and the frequency with which random tests will be administered are specified in Appendix A.

E. Notification of Selection

An individual selected for random testing and the individual's supervisor shall be notified the same day the test is scheduled, preferably within 1 hour of the scheduled testing. The supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employee's name was selected randomly.

F. Excuse from Testing

An employee selected for random drug testing may be excused from testing if the employee's supervisor and Division Director or above concur that a compelling need necessitates he/she being excused. Otherwise, an employee may be excused from testing if he or she is:

1. In a leave status (sick, annual, administrative, or leave without pay);
2. In official travel status away from the test site or is about to embark on official travel scheduled before testing notification;
3. Notified of testing and submits a verifiable leave request for family or medical emergency; or
4. Attending or scheduled to attend a meeting with a licensee or certificate holder or is scheduled to be a key speaker at a Commission meeting and the test cannot otherwise be scheduled that day.

An employee whose random drug test is excused will be returned to the testing pool.

X. REASONABLE SUSPICION TESTING

A. Individuals Subject to Reasonable Suspicion Testing

Reasonable suspicion testing may be required of any employee in a position that is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs 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.

B. Grounds

Reasonable suspicion testing may be based on, among other things:

1. Observable phenomena, such as direct observation of drug use 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 possession, use, or trafficking. In any references to grounds for "reasonable suspicion testing," the term "trafficking" shall also mean "distribution;"
4. Information provided either by reliable and credible sources or information gained, for example, by anonymous tips that are independently corroborated;
5. Reliable evidence that the employee has tampered with a previous test; or
6. Employee has just given a specimen, the temperature measurement of which indicates possible tampering/adulteration/substitution.

Each determination of reasonable suspicion will be made individually based on the circumstances. Supervisory judgment will be based on the alcohol and drug abuse training for supervisors provided by the NRC's Employee Assistance Program.

C. Procedures

If an employee is suspected of using illegal drugs, the appropriate supervisor will verbally provide all information, facts, and circumstances leading to and supporting this suspicion to the Office Director/Regional Administrator or above for concurrence. Concurrence of the Office of the General Counsel and the Chief, Organization and Labor Relations, Office of Human Resources, will also be obtained.

If and when reasonable suspicion has been verified by a positive test, the appropriate supervisor will promptly detail, for the record and in writing, the circumstances that formed the basis to warrant the testing. The written report will be prepared to include, at a minimum, the appropriate dates and times of reported drug-related incidents, reliable/credible sources of information, rationale leading to the test, findings of the test, and the action taken.

D. Obtaining the Sample

The employee may be asked to provide the urine sample under observation in accordance with the criteria in Section XIII.B.

E. Supervisory Training

In accordance with Section IV, supervisors will be trained to address employee illegal drug use by recognizing facts that give rise to a reasonable suspicion and documenting facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training, however, shall not invalidate otherwise proper reasonable suspicion testing.

XI. APPLICANT TESTING

A. Objectives

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

B. Extent of Testing

Drug testing shall be required of all external candidates seriously being considered for employment with the NRC in a testing-designated position.

C. Vacancy Announcements

Every vacancy announcement for testing-designated positions shall indicate the drug testing requirements for external applicants/selectees. The suggested vacancy announcement statement follows:

"External applicant(s) selected for this position will be subject to pre-appointment drug testing."

In addition, the applicant will be notified that appointment to the position will be contingent on the receipt of a negative drug test result. Failure of the vacancy announcement to indicate these

requirements will not preclude applicant testing if advance written notice is provided to applicants in some other manner.

D. Procedures

The ADPC, Regional ADPC, or Office of Human Resources representative shall direct external applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for reasonable travel expenses.

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

Upon notification that an individual has been tentatively selected for employment with the NRC, the Director, Office of Human Resources, or designee, shall assure, after consultation with the Headquarters ADPC, that a drug test has been conducted on that individual and determine whether the test result is a verified positive result.

E. Consequences

The NRC will rescind any offer of employment and refuse to employ any applicant with a verified positive test result. Subsequent application will not be considered without adequate evidence of rehabilitation as determined by NRC's MRO. Absent such evidence, the personnel representative working on the applicant's certificate shall be directed to object to the applicant on the basis of failure to support the goals of the NRC. The NRC shall inform such applicant that a confirmed presence of an illegal drug in the applicant's urine precludes the NRC from hiring the applicant.

XII. ADDITIONAL TYPES OF DRUG TESTING

A. Injury, Illness, Unsafe or Unhealthful Practice Testing

The NRC is committed to providing a safe and secure work environment. It also has a legitimate interest in determining the cause of serious accidents so that it can undertake appropriate corrective measures. Post-accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based on circumstances of the accident, their actions are reasonably suspected of having caused 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 Office Director/Regional Administrator for approval. Once approval has been obtained and arrangements made for testing, the supervisor will prepare a written report detailing the facts and circumstances that warranted the testing.

B. Voluntary Testing

To demonstrate their commitment to the NRC goal of a drug-free workplace and to set an example for other Federal employees, employees not in testing-designated positions may volunteer for unannounced random testing by notifying the ADPC. These employees will then be included in the pool of testing-designated positions subject to random testing, and be subject to the same frequency, conditions, and procedures, including the provisions of Section VIII.F.

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

C. Follow-up Testing

All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through the EAP will be subject to unannounced random, or follow-up, testing following completion of such a program for a period of at least one year. Such employees shall be tested at the rate stipulated in the abeyance contract or, in the alternative, at the increased frequency of up to once every three to five work days for a period of three months, after which the follow-up tests may be decreased in frequency. Such testing is distinct from testing that may be imposed as a component of a rehabilitation program. Thereafter, such employees may continue to be tested randomly, regardless of the type of position they hold, at a rate recommended by the DRAC and approved by the NRC for the duration of their NRC employment.

XIII. TEST PROCEDURES IN GENERAL

A. Technical Guidelines for Drug Testing

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

2. Under the guidelines, 45 milliliters (ml) of urine will be collected. If sufficient urine can be collected from the donor, each specimen will be split into two portions (i.e., 30 ml for the first portion (bottle A) and 15 ml for the second (split) portion (bottle B) of the specimen. Both portions of the specimen (bottles A and B) will be sent to the same HHS certified testing laboratory.

If the donor is able to provide at least 30 ml but less than 45 ml of urine, the specimen will be processed as a single specimen (bottle A) and will not be split. Individuals who provide less than 45 ml needed for a split specimen will no longer be asked to sign a waiver form. If an individual is unable to provide at least 30 ml of urine, the specimen will be discarded after its temperature is taken and a new specimen will be collected after the individual is given a reasonable amount of time to consume fluids.

If the first portion of a specimen (bottle A) tests positive based on the initial screening and confirmatory testing at the testing laboratory, the result will be sent to NRC's MRO for evaluation. If the MRO cannot justify the positive result (i.e., determine that there was a legitimate use of a controlled substance), the MRO must report the result to the NRC without waiting for the donor to request that the bottle B specimen be tested. The MRO may, however, order a retest of the first portion (bottle A) from a split specimen collection or a single specimen before making his/her decision on a positive result.

Only the donor may request through the MRO that the split portion (bottle B) of specimen be tested. This request to the MRO must be made by the donor within 72 hours of being told by the MRO that he or she tested positive. Previously, the MRO could independently order a confirmatory test on the split portion (bottle B) of the specimen. The donor has the option to request that the split portion (bottle B) be tested either at the primary contract testing laboratory or NRC's HHS certified secondary contract testing laboratory. The NRC will also pay the costs associated with testing the split portion (bottle B). If the result of the test on the split portion (bottle B) fails to reconfirm the result reported for the first portion (bottle A), the MRO will void the test result for bottle A.

B. Assurance of Privacy

Any individual subject to testing under this Plan shall be permitted to provide urine specimens in private, 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 specific reason to believe that a particular individual may alter or substitute the specimen to be provided. Collection site personnel may have specific reason to believe that a particular individual may alter or substitute the specimen to be provided when:

1. Facts and circumstances suggest that the individual has equipment or implements capable of tampering with or altering urine samples;

2. The individual has previously tampered with a sample; or
3. The individual has just given a specimen and the temperature measurement indicates possible tampering/adulteration/substitution.

C. Failure To Appear for Testing

Failure to appear for testing without a valid excuse (see Section IX.F) will be considered refusal to participate in testing, and it will subject an employee to disciplinary action ranging from suspension to removal 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 ADPC 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 the HHS Guidelines and in Section XIII.A.2. For example, the MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include, but is not limited to:

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.

E. Testing Status During Rehabilitation

While participating in a rehabilitation program, and in coordination with the program, the employee may be exempted from the random testing-designated position pool for a period not to exceed 60 days, or for a time period specified in an abeyance contract or rehabilitation plan approved by the Office of Human Resources, NRC. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to Section XII.C.

F. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Scientific and Technical Guidelines (59 Fed. Reg. at 29919) promulgated by the Department of Health and Human Services, or any subsequent amendment thereto, such HHS Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

XIV. RECORDS AND REPORTS

A. Confidentiality of Test Results

The laboratory may disclose confirmed laboratory test results only to the MRO. Any positive result the MRO determines to be justified by licit and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. § 552a, et seq., and Section 503(e) of the Act, and may not be released in violation of either Act. The MRO may maintain only those records necessary for compliance with this Plan. NRC components or individuals with audit responsibilities of the MRO or the overall program may not have access to personal information identifying any employee.

To comply with Section 503(e) of the Act, the results of a drug test of an NRC 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 Headquarters ADPC or designee;
3. To the Manager of the EAP or designee in which the employee is receiving counseling or treatment or is otherwise participating;
4. To the DPC;
5. To any supervisory or management officials within the NRC having authority to take adverse personnel action against such employee; or
6. Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

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

B. Access to Records

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

1. Such employee's drug test; and
2. The results of any relevant certification, review, or revocation of proceedings, as referred to in Section 503(a)(1)(A)(ii)(I-III) of the Act.

Except as authorized by law, an applicant who is the subject of a drug test, however, shall not be entitled to this information.

C. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential and should be treated as such by anyone authorized to review or compile program records. To implement this Plan efficiently and to make information readily retrievable, the Headquarters ADPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this Plan.

Records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the Chief, Organization and Labor Relations, Office of Human Resources. Such shall remain confidential, securely locked with only authorized individuals who have a "need to know" having access to them.

D. Employee Assistance Program Records

The EAP Manager shall maintain only those records necessary to comply with this Plan. After the DPC refers an employee to an EAP, the EAP will maintain all records necessary to carry out its duties. All medical and/ or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment, are confidential and may be disclosed only as authorized by 42 CFR Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress (42 CFR 2.1 et seq., as amended June 9, 1987).

E. Maintenance of Records

The NRC has established a System of Records, "Drug Testing Program Records," NRC-35, to maintain the records of the NRC's Drug Testing Program consistent with all applicable Federal laws, rules, and regulations regarding confidentiality of records, including the Privacy Act 5 U.S.C. § 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the NRC. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of this Plan and include:

1. Notices of verified positive test results referred by the MRO;
2. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;

3. Anonymous statistical reports; and
4. Other documents the DPC, MRO, or EAP Manager deems necessary for efficient compliance with this Plan.

F. Records Maintained by Government Contractors

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

G. Statistical Information

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

1. Random tests; reasonable suspicion tests; injury, illness, unsafe, or unhealthful 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. Removals or denials of employment offers resulting from refusal to submit to testing;
6. Removals or denials of employment offers resulting from alteration of specimens;
7. Removals or denials of employment offers resulting from failure to complete a drug abuse counseling program; and
8. Employees who successfully complete EAP.

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

APPENDIX A

Criteria, Frequency, and Justification for Testing-Designated Positions

APPENDIX A

CRITERIA, FREQUENCY, AND JUSTIFICATION FOR TESTING-DESIGNATED POSITIONS

I. CRITERIA FOR TESTING

The Executive Order (E.O.) authorizes random drug testing of all employees in sensitive positions. Since all NRC positions are sensitive as defined by E.O. 12564, all NRC employees and special employees are potentially subject to drug testing. On January 15, 1992, the Office of National Drug Control Policy (ONDCP) provided revised guidance for selecting testing designated positions. This revised guidance was developed in accordance with the provisions of the E.O. and applicable case law. It identified categories of positions that agencies are expected to include "presumptively" in drug testing pools, as well as positions that "preferably" are to be included under most, but not all, circumstances. The Commission has determined that "motor vehicle operators carrying passengers" falls under the "presumptive" category and those employees who have access to "truly sensitive information," the compromise of which could cause damage to the national security, falls under the "preferable" category.

In addition to these categories, there are other agency-specific sensitive positions that may warrant, at the discretion of the agency, designation for testing. Such determinations are to be based on the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to public health and safety or national security that could result from the failure of an employee to discharge the duties of his/her position adequately. The revised guidance also identifies categories of positions that agencies should exclude from their random testing pool.

Considering the provision of the E.O. and the revised ONDCP guidance, the Commission determined that all NRC employees in the following categories are subject to random testing:

- (1) Regional and Headquarters employees who have unescorted access to vital or protected areas of nuclear plants, Category 1 fuel cycle facilities, and uranium enrichment facilities;
- (2) Employees who have assigned responsibilities or are on call for Regional or Headquarters incident response centers;
- (3) Employees with access to Sensitive Compartmented Information (SCI) and/or Foreign Intelligence Information (FII), or who require access more than once or

twice a year to classified information (e.g., National Security Information or Restricted Data); and

- (4) Employees who are motor vehicle operators whose principal duties or backup duties include the driving of Government vehicles to transport passengers.

It should be noted that positions occupied by some employees will fall under more than one category.

II. FREQUENCY

We estimate that approximately 1720 positions will be subject to random drug testing. NRC's policy is to test 50% of the pool each year (e.g., in a pool of 1720, we will conduct a total of 860 tests per year at a frequency of ten times per year). The names of the tested employees will be returned to the pool following each test.

III. JUSTIFICATION FOR CATEGORIES OF EMPLOYEES TO BE SUBJECT TO RANDOM DRUG TESTING

CATEGORY 1 - Regional and Headquarters employees who have unescorted access to vital or protected areas of nuclear power plants, Category 1 fuel cycle facilities, and uranium enrichment facilities:

It is the NRC's policy that all persons (including government employees) who are authorized unescorted access to the vital or protected areas of nuclear power plants, Category 1 fuel cycle facilities, and uranium enrichment facilities be fit to perform their duties and that they not be under the influence of any substance, legal or illegal, that could adversely affect the ability to perform their duties in any way related to safety.

To carry out their plant safety inspection and review activities in a manner that is unfettered and free of any possible constraints created by the presence of licensee personnel, some NRC personnel must have the authority to gain access to nuclear power plants, Category 1 fuel cycle facilities, and uranium enrichment facilities on an unescorted basis. With this authority comes the responsibility to be fit for duty in accordance with the Commission's policy. The Commission expects licensees to maintain programs, including effective monitoring and testing programs, that provide reasonable assurance that their own employees and contractors are not under the influence of drugs.

Actions by licensee employees, contractors, or NRC employees that are contrary to nuclear safety can have serious public safety impact. Errors in judgment or mental attentiveness by an NRC employee resulting from illegal drug use during the course of a safety inspection or review could result in the failure to recognize and properly react to an adverse nuclear safety condition; a condition that could, if not properly corrected, contribute to a nuclear accident. An

NRC employee whose judgment is impaired by the effects of drugs might also take positive actions to place the nuclear facility, and hence the public, in a dangerous situation.

Number of employees: Approximately 1182

CATEGORY 2 - Employees who have assigned responsibilities or are on call for Regional or Headquarters incident response centers:

The major responsibility for NRC emergency response personnel is to protect public health and safety in the event of a serious nuclear accident. The use of illegal drugs by emergency response personnel could adversely impact the NRC's ability to carry out its emergency response mission.

For example, in the event of a serious nuclear accident, NRC's principal role is to monitor the accident response to ensure that appropriate protective measures are being taken on behalf of the public. Monitoring accident response includes monitoring the licensee's activities, supporting the licensee and off-site authorities, informing Federal agencies and the media regarding the incident and, in very rare circumstances, intervening in a limited fashion to direct the licensee's on-site response. Drug usage could result in loss of life or injury and damage to property. Under the influence of illegal drugs, NRC emergency response personnel might fail to recognize and address a significant error in the licensee's on-site response. Additionally, use of drugs by emergency response personnel could result in the miscommunication of information between key technical officials, which could result in failure to take proper action during an emergency. A drug-free environment is essential to minimize the chance that human error could impair the proper performance of response team personnel.

Number of employees: Approximately 276

CATEGORY 3 - Employees with access to Sensitive Compartmented Information (SCI) and/or Foreign Intelligence Information (FII), or who require access more than once or twice a year to classified information (e.g., National Security Information or Restricted Data):

All positions requiring access to Sensitive Compartmented Information:

Types of positions: All positions in NRC for which the incumbents have been screened and approved for access to SCI on a need-to-know basis. Positions include all Commissioners, certain Commissioners' Assistants, the Executive Director for Operations, selected Office and Division Directors, and other NRC managers and employees who need access to SCI to perform the duties of their positions and carry out the mission of the NRC.

Justification: Drug use could result in the unauthorized disclosure or compromise of U.S. intelligence collection programs (e.g., sources, methods, analytical procedures) and their end products. Such disclosure and/or compromise could cause exceptionally grave damage to the

national security and place intelligence collection sources, including personnel, in imminent danger.

All positions requiring access to Foreign Intelligence Information (FII):

Types of positions: All positions in NRC for which the incumbents have been nominated and approved for access to FII on a need-to-know basis. Positions include all Commissioners, members of their immediate staffs, the Executive Director for Operations and the EDO staff, selected Office and Division Directors, and other NRC managers and employees who need access to FII to perform the intelligence duties of their positions and carry out the mission of NRC.

Justification: Drug use could result in the unauthorized disclosure or compromise of classified information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons, including that portion of counterintelligence dealing with information on international terrorist activities. Such disclosure and/or compromise could cause exceptionally grave damage to the national security and place intelligence collection sources, including personnel, in imminent danger.

All positions requiring access to other classified information (e.g., National Security Information or Restricted Data):

Types of positions: All positions in NRC for which the incumbents have been granted an "L" (equivalent to Secret) or "Q" (equivalent to Top Secret) security clearance and require access to classified information other than SCI or FII (e.g., National Security Information or Restricted Data). Positions include all Commissioners, members of their immediate staffs, the Executive Director for Operations and the EDO staff, Regional Administrators, various Office and Division Directors, and other NRC managers and employees who need access to National Security Information or Restricted Data to perform the duties of their positions and carry out the mission of NRC.

Justification: Drug use could result in the unauthorized disclosure or compromise of classified information (e.g., "truly sensitive information") that could cause damage to the national security. This includes information classified at the Confidential level, as well as higher classifications.

Number of employees in all Category 3 positions: Approximately 451.

(NOTE: All NRC positions require a security clearance either at the "Q" (Top Secret) or "L" (Secret) level in accordance with the Atomic Energy Act of 1954, as amended.)

CATEGORY 4 - Employees who are motor vehicle operators carrying passengers.

Types of positions: All positions in NRC for which the incumbent's principal duties or backup duties include the driving of Government vehicles to transport passengers.

Justification: Drug use could result in impairment in necessary driving skills and judgment and cause a direct threat to the health and safety of the vehicle passengers and the public.

Number of employees: Approximately two (2) employees.

It is noted that the sum of the number of employees who meet each category exceeds the actual number of employees who will be accessed through random testing because the testing-designated positions may fall under more than one category.

APPENDIX B

Drugs for Which Individuals Are Tested

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DRUGS FOR WHICH INDIVIDUALS ARE TESTED

The NRC random and voluntary drug testing programs will test for the following drugs:

- (1) marijuana
- (2) cocaine
- (3) opiates
- (4) amphetamines
- (5) phencyclidine (PCP)

When conducting reasonable suspicion testing, NRC will test for any drug(s), including those mentioned above, identified in Schedule I or II of the Controlled Substances Act, as deemed necessary.