



DRUG-FREE WORKPLACE PROGRAM

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**Court Services and Offender Supervision Agency
for the District of Columbia**

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Management & Administration

DRUG-FREE WORKPLACE PROGRAM

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Court Services and Offender Supervision Agency
for the District of Columbia
Management & Administration

I. INTRODUCTION

Coverage

Upon certification by the Department of Health and Human Services, in accordance with Section 503 of the Supplemental Appropriations Act of 1987, this Directive shall be effective immediately for all personnel employed by the Court Services and Offender Supervision Agency (CSOSA) and the District of Columbia Pretrial Services Agency (PSA),¹ hereinafter referred to collectively as "Agency."

Background

On September 15, 1986, President Reagan signed Executive Order (E.O.) 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all federal employees to refrain from using illegal drugs on or off-duty. In a letter to all executive branch employees dated October 4, 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all Federal workers.

The Executive Order recognized that illegal drug use is seriously impairing a portion of the national work force, resulting in the loss of billions of dollars each year. As the largest employer in the Nation, the federal government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The Agency is concerned with the well-being of its employees, the successful accomplishment of its missions, and the need to maintain productivity. The intent of the drug-free workplace 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, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301 note (1987), (hereafter, the "Act"), in an attempt to establish uniformity

¹ Pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, P. L. 105-33, PSA functions as an independent entity within the Agency.

among federal agencies drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug testing results, and centralized oversight of the Federal Government's drug testing program.

The purpose of the Agency's DFWP 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.

Mission

CSOSA was created by the National Capital Revitalization and Self-Government Improvement Act of 1997. CSOSA's mission is to provide supervision, through qualified supervision officers, for offenders on probation, parole, and supervised release pursuant to the District of Columbia Code. CSOSA carries out its responsibilities on behalf of the court or agency having jurisdiction over the offender being supervised.

PSA's mission is to honor the Constitutional presumption of innocence and enhance public safety by formulating recommendations that promote the use of non-financial pretrial release under the least restrictive conditions and by providing effective community supervision for defendants.

Policy

A key responsibility of government is to provide for the security of its citizens. Unfortunately, the citizens of the District of Columbia (D.C.) are threatened by crime rates and drug-related violence that far exceed the national average. This adversely affects the quality of life of the District's residents. Over the next 5 years, the Agency will implement effective operations and establish partnerships with other criminal justice and social services organizations throughout the District of Columbia to dramatically reduce violent crime, as well as reduce the overall District of Columbia crime rate.

As a law enforcement organization, the Agency has a special responsibility to eliminate illegal drug use from its workplace. The Agency has a legal duty to ensure a drug-free and safe working environment that protects the public and our employees from the dangers of drug use. Illegal drug use impairs an employee's performance as well as his or her general physical and mental health. The use of illegal drugs also exposes an employee to influences that endanger other employees and property, and threatens the successful accomplishment of the

Agency's mission. Furthermore, the illegal possession or use of drugs is a criminal act, inconsistent with continued employment in a law enforcement agency. Our employees have a special obligation to maintain the public's trust. In support of our mission, the Agency works closely with court personnel, other law enforcement organizations, and local agencies.

Drug use by any agency employee, which impairs judgement or performance poses a great threat to public safety in and beyond the District of Columbia. Whenever an offender who should have been removed from the community through effective supervision is not removed due to a lapse in judgement, the result can be devastating to innocent citizens. A lapse in offender or defendant supervision can result in the commission of a serious crime, which could have been prevented through effective supervision. Therefore, all employees of the Agency, on or off-duty, are required to refrain from the use or possession of illegal drugs.

The mark of a successful DFWP depends on how well the Agency can inform its employees of the hazards of drug use, and on how much assistance it can provide drug users. Equally important is the assurance to employees that personal dignity and privacy will be respected in reaching the Agency's goals of a drug-free workplace. Therefore, this plan includes policies and procedures for:

1. employee education;
2. supervisory training;
3. employee assistance; and
4. identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

Nature, Frequency, and Type of Drug Testing to be Instituted

Section 503 of the Act requires the Agency's DFWP to specify the nature, frequency, and types of drug testing to be instituted. The Agency's program includes the following types of drug testing: (1) applicant testing; (2) random testing of those employees in sensitive positions that have been designated as testing designated positions; (3) reasonable suspicion testing; (4) accident or unsafe practice testing; (5) voluntary testing and (6) testing as part of or as a follow-up to counseling or rehabilitation.

The frequency of testing for random testing is specified in section XVI; voluntary testing and follow-up testing is specified in section XIII. CSOSA or PSA management reserves the right to increase or decrease the frequency of testing based upon the Agency's mission, needs, availability of resources, and experience with the plan, consistent with the duty to achieve a drug-free workplace under the Executive Order.

Drugs for Which Individuals are Tested

Section 503 of the Act requires the Agency to specify the drugs for which individuals will be tested. The Agency will test for the following drugs:

- a. Marijuana
- b. Cocaine
- c. Opiates
- d. Amphetamines
- e. Phencyclidine (PCP)

The Agency may test for additional drugs subject to the advanced written approval of the Secretary of the Department of Health and Human Services (HHS).

Union Cooperation

The active participation and support of labor organizations can contribute to the success of this program. **Management will seek ways in which recognized 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.**

II. REFERENCES

Authorities

1. Executive Order 12564, Drug-Free Federal Workplace;

2. Executive Order 10450, Security Requirements for Government Employees;
3. Executive Order 12958, Classified National Security Information;
4. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301, note (1987);
5. Mandatory Guidelines for Federal Workplace Drug Testing Programs, which includes Scientific and Technical Requirements and Certification of Laboratories Engaged in Urine Drug Testing, 53 Fed. Reg. 11970 (1988), as revised (1994);
6. Civil Service Reform Act of 1978, P. L. 95-454;
7. Sections 523 and 527 of the Public Health Service Act and implementing regulations at 42 C.F.R. Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records;
8. The Privacy Act of 1974 (5 U.S.C. § 552(a)), prescribing requirements governing the maintenance of records by agencies pertaining to individuals and access to these records by the individual(s) to whom they pertain;
9. 49 C.F.R Part 10, implementing the Privacy Act of 1974 for the Agency; and
10. Federal Employees Substance Abuse Education and Treatment Act of 1986, P. L. 99-570;

Guidance

- Court Services and Offender Supervision Agency Standards of Employee Conduct, Section VIII, Personal Conduct.

III. DEFINITIONS

(These definitions are based on the latest issuance of the HHS guidelines and are subject to change as the guidelines are amended. Guidelines published in 53 Federal Register 1970 on April 11, 1988, and revised and reissued in 59 Federal Register 110 on June 9, 1994, will take precedence in any case where the guidelines conflict with this directive)

Abeyance Agreement - An agreement between an employee who voluntarily admits to illegal drug use prior to identification through other means, management official(s), and EAP that establishes the conditions for the employee's counseling, rehabilitation, treatment, and follow-up testing that the employee agrees to comply with in lieu of removal.

Adulterant - An exogenous substance (i.e., a substance which is not a normal constituent of urine) or an endogenous substance at a higher concentration than normal physiological concentration is present in the specimen.

Applicant - Any individual tentatively selected for employment with the Agency.

Collection - The process of obtaining a urine sample from an individual at a specified time and place.

Collection Site - a place where donors present themselves for the purpose of providing a urine specimen. A facility specifically prepared for urine specimen in which the taping of water faucets and adding bluing agents to the water in the toilet bowl provides a controlled setting that decreases the ability of a donor to adulterate and/or substitute a urine specimen.

Drug Program Coordinator (DPC) - The individual responsible for implementing, directing, administering, and managing the Agency's drug-free workplace program.

Employee Assistance Program (EAP) - The Agency 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. (See Section VII, below).

Employee Assistance Program Administrator - The individual responsible for ensuring the development, implementation, and review of the Agency's EAP.

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

Illegal Drug - A controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of controlled substance pursuant to a valid prescription or other uses authorized by law.

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

Random Testing - A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs, and may either be:

1. Uniform-unannounced testing of testing designated employees occupying a specified area, element or position; or
2. A statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

Sensitive Positions means:

1. Employees in positions designated by the Agency as Special Sensitive, Critical Sensitive, or Non-critical-Sensitive, or employees in positions designated by the Agency as sensitive in accordance with Executive Order 10450, as amended;
2. Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the Agency as sensitive in accordance with Executive Order No. 10450, as amended;
3. Individuals serving under presidential appointments;
4. Law enforcement officers as defined in 5 U.S.C. § 8331(20) and 8401(17); or

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

Split Specimen - A urine specimen collected at the collection site that has been subdivided and independently sealed in the presence of the donor. A minimum of 45 milliliters of urine is collected in a collection cup. The collection site person pours 3-milliliters in labeled bottle A (primary) and the remainder of the specimen into labeled bottle B (split).

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

Testing Designated Position (TDP) - An employment position within the Agency which has been designated for random testing under Section X, Determining Testing Designated Positions, of this plan.

Verified Positive Test Result - A test result that was positive on an initial FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay (or other confirmatory tests) approved by HHS, and reviewed and verified by the MRO in accordance with this plan and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

IV. SPECIAL DUTIES AND RESPONSIBILITIES

(More than one of these designations may be held by the same individual)

Office of the Director

In accordance with law and regulation, CSOSA and PSA Directors may jointly agree to any deviations from the Agency's DFWP.

Deputy Director

CSOSA and PSA Directors may delegate authority for administrative actions to the respective Deputy Director.

Training and Career Development

The respective Training and Career Development staff 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 Agency's DFWP.

Office of Procurement

The Office of Procurement shall act as Contracting Officer for the administration of all related contracts. It shall ensure that all applicable contracts include Federal Acquisition Regulation 52.223-6, Drug-Free Workplace.

Office of Security

The Office of Security is responsible for the establishment, implementation and management of the physical, personnel and information security programs as required by E.0 and other applicable guidelines. In addition, the Office of Security has the overall responsibility for the implementation and operation of the DFWP within the Agency.

Drug Program Coordinator

The Agency shall have a Drug Program Coordinator (DPC) assigned to carry out the requirements of this plan. The DPC shall be responsible for implementing, directing, administering, and managing the drug program. The DPC shall serve as the principal contact with the laboratory and collection activities in assuring the effective operation of the testing portion of the program. In carrying out these responsibilities, the DPC shall, among other duties:

1. Arrange for testing authorized under this order;

2. Ensure that all employees subject to random testing receive an individual notice as described in Section VIII of this plan, prior to implementation of the program, and that such employees return a signed acknowledgment of receipt form;
3. Document, through written inspection reports, all results of laboratory inspections conducted;
4. Coordinate and report to the Office of Security on DPC activities and findings that may affect the reliability or accuracy of laboratory results;
5. In coordination with the EAP Administrator (see below), publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation;
6. In coordination with the Office of Procurement, ensure that contractors chosen to perform the drug screening tests certify their compliance with Federal Acquisition Regulation 52.223-6, Drug-Free Workplace.
7. Act as the Contracting Officer's Technical Representative for the administration of all related contracts; and
8. Act as a liaison to the MRO (see below) and provide needed information. As requested by the MRO, assists in locating and contacting employees.

Employee Assistance Program Administrator

The EAP Administrator shall:

1. Receive verified positive test results from the MRO.
2. Assume the lead role in the development, implementation, and evaluation of the EAP;
3. Advise the Agency components on the submission of annual statistical reports, and prepare consolidated reports on the Agency's EAP activity; and
4. Supervise and designate the headquarters EAP Coordinator and counselors (see below).

Employee Assistance Program Coordinator

The EAP Coordinator shall:

1. Implement and operate the EAP within the Agency component and assigned to the coordinator;
2. Provide counseling and treatment services to all employees referred to the EAP by their supervisors or self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;
3. Coordinate with CSOSA or PSA management, the MRO and supervisors, as appropriate;
4. Work with the DPC to provide educational materials and training to managers, supervisors, and employees on illegal drug use in the workplace;
5. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
6. Monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in accordance with 42 C.F.R. Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records;
7. 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;
8. Maintain a list of rehabilitation or treatment organizations, which provide counseling and rehabilitative programs, and include the following information on each such 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.
9. 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.

Employee Assistance Program Counselors

The Employee Assistance Counselors shall--

1. Serve as the initial point of contact for employees who ask or are referred for counseling;
2. 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;
3. Meet the qualifications as determined by the EAP Administrator, and be trained in counseling employees in the occupational setting and in identifying drug use;
4. Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on the document; and
5. Consider the following factors in making referrals:
 - 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 childcare;
 - g. The preferences of the employee; and

6. Ensure that confidentiality of treatment is maintained.

Medical Review Officer

The Agency shall have a Medical Review Officer (MRO) assigned to carry out the purposes of this order. 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 discuss the test result in accordance with Section XIV, Opportunity to Justify a Positive Test, of this directive;
3. Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the EAP Administrator and the DPC, including a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings;
4. Coordinate with and report to the DPC on all activities and findings on a regular basis;
5. Confirm with the DPC that an individual who has been tentatively selected for employment with the Agency has obtained a verified positive test result; and
6. When appropriate, may request that the split specimen be submitted for analysis by the contract laboratory.

Supervisors

All supervisors will be trained to recognize and address illegal drug use by employees (see section V, below). They 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 CSOSA or PSA management to suit specific program responsibilities, first-line supervisors shall:

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

2. Initiate drug tests based on reasonable suspicion in compliance with Section XI, after first making appropriate factual observations and documenting those observations and obtaining consultation with the respective Office of Human Resources (OHR) and the Office of the General Counsel (OGC);
3. Upon a finding of illegal drug use and in consultation with the respective OHR, refer employees to the EAP for assistance in obtaining counseling and rehabilitation;
4. In consultation with the respective OHR and OGC, initiate appropriate disciplinary action upon a finding of illegal drug use; and
5. In conjunction with the respective OHR, assist higher-level supervisors and the EAP Administrator in evaluating employee performance and or personnel problems that may be related to illegal drug use.

An agency senior manager, who reports to the CSOSA Deputy Director or PSA Deputy Director, in consultation with the respective OHR and OGC, shall review and concur, in advance, with all tests ordered on the basis of a reasonable suspicion in accordance with Section XI.

Implementation

At the direction of the Director, each senior manager shall implement the Drug-Free Workplace Program within his/her respective office, and ensure that the Program is efficiently and effectively accomplished in accordance with this directive and all other applicable regulations.

Government Contractors

Wherever existing facilities are inadequate to implement this order, the Director of Procurement shall:

1. Act as Contracting Officer for the administration of all related contracts;
2. Ensure that contract laboratories chosen to perform the drug screening tests are duly certified according to subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs and that any other contracts to

implement this Order conform to the technical specifications of the Mandatory Guidelines; and

3. Establish, by contract or with Agency employees as deemed appropriate, the positions and specific responsibilities of the Drug Program Coordinator and the Medical Review Officer as required by the Mandatory Guidelines.

V. SUPERVISORY TRAINING

Objectives

Supervisors have a key role in establishing and monitoring a drug-free workplace. The Agency 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 --

- a. Agency policies relevant to work performance problems, drug use, and the EAP;
- b. The responsibilities of offering EAP services;
- c. How employee performance and behavioral changes should be recognized and documented;
- d. The roles of the MRO, medical staff, supervisors, OHR, OGC and EAP personnel;
- e. The ways to use the Agency's EAP;
- f. How the EAP is linked to performance appraisal and the disciplinary process; and
- g. The process of reintegrating employees into the workforce.

Implementation

The respective Training and Career Development staff and the DPC 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 Agency's Drug-Free Workplace Plan.

Training Package

Training shall be required of all supervisors and may be presented as a separate course, or be included as part of an ongoing supervisory training program. Training shall be provided as soon as possible after an employee assumes supervisory responsibility.

Training courses shall include--

- a. The Agency's policy;
- b. The prevalence of various employee problems with respect to drugs and alcohol;
- c. The EAP approach to handling problems including the supervisor's role and relationship to EAP;
- d. How to recognize employees with possible problems;
- e. Documentation of employee performance or behavior;
- f. Skills in confronting employees with possible problems;
- g. Agency procedures for referring employees to EAP;
- h. Disciplinary action, and removals from sensitive positions as required by Section 5 (c) of the Executive Order;
- i. Reintegration of employees into the workforce; and
- j. Written materials that the supervisor can use at the work site.

VI. EMPLOYEE EDUCATIONObjectives

The respective Training and Career Development staff, and EAP, in coordination with the DPC, shall offer drug education programs to all employees. Drug education should include training and education to all levels of employees on --

- a. **A comprehensive review of the Agency's Drug Free Workplace Policy;**
- b. **Discussion of topics relevant to work performance problems, drug use and the Employee Assistance Program.**
- c. Types and effects of drugs.
- d. Symptoms of drug use, and the effects on performance and conduct, **and the documentation procedures the Agency will perform with respect to the above.**
- e. **The role of the Medical Review Officer, medical staff, supervisors, Office of Human Resources, Office of General Counsel, and EAP personnel.**
- f. The relationship of the EAP to drug testing.
- g. **How the EAP is linked to performance appraisal and the disciplinary process.**
- h. **An overview of the administrative process for returning employees to work.**
- i. Other relevant treatment, rehabilitation, and confidentiality issues.
- j. **Providing all employees with a copy of the Drug Free Workplace Policy.**

Means of Education

Drug education activities may include:

- a) Distribution of written materials;
- b) Videotapes;
- c) Lunch-time employee forums;
- d) Employee drug awareness days; and
- e) Outside speakers.

VII. EMPLOYEE ASSISTANCE PROGRAM (EAP)Function

The Agency's EAP plays an important role in preventing and resolving employee drug use by: (1) demonstrating the Agency's 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 **approaching** employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and (5) following-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however, shall not be involved in the collection of urine samples or the initial reporting of test results. Specifically the EAP shall--

- a. Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been verified as positive, and monitor the employee's progress through treatment and rehabilitation;
- b. Provide needed education and training to all levels of Agency employees 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; and
- c. Ensure that confidentiality of test results and related medical treatment and rehabilitation records are maintained in accordance with Section XV.

Referral and Availability

Any employee found to be using illegal drugs shall be referred to the EAP. The EAP shall be administered separately from the drug testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. **The Agency's EAP program is available to all employees. Employees electing to seek additional services from non-Agency sponsored providers may do so at their own expense. This does not negate the**

employee of his/her responsibility to obtain Agency sponsored EAP services upon management referral. The EAP is available not only to Agency employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems.

In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to completion of the program. The decision of the EAP Administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program selected, the employee remains responsible for successful completion of the treatment. Assertions that the counselor failed to consider one or more of the factors described in Section IV, Employee Assistance Counselors, in making a referral, shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

Leave Allowance

Employees will be allowed a reasonable amount of time of excused absences for each counseling session, up to a maximum of two (2) hours (or more depending upon necessary travel time), 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 applicable leave regulations.

Records and Confidentiality

All EAP operations shall be confidential in accordance with Section XV of this plan relating to records and confidentiality.

Structure

The respective OHR is responsible for oversight and implementation of the Agency's EAP, and will provide, with the support of the Director, high level direction and promotion of the EAP.

- a. The actual EAP program is currently provided via the U.S. Public Health Services, Federal Occupational Health (FOH).
- b. FOH/EAP provides a full range of assessment,

counseling and referral services.

FOH, its EAP contractors, and its customer organizations are not responsible for the treatment costs and/or services that may be referred beyond the EAP counselor or local affiliate counselor.

VIII. NOTICE

General Notice

A general notice from the Director announcing the testing program, as required by the E.O., Section 4 (a), will be provided to all employees no later than sixty (60) days prior to the implementation date of the Plan. The notices shall be provided immediately upon completion of the congressional certification procedures pursuant to Section 503 of the Act, and shall explain:

1. The purpose of the Drug-Free Workplace 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, prior to the commencement of testing, 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 which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the MRO;
8. That positive test results verified by the MRO may only be disclosed to the employee, the appropriate EAP Administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal

in any adverse personnel action; 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 employee, an authorizing court order, or otherwise as permitted by Federal law implemented at 42 C.F.R. Part 2.

Individual Notice

In addition to the information provided in the general notice, an individual notice will be distributed to all employees in testing designated positions (TDPs) explaining:

1. That the employee's position has been designated as a TDP;
2. That the employee will have the opportunity to voluntarily admit to being a user of illegal drugs, prior to being identified through other means, and to receive counseling or rehabilitation, in which disciplinary action is not required;
3. That the employee's position will be subject to random testing no sooner than thirty days following the notice; and
4. The consequences of a confirmed positive test result, the refusal to be tested, the refusal to report to testing or the altering, tampering or substitution of a sample.

Signed Acknowledgment

Each employee in a TDP shall be asked to acknowledge in writing that the employee has received and read the notice which states that the employee's position has been designated for random testing, and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal. If an employee refuses to sign the acknowledgment form, the employee's supervisor shall note on the acknowledgment form that the employee received the notice and refused to sign. This acknowledgment form, which is advisory only, will be collected by supervisors and maintained by the DPC. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this

directive since the general sixty-day notice will previously have been issued to notify all Agency employees of the requirement to be drug-free.

Administrative Relief

If an employee believes that his or her position has been wrongly designated as a TDP, that employee may file an administrative appeal to the respective Deputy Director who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing to the Deputy Director within fifteen (15) **business** days of notification, setting forth all relevant information. The Deputy Director shall review the appeal based upon the criteria applied in designating that employee's position as a TDP. The Deputy Director's decision is final and is not subject to further administrative review.

IX. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

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.

Mandatory Administrative Actions

Pursuant to the E.O., the Agency is committed to establishing a drug-free workplace. Therefore, disciplinary action taken against an employee found to use illegal drugs may include the full range of disciplinary actions, including removal. Even though disciplined, the Agency shall refer any employee found to use illegal drugs to the EAP. Further, senior management will consider removing any employee found to use illegal drugs from their assigned position. However, at the discretion of the Director, an employee who voluntarily admits to illegal drug use, prior to being identified through other means and is in an EAP rehabilitation program, may return to duty if the employee's

return would not endanger public health or safety or national security.

Range of Consequences

Disciplinary action taken against an employee found to use illegal drugs may include the full range of disciplinary actions, including removal. The severity of the action chosen will depend on the circumstances of each case, and will be consistent with the E.O.

The Agency shall initiate disciplinary action against any employee found to use illegal drugs, provided that such action is not required for an employee who voluntarily admits to illegal drug use, prior to being identified through other means, and obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.

Such disciplinary action, consistent with the requirements of any governing collective bargaining agreement and the Civil Service Reform Act **of 1978** and other statutes, Agency directives, and regulations, may include any of the following measures. Some disciplinary action must be initiated:

1. Reprimanding the employee in writing;
2. Placing the employee in an enforced leave status;
3. Suspending the employee for 14 days or less;
4. Suspending the employee for 15 days or more;
5. Suspending the employee until the employee successfully completes the EAP or until the Agency determines that action other than suspension is more appropriate;
6. Reducing the employee in pay and grade; or
7. Removing the employee from service;

Mandatory Initiation of Removal from Service

The Agency shall initiate action to remove an employee for:

1. Refusing to obtain counseling or rehabilitation through an EAP as provided by the Executive Order after having been referred.

2. Not refraining from illegal drug use after a first finding of such use while participating in an EAP counseling or rehabilitation program.

All letters to propose and decide on a separation action must be developed in consultation with and approved by the respective OHR.

Refusal to Take Drug Test When Required

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

Voluntary Referral

Under Executive Order 12564, the Agency is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except that such discipline is not required for an employee who (1) voluntarily admits his or her drug use, prior to being identified through other means; (2) completes counseling or rehabilitation through an EAP; and (3) thereafter refrains from drug use.

Any administrative actions on a voluntary referral will be made on a case-by-case basis, depending on the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the Agency will consider that the employee has come forward voluntarily.

Pursuant to the terms of an abeyance agreement, an employee who voluntarily admits to illegal drug use and participates in counseling or rehabilitation through EAP will be excluded from random drug testing for a thirty-day period, however, they will be subject to follow-up testing. Any employee who fails to complete counseling, rehabilitation, tests positive for illegal drug use during treatment or fails to adhere to the requirements of an abeyance agreement will be terminated from employment with the Agency.

X. RANDOM TESTINGSensitive Positions Designated for Random Testing

The Executive Order requires random testing for employees in sensitive positions, subject to Agency criteria. As specified in Section XVI of this Plan, the Director has determined that some of these sensitive positions are testing designated positions subject to random testing. The position titles designated for random drug testing are listed in Section XVI, along with criteria and procedures applied in designating such positions for drug testing, including the justification for such criteria and procedures.

Determining Testing Designated Positions (TDPs)

Among the factors the Director has considered in designating a TDPs, are the extent to which the Agency-

1. Considers its mission inconsistent with illegal drug use;
2. Is engaged in law enforcement;
3. Must foster public trust by preserving employee reputation for integrity, honesty, and responsibility;
4. Has national security responsibilities;
5. Has drug interdiction responsibilities; or
6. Has positions which--
 - a. Give employees access to sensitive information;
 - b. Authorize employees to engage in law enforcement;
 - c. Require employees, as a condition of employment, to obtain a security clearance; or
 - d. Require employees to engage in activities affecting public health or safety.

These positions are characterized by critical sensitive or security responsibilities as related to the mission of the Agency. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions require random testing because they

require the highest degree of trust and confidence. The Agency reserves the right to add or delete positions determined to be TDPs pursuant to the criteria established in the E.O. and this Plan. Moreover, the Director has determined that all positions, which have been or will be designated as testing designated positions, under this Plan, are "sensitive positions."

Implementing Random Testing

In implementing the program of random testing, the DPC shall ensure that the means of random selection remains confidential, and evaluate periodically whether the number of employees tested and the frequency with which those tests will be administered satisfy the Agency's duty to achieve a drug-free workforce.

The number of sensitive employees occupying TDPs and the frequency with which random tests will be administered are specified in Section XVI.

Notification of Selection for Testing

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

Employees subject to random testing will report to designated locations to provide urine specimens. The collection will take place according to the HHS guidelines. The collection site will notify the DPC immediately when an individual fails to appear at a scheduled appointment. All scheduling or cancellation of appointments are to be made by the DPC.

Employees selected for testing shall be rescheduled if the test will conflict with leave that has been requested and approved in advance of being notified to report for testing.

Deferral of Testing

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

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

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

- **Or for other legitimate operational needs.**

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

XI. REASONABLE SUSPICION TESTING

Grounds

Reasonable suspicion testing may be required of any employee in a position which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment. Reasonable suspicion testing may be based upon, among other things:

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

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

Procedures

If an employee is suspected of using illegal drugs, the appropriate supervisor will gather and document all information, facts, and circumstances leading to and supporting this suspicion. If possible, the supervisor should request another supervisor to participate in any employee observations. The supervisor must contact the respective OHR for review and concurrence, in advance, of all reasonable suspicion testing. OHR will obtain OGC concurrence prior to concurring on the request for reasonable suspicion testing.

The DPC will be contacted by OHR to arrange for the specimen collection.

When the respective OHR and OGC have concurred a reasonable suspicion determination has been made, the appropriate supervisor will promptly prepare a written report detailing the circumstances, which formed the basis to warrant the testing. This report should include the appropriate dates and times of reported drug related incidents, reliable/credible sources of information (**identified by type. e.g. "law enforcement agency", "CSOSA employee", etc.**), rationale leading to the test, and the action taken. **Prior to being subjected to a reasonable suspicion test, the employee shall be provided a written notice explaining the grounds for suspicion.**

Obtaining the Sample

The employee may be asked to provide a urine sample under observation in accordance with the criteria in Section XIV, Privacy Assured, of this Plan.

Supervisory Training

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

XII. PRE-EMPLOYMENT TESTING (Applicants)

Objectives

To maintain the high professional standards of the Agency's workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are employed by the Agency. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within the Agency, and will provide for a safer work environment. For these reasons, drug testing will be required of all applicants as defined in Section III.

During the application process, the Office of Security shall inform the applicant of this requirement and coordinate the request for drug testing.

Vacancy Announcements

Every vacancy announcement shall state:

"All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment."

In addition, each applicant will be notified that appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement will not preclude applicant testing if advance written notice is provided to applicants in some other manner.

Procedures

The DPC shall direct 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.

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

The MRO will notify the DPC of the test results. The DPC will submit a memorandum to the Director, Office of Security advising of the drug test results.

Consequences

The Agency will decline to extend a final offer of employment to any applicant with a verified positive test result. The respective OHR shall inform the applicant that a confirmed presence of an illegal drug in the applicant's urine precludes the Agency from hiring the applicant.

XIII. ADDITIONAL TYPES OF DRUG TESTING

Injury, Illness, Unsafe, or Unhealthful Practice Testing

The Agency 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 upon the 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 employee's supervisor will present the facts leading to this suspicion to the Associate Director or the PSA Division Director, of the office involved, for approval whether to authorize testing. The approving authority should consult with the respective OHR and OGC prior to deciding whether to authorize testing. If approval is obtained and arrangements made for testing, the employee's supervisor will prepare a written report detailing the facts and circumstances that warranted the testing. Requests to test must be submitted in writing to the DPC.

Voluntary Testing

In order to demonstrate their commitment to the Agency's goal of a drug-free workplace and to set an example for other federal employees, employees not in TDPs may volunteer for unannounced random testing by notifying the DPC, in writing. These employees will then be included in the pool of TDPs subject to random testing, and be subject to the same conditions and

procedures, including provisions of Section IX, Voluntary Referral. Volunteers shall remain in the TDPs pool until they withdraw from participation by notifying, in writing, the DPC of such intent at least 48 hours prior to a scheduled test.

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 testing following completion of such a program for a period of one year. Such employees shall be tested as often as stipulated in the abeyance agreement, or, in the alternative, at an increased frequency of once a month. Such testing is distinct from testing which may be imposed as a component of the EAP.

XIV. TEST PROCEDURES IN GENERAL

Mandatory Guidelines for Federal Workplace Drug Testing

The Agency shall adhere to the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by HHS consistent with the authority granted by E.O. 12564, and to the requirements of Section 503 of the Act. The Agency's drug testing component shall have professionally trained collection personnel, quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

Privacy Assured

Any individual subject to testing under this Plan shall be permitted to provide urine specimens in private, such as in a restroom stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided, when--

1. The individual --
 - a. Has previously been found by the Agency to be an illegal drug user; or
 - b. Has previously tampered with a sample; or

2. Facts and circumstances suggest that the individual--
 - a. Is an illegal drug user;
 - b. Is under the influence of drugs at the time of the test; or
 - c. Has equipment or implements capable of tampering with or altering urine samples; or
3. The specimen --
 - a. Has a temperature outside the range of 32-38 degrees C / 90-100 degrees F; or
 - b. Shows signs of contaminants.

Failure to Appear for Testing

Failure to appear for testing without an approved deferral will be considered refusal to participate in testing, and will subject an employee to the full range of disciplinary actions, including dismissal. An applicant is subject 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 DPC to obtain guidance on action to be taken.

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 Mandatory Guidelines. Prior to making a final decision on a specimen that was reported positive, the MRO shall interview the donor (except in those non-contact situations provided for in the Medical Review Officer Handbook) to determine if the donor has a valid medical explanation for the test result. This action could include a review of the donor's medical history and a review of any other 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 to a trial-type administrative proceeding, in presenting evidence to the MRO. Although, the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary. If the MRO determines there is no other justification for the positive result, such result will then be considered a verified positive test result.

The MRO shall immediately contact the DPC and the EAP Administrator upon obtaining a verified positive test result.

During employee medical interviews with the MRO, only the donor may request that bottle B (split specimen) be retrieved from storage and submitted for confirmation testing at the designated contract laboratory or other HHS certified laboratory. The split specimen may only be tested for the presence of the drug(s) for which a positive result was obtained in the test of the primary (bottle A) specimen. The MRO shall honor such request if it is made within 72 hours of the donor's having received notice that he/she tested positive.

Once the Agency has been notified of any inconsistency in a test result, the Agency will notify, in writing, the employee who had a confirmed positive test result.

When contacted by the MRO, the employee may, at his/her option and within reason, call the MRO back using a telephone that they believe ensures their privacy, to include their home phone during non-duty hours.

Action Following Verified Positive Test

The appropriate senior management official and OHR will be notified immediately, by the Office of Security, of any verified positive test result of an employee under his/her supervision. In addition, the following will occur:

- The employee will be officially notified of the verified positive test result, **in a private and confidential manner**, by the appropriate senior manager;
- The employee shall be referred to EAP;

Supervisory personnel shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs.

- Use of government vehicles, by the employee, will be suspended;

The DPC will initiate a technical review of the notification, collection, and laboratory testing phase of the drug screening which produced the positive result; and

- Any administrative action will be initiated by the first-line supervisor and the Deputy Director or designee will be the deciding official.

Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, and at the request of the program, the employee may be exempted from the random testing pool for a period not to exceed sixty (60) days or for a time period specified in an abeyance contract or rehabilitation plan approved by the respective Deputy Director. Upon completion of the program, the employee shall be subject to follow-up testing pursuant to Section XIII, Follow-up Testing.

Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by HHS, or any subsequent amendment thereto, such Mandatory Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistent provision(s).

XV. RECORDS AND REPORTS

Confidentiality of Records in General

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

All records and information of personnel actions taken on employees with verified positive test results will be maintained by the respective OHR. Such records shall be safeguarded in a locked container and only authorized individuals with a "need-to-know" shall have access to them.

Confidentiality of Test Results

The laboratory may disclose laboratory test results only to the MRO or the MRO staff. Any positive result which the MRO justifies by acceptable 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 se q., 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 directive. Any records of the MRO, including drug test results, may be released to an authorized management official for purposes of auditing the activities of the MRO, except that the disclosure of the results of any audit may not include personal identifying information on any employee.

In order to comply with Section 503 (e) of the Act, the results of a drug test of an Agency employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be--

1. To the MRO;
2. To the EAP Administrator in which the employee is receiving counseling or treatment or is otherwise participating;
3. To any supervisory or management official within the Agency having authority to take adverse personnel action against such employee; or
4. Pursuant to the order of a court of competent jurisdiction or where required by the United States government to defend against challenge against any adverse personnel action.

For purposes of this Section, "management official" includes any management, government, security or personnel official whose

duties necessitate review of the test results in order to process an adverse personnel action against the employee. In addition, test results with all identifying information removed shall also be made available to the Agency personnel, including the DPC, for data collection and other activities necessary to comply with Section 503 (f) of the Act.

Employee Access to Records

Any employee who is the subject of a drug test shall, upon written request, have access to

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

Employee Assistance Program Records

The EAP Administrator shall maintain only those records necessary to comply with this directive. After a management official 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 C.F.R. 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 C.F.R. § 2.1 et seq. (1986), revised regulations promulgated at 52 F.R. 21796, June 9, 1987).

Maintenance of Records

The Agency shall establish or amend a record keeping system to maintain the records of the Agency's DFWP **(including any records that may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Director)** consistent with the Agency's Privacy Act System of Records and with all applicable Federal laws, rules and regulations regarding confidentiality of records including the Privacy Act (5 U.S.C. § 552a). The record keeping system should capture

sufficient documents to meet the operational and statistical needs of this directive, 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;
4. Other documents the DPC, MRO, or EAP Administrator deems necessary for efficient compliance with this order; and
5. Terminations.

Records Maintained By Government Contractors

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

Statistical Information

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

1. Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, applicant tests administered;
2. Verified positive test results;
3. Voluntary drug counseling referrals;
4. Involuntary drug counseling referrals;
5. Terminations of employment resulting from verified positive test results;
6. Terminations or denial of employment offers resulting from refusal to submit to testing;
7. Terminations or denial of employment offers resulting from failure to complete a drug abuse counseling

program;

8. Terminations or denial of employment offers resulting from alteration of specimens; and
9. Employees who successfully complete EAP.

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

XVI. POSITIONS DESIGNATED FOR RANDOM TESTING

A key responsibility of government is to provide for the security of its citizens. Unfortunately, the citizens of the District of Columbia (D.C.) are threatened by a crime rate and an increase in drug-related violence that far exceeds the national average and unacceptably disrupts their lives and limits their potential. Over the next 5 years, the Agency will implement effective operations and establish partnerships with other criminal justice and social services organizations throughout the District of Columbia to dramatically reduce violent crime, as well as reduce the overall District of Columbia crime rate.

Thirty-six percent of adult residents in the city say that the problems in their neighborhoods are caused by drug dealers and users and changed the way their families live. The long-term consequence of this situation to citizens of D.C. is profound. Living in constrained circumstances not only reinforces the social and economic disadvantages that sustain poverty, but also complicates the government's ability to effectively address the complex problems associated with community development.

As a law enforcement organization, the Agency is responsible for effectively supervising approximately 30,000 individuals who are on pretrial release, probation or parole. These defendants and offenders account for a disproportionate share of the crime committed in the city and have much more serious criminal backgrounds than defendants and offenders in other U.S. cities. In addition, about two thirds of the offenders are currently using drugs or have a history of drug abuse. A primary method of supervision is a system of intermediate graduated sanctions designed to address noncompliance behavior. A critical component of supervision is drug testing and

imposing sanctions for positive tests or other violations of the terms of release orders.

The end result of any employee of this agency whose judgment or performance is in any way impaired or below standards can be devastating. Whenever a criminal who could have been removed from the community through effective supervision is not removed, the result can be devastating. For whatever reason, a lapse in offender or defendant supervision can have the unfortunate consequence of serious and sometimes tragic crime. Possible serious lapses are not limited to just front line supervision officers. For example, an information system that fails to report on an outstanding warrant or a positive drug test or an administrative failure to provide a critical support contract such as electronic monitoring can have the same unintended result as a front line officer who could fail to take appropriate sanctioning measures when he or she becomes aware of non-compliant behavior of an offender or defendant.

Drug use by these employees could affect the success of the Agency mission, as well as pose risk of injury to other employees and the general public, or have the potential for compromise of law-enforcement and sensitive information.

Employees in a TDP will be selected for drug testing through a computer-generated random selection process **using a selection methodology such that the selection process cannot be manipulated.** The employees will be tested at an annual frequency rate of 100%. Employees already tested will continue to be subject to testing. The element of deterrence is maintained only when the likelihood of re-testing is guaranteed. The random selection removes the human element from the selection process. Employees will be selected in a manner such that specific individuals cannot be targeted for screening.

The positions described below are considered Preferred Testing Designated Positions. These positions are identified as Front Line Law Enforcement, National Security, or Drug Rehabilitation Employees. The job functions associated with the below positions relate directly to public health and safety, the protection of life and property, or the protection of National Security information. The Agency must have the highest degree of trust and confidence in employees in these positions.

Position:

Director

Number of Employees: 1

The employee is a Presidential Appointee and is responsible for increasing public safety, preventing crime, reducing recidivism and

supporting the fair administration of justice in close collaboration with the community. This position oversees the operations and functions for the entire Agency.

Any illegal drug use could jeopardize the operational functions of the Agency, threaten the health and safety of employees or offenders, and reflect negatively on the Agency.

Positions:

Director, Office of Security
Security Officer
Security Specialist

Number of employees: 4

Duties: The Office of Security is responsible for the establishment, implementation and management of the Physical, Personnel and Information Security programs as required by Executive Orders and other applicable guidelines. In addition, the Office is responsible for the implementation and management of the Drug Free Workplace Program, ensuring compliance with all Federal and CSOSA regulations and guidelines. The Office establishes physical security policy for the protection of personnel, facilities, and property; personnel security policy for determining applicant and employee suitability approval; and information policy for safeguarding sensitive, unclassified information, and classified information, as required.

The incumbents reside in Preferred Testing Designated positions. Their duties require them to have top secret clearances. They have access to personal information and conduct background investigations. Drug use is a disqualification for a top secret clearance. In addition, performance of their duties requires a very high degree of accuracy, which could be seriously diminished because of illegal drug use. Inaccurate background investigations or personnel records could result in improper hiring or other personnel decisions. Any illegal drug use by these employees could have the potential of being coerced into disclosing sensitive, classified, or personal employee information, thus endangering the lives and safety of employees.

Positions:

Supervisory, Community Supervision Officers

Number of employees: 44

When the Agency became federal on August 4, 2000, Supervisory Parole Officer and Supervisory Probation Officer job titles were converted to Supervisory, Community Supervision Officers. This change did not affect their duties.

Duties: Manages, directs and plans the work of a team of Community

Supervision Officers who administer and help develop initiatives and programs to facilitate compliance with release conditions by offenders in the community who are on probation or parole. This includes services such as drug testing, substance abuse counseling and treatment, crisis intervention, family life education and counseling, employment, AIDS awareness and prevention training, mental health treatment, and violence prevention. Ensures that staff strictly monitor offenders' compliance with the conditions of parole or probation and reports alleged violations to the releasing authority. Reviews and submits reports related to offender supervision compliance behavior in terms of drug test results, treatment progress, re-arrests, and other standard measures. Directs employees in the investigation of offenders' criminal and social backgrounds to include, but not limited to criminal history, social, health, educational, employment, and family to assess the offenders' needs and level of risk for community supervision. Ensures that appropriate community supervision plans are developed in accordance with established standards, or that the Community Supervision Officers determine suitability for release based on offenders' needs and community supervision risk level. Implements strategies and guidelines for employees who supervise offenders and monitor their activities and compliance with the terms and conditions as set forth by the releasing authority. Ensures the accurate and timely completion of assessments and diagnostic evaluations to determine each offenders' needs. Approves recommendations to the releasing authority for the continuation or termination of supervision of an offender based on a thorough investigation and assessment of the offender's criminal and social background and current supervision compliance behavior. Directs and provides guidance and instruction to staff in the implementation of effective offender case management strategies, ensuring that Community Supervision Officers appropriately conduct investigations, prepare reports, maintain contact with offenders and their families, attend revocation hearings and make other court and/or parole commission appearances, visit correctional institutions, hospitals, clinics and service providers, and conduct home and job visits. Develops and administers initiatives and activities that focus on assisting the offender to make positive choices that are designed to lead to success while under community supervision. Organizes and facilitates workshops and support group meetings for offenders. Works with community organizations, criminal justice agencies, the Metropolitan Police Department and other law enforcement agencies in providing effective offender supervision. Reviews and provides direction to Community Supervision Officers in their evaluation of offenders' progress on an on-going and continuing basis. Collaborates with members of the Community Justice Partnership in implementing a variety of strategies that focus on decreasing the rate of recidivism for offenders, and increasing the number of offenders successfully integrated into the community.

The incumbents work in proximity and/or have direct contact with offenders.

In many cases, the supervisors are required to perform the duties of non-supervisory community supervision officers. Supervisors approve recommendations to releasing authorities for the continuation or termination of supervision. The recommendations and guidance to courts and subordinates requires accuracy in assessing offender needs, potential problems and relevant indicators. Any illegal drug use will distort their judgement, likely causing inappropriate recommendations on the release of offenders and make them susceptible to blackmail, coercion, falsifying information, and jeopardizing the operational functions of the programs, thereby endangering public safety and the lives of citizens, and reflecting negatively on the Agency.

Positions:

Community Supervision Officers

Number of employees: 282

When the Agency became federal on August 4, 2000, Parole and Probation officer job titles were converted to Community Supervision Officers. This change did not affect their duties.

Duties: Develops initiatives and drug testing programs to facilitate outreach to offenders in the community who are on probation or parole. This includes services such as drug testing, substance abuse counseling and treatment, crisis intervention, family life education and counseling, employment, AIDS awareness and prevention training, mental health treatment and violence prevention. Supervises and monitors offenders' activities and behavior to determine compliance with the terms and conditions of the offenders' release as set forth by the releasing authority, and meets regularly with the offender to observe and discuss their activities to ensure that they understand the conditions and terms of their release. Monitors offenders' compliance with conditions of release and meets regularly with the offenders to ensure that they understand the conditions and terms of release which includes offenders' responsibilities and accountability pursuant to the case management plan. Develops a relationship with each offender that enables them to play a proactive role in guiding their transition to becoming productive, law abiding members of the community. Ensures the completion of assessments and diagnostic evaluations to determine each offenders' need for psychological counseling, substance abuse treatment, skills training and education, financial, employment, medical treatment, community and family support and other assistance. Investigates offenders' criminal and social backgrounds, including but not limited to criminal history, social, health, educational, employment and family backgrounds in order to assess the offender's need and level of risk for community

supervision. Develops or determines appropriateness of community supervision plan or suitability for release in light of offenders' needs and community supervision risk level. Recommends to the releasing authority the continuation or termination of supervision based on a thorough investigation and assessment of the offender's criminal and social background circumstances and current supervision compliance behavior. Reports alleged violations to the releasing authority; and reports offender supervision compliance behaviors in terms of drug test results, treatment progress, re-arrests, and other standard measures. Manages cases which includes conducting investigations, preparing reports, maintaining contact with offenders and their families, attending revocation hearings and making other court and/or parole commission appearances, visiting correctional institutions, hospitals, clinics, and service providers; and conducting home and job visits. Works with community organizations, criminal justice agencies, the Metropolitan Police Department, and other law enforcement agencies in providing effective offender supervision. Evaluates offenders' progress on an ongoing basis. Collaborates with members of the Community Justice Partnership in implementing a variety of strategies that focus on decreasing the rate of recidivism for offenders, and increasing the number of offenders successfully integrated into the community.

The employees are front line law enforcement personnel. They work in close proximity and/or have direct contact with offenders. They conduct investigations on offenders' criminal and social background and provide reports to DC Superior Court Judges and the US Parole Commission on the compliance of offenders. Recommendations to releasing authorities, attendance at revocation hearings and other court/parole commission appearances on the continuation or termination of supervision requires accurate and thorough decision-making on the part of the officer. Any illegal drug use could distort the officer's judgement, likely causing inappropriate recommendations to the courts on the release of offenders. It could make them susceptible to blackmail, coercion, and/or falsification of information, thereby jeopardizing the operational functions of the programs, and endangering public safety and the lives of citizens.

Positions:

Drug Testing Technician
Drug Testing Supervisor

Number of employees: 17

When the Agency became federal on August 4, 2000, the Supervisory Drug Surveillance Monitor and Drug Surveillance Monitor job titles were converted to Drug Testing Supervisor and Drug Testing Technician. This change did not affect their duties.

Duties: Responsible for overseeing all intake and surveillance functions; escorts offenders and monitors defendants movement throughout the surveillance area; collects specimens from defendants; provides updates to the Court, Community Supervision, and Pretrial Officers of the client's compliance with the surveillance program.

The employees are front line law enforcement personnel who have daily contact with offenders. Any illegal drug use could jeopardize the operational functions of the programs, threaten the health and safety of employees or offenders, and reflect negatively on the Agency.

Positions:

Substance Abuse Counselor
Counselors

Number of employees: 4

Duties: Responsible for conducting initial intake of clients; identifying symptoms of the acutely ill alcoholic or drug addicted clients; participating in individual/group counseling of clients; assisting in making referral to other social service or health care agencies; and developing and presenting psycho-educational modules that are centered on substance abuse and substance abuse treatment. The employees work in proximity to offenders. These employees provide drug and alcohol abuse counseling, as well as information regarding treatment programs. Any illegal drug use could lead employees to be coerced into disclosing personal information, altering official offender's records, threaten the health and safety of employees or offenders, and reflect negatively on the Agency.

Positions:

Case Managers

Number of employees: 3

Duties: Responsible for providing direct and indirect counseling and supportive human services designed to assist substances abusers in determining the nature and impact of their disorder(s); screens and assesses referrals; initiates intake interviews; provides counseling and crisis intervention; provides referrals to appropriate community resources; and administers discharge planning and aftercare activities.

The employees work in proximity to offenders. These employees provide drug and alcohol abuse counseling, as well as information regarding treatment programs. Any illegal drug use could lead employees to be coerced into disclosing personal information, altering official offender's records, threaten the health and safety of employees or offenders, and reflect negatively on the Agency.

Positions:

Treatment Specialists

Number of employees: 7

Duties: Responsible for conducting program orientation and screening interviews with offenders; prepares intake interviews and assessments of offenders; develops psycho-educational modules for offenders, such as addiction and anger management; develops and monitors clients treatment plans; and prepares sanction lists for clients who are not in compliance with program's drug testing policy.

The employees work in proximity to offenders. These employees provide drug and alcohol abuse counseling, as well as information regarding treatment programs. Any illegal drug use could lead employees to exercise poor judgement in performing their drug treatment related responsibilities, to be coerced into disclosing personal information and not taking appropriate action regarding an offender's behavior, and altering official offender's records, anyone of which could threaten the life, health and safety of employees, offenders, citizens in the community, and reflect negatively on the Agency.

Position:

Education Specialists

Number of employees: 1

Duties: Responsible for conducting and evaluating developmental activities for the Agency's educationally disadvantaged and vocationally underdeveloped offenders; conducts individualized education assessments for clients; counsels clients and their families; and interacts with court staff.

The employees work in proximity to offenders. The employees provide drug and alcohol abuse counseling, as well as information regarding treatment programs. Any illegal drug use could lead employees to be coerced into disclosing personal information and not taking appropriate action regarding an offender's behavior, and altering official offender's records, anyone of which could threaten the life, health and safety of employees, offenders, citizens of the community, and reflect negatively on the Agency.

Positions:

Supervisory Community Supervision Assistants
Community Supervision Assistants

Number of employees: 51

When the agency became federal on August 4, 2000, Parole and Probation Assistant and Supervisory Parole and Probation Assistant job titles were converted to Community Supervision Assistants and Supervisory Community Supervision Assistants. This change did not affect their duties.

The administrative positions are discretionary designated positions that the agency specifies as sensitive positions that warrant designation for testing. These positions are located in various offices. Any employee working in these offices is in a position to obtain sensitive information.

The purpose of the administrative positions is to provide technical community supervision support. The incumbent's work directly affects the accuracy and reliability of many segments of the community supervision program.

The knowledge required by the community supervision assistants are having an understanding of the basic processes associated with probation and parole systems, being familiar with the programs offered under CSOSA's community supervision program, and the basic structure and operating procedures of the D. C. criminal justice system. In addition, it is required that the assistants are knowledgeable of various agency forms, policies and procedures to perform technical work associated with the community supervision program, able to accurately review and report on offender's history and service requirements, accurately collect, tabulate and report data used to evaluate data and information, proficient in using a personal computer, including special programs applicable to law enforcement, and have the ability to deal with members of the general public who are under community supervision, or seeking information about the community supervision program.

The employee uses judgment in selecting, applying, and adapting general guidelines to specific problems. Guidelines also include statutes that govern the Court Services and Offender Supervision Agency, and that apply to offenders who are on parole or probation under the jurisdiction of the District of Columbia. Supervisor and/or

Community Supervision Offers are available to provide guidance on applicable statutes.

Decisions concerning what needs to be done are based on an understanding of the requirements for community supervision. The incumbent is often challenged with handling concurrent assignments or projects for several community supervision officers.

Contacts include employees and management officials, offenders, the general public, community supervision staff, and government officials within and outside CSOSA.

The following discussion summarizes the types of information these employees have access to, the ways in which employees can gain access to this information, and how this sensitive information can be jeopardized.

Access to Information

These administrative positions have the same intense ability as Community Supervision Officers to work with or obtain sensitive, confidential and often critical criminal information. Records and files contain sensitive and confidential law enforcement information, these records are not classified documents. Therefore, these records are not subject to the same control mechanisms usually required for classified information.

In addition, the assistants have contact with offenders, their families, members of the community, and law enforcement personnel. Contacts with the defendant are to gather information and issue advisory and appointment notices.

Types of Information

The administrative employees have access to confidential and sensitive law enforcement information. The types of information are criminal cases and files that pertain to the investigation, apprehension, removal, and placement of offenders and defendants in custody. This includes information pertaining to investigative case files, judicial and court protection measures, details concerning offenders' movement records, upcoming court appearances and similar records containing sensitive information. Also included in these records is information found in external law enforcement systems pertaining to offenders. Records maintained by the incumbents may affect decisions relating to offenders of a legal nature.

In addition to the basic supervisory duties, the incumbents' responsibilities include:

- Performing a variety of administrative and technical duties to support the Community Supervision programs and initiatives which includes services such as drug testing, substance abuse counseling and treatment, crisis intervention, family life education and counseling, employment, AIDS awareness and prevention training, mental health treatment, and violence prevention
- Providing technical support in community supervision by preparing reports, forms and a variety of referral and case management documents for use by Community Supervision Officers.
- Compiling statistics and assigns cases to Community Supervision Officers in accordance with approved procedures.
- Issuing advisory and appointment notices to offenders, advises Community Supervision Officers of scheduled hearings, Court appearances, etc. Prepares and maintains general calendar for Community Supervision Officers.
- Maintaining communications with judicial support personnel, and other Court Staff; and performs related liaison activities with other criminal justice agencies and/or personnel. Responds to requests for reports from correctional agencies and other criminal justice organizations.
- Performing preliminary screening of documents related to offender intake and/or assignment to ensure that all required information is submitted and accurate.
- Writing or revises supporting and supplemental material to accompany community supervision plan or other documents.
- Working with Community Supervision Officers to schedule meetings and visits which includes making arrangements with all parties.
- Assisting Community Supervision Officers by responding to requests for information. Explains resources, services, and administrative processes to inquirers and/or makes referrals to appropriate Community Supervision Officer.
- Preparing correspondence as necessary. Coordinates and facilitates the processing of administrative documents, reports, requests, and instructions.

The incumbents work in proximity to offenders. On a daily basis, they respond to requests and maintain communication with judicial support personnel, other court staff, correctional agencies and other

criminal justice organizations. The incumbents have access to offender records. Their performance requires accuracy in responding to requests from correctional agencies, court staff, and entering data on active community supervision cases. The accuracy and reliability of this information affects many segments of the criminal justice community. Any illegal drug use will make them susceptible to blackmail, coercion, and/or falsification of information, thereby jeopardizing the operational functions of the programs, and endangering public safety and the lives of citizens.

In addition, the following positions are designated as a TDP:

Position:

Sex Offender Registration Technician/Assistant

Number of employees: 1

Duties: The incumbent provides administrative support services for Sex Offender Registration, performs duties relating to Sex Offender Registration including maintaining and updating the sex offender database, scanning documents into the database, obtaining information pertinent to the sex offender's crime from various criminal justice agencies, as well as receiving information from the Court Services and Offender Supervision's Sex Offender Unit and other law enforcement sources to be processed into the sex offender database. The employee may also be required to photograph and fingerprint sex offenders and do comparison analysis of fingerprints.

Illegal drug use could lead these employees to being coerced into altering official offenders records, release of sensitive information, unauthorized action on a defendant or client, thus endangering the lives and safety of employees and the general public and reflect negatively on the Agency.

Position:

Drug-Free Workplace Coordinator

Number of employees: 1

Duties: The incumbent is responsible for managing the Drug-Free Workplace Program, ensuring compliance with all Federal and CSOSA regulations and guidelines. In addition, the incumbent assists in the administration of the Agency's security programs.

Illegal drug use could jeopardize the safety and health of employees. Employees may lose their jobs or livelihood by an incorrect positive drug test reported to management, or an incorrect negative drug test reported to management that lets a known drug user continue to work and possibly jeopardize lives of others.

Pretrial Services Agency (PSA) Testing Designated Positions

PSA's mission is to honor the constitutional presumption of innocence and enhance public safety by formulating recommendations that promote the use of non-financial pretrial release under the least restrictive conditions and by providing effective community supervision for defendants in a manner that: 1) ensures that defendants will return to court and will not be a danger to the community while on pretrial release; and 2) addresses the social problems that contribute to criminal behavior.

The mission is accomplished through a variety of integrated programs of investigation, reporting, assessments, recommendations and other services to the court in management of defendants pending trial; assistance to defendants in complying with their pretrial obligations; provision of or referral of defendants for certain intervention services; and assurance of defendants' appearance in court and of the safety of the community.

The following employees are front line law enforcement personnel. Any illegal drug use could jeopardize the operational functions of the programs, threaten the health and safety of employees or arrestee, defendants or clients, and reflect negatively on the Agency.

Positions:

Supervisory Pretrial Services Officer (Training)
Pretrial Services Officer (Training)

Number of employees: 4

Duties: The officers in the Training Office are responsible for managing the assessment of needs, developing courses and presenting training to all PSA employees.

Positions:

Supervisory Pretrial Services Officer (Diagnostic)
Assistant Supervisory Pretrial Services Officer (Diagnostic)
Pretrial Services Officer (Diagnostic & Quality Assurance)

Number of employees: 23

Duties: The officers in the Pretrial Services Diagnostic Unit responsible for interviewing, investigating and assessing defendants in Superior Court; diagnostic screening for specialized programs and recommending, preparing bail reports for decisions on release; and maintaining quality control.

Positions:

Supervisory, Pretrial Services Officer (Intake/Supervision)
Pretrial Services Officer (Intake/Supervision)

Number of employees: 8

Duties: The officers in the Post Release Unit are responsible for monitoring and supervising defendants released into the community; assessing defendants' compliance with conditions of release; assisting defendants in meeting pretrial obligations; recommending resolution of violations of release conditions; managing misdemeanor calendars; coordinating assignment of cases; and reporting to the court.

Positions:

Supervisory Pretrial Services Officer (Failure to Appear)
Pretrial Services Officer (Failure to Appear)

Number of employees: 3

Duties: The officers in the Failure to Appear Unit are responsible for investigating outstanding bench warrants; surrendering defendants with bench warrants; providing information to the court to prevent issuance of bench warrants; investigating cases of failure to appear; assisting defendants with meeting release conditions; and reporting to the court.

Positions:

Supervisory Pretrial Services Officer (Diagnostic)
Pretrial Services Officer (Diagnostic)

Number of employees: 4

Duties: The officers in the Evening Unit are responsible for interviewing and investigating defendants in Superior and District Court; researching criminal history; diagnostic screening; preparing of bail reports and recommendations for conditions of release; and curfew and evening monitoring of defendants in community supervision programs.

Positions:

Supervisory Pretrial Services Officer
Pretrial Services Officer (Substance Abuse)
Pretrial Services Officer (Supervision)
Pretrial Services Officer (Diagnostic)

Number of employees: 7

Duties: The officers in the District Court Unit are responsible for investigating, assessing, screening and preparing bail reports, supervising defendants awaiting trial in United States District Court; overseeing *Operation Drug TEST* for the federal court; managing

cases of clients in drug treatment under *Operation Drug TEST*; recommending sanctions to address noncompliance; maintaining clinical records; supervising defendants released into the community; monitoring compliance with conditions of release; identifying and recommending treatment and intervention services; and reporting to the court.

Positions:

Supervisory Pretrial Services Officer (Substance Abuse)
Pretrial Services Officer (Substance Abuse)
Pretrial Services Officer (Court Operations)

Number of employees: 26

Duties: The officers manage the Superior Court Drug Intervention and New Directions substance abuse programs for defendants charged with nonviolent offenses, felonies and misdemeanors; evaluate defendants for placement; develop plans for and oversee treatment progress; provide client treatment; oversee court operations and client representation; develop and coordinate treatment programs, locate employment, training and other services available in the community; refer clients; manage cases for clients in drug treatment; assess client needs; recommend sanctions to address noncompliance; maintain clinical records; and report to the court.

Position:

Pretrial Services Officer (Court Operations)

Number of employees: 1

Duties: The officer serves as Court Operations Manager for the Superior Court Drug Intervention Program. The officer is responsible for systems and processes to ensure appropriate court representation of program clients; court liaison; training and oversight of case managers in fulfilling court reporting and representation;

Positions:

Supervisory Pretrial Services Officer (Supervision)
Pretrial Services Officer (Supervision)

Number of employees: 39

Duties: The officers in the General, Heightened, Intensive or Restrictive Supervision units are responsible for supervises defendants awaiting trial, pending sentencing or post conviction show cause in Superior Court; assists defendants in meeting pretrial obligations; reports to the court on defendant's pretrial status; recommends sanctions or other actions to address noncompliance; monitors compliance with conditions of release; identifies and recommends treatment and intervention services; and reports to the court.

Positions:

Supervisory Drug Surveillance Officer
Drug Surveillance Officer (Quality Assurance)
Drug Surveillance Officer

Number of employees: 38

Duties: The officers in the Adult and Juvenile Drug Units are responsible for managing the collection of urine samples for detection of drug use; collection monitoring and surveillance; documenting the submission of urine samples; working with defendants, clients and respondents; maintaining automated systems; and performing quality assurance, control and review functions.

The following administrative positions are discretionary designated positions that the agency specifies as sensitive positions that warrant designation for testing. These positions are located in various offices. Any employee working in these offices is in a position to obtain sensitive information.

These employees do work in proximity to arrestees, defendants and clients. On a daily basis, program assistants deal with sensitive law enforcement information. They have the same access to offenders records as do operational law enforcement employees. Records maintained by these employee may affect decisions on legal action on defendants.

The agency has not identified these employees as eligible for law enforcement retirement coverage, in accordance with 5 CFR 831.902 and 842.802. In order to meet this requirement, certain conditions must be met. This coverage is divided into two categories: Primary and Secondary.

To be eligible for primary coverage, the employee must perform duties in the "detention, supervision, inspection, care of individuals suspected of offenses against the District of Columbia;" the work with arrestees, defendants or clients must constitute the basic reasons for the existence of the position; the work must be assigned on a regular basis; the work must be "rigorous" and, the work must occupy a substantial portion, (at least 50%) of the employee's time.

To be eligible for secondary coverage, the position must be in the law enforcement field; located in an organization with law enforcement functions; and either: is a supervisor of employees whose positions have primary coverage as described above; OR is an administrative position, e.g., an executive, managerial, professional, or technical position for which experience in a primary position is a mandatory prerequisite.

The following discussion summarizes the types of information these employees have access to, the ways in which employees can gain access to this information, and how this sensitive information can be jeopardized.

Access to Information

These administrative positions have the same intense ability as Pretrial Services Officers to work with or obtain sensitive, confidential and often critical criminal information. Records and files contain sensitive and confidential law enforcement information, these records are not classified documents. Therefore, these records are not subject to the same control mechanisms usually required for classified information.

In addition, the assistants have contact with defendants, their families, members of the community, employees of the court, attorneys and law enforcement personnel. Contacts with the defendant are to gather information, and perform assignments in evaluation of compliance with pretrial obligations. Limited contact with defendants may occur in cellblocks or detention facilities.

Illegal drug use could lead these employees to being coerced into altering official offenders records, release of sensitive information, unauthorized action on a defendant or client, thus endangering the lives and safety of employees and the general public and affect the operation of the unit.

Types of Information

The types of information the administrative employees have access to are criminal cases and files that pertain to the investigation, apprehension, removal, and placement of offenders and defendants in custody. This includes information pertaining to investigative case files and judicial and court protection measures, and details concerning arrestee, defendant or client location, movement records, upcoming court appearances and similar records contain sensitive information. Also included in these records is information in external law enforcement system pertaining to defendants or clients.

Records maintained by this employee may affect decisions on legal action on defendants.

Contacts with the defendant to gather information, and perform assignments in evaluation of compliance with pretrial obligations. Limited contact with defendants may occur in cellblocks or detention facilities.

Positions:**Program Assistant, Restrictive Community Supervision Unit**

The Restrictive Community Supervision Unit is responsible for monitoring and supervision of defendants awaiting trial, pending sentencing, or post conviction show cause, in Superior or District Court who are released to halfway houses. The unit functions include supervision and monitoring of the defendant's compliance with the conditions of release while in the halfway house and subsequent release to the community and assistance to the defendant in meeting the conditions, including recommendation, referral, assessment and placement in substance abuse treatment programs and referral for other intervention services. In addition, the unit reports to the court on the defendant's pretrial status, probation matters, and compliance with release conditions, and provides recommendations on sanctions, treatment or supervision alternatives or other means of resolving noncompliance or other pretrial issues; maintains relevant information in both manual and automated systems and subsystems; and provides testimony or other information for use in judicial proceedings and decisions.

Program Assistant, Intensive Supervision Unit

The Intensive Supervision Unit is responsible for monitoring and supervision of defendants awaiting trial, pending sentencing, or post conviction show cause, in Superior or District Court who are determined to require the highest level of supervision in the community. The unit functions include supervision of the defendant's compliance with the conditions of release in a halfway house and subsequent release to the community and assistance to the defendant in meeting the conditions, including recommendation, referral, assessment and placement in substance abuse treatment programs and referral for other intervention services. In addition, this unit reports to the court on the defendant's pretrial status, probation matters, and compliance with release conditions, and provides recommendations on sanctions, treatment or supervision alternatives or other means of resolving noncompliance or other pretrial issues; maintains relevant information in both manual and automated systems and subsystems; and provides testimony or other information for use in judicial proceedings and decisions.

Program Assistant, Heightened Supervision Unit

The Heightened Supervision Unit is responsible for monitoring and supervision of defendants awaiting trial, pending sentencing or post conviction show cause in Superior or District Court who are determined to require an intermediate level of supervision in the community. The unit functions include supervision of the defendant's

compliance with the conditions of release and assistance to the defendant in meeting the conditions, including recommendations, referral, assessment and placement in substance abuse treatment programs and referral for other intervention services. In addition, this unit reports to the court on the defendant's pretrial status, probation matters and compliance with release conditions, and provides recommendations on sanctions, treatment or supervision alternatives or other means of resolving noncompliance or other pretrial issues; maintains relevant information in both manual and automated systems and subsystems; and provides testimony or other information for use in judicial proceedings and decisions.

Program Assistant, General Supervision Unit

The General Supervision Unit is responsible for monitoring and supervision of defendants awaiting trial, pending sentencing or post conviction show cause in Superior Court who are determined to require a standard level of supervision in the community. Unit functions include supervision of the defendant's compliance with the conditions of release and assistance to the defendant in meeting the conditions, including recommendation, referral, assessment and placement in substance abuse treatment programs and referral for other intervention services. This unit reports to the court on the defendant's pretrial status, probation matters and compliance with release conditions, and provides recommendations on sanctions, treatment or supervision alternatives or other means of resolving noncompliance or other pretrial issues; maintains relevant information in both manual and automated systems and subsystems; and provides testimony or other information for the use in judicial proceedings and decisions. This unit provides courtesy supervision of defendants charged in other state or local jurisdictions.

Program Assistant, Post-Release Unit

The Post-Release Unit is responsible for monitoring and supervision of defendants released into the community; assessment of the defendant's compliance with conditions of release and assistance to the defendant in meeting the conditions, including assessment, recommendation and referral for other intervention services such as substance abuse, psychiatric treatment and social welfare. In addition, this unit reports to the courts on the defendant's pretrial status and compliance with conditions, provides recommendations for resolution of violation of release conditions, and provides testimony or other information for use in judicial proceedings and decisions. Also, Post-Release provides courtesy supervision of defendants charged in other state or local jurisdictions.

Program Assistant, Pretrial Services Diagnostic Unit

The Pretrial Services Diagnostic Unit performs pretrial services of interview, investigation and assessment of defendants in Superior Court. Functions include defendant interviews, verification of background information, research of criminal history, reporting drug test results, and diagnostic screening for specialized community supervision programs and other intervention services. The unit develops release recommendations, prepares bail reports, provides other information necessary for the court's decision on release; and; represents the PSA in judicial proceedings.

The duties for the Program Assistants, listed above, are as follows:

Participates in or performs assignments in interview, assessment and supervision of persons arrested or defendants in pretrial status.

Obtains and verifies information on criminal history, behavior, and compliance with pretrial obligations.

Reviews defendant automated records to obtain information on compliance with pretrial release conditions or to identify detained persons that are eligible for release.

Works with defendants checking in, documenting information, and directing defendants or others to courtroom or other areas of court ordered appearances.

Maintains records of defendant contacts or acknowledgements and a variety of automated and hard copy files, information and forms.

May work with defendants in court, reviewing conditions of release with defendants and explaining pretrial obligations.

Reviews incoming court files, identifies and corrects possible errors.

Updates defendant information in a number of systems, investigating and resolving discrepancies or referring to the assigned Pretrial Services Officer or Unit Supervisor.

Prepares and delivers documents and reports to court or to agencies supervising defendants on release.

Utilizes automated system or manually prepares reports, correspondence to defendants and other information, assuring proper format and accuracy of information.

Illegal drug use could lead these employees to being coerced into altering official defendants/client records, release of sensitive information, unauthorized action of an defendant or client, thus endangering the lives and safety of employees and the general public and affect the operation of the units.

Program Assistant, New Directions Program

The New Directions Drug Treatment Program is a substance abuse program for defendants charged with felony and misdemeanor cases who are not eligible for the Superior Court Drug Intervention Program. The program provides inpatient and outpatient treatment. The office is charged with the evaluation of defendants and recommendations to the court on program eligibility. Following placement, the office is responsible for assessment of treatment requirements, development and administration of treatment protocols, monitoring and supervision of clients during treatment, referral of clients for additional external intervention services; and provision of direct client treatment. This office provides information to the court on the client's status in treatment and makes recommendations on sanctions, treatment alternatives or other means of resolving issues arising during treatment and provides testimony or other information for use in judicial proceedings and decisions. The employee in this position serves as the Program Assistant for the Program.

Duties:

Perform tasks in supporting and reporting on client treatment processes.

Establishes and maintains clinical treatment records for all clients.

Develops and maintains a current active client roster and other records that track client progression through treatment.

Provides technical and administrative support for treatment sessions.

Maintains attendance systems and prepares daily attendance sheets for each session and forward to staff members conducting the session.

Updates automated systems to reflect attendance or nonattendance.

Compares daily attendance reports to active client roster, noting and reporting discrepancies to supervisor.

Prepares regular and special statistical, clinical and other reports for the program.

Identifies and recommends improvements in areas such as records maintenance, reporting, or client interface and tracking.

Applies rules of confidentiality in maintenance and protection of information.

Interacts with clients who report personally or by phone, tracking contacts, verifying photographs with automated system for identification.

Contacts are with employees in other parts PSA, clients and their families, the public, employees of the court attorneys and law enforcement personnel. Contacts with employees of PSA are to exchange and verify information regarding clients. Contacts with

clients are to note check in and other information related to treatment.

Illegal drug use could lead these employees to being coerced into altering official offenders records, release of sensitive information, unauthorized action on a defendant or client, thus endangering the lives and safety of employees and the general public and affect the operation of the units.

Program Assistant, Superior Court Drug Intervention Program

Superior Court Drug Intervention Program is an outpatient substance abuse program for defendants charged with nonviolent offenses. The office is charged with the investigation and evaluation of defendants and recommendations to the court on program eligibility. Following placement and assessment, the office is responsible for the development and administration of treatment protocols, monitoring and supervision of clients during treatment, referral of clients for additional external treatment services; and provision of direct client treatment. This office provides information to the court on the client's status in treatment and makes recommendations on sanctions, treatment alternatives or other means of resolving issues arising during treatment; maintains relevant information in both manual and automated systems, and provides testimony or other information for use in judicial proceedings and decisions. The employee in this position serves as Program Assistant for the Program.

Duties: The same duties, as outline above in New Directions Program, to include:

Provides technical and administrative support for treatment sessions.

Compares daily attendance reports to active client roster, noting and reporting discrepancies to supervisor.

Develops and maintains a system to track control of awards for clients in treatment and prepares reports of level progression awards for the court.

Maintains records by the incumbent, and reports may affect treatment and legal decisions on clients.

Identifies and recommends improvement in areas such as records maintenance, reporting or client interface and tracking.

Telephones defendants as part of the sanction process, informing them of court appearance or other requirements and documenting results of contact. Contacts with clients are to note check in and other information related to treatment.

This employee must understand treatment policies and procedures and court requirements in order to complete specific assignments. Various treatment protocols of clients, time constraints and rules for protection and release of information complicate the work. Data and records maintained by the employee and report may affect treatment and legal decisions on clients. Therefore, illegal drug use could lead these employees to being coerced into altering official offenders records, release of sensitive information, unauthorized action on a defendant or client, thus endangering the lives and safety of employees and the general public and affect the operation of the units.

Program Assistant (Office Automation Receptionist), Office of the Director

The Office of the Director provides leadership and direction of all PSA programs, exercising executive authorities to fulfill the PSA mandate of interview of arrested persons and investigation and verification of their backgrounds, production of bail recommendations, management of persons released into the community pending trial, provision of drug treatment and other intervention services, appearances for all scheduled court dates, and safety of the community.

This employee serves as a Program Assistant, providing clerical and technical support to the Office of the Director and to PSA program offices as assigned.

Duties:

Receives inquiries from the defendants, the public and clients the courts and law enforcement agencies. If dealing with a defendant/client who is fulfilling conditions of release, handles in accordance with program procedures for documenting check in or other action.

Enter updates to reflect defendant check in.

Contacts with PSA staff, external agencies with related missions, defendants, clients and their families and the general public.

Contacts are to provide information, refer callers and visitors, verify and document information from defendants or clients who are meeting pretrial obligations and to provide office support.

Other duties assigned depending on the assigned office.

Illegal drug use could lead this employee to being coerced into altering official defendant/client records, release of sensitive information, and endangering the lives and safety of employees and the general public and affect the operation of the units.

Total number of Program Assistant positions: 12

The functions associated with the following positions relate to the testing for illegal drug use of defendants, clients and offenders who are managed by PSA and CSOSA. These positions are located in the Forensic Toxicology Drug Testing Laboratory and the incumbents are responsible for analysis of urine samples, confirmation and documentation of results; use of all automated systems associated with drug testing; and providing expert testimony in court. Drug use by any of these employees could compromise the success of laboratory operations, of other units whose decisions depend on accurate drug testing, and of the court in making decisions on based on drug testing results. Any involvement of these employees with drugs exposes the employee to extortion and release of sensitive information.

Positions:

Supervisory Toxicologist (Forensics)

Supervisory Chemist (Forensics)(Interdisciplinary'Position)

Number of employees: 3

Duties: These are supervisory positions, Director, Deputy Director and Technical Director, in the Forensic Toxicology Drug Testing Laboratory, responsible for direction and oversight of staff, development and implementation of policies, procedures and protocols for use in forensic drug testing of PSA defendants and clients and CSOSA offenders; and, provision of expert testimony in court and other judicial proceedings.

Positions:

Toxicologist (Forensics) or Chemist (Forensics)(Interdisciplinary position)

Number of employees: 1

Duties: As the Laboratory Quality Assurance Officer, the incumbent reviews scientific performance, reagents and instruments; insures the scientific validity of testing results; prepares and certifies standards and protocols; and provides expert testimony in court and other judicial proceedings.

Positions:

Toxicologist (Forensics) or, Chemist (Forensics)(Interdisciplinary position)

Number of employees: 11

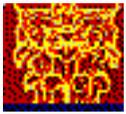
Duties: The incumbents are analysts performing the full range of testing and confirmation analyses of urine samples for defendants, clients and offenders managed by PSA and CSOSA; documenting results and providing expert testimony in court and other judicial proceedings.

Position:

Laboratory Program Assistant

Number of employees: 1

Duties: The Laboratory Program Assistant enters and retrieves data in automated systems for the Laboratory, researches database, releases information and answers questions, in accordance with rules of confidentiality, and performs office support functions. The incumbent must have knowledge of and the ability to apply rules of confidentiality of information in order to answer questions or to withhold information. The decisions and information must be reliable and accurate. The complexity of this position is high due to the scientific environment and the necessity to adhere to strict procedures. The responsibilities of the incumbent directly affect the operation of the laboratory. Records maintained by this individual are sensitive and confidential. Any inaccuracy can cause harm to laboratory operations and the reporting of results.



Executive Order 12564--Drug-free Federal workplace

Source: The provisions of Executive Order 12564 of Sept. 15, 1986, appear at 51 FR 32889, 3 CFR, 1986 Comp., p. 224, unless otherwise noted.

I, RONALD REAGAN, President of the United States of America, find that:

Drug use is having serious adverse effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year;

The Federal government, as an employer, is concerned with the well-being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity;

The Federal government, as the largest employer in the Nation, can and should show the way towards achieving drug-free workplaces through a program designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and potential drug users that drugs will not be tolerated in the Federal workplace;

The profits from illegal drugs provide the single greatest source of income for organized crime, fuel violent street crime, and otherwise contribute to the breakdown of our society;

The use of illegal drugs, on or off duty, by Federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust placed in such employees as servants of the public;

Federal employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs;

The use of illegal drugs, on or off duty, by Federal employees impairs the efficiency of Federal departments and agencies, undermines public confidence in them, and makes it more difficult for other employees who do not use illegal drugs to perform their jobs effectively. The use of illegal drugs, on or off duty, by Federal employees also can pose a serious health and safety threat to members of the public and to other Federal employees;

The use of illegal drugs, on or off duty, by Federal employees in certain positions evidences less than the complete reliability, stability, and good judgment that is consistent with access to sensitive information and creates the possibility of coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, the public safety, and the effective enforcement of the law; and

Federal employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves.

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 3301(2) of Title 5 of the United States Code, section 7301 of Title 5 of the United States Code, section 290ee-1 of Title 42 of the United States Code, deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the Federal service, and in order to establish standards and procedures to ensure fairness in achieving a drug-free Federal workplace and to protect the privacy of Federal employees, it is hereby ordered as follows:

Section 1. *Drug-Free Workplace.*

- (a) Federal employees are required to refrain from the use of illegal drugs.
- (b) The use of illegal drugs by Federal employees, whether on duty or off duty, is contrary to the efficiency of the service.
- (c) Persons who use illegal drugs are not suitable for Federal employment.

Sec. 2. *Agency Responsibilities.*

- (a) The head of each Executive agency shall develop a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the government, the employee, and the general public.
- (b) Each agency plan shall include:
 - (1) A statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;
 - (2) Employee Assistance Programs emphasizing high level direction, education, counseling, referral to rehabilitation, and coordination with available community resources;
 - (3) Supervisory training to assist in identifying and addressing illegal drug use by agency employees;
 - (4) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues; and
 - (5) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis in accordance with this Order.

Sec. 3. *Drug Testing Programs.*

- (a) The head of each Executive agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. The extent to which such employees are tested and the criteria for such testing shall be determined by the head of each agency, based upon the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to the public health and safety or national security that could result from the failure of an employee adequately to discharge his or her position.
- (b) The head of each Executive agency shall establish a program for voluntary employee drug testing.
- (c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each Executive 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;
 - (2) In an examination authorized by the agency regarding an accident or unsafe practice; or
 - (3) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance Program.
- (d) The head of each Executive agency is authorized to test any applicant for illegal drug use.

Sec. 4. *Drug Testing Procedures.*

- (a) Sixty days prior to the implementation of a drug testing program pursuant to this Order, agencies shall notify employees that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation and inform them of the procedures for obtaining such assistance through the agency's Employee Assistance Program. Agency drug testing programs already ongoing are exempted from the 60-day notice requirement. Agencies may take action under section 3(c) of this Order without reference to the 60-day notice period.
- (b) Before conducting a drug test, the agency shall inform the employee to be tested of the opportunity to submit medical documentation that may support a legitimate use for a specific drug.
- (c) Drug testing programs shall contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting; and procedures, consistent with applicable law, to protect the confidentiality of test results and related medical and rehabilitation records. Procedures for providing urine specimens must allow individual privacy, unless the agency has reason to believe that a particular individual may alter or substitute the specimen to be provided.
- (d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and agencies shall conduct their drug testing programs in accordance with these guidelines once promulgated.

Sec. 5. *Personnel Actions.*

- (a) Agencies shall, in addition to any appropriate personnel actions, refer any employee who is found to use illegal drugs to an Employee Assistance Program for assessment,

counseling, and referral for treatment or rehabilitation as appropriate.

(b) Agencies shall initiate action to discipline any employee who is found to use illegal drugs, provided that such action is not required for an employee who:

- (1) Voluntarily identifies himself as a user of illegal drugs or who volunteers for drug testing pursuant to section 3(b) of this Order, prior to being identified through other means;
- (2) Obtains counseling or rehabilitation through an Employee Assistance Program; and
- (3) Thereafter refrains from using illegal drugs.

(c) Agencies shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, the head of an Executive agency may, in his or her discretion, allow an employee to return to duty in a sensitive position if it is determined that this action would not pose a danger to public health or safety or the national security.

(d) Agencies shall initiate action to remove from the service any employee who is found to use illegal drugs and:

- (1) Refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or
- (2) Does not thereafter refrain from using illegal drugs.

(e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing any adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in an administrative proceeding unless they are confirmed by a second analysis of the same sample or unless the employee confirms the accuracy of the initial test by admitting the use of illegal drugs.

(f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, a criminal conviction, administrative inquiry, or the results of an authorized testing program. Positive drug test results may be rebutted by other evidence that an employee has not used illegal drugs.

(g) Any action to discipline an employee who is using illegal drugs (including removal from the service, if appropriate) shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.

(h) Drug testing shall not be conducted pursuant to this Order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of Title 21 of the United States Code received as a result of the operation of drug testing programs established pursuant to this Order.

Sec. 6. *Coordination of Agency Programs.*

(a) The Director of the Office of Personnel Management shall:

- (1) Issue government-wide guidance to agencies on the implementation of the terms of this Order;

- (2) Ensure that appropriate coverage for drug abuse is maintained for employees and their families under the Federal Employees Health Benefits Program;
- (3) Develop a model Employee Assistance Program for Federal agencies and assist the agencies in putting programs in place;
- (4) In consultation with the Secretary of Health and Human Services, develop and improve training programs for Federal supervisors and managers on illegal drug use; and
- (5) In cooperation with the Secretary of Health and Human Services and heads of Executive agencies, mount an intensive drug awareness campaign throughout the Federal work force.

(b) The Attorney General shall render legal advice regarding the implementation of this Order and shall be consulted with regard to all guidelines, regulations, and policies proposed to be adopted pursuant to this Order.

(c) Nothing in this Order shall be deemed to limit the authorities of the Director of Central Intelligence under the National Security Act of 1947, as amended, or the statutory authorities of the National Security Agency or the Defense Intelligence Agency. Implementation of this Order within the Intelligence Community, as defined in Executive Order No. 12333, shall be subject to the approval of the head of the affected agency.

Sec. 7. Definitions.

(a) This Order applies to all agencies of the Executive Branch.

(b) For purposes of this Order, the term "agency" means an Executive agency, as defined in 5 U.S.C. 105; the Uniformed Services, as defined in 5 U.S.C. 2101(3) (but excluding the armed forces as defined by 5 U.S.C. 2101(2)); or any other employing unit or authority of the Federal government, except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(c) For purposes of this Order, the term "illegal drugs" means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(d) For purposes of this Order, the term "employee in a sensitive position" refers to:

- (1) An employee in a position that an agency head designates Special Sensitive, Critical-Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position that an agency head designates as sensitive in accordance with Executive Order No. 10450, as amended;
- (2) An employee who has been granted access to classified information or may be granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of [Executive Order No. 12356](#);
- (3) Individuals serving under Presidential appointments;
- (4) Law enforcement officers as defined in 5 U.S.C. 8331(20); and
- (5) Other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or

other functions requiring a high degree of trust and confidence.

(e) For purposes of this Order, the term "employee" means all persons appointed in the Civil Service as described in 5 U.S.C. 2105 (but excluding persons appointed in the armed services as defined in 5 U.S.C. 2102(2)).

(f) For purposes of this Order, the term "Employee Assistance Program" means agency-based counseling programs that offer assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health programs that affect employee job performance. Employee Assistance Programs are responsible for referring drug-using employees for rehabilitation and for monitoring employees' progress while in treatment.

Sec. 8. *Effective Date.* This Order is effective immediately.



Division of Workplace Programs

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Model Plan

APPENDIX B

101 STAT. 468

PUBLIC LAW 100-71–July 11, 1987

TITLE V

GENERAL PROVISIONS

Drugs and drug abuse. Government organization and employees. 5 USC 7301 note. 3 CFR, 1986 Comp., p. 224.

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 502. Except where specifically increased or decreased elsewhere in this Act, the restrictions contained within appropriations, or provisions affecting appropriations or other funds, available during fiscal year 1987, limiting the amount which may be expended for personal services, or for purposes involving personal services, or amounts which may be transferred between appropriations or authorizations available for or involving such services, are hereby increased to the extent necessary to meet increased pay costs authorized by or pursuant to law.

Sec. 503. (a)(1) Except as provided in subsection (b) or (c), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564 (dated September 15, 1986), or any subsequent order, unless and until--

(A) the Secretary of Health and Human Services certifies in writing to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, that--

3 CFR, 1986 (i) each agency has developed a plan for achieving a drug-free workplace in accordance with Executive Order Numbered 12564 and applicable provisions of law (including applicable provisions of this section);

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p.224.

(ii) the Department of Health and Human Services, in addition to the scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, has, in accordance with paragraph (3), published mandatory guidelines which—

(I) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order Numbered 12564, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

(II) specify the drugs for which Federal employees may be tested; and

(III) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order Numbered 12564; and

(iii) all agency drug-testing programs and plans established pursuant to Executive Order Numbered 12564 comply with applicable provisions of law, including applicable provisions of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), title 5 of the United States Code, and the mandatory guidelines under clause (ii);

(B) the Secretary of Health and Human Services has submitted to the Congress, in writing, a detailed, agency-by-agency analysis relating to—

(i) the criteria and procedures to be applied in designating employees or positions for drug testing, including the justification for such criteria and procedures;

(ii) the position titles designated for random drug testing; and

(iii) the nature, frequency, and type of drug testing proposed to be instituted; and

(C) the Director of the Office of Management and Budget has submitted in writing to the Committees on Appropriations of the House of Representatives and the Senate a detailed, agency-by-agency analysis (as of the time of certification under subparagraph (A)) of the anticipated annual costs associated with carrying out Executive Order Numbered 12564 and all other requirements under this section during the 5-year period beginning on the date of the enactment of this Act.

(2) Notwithstanding subsection (g), for purposes of this subsection, the term "agency" means—

(A) the Executive Office of the President;

(B) an Executive department under section 101 of title 5, United States Code;

(C) the Environmental Protection Agency;

(D) the General Services Administration;

(E) the National Aeronautics and Space Administration;

(F) the Office of Personnel Management;

(G) the Small Business Administration;

(H) the United States Information Agency; and

(I) the Veteran's Administration;

except that such term does not include the Department of Transportation or any other entity (or component thereof) covered by subsection (b).

(3) Notwithstanding any provision of chapter 5 of title 5, United States Code, the mandatory guidelines to be published pursuant to subsection (a)(1)(A)(ii) shall be published and made effective exclusively according to the provisions of this paragraph. Notice of the mandatory guidelines proposed by the Secretary of Health and Human Services shall be published in the Federal Register, and interested persons shall be given not less than 60 days to submit written comments on the proposed mandatory guidelines. Following review and consideration of written comments, final mandatory guidelines shall be published in the Federal Register and shall become effective upon publication.

Federal Register, publication. 5 USC 500 et seq.

(b)(1) Nothing in subsection (a) shall limit or otherwise affect the availability of funds for drug testing by—

(A) the Department of Transportation;

(B) Department of Energy, for employees specifically involved in the handling of nuclear weapons or nuclear materials;

(C) any agency with an agency-wide drug-testing program in existence as of September 15, 1986; or

(D) any component of an agency if such component had a drug-testing program in existence as of September 15, 1986.

(2) The Departments of Transportation and Energy and any agency or component thereof with a drug-testing program in existence as of September 15, 1986—

(A) shall be brought into full compliance with Executive Order Numbered 12564 no later than the end of the 6-month period beginning on the date of the enactment of this Act; and

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224.

(B) shall take such actions as may be necessary to ensure that their respective drug-testing programs or plans are brought into full compliance with the mandatory guidelines published under subsection (a)(1)(A)(ii) no later than 90 days after such mandatory guidelines take effect, except that any judicial challenge that affects such guidelines should not affect drug-testing programs or plans subject to this paragraph.

(c) In the case of an agency (or component thereof) other than an agency as defined by subsection (a)(2) or an agency (or component thereof) covered by subsection (b), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564, or any subsequent order, unless and until—

(1) the Secretary of Health and Human Services provides written certification with respect to that agency (or component) in accordance with clauses (i) and (iii) of subsection (a)(1)(A);

(2) the Secretary of Health and Human Services has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(B); and

(3) the Director of the Office of Management and Budget has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(C).

(d) Any Federal employee who is the subject of a drug test under any program or plan shall, upon written request, have access to—

- (1) any records relating to such employee's drug test; and
- (2) any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings, as referred to in subsection (a)(1)(A)(ii)(III).

Classified
information.

(e) The results of a drug test of a Federal employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be—

- (1) to the employee's medical review official (as defined in the scientific and technical guidelines referred to in subsection (a)(1)(A)(ii));
- (2) to the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;
- (3) to any supervisory or management official within the employee's agency having authority to take the adverse personnel action against such employee; or
- (4) pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

(f) Each agency covered by Executive Order Numbered 12564 shall submit to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, an annual report relating to drug-testing activities conducted by such agency pursuant to such executive order. Each such annual report shall be submitted at the time of the President's budget submission to the Congress under section 1105(a) of title 31, United States Code.

(g) For purposes of this section, the terms "agency" and "Employee Assistance Program" each has the meaning given such term under section 7(b) of Executive Order Numbered 12564, as in effect on September 15, 1986.

Sec. 504. None of the funds appropriated by this Act may be obligated for the centralization, consolidation, or redeployment of the Customs Service Air Operations unless the Secretary of the Treasury submits a report to the Committees on Appropriations which sets forth specific details for the use of such funds thirty days in advance of such implementation.

Reports.
3 CFR,
1986
Comp., p.
224.

Sec. 505. None of the funds appropriated or made available by this or Vessels.
any other Act or otherwise appropriated or made available to the
Secretary of Transportation or the Maritime Administrator for purposes
of administering the Merchant Marine Act, 1936, as amended (46 U.S.C.
1101 et seq.), shall be used by the United States Department of
Transportation or the United States Maritime Administration to propose,
promulgate, or implement any rule or regulation, or, with regard to
vessels which repaid subsidy pursuant to the rule promulgated by the
Secretary May 3, 1985 and vacated by Order of the U.S. Court of
Appeals for the D.C. Circuit January 16, 1987, conduct any adjudicatory
or other regulatory proceeding, execute or perform any contract, or
participate in any judicial action with respect to the repayment of
construction differential subsidy for the permanent release of vessels
from the restrictions in section 506 of the Merchant Marine Act, 1936, as
amended: Provided,

That such funds may be used to the extent such expenditure relates to 46 USC
a rule which conforms to statutory standards hereafter enacted by 1156.
Congress.

Sec. 506. Notwithstanding any other provision of this Act,
appropriations made by the title I of this Act for the following account
shall be as follows:

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