



# Department of Defense INSTRUCTION

NUMBER 1010.09

June 22, 2012

*Incorporating Change 1, Effective June 28, 2018*

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USD(P&R)

SUBJECT: DoD Civilian Employee Drug-Free Workplace Program

References: See Enclosure 1

1. PURPOSE. This ~~I~~instruction:

a. Reissues DoD Directive 1010.9 (Reference (a)) as a DoD ~~I~~instruction in accordance with the authority in DoD Directive 5124.02 (Reference (b)).

b. Establishes policy, assigns responsibilities, and prescribes procedures for establishing and maintaining a drug-free workplace program, including *the* requirement of *testing federal civilian personnel for* illegal drug use. ~~testing for Federal civilian personnel.~~

c. Updates the DoD Civilian Employee Drug Testing Program pursuant to Executive Order (E.O.) 12564 (Reference (c)) and section 7301 note of title 5, United States Code (U.S.C.) (Reference (d)) in compliance with the Department of Health and Human Services (DHHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs (Reference (e)).

2. APPLICABILITY. This ~~I~~instruction:

a. Applies to:

(1) OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereinafter referred to collectively as the "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps (both Active and Reserve Components) and the National Guard.

(2) Federal civilian employees only. Federal civilian employees assigned either on detail or on leave without pay ~~to~~ *under* the Intergovernmental Personnel Act (IPA), as detailed in ~~s~~Sections 3371 through 3375 of Reference (d), remain employees of their agency and are subject to this ~~I~~instruction.

b. Does not:

(1) Apply to ~~non-DoD IPA employees~~ *State or local employees assigned to the DoD pursuant to the IPA, as codified in Sections 3371-3375 of Reference (d) or contractor employees.*

(2) Address compliance with Department of Transportation regulations issued pursuant to Public Law (PL) 102-143 (Reference (f)), which requires drug and alcohol testing of safety-sensitive transportation employees, including those with commercial drivers' licenses. This ~~I~~nstruction addresses compliance with Reference (c) only.

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. Reference (c) is fully implemented. To accomplish this, the DoD ~~shall will~~ conduct a program of drug testing its ~~F~~ederal civilian workforce that ~~is in compliance~~ *complies* with ~~D~~HHS guidelines (Reference (e)) and includes provisions for employee privacy, confidentiality, employee assistance programs, and supervisory training.

b. *The DoD will* be a drug-free workplace and that DoD ~~F~~ederal civilian employees ~~shall will~~ not use illegal drugs, whether on duty or off duty in accordance with References (c) and (d) and the Guidance for Selection of Testing Designated Positions (TDPs) (Reference (g)).

c. Drug ~~abuse~~ testing of foreign nationals employed by DoD stationed outside the United States may be conducted in accordance with this ~~I~~nstruction only as authorized by and consistent with intergovernmental and labor agreements negotiated on a country-by-country basis.

d. Components of the DoD ~~shall will~~ not use Instrumented Initial Test Facilities as defined in subpart L of Reference (e); for initial specimen testing. All ~~F~~ederal civilian employees' drug testing procedures ~~shall will~~ be carried out in a ~~certified~~ laboratory setting *certified by the Substance Abuse and Mental Health Services Administration (SAMHSA)*.

e. For the purposes of this ~~I~~nstruction, the Director, Washington Headquarters Services (WHS), is the DoD Component ~~H~~head for employees serviced by the WHS, Human Resources Directorate, Labor and Management Employee Relations Division, including WHS, OSD, Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, and the DoD Field Activities and Defense Agencies listed in Enclosure 2.

5. RESPONSIBILITIES. See Enclosure 3.

6. PROCEDURES. See Enclosure 4.

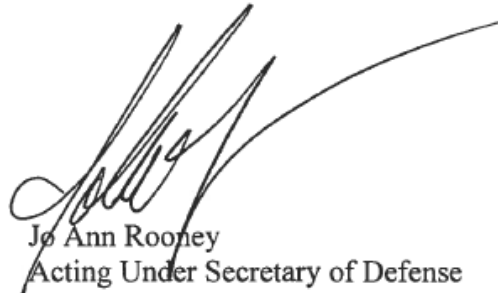
7. INFORMATION COLLECTION REQUIREMENTS. The submission of anonymous statistical information for the Annual Survey Report referred to in ~~p~~Paragraph 3.c. of Enclosure 4 of this ~~I~~instruction, ~~is exempt from~~ *does not require* licensing ~~requirements in accordance with paragraph C4.4.2 of DoD 8910.1-M (Reference (h)) with a report control symbol in accordance with Paragraph 1.b.(9) of Volume 1 of DoD Manual 8910.01 (Reference (h)).~~

8. RELEASABILITY. ~~UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>~~ *Cleared for public release. This instruction is available on the Directives Division Website at <http://www.esd.whs.mil/DD/>.*

9. EFFECTIVE DATE. This ~~I~~instruction *is effective June 22, 2012.*

~~a. Is effective June 22, 2012.~~

~~b. Must be reissued, cancelled, or certified current within 5 years of its publication in accordance with DoD Instruction 5025.01 (Reference (i)). If not, it will expire effective June 22, 2022 and be removed from the DoD Issuances Website.~~



Jo Ann Rooney  
Acting Under Secretary of Defense  
Personnel and Readiness

Enclosures

1. References
2. Components and Agencies Serviced by WHS for Drug Testing
3. Responsibilities
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Glossary

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 1010.9, "DoD Civilian Employee Drug Abuse Testing Program," August 23, 1988 (hereby cancelled)
- (b) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
- (c) Executive Order 12564, "Drug-Free Federal Workplace," ~~as amended~~, September 15, 1986
- (d) Sections 552a, 2105, 3371-3375, 7301 ~~note (1987)~~, 7541-7542, 8331(20), and 8401(17) of ~~¶~~Title 5, United States Code
- ~~(e) Pages 71858-71907 of Volume 73, Federal Register, November 25, 2008, (as amended)~~
- ~~(e) Pages 7920-7970 of Volume 82, Federal Register, October 1, 2017~~
- (f) Public Law 102-143, "Omnibus Transportation Employee Testing Act of 1991," October 28, 1991
- (g) Division of Workplace Programs, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, "Guidance for Selection of Testing Designated Positions (TDPs)," ~~April 2010-May 6, 2013~~
- ~~(h) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," June 30, 1998~~
- ~~(h) DoD Manual 8910.01, Volume 1, "DoD Information Collections Manual: Procedures for DoD Internal Information Collections," June 30, 2014, as amended~~
- ~~(i) DoD Instruction 5025.01, "DoD Directives Program," October 28, 2007~~
- ~~(j) DoD Directive 5400.11, "DoD Privacy Program," May 8, 2007 October 29, 2014~~
- ~~(k) DoD Directive 5400.11-R "Department of Defense Privacy Program," May 14, 2007~~
- ~~(l) Division of Workplace Programs, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, "Collection Site Manual and Collection Site Checklist Tool," 2011~~
- ~~(j) Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, "Collection Site Manual," October 1, 2017~~
- ~~(mk) Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, "Collection Site Checklist," October 1, 2017~~
- ~~(ml) Section 791 of ¶Title 29, United States Code~~
- ~~(nm) Division of Workplace Programs, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services "Model Plan for a Comprehensive Drug-Free Workplace Program," January 24, 1992~~
- ~~(on) Public Law 95-454, "The Civil Service Reform Act of 1978," October 13, 1978~~
- ~~(po) Parts 732 and Sections 752.601-606 of ¶Title 5, Code of Federal Regulations~~
- ~~(qp) Chapter 13 and sSection 802(6) of ¶Title 21, United States Code~~
- ~~(rq) Part 2 of ¶Title 42, Code of Federal Regulations~~
- ~~(sr) Executive Order ~~12356~~ 13526, "Classified National Security Information," April 2, 1982 December 29, 2009~~

ENCLOSURE 2

COMPONENTS AND AGENCIES SERVICED BY WHS FOR DRUG TESTING

1. OSD COMPONENTS. In addition to the DoD Components listed in ~~p~~Paragraph 4.e. above the signature, these OSD Components will be serviced by WHS for drug testing:

a. Office of the Under Secretary of Defense for ~~Acquisition, Technology, and Logistics~~ *Acquisition and Sustainment*.

b. Office of the Under Secretary of Defense for Policy.

~~c. Office of the Under Secretary of Defense for Personnel and Readiness.~~

~~dc.~~ Office of the Under Secretary of Defense Comptroller/Chief Financial Officer, Department of Defense.

*d. Office of the Under Secretary of Defense for Personnel and Readiness.*

e. Office of the Under Secretary of Defense for Intelligence.

~~f. Office of the Director of Administration and Management.~~

*f. Office of the Under Secretary of Defense for Research and Engineering.*

*g. Office of the Chief Management Officer of the Department of Defense.*

~~gh.~~ Office of the General Counsel of the Department of Defense

*i. Office of the Director, Cost Assessment and Program Evaluation.*

*j. Office of the Director, Operational Test and Evaluation.*

*k. Office of the DoD Chief Information Officer.*

~~hl.~~ Office of the Assistant Secretary of Defense for Legislative Affairs.

*m. Office of the Assistant to the Secretary of Defense for Public Affairs.*

~~in.~~ Office of the Director, Net Assessment.

~~j. Office of the Director, Cost Assessment and Program Evaluation.~~

~~k. Office of the Assistant Secretary of Defense for Public Affairs.~~

~~l. Office of the Assistant Secretary of Defense for Intelligence Oversight.~~

~~m. Office of the Department of Defense Chief Information Officer.~~

~~n. Office of the Deputy Chief Management Officer.~~

~~o. Office of the Director, Operational Test and Evaluation.~~

2. DEFENSE AGENCIES AND DoD FIELD ACTIVITIES. These Defense Agencies and DoD Field Activities will be serviced by WHS for drug testing:

- a. Defense Technology Security Administration.
- b. Defense Security Cooperation Agency.
- c. Defense ~~Prisoner of War/Missing Personnel Office~~ *POW/MIA Accounting Agency*.
- d. Pentagon Force Protection Agency.
- e. Defense Legal Services Agency.
- f. Office of Economic Adjustment.
- g. Department of Defense Test Resource Management Center.
- h. United States Court of Appeals for the Armed Forces.

ENCLOSURE 3

RESPONSIBILITIES

1. ~~DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR READINESS (DASD(R) EXECUTIVE DIRECTOR, FORCE RESILIENCY (EDFR))~~. The ~~DASD(R) EDFR~~, under the direction, control, and authority of the ~~Assistant Secretary of Defense for Readiness and Force Management Under Secretary of Defense for Personnel and Readiness, and through the Director, Operational Readiness and Safety shall will~~:

a. Serve as the liaison and coordinating official with the Division of Workplace Programs (DWP)/~~Substance Abuse and Mental Health Service Administration (SAMHSA)~~ of ~~DHHS~~.

b. Ensure that overall policy management, administration, and the technical and scientific aspects of *the* DoD Civilian Employee Drug-Free Workplace Program are in compliance with ~~DHHS~~ guidelines.

c. Provide fiscal oversight for budget planning, execution, and auditing of the Drug Demand Reduction Program funding appropriated from the Counternarcotics Central Transfer Account.

2. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components ~~shall will~~:

a. Develop a drug-free workplace plan (DFWP), implement guidance for achieving the objective of a drug-free workplace with due consideration to the rights of the Government, the ~~F~~federal civilian employee, and the general public, and oversee all procedures detailed in Enclosure ~~34~~.

b. Issue a statement of policy on the DoD Component's expectations on drug use and the action to be anticipated in response to identified drug use.

3. SECRETARY OF THE ARMY. The Secretary of the Army, through the Surgeon General of the U.S. Army, ~~shall will~~:

a. Maintain ~~DHHS~~ certification under the National Laboratory Certification Program (NLCP) of the U.S. Army Forensic Toxicology Drug Testing Laboratory (FTDTL), Fort Meade, Maryland.

b. Ensure that the FTDTL coordinates all budget planning and execution funded through the ~~DASD(R) EDFR~~, to support the maintenance of the NLCP requirements.

c. Ensure that the FTDTL is in compliance with all current NLCP technical and regulatory requirements and reports all compliance problems to the ~~DASD(R) EDFR~~.



ENCLOSURE 4

PROCEDURES

1. NOTICE AND CONFIDENTIALITY OF TEST RESULTS

- a. When establishing a new drug testing program, DoD Components:

(1) ~~Shall Will~~ notify all ~~F~~federal civilian employees 60 days before implementing a drug testing program consistent with this ~~I~~nstruction that: tests for use of illegal drugs will be conducted; employees will have the opportunity to submit medical documentation of lawful use of an otherwise illegal drug; and employees may seek counseling and rehabilitation if necessary. DoD Components ~~shall will~~ inform all ~~F~~federal civilian employees of the procedures for obtaining such assistance through the DoD Component's Employee Assistance Program (EAP).

(2) ~~Shall Will~~ ensure specific written notice is given to each ~~F~~federal civilian employee in a TDP at least 30 days before ~~testing begins being subject to random selection and testing~~.

(3) In accordance with References (c) ~~and (d)~~, ~~shall will~~ receive the certification of the Secretary, ~~D~~HHS, prior to expenditure of appropriated funds for drug testing of ~~F~~federal civilian employees.

b. In accordance with DoD Directive 5400.11 (Reference (~~ji~~)), all DFWPs must include procedures to protect the privacy of an employee's identifiable information contained in test results, ~~pursuant to sSection 552a of Reference (d) and DoD 5400.11 R (Reference (k))~~, and *other* related medical and rehabilitation records consistent with applicable laws and regulations.

2. PLANS AND LISTS OF TDPs

a. DoD Components ~~shall will~~ annually review the DFWP and list of positions designated for random testing.

b. DoD Components ~~shall will~~ submit requests for changes ~~in to~~ certified ~~or~~ compliant plans and requests to designate new (or delete existing) positions defined as Preferred and Discretionary as required by ~~D~~HHS Memorandum "~~2010 2013~~ Guidance for Selection of Testing Designated Positions (TDPs)" (Reference (g)), with the Component's General Counsel's supporting opinion, for the review and concurrence of the Interagency Coordinating Group Executive Committee (ICGEC) to:

ICGEC c/o ~~D~~HHS  
Substance Abuse and Mental Health Services Administration  
Division of Workplace Programs  
1 Choke Cherry Road  
Room 2-1035

Rockville, MD 20857

c. DoD Components ~~shall~~ *will* provide initial and updated estimates of the number of applicant, random, and other drug tests anticipated during the fiscal year to ~~DASD(R) EDFR~~ to assure adequate funding support.

### 3. DRUG TESTING

a. Any DoD Component, agency, or organization implementing a certified DFWP must assign a drug program coordinator to carry out the drug-free workplace program, to serve as the principal contact with the laboratory, and to ensure compliance with Reference (e) and the requirements of this ~~I~~ instruction in collection activities.

b. DoD Components will conduct random tests of civilians in TDPs in a number that equals ~~100~~ *50* percent of the full-time equivalents in the random testing pool ~~over a 2-year period~~ *annually*. DoD Components will conduct mandatory drug testing for all DoD civilian TDP applicants. Applicants for TDPs who refuse to be tested will not be extended an offer of employment.

*(1) Applicant testing of non-TDP selectees is prohibited.*

*(2) Mandatory drug testing of employees moving by transfer or reassignment from one TDP to another TDP with no break in service within the DoD is not required, unless deemed appropriate, on a case-by-case basis, by the gaining component.*

*(3) DoD agencies may elect to pay for the applicant's retest or require the applicant to incur the cost. An agency must use the same payment policy for all applicants applying for employment within such agency.*

c. DoD Components ~~shall~~ *will* submit anonymous statistical information about the drug-free workplace program to the ~~D~~HHS/SAMHSA/DWP Annual Survey Report as stated in the terms of their certified and compliant plans.

d. DoD Components ~~shall~~*will* test for the ~~following~~ drugs *specified in Reference (e):* ~~amphetamines (amphetamine/ methamphetamine, methylenedioxymethamphetamine, methylenedioxyamphetamine, and methylenedioxyethylamphetamine), cocaine, marijuana, opiates (codeine/morphine and 6-monoacetyl morphine), and phencyclidine.~~

e. DoD Components may test for additional drugs listed by the Drug Enforcement Administration on its Schedule I or II list ~~if reasonable suspicion of use is established~~ *only in conjunction with reasonable suspicion or post-accident testing*. The DoD Component is required to submit ~~the a~~ written request and justification for reasonable suspicion testing to the ~~HHS-certified~~ laboratory that will test the sample(s). The DoD Component is also responsible for consulting with ~~D~~HHS/SAMHSA/DWP to ensure the HHS-certified laboratory *that will test*

*the sample(s)* has the capability and a validated methodology for testing the specific drug; and for contracting with the HHS-certified laboratory.

*f. In addition to the testing authorized in Paragraphs (d) and (e) of this enclosure, the head of each agency is authorized to test an employee for illegal drug use under the following circumstances:*

*(1) When there is a reasonable suspicion that any employee uses illegal drugs; such testing may be directed for employees encumbering non-TDPs only if there is reasonable suspicion of illegal drug use during duty hours or of performing work while impaired;*

*(2) When an employee is reasonably suspected of having caused or contributed to a work-related accident or unsafe practice;*

*(3) As part of, or as a follow-up to, counseling or rehabilitation for illegal drug use through an EAP.*

*fg.* DoD Components may routinely test for another drug or drug class when a waiver has been granted from the Secretary, ~~D~~HHS. The DoD Component is required to submit a copy of the ~~D~~HHS waiver to the *HHS-certified* laboratory that will test the sample(s).

*gh.* Urine is the only approved specimen matrix to be collected in the drug testing program. Each specimen will be collected as a split specimen in compliance with Reference (e). All urine collections must be performed using the approved Office of Management and Budget (OMB) Form No. 0930-0158, "Federal Drug Testing Custody and Control Form," located at [http://www.reginfo.gov/public/do/PRAViewIC?ref\\_nbr=201007-0930-002&icID=193835](http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201007-0930-002&icID=193835) [https://www.reginfo.gov/public/do/PRAICList?ref\\_nbr=201406-0930-001](https://www.reginfo.gov/public/do/PRAICList?ref_nbr=201406-0930-001).

*hi.* All specimen collectors will complete initial and refresher training as defined in Reference (e), and collectors and their employers will maintain training documentation. All collectors will be provided with the name and telephone number of the Component official to contact about problems or issues arising in the collection process.

*ij.* ~~DoD Components shall~~ *To* ensure all collection sites comply with Reference (e); *DoD Components* will randomly inspect *at least* 5 percent (up to a maximum of 50 percent) of collection sites annually, investigate reported collection site deficiencies, and take appropriate action. The ~~D~~HHS/SAMHSA/DWP has developed examples of a "Collection Site Manual" (*Reference (j)*) and Collection Site Checklist ~~Tool~~ (*Reference (k)*) (~~Reference (l)~~). In addition, reasonable accommodation must be made to qualified employees and applicants for employment with a disability pursuant to ~~s~~Section 791 of ~~t~~Title 29, U.S.C. (*Reference (m)*). Persons requiring an accommodation must inform the employing agency that an accommodation is needed.

*jk.* DoD Components ~~shall~~ *will* ensure that all medical review officers (MROs) who receive and review ~~F~~federal civilian employee test results have satisfactorily passed an examination administered by an MRO-certifying organization approved by ~~D~~HHS.

~~kl.~~ DoD Components ~~shall~~ *will* comply with Reference (e). These guidelines are amended from time to time to reflect advances in the forensic science of drug testing and ~~F~~ederal agency experience with the Drug-Free Workplace Program.

#### 4. FTDTL ANALYSIS

a. All DoD Components will use the ~~D~~HHS certified U.S. Army Fort Meade FTDTL for all laboratory analyses, unless otherwise directed by the ~~D~~ASD(~~R~~) *EDFR*.

b. The Fort Meade FTDTL will maintain all ~~D~~HHS certification requirements pursuant to subparts I and K of Reference (e).

#### 5. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

a. The determination that a ~~F~~ederal civilian employee has used illegal drugs may be made on the basis of any appropriate evidence including, but not limited to:

(1) Direct observation. Supervisors and managers should contact the appropriate offices within their respective agency for proper guidance when a determination has been made through direct observation that a ~~F~~ederal civilian employee has used illegal drugs. Direct observation may include observed drug use, possession of drugs or drug paraphernalia, ~~and~~/or physical symptoms including abnormal conduct or abnormal behavior associated with being under the influence of a drug.

(2) Evidence obtained from an arrest or criminal conviction.

(3) Verified positive test result.

(4) The employee's voluntary admission.

b. The DoD Component ~~shall~~ *will* refer a ~~F~~ederal civilian employee found to use illegal drugs to the EAP and, if the employee occupies a sensitive position, immediately remove the employee from that position *and assign the employee other duties pending a decision on his or her status, without regard to whether or not it the position is a TDP.* At the discretion of the DoD Component ~~H~~head, however, and as part of 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.

#### 6. RANGE OF CONSEQUENCES

a. Disciplinary action taken against a ~~F~~ederal civilian employee found to use illegal drugs may include the full range of disciplinary actions consistent with *the HHS "Model Plan for a Comprehensive Drug-Free Workplace Program"* (Reference (~~am~~)), including removal *from*

*federal service*. The severity of the action chosen will depend on the circumstances of each case and the supporting evidence. DoD Components ~~shall~~ *will* initiate action to discipline any employee found using illegal drugs, provided that such action is not mandatory for an employee who voluntarily admits to illegal drug use, obtains counseling or rehabilitation through the EAP, and thereafter refrains from using illegal drugs.

b. Such disciplinary action ~~shall~~ *will* be consistent with the requirements of any governing collectively bargained agreement pursuant to PL 95-454 (Reference (~~en~~)) and other *applicable* statutes, DoD and Component orders, regulations, and tables of penalties. Disciplinary measures available to the DoD Components include:

(1) Reprimanding the employee in writing.

(2) Suspending the employee for a specific time period, until the employee completes the EAP, or until the DoD Component determines that action other than suspension is more appropriate.

(3) Removing the employee from *federal* service.

c. All applicants with verified positive test results ~~shall~~ *will* be refused employment. Applications from such individuals ~~shall~~ *will* not be considered for DoD employment for a period of ~~6 months from the date of the test results not more than 3 years from the date of the unfavorable suitability determination based on illegal use of narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation, in accordance with Section 731 of Title 5, U.S.C (Reference (d))~~.

d. DoD Components may elect to prohibit disciplinary action for an employee who voluntarily admits to illegal drug use, obtains counseling or rehabilitation under the EAP, and thereafter refrains from using illegal drugs. This “safe harbor” option ~~shall~~ *will* not be available to an employee after having been asked to provide a urine sample in accordance with the Component’s DFWP ~~or~~, after having been found to have used illegal drugs pursuant to direct observation, after evidence is obtained from an arrest or criminal conviction, *or through other means if management was unaware of such use*.

## 7. INITIATION OF ADVERSE ACTION PROCEEDINGS

a. DoD Components ~~shall~~ *will* initiate action to remove a ~~F~~federal civilian employee *from federal service* for:

(1) Refusing to obtain counseling or rehabilitation through an EAP as required by Reference (c) after having been found to use illegal drugs.

(2) Not refraining from illegal drug use after a first finding of such use.

b. A ~~F~~federal civilian employee who refuses to be tested, when so required, ~~shall will~~ be subject to the full range of disciplinary actions, including removal *from federal service*.

c. Attempts to alter or substitute the specimen or any other effort to subvert or tamper with the testing process are strictly prohibited and will subject the employee to the full range of disciplinary actions, including removal *from federal service*.

## 8. ADVERSE ACTION

a. Verified positive test results by the MRO and information developed by the DoD Component in the course of the drug testing of the ~~F~~federal civilian employee, subject to the limitations of ~~s~~Section 552a, ~~p~~Paragraph (p) of Reference (d), may be considered in processing any adverse action against the employee or for other administrative purposes.

b. Adverse actions taken against senior executives will conform to guidance outlined in ~~s~~Sections 7541-7542 of Reference (d) and ~~part~~ Sections 752.601-606 of ~~t~~Title 5, Code of Federal Regulations (CFR) (Reference (~~p~~o)).

9. CRIMINAL PROCEEDINGS. Drug testing ~~shall will~~ not be conducted under this ~~I~~nstruction for gathering evidence for use in criminal proceedings. DoD Components are not required to report to the U.S. Attorney General for investigation or prosecution of any information, allegation, or evidence of violations of any provision in ~~e~~Chapter 13 and ~~s~~Section 802(6) of *Title 21, U.S.C.* (Reference (~~q~~p)) received as a result of drug testing conducted under this ~~I~~nstruction.

## 10. EAP

a. The EAP plays an important role in preventing and resolving ~~F~~federal civilian employee drug use by:

- (1) Demonstrating the DoD Components' commitment to eliminating illegal drug use.
- (2) Providing employees an opportunity, with appropriate assistance, to discontinue their drug use.
- (3) Providing educational materials to supervisors and employees on drug use issues.
- (4) Assisting supervisors in confronting employees who have performance or conduct problems and making referrals to appropriate treatment and rehabilitative facilities.
- (5) Following up with individuals during the rehabilitation period to track their progress in accordance with ~~p~~Part 2 of ~~t~~Title 42, CFR (Reference (~~q~~q)) and encouraging successful completion of the program.

b. The EAP ~~shall will~~ not be involved in the collection of urine samples or the initial reporting of test results. The EAP ~~shall will~~ be administered separately from the testing program, and ~~shall will~~ be available to all employees without regard to a finding of drug use.

c. The EAP is available not only to DoD Component employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems.

d. The EAP ~~shall will~~:

(1) Provide short term counseling and ~~referral assessment~~ services to employees who self-refer for treatment or whose drug tests have been verified positive, and monitor the employees' progress through treatment and rehabilitation in accordance with Reference (~~¶q~~). Such ~~referral assessment~~ is to be conducted with maximum respect for individual confidentiality consistent with safety and security.

(2) Provide needed education and training to all levels of the DoD Component on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP to drug testing, and related treatment, rehabilitation, and confidentiality issues. Supervisory training must be available to assist in identifying and addressing illegal drug use by DoD Component ~~F~~federal civilian employees.

(3) Ensure that confidentiality of test results and related drug and alcohol treatment and rehabilitation records is maintained.

e. Any ~~F~~federal civilian employee found to be using illegal drugs ~~shall will~~ be referred to the EAP.

(1) Referral to the EAP does not prevent the imposition of discipline, up to and including removal ~~from federal service~~.

(2) The EAP ~~shall will~~ provide short term counseling or non-critical rehabilitation for all referrals, such as education and training regarding illegal drug use.

(3) Federal civilian employees ~~shall will~~ be allowed up to 1 hour (or more as necessitated by travel time) of excused absence for each counseling session, up to the maximum established by the DoD Component, during the assessment and 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.

(4) 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 assessment~~ by notifying the EAP administrator prior to completion of the program. The decision of the EAP administrator ~~shall will~~ be final and ~~shall will~~ not be subject to further administrative review.

(5) 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 as detailed in Reference (~~nm~~) in making ~~a referral shall an assessment will~~ not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

f. All EAP operations noted in this ~~i~~nstruction ~~shall will~~ be confidential in accordance with ~~s~~Sections 552a ~~and~~ 7301 note (1987) of Reference (d) and Reference (~~rq~~) relating to records and confidentiality.



GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

CFR	Code of Federal Regulations
<del>DASD(R)</del>	<del>Deputy Assistant Secretary of Defense for Readiness</del>
DFWP	drug-free workplace plan
<del>DHHS</del>	<del>Department of Health and Human Services</del>
DWP	Division of Workplace Programs
EAP	Employee Assistance Programs
<i>EDFR</i>	<i>Executive Director, Force Resiliency</i>
E.O.	Executive order
FTDTL	Forensic Toxicology Drug Testing Laboratory
<i>HHS</i>	<i>Department of Health and Human Services</i>
ICGEC	Interagency Coordinating Group Executive Committee
IPA	Intergovernmental Personnel Act
MRO	medical review officer
NLCP	National Laboratory Certification Program
OMB	Office of Management and Budget
PL	Public Law
SAMHSA	Substance Abuse and Mental Health Services Administration
TDP	testing designated position
U.S.C.	United States Code

WHS

Washington Headquarters ~~Service~~ *Services*

## PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this ~~I~~Instruction. A comprehensive listing of definitions for the Federal Drug-free Workplace Program can be found in Reference (e).

EAP. DoD Component-based counseling program that offers assessment, short-term counseling, and referral services for ~~F~~federal civilian employees for a wide range of drug, alcohol, and mental health problems that affect employee job performance and provides the services stipulated in ~~s~~Section III of Reference (~~am~~).

~~F~~federal civilian employee. As defined in ~~s~~Section 2105 of Reference (d).

*follow-up testing. An authorized, unannounced test administered to those employees who undergo counseling or participate in a rehabilitation program for illegal drug use through the EAP for a minimum period of 1 year (Reference (m)).*

ICGEC. The body convened by the Office of National Drug Control Policy, including representatives of the ~~D~~HHS, the Department of Justice, and the Office of Personnel Management, to provide policy oversight of the Federal Drug-free Workplace Program, including review of positions proposed for inclusion in the random testing pool.

illegal drugs. Defined in ~~s~~Section 802(6) of Reference (~~ap~~).

*post-accident testing. Employees may be subject to testing when, based upon the circumstances of the accident, their actions are reasonably suspected of having caused or contributed to an accident that meets the following criteria in the performance of official duties in Reference (m):*

*The accident results in a death or personal injury requiring immediate hospitalization; or*

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

random testing. A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may be either testing of a testing-designated ~~F~~federal civilian employee occupying a specified area, element, or position, or a statistically random sampling of such employees based on a neutral criterion.

reasonable suspicion testing. A belief that a ~~F~~federal civilian employee may have used illegal drugs may be based on, but is not limited to, the following:

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

A pattern of abnormal conduct or erratic behavior.

Arrest or conviction for a drug-related offense, or the identification of a **F**federal civilian employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.

Information provided either by credible sources or independently corroborated.

Evidence that the **F**federal civilian employee has tampered with a previous drug test.

*Such testing may be directed for employees encumbering non-TDPs only if there is reasonable suspicion of illegal drug use during duty hours or of performing work while impaired.*

schedule I. A category of drugs ~~not considered legitimate for~~ *with no currently accepted* medical use *and a high potential for abuse.*

schedule II. A category of drugs considered having a strong potential for abuse or addiction but that have legitimate medical use.

sensitive position. Refers to:

A **F**federal civilian employee in a position that a **H**head of a DoD Component designates special-sensitive, critical-sensitive, or non-critical-sensitive, pursuant to **p**Part 732, subpart B of Reference (**po**), or as sensitive in accordance with E.O. ~~12356~~ *13526* (Reference (**sr**)).

A **F**federal civilian employee who has been granted access to classified information or may be granted access to classified information under a determination of trustworthiness by a DoD Component **H**head.

Individuals serving under Presidential appointments.

Law enforcement officers as defined in **s**Sections 8331(20) and 8401(17) of Reference (d).

Other positions that the **H**head of a DoD Component determines to involve law enforcement, U.S. national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

TDP. Sensitive position that meets the criteria for random testing defined in Reference (g) in which incumbents are subject to random drug testing.