

3 FAH-1 H-2000 PERSONNEL OPERATIONS

3 FAH-1 H-2100 EMPLOYMENT

3 FAH-1 H-2110 DRUG FREE WORK- PLACE

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(Office of Origin: DGHR/MED)

3 FAH-1 H-2111 DRUG-FREE WORKPLACE PROGRAM PLAN

(TL:POH-089; 01-31-2003)
(State Only)
(Applies to Foreign Service and Civil Service Employees)

The Department of State's Drug-Free Workplace Program is based on a Drug-Free Workplace Program Plan which is published as 3 FAH-1 H-2111 Exhibit H-2111 of this subchapter.

3 FAH-1 H 2112 THROUGH H-2119 UNASSIGNED

3 FAH-1 H-2110 Exhibit H-2111

U.S. DEPARTMENT OF STATE DRUG-FREE WORKPLACE PROGRAM PLAN

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I. INTRODUCTION

A. Background

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal workplace. The Order made it a condition of employment 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 U.S. Federal Government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The Department of State is concerned with the well being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity. The intent of the policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is, quite simply, incompatible with federal service.

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

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

B. Statement of Policy

The Department of State, hereafter referred to as “the Department,” as a consequence of its leading role in developing and implementing policies affecting the security of the United States, has a compelling reason to eliminate illegal drug use from its workplace. Much of the work of the Department of State involves highly sensitive information that must not be compromised. It is critically important that employees with access to sensitive information be reliable and stable and shows good judgment. Illegal drug use creates the possibility of coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, public safety, and effective law enforcement. It is inconsistent with the special trust placed in those who serve the public and damages the ability of the United States to protect its interests abroad, both in terms of combating the illicit flow of narcotics and assuring the wide range of United States political, economic and social relationships with foreign governments.

The Department’s assault on drug use in the workplace is, by example, a signal to foreign governments that the United States intends to treat this global threat seriously. United States diplomats *abroad* play a special role in the national and international strategy to halt the vast worldwide trafficking of drugs by demonstrating leadership in exploring regional cooperation on the narcotics issue, and encouraging other countries to do the same. This position is backed by the Secretary’s public stand that the United States cannot preach to other governments what it does not practice at home.

This is particularly illustrated, where, through the efforts of the *Bureau of International Narcotics and Law Enforcement*, the Department has undertaken an aggressive program to obtain the cooperation of foreign governments to stop the illegal production, trafficking, and use of drugs worldwide.

Assuring the successful accomplishment of the Department’s mission is a critical dimension of the drug abuse issue. Another equally important dimension of central concern to the Department is the well being of employees.

Therefore, to protect our national security, eliminate any risk to the health, welfare and safety of the public and Department employees, and to increase productivity in the workplace, it is the policy of the Department of State that the use of illegal drugs, on or off duty, will not be tolerated. It is the responsibility of every employee to comply with this policy

In developing and implementing a comprehensive plan to achieve a drug-free workplace, the Department will make every effort to ensure employee understanding of, and employee organization cooperation with, this drug prevention program. Fully in keeping with the requirements of the Executive Order and applicable laws and statutes, every precaution will be taken to protect the confidentiality of all records related to the counseling, testing, and rehabilitation of employees in connection with the Department's drug-free workplace program.

Accomplishing the goal of a department-wide drug-free workplace rests primarily with senior officials and supervisors of the Department, in keeping with their responsibility for the performance and well being of employees.

The mark of a successful drug-free workplace program depends on how well the Department 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 Department's goal of a drug-free workplace.

Therefore, this plan includes policies and procedures for:

- (1) Employee assistance;
- (2) Supervisory training;
- (3) Employee education; and
- (4) Identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

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

The Department Drug-Free Workforce Plan includes the following types of drug testing:

- (1) Random testing of employees in testing designated positions;
- (2) Reasonable suspicion testing;
- (3) Accident or unsafe practice testing;
- (4) Voluntary testing; and
- (5) Testing as part of, or as a follow-up to, counseling or rehabilitation.

The frequency of testing for random testing, voluntary testing, and follow-up testing is specified at *Section IX C, Section XII B and XII C of this Plan*, respectively. The Secretary reserves the right to increase or decrease the frequency of testing based on the Agency's mission, need, availability of resources, and experience in the program, consistent with the duty to achieve a drug-free workplace under Executive Order 12564.

D. Drugs for which Individuals Are Tested

The Department tests for the following drugs: marijuana, cocaine, opiates, phencyclidine (PCP) and amphetamines.

E. Scope

This plan is effective immediately for all employees of the Department of State.

F. 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, and Chapter 10 of the Foreign Service Act of 1980.

G. References

(1) Authorities

- (a) Executive Order 12564;
- (b) Executive Order 10450;
- (c) Section 503 of the supplemental Appropriations Act of 1987, Public Law 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987);
- (d) *Mandatory Guidelines for Federal Workplace Drug Testing Programs, Substance Abuse and Mental Health Administration (SAMHSA), Department of Health and Human Services (HHS), as amended;*
- (e) Civil Service Reform Act of 1978, Public Law. 95-454;
- (f) Foreign Service Act of 1980, Public Law. 96-465;

(g) *42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records;*

(h) *The Privacy Act of 1974 (5 U.S.C. Section 552a);*

(i) *22 CFR Part 171, implementing the Privacy Act of 1974 within the Department of State; and*

(j) *Federal Employees Substance Abuse Education and Treatment Act of 1986, Public Law 99-570.*

(2) Guidance

Foreign Affairs Manual (FAM), including 3 FAM 1990, Alcoholism and Drug Abuse Program; 3 FAM 4130, Standards for Appointment and Continued Employment; 3 FAM 4300 Disciplinary Actions (Foreign Service); and 3 FAM 4500, Disciplinary Actions (Civil Service).

I. DEFINITIONS

(1) *Alcohol and Drug Awareness Program (ADAP)—the Department program that provides confidential assistance to employees and their families for drug or alcohol problems. This assistance may be in the form of short-term counseling or referral to a community rehabilitation or counseling program.*

(2) *Department—the Department of State.*

(3) *Drug Program Coordinator (DPC)—a Deputy Assistant Secretary for Human Resources. The DPC is responsible for the implementation, direction, administration, and management of the Department of State's Drug Free Workplace Plan. The DPC also makes the final decision regarding disciplinary actions.*

(4) *Drug Program Manager (DPM)—the individual who handles the day-to-day management, coordination, and implementation of the Department's Drug Free Workplace Plan. The DPM also makes the final decision regarding deferral of testing.*

(5) *Designated Bureau Drug-Free Workplace Coordinators (DFWC)—the individuals responsible for the notification of employees in their bureau that have been selected for random drug testing. The DFWC may designate individuals in their bureau field offices to assist them in the notification of employees in the field offices.*

(6) Employee Assistance Program (EAP)—the Department’s counseling program which offers assessment, short term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and which monitors the progress of employees while in treatment. The Department’s EAP is comprised of the *Employee Consultation Service (ECS) and the Alcohol and Drug Awareness Program (ADAP)*.

(7) Employee Assistance Program Administrator—the Associate Medical Director for Mental Health Programs who is responsible for ensuring the development, implementation, and evaluation of the Department EAP.

(8) Employee Consultation Service (ECS)—*the Department program which provides confidential assistance to employees and employees’ families who need short-term counseling or referral for problems other than drug or alcohol problems.*

(9) Employee in a Sensitive Position - an employee who is cleared for access to information classified at secret or above.

(10) Department of State Foreign Affairs Manual.

(11) Illegal Drugs—a controlled substance included in Schedule I or II, as defined by 21 U.S.C. 802(6), 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.

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

(13) Random Testing—a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform, unannounced testing of testing designated employees occupying a specified area, element, or position, or it may be a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

(14) 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 the authority is not merely routine or clerical in nature, but requires the consistent exercise of judgment.

(15) Testing Designated Position—a position within the Department held by an employee who is cleared for access to information classified at secret or above.

(16) Verified Positive Test Result—a test result that has been screened positive by an 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 Medical Review Official in accordance with this plan and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.*

III. EMPLOYEE ASSISTANCE PROGRAM (EAP)

A. Function

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

(1) Provides counseling and assistance to employees who self refer for treatment or whose drug tests have been confirmed positive, and monitors the employees progress through treatment and rehabilitation;

(2) Provides needed education and training to all levels of the Department on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues; and

(3) Ensures that confidentiality of counseling and related medical treatment and rehabilitation records are maintained in accordance with Section XIV of *this Plan*.

B. Structure

(1) *The Associate Medical Director for Mental Health Programs is responsible for oversight and implementation of the Department's EAP.*

(2) The Department's EAP is comprised of the Employee Counseling Service (ECS) and the Alcohol and Drug Awareness Program (ADAP). The ADAP and ECS are each headed by administrators who work closely together to coordinate a comprehensive Employee Assistance Program for employees and their families.

(3) The ECS provides confidential assistance to employees and employees' families who need short-term counseling or referral for problems other than drug or alcohol problems.

(4) The ADAP provides confidential assistance to employees and their families for drug or alcohol problems. This assistance may be in the form of short-term counseling or referral to a community rehabilitation or counseling program.

C. Referral and Availability

(1) The first time any employee is found to be using drugs, he or she shall be referred to the ADAP. The ADAP *is* administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The ADAP provides counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. As appropriate, employees may also receive services from the ECS for emotional, financial, marital, family, or other issues, whether or not related to substance abuse. Such services will be coordinated between ADAP and ECS through internal referrals.

(2) In the event the employee is not satisfied with the program of treatment or rehabilitation the employee may seek review of the ADAP or ECS referral by notifying the EAP Administrator prior to completion of the program. The decision of the EAP Administrator *is* final and *is* not subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the ADAP counselor failed to consider certain factors 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.

D. Leave Allowance

Employees are allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session, and up to three (3) hours, exclusive of travel time, during the assessment and/or referral phase of rehabilitation. However, absences during duty hours for rehabilitation or treatment must be charged to an appropriate leave category in accordance with law and leave regulations.

E. Records and Confidentiality

All EAP operations are confidential in accordance with Section XIV of the Plan relating to records and confidentiality.

IV. SUPERVISORY TRAINING

A. Objectives

Supervisors have a key role in establishing and monitoring a drug-free workplace. Therefore, the Department *provides* training to assist supervisors and managers in recognizing and addressing illegal drug use by agency employees. The purpose of supervisory training is to understand *the following*:

- (1) Departmental policies relevant to work performance problems, drug use, and the Department's EAP;
- (2) When to offer EAP services;
- (3) How employee performance and behavioral changes should be recognized and documented;
- (4) The roles of the medical staff, supervisors, *Human Resources*, and EAP personnel;
- (5) The ways to use the *Department of State* EAP;
- (6) How the EAP is linked to the performance appraisal and the disciplinary process; and
- (7) The process of reintegrating employees into the workforce.

B. Implementation

The Drug Program Manager, in conjunction with the EAP Administrator, will provide educational material and/or training to inform employees and supervisors of the requirements of the Department's Drug-Free Workplace Plan.

C. Training Package

Supervisory training may be presented as a separate course, or included as part of an ongoing supervisory training program. Training may consist of written materials or classroom sessions or a combination of the two. Training shall be provided as soon as possible after a person assumes supervisory responsibility. Training courses should include the following:

- (1) Overall Departmental policy;
- (2) The prevalence of various employee problems with respect to drugs and alcohol;
- (3) The EAP approach to handling problems;
- (4) How to recognize employees with possible problems;
- (5) Documentation of employee performance or behavior;
- (6) How to approach the employee;
- (7) How to use the EAP;
- (8) *Disciplinary action, and removals from sensitive positions as required by Section 5 (c) of the Executive Order;*
- (9) *Reintegration of employees into the workforce; and*
- (10) Written materials, which the supervisor can use at the work site.

V. EMPLOYEE EDUCATION

A. Objectives

The Drug Program Coordinator, in conjunction with the EAP Administrator offers drug education opportunities to all Department of State employees. Drug education should include education *material available to all levels of the Department on the following:*

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

B. Means of Education

Drug use education may consist of *the following:*

- (1) Distribution of written materials;
- (2) Videotapes;
- (3) Lunch time employee forums; and

- (4) Employee drug awareness days.

VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. Drug Program Coordinator

A Deputy Assistant Secretary for *Human Resources* serves as the Drug Program Coordinator (DPC). The DPC is responsible for implementation, direction, administration, and management of the Department of State, Drug-Free Workplace Plan. The DPC also makes the final decisions regarding disciplinary *actions*.

B. Drug Program Manager

The Drug Program Manager (DPM) handles the day-to-day management, coordination, and implementation of the Department's Drug-Free Workplace Plan. The DPM has primary responsibility for assuring the effective operation of the testing portion of the program. In carrying out this responsibility, the DPM, among other duties, *does the following*:

- (1) *Arranges for all testing under the plan;*
- (2) *Insures that all employees subject to random testing receive individual notice as described in Section VII A. of this Plan;*
- (3) Upon receipt of a verified positive test result from the MRO, transmits the test result to the appropriate management official empowered to initiate disciplinary action;
- (4) Documents, through written inspection reports, all results of laboratory inspections conducted;
- (5) Coordinates with and reports to the DPC on activities and findings that may affect the reliability or accuracy of laboratory results;
- (6) In coordination with the EAP Administrator, publicizes and disseminates drug program educational materials, and *oversees* training and education sessions regarding drug use and rehabilitation;
- (7) Coordinates all drugs testing related activities throughout the Department wherever possible to conserve resources and to accomplish reliable and accurate testing objectives efficiently and speedily; and
- (8).*Provides approval of deferral of testing.*

C. Employee Assistance Program (EAP) Administrator

The Associate Medical Director for Mental Health Programs serves as EAP Administrator. The *EAP* Administrator *is responsible for the following*:

(1) Assumes the lead role in the development, implementation, and evaluation of the *EAP*;

(2) Supervises the *Alcohol Drug Abuse Program and Employee Consultation Service (ECS)* Administrators and assists them in establishing and maintaining EAP services in the field; and

(3) Advises Department components on the submission of annual statistical reports, and prepares consolidated reports on the Department's EAP activity.

D. ADAP and ECS Administrators

The following responsibilities are carried out by the Alcohol Drug Abuse Program and/or Employee Consultation Service Administrator, as appropriate:

(1) Implement and direct the Department's EAP;

(2) Provide through direct or contracted services, counseling and treatment services to all employees referred to the EAP by supervisors or self-referrals, and otherwise offer employees the opportunity for counseling and rehabilitation;

(3) Work with the DPM to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace;

(4) Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;

(5) Monitor the progress of referred employees during and after the rehabilitation period;

(6) Maintain a list of rehabilitation or treatment *organizations, which* provide counseling and rehabilitative programs, including 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) *Contact person's name and phone number;*

(e) Fee structure, including amount coverable by insurance;

(f) Client specialization; and

(g) Other pertinent information.

(7) 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.

E. ADAP and ECS Counselors

The following responsibilities are carried out by Alcohol Drug Abuse Program and/or Employee Consultation Service Counselors, as appropriate:

(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) Be qualified and trained in counseling employees in the occupational setting, and identifying drug use;

(4) Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and

(5) In making referrals, consider the *following*:

(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 and/or outpatient care;

(f) Other special needs, such as transportation and child care; and

(g) *Employee preference.*

F. Medical Review Official (MRO)

The MRO, among other duties:

(1) Receives all laboratory test results;

(2) Assures that an individual who has tested positive has been afforded an opportunity to justify the test result in accordance with Section XIV of this Plan;

(3) Consistent with confidentiality requirements, refers written determinations regarding all verified positive test results to the DPM, 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; and*

(4) Coordinates with and reports to the DPM on all activities and findings on a regular basis.

G. Supervisors

Supervisors *need to be* trained to address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. First line supervisors shall *do the following*:

(1) Attend training sessions on illegal drug use in the workplace;

(2) Document performance problems, behavior *and/or abnormal conduct* and refer employees to the EAP or, if appropriate, *submit findings to the Bureau of Human Resources, Office of Employee Relations, (HR/ER), for HR/ER's determination regarding reasonable suspicion of drug use;*

(3) Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use; and

(4) In conjunction with personnel specialists, assist second line supervisors and the EAP Administrator in evaluating employee performance and or personnel problems that may be related to illegal drug use.

H. Implementation

Each bureau will ensure that the Drug-Free Workplace Plan is efficiently and effectively implemented in accordance with guidelines established by the Drug Program Coordinator.

I. U.S. Government Contractors

Where it is determined that certain activities provided under this plan should be undertaken by an outside contractor:

(1) The Drug Program Manager shall serve as Contracting Officer for the administration of all related contracts; and

(2) The DPC shall ensure that contractors chosen to perform the drug screening tests are duly certified pursuant to the HHS guidelines and that all contracts conform to the technical specifications of the HHS guidelines.

VII. NOTICE

A. Individual Notice

Prior to their inclusion in the "pool" for random drug testing, a copy of this plan and/or an individual notice will be distributed to each employee entering a sensitive position explaining the following:

(1) That the employee's position has been designated a "testing designated position;,"

(2) That the employee will have the opportunity to voluntarily identify himself or herself as a user of illegal drugs and to receive counseling or rehabilitation, prior to notification of being tested, and shall not be subject to disciplinary action; and

(3). That the employee's position will be subject to random testing no sooner than 30 days after the date of the notice.

B. Signed Acknowledgment

Each employee entering a testing designated position shall be asked to acknowledge in writing that:

(1) The employee has received and read the notice which states that the employee's position has been designated for random drug testing; and

(2) Refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal.

If the employee refuses to sign the acknowledgment, *it is noted* on the acknowledgment form that the employee received the notice. *These acknowledgments will be centrally collected for easy retrieval by the Director General of Human Resources, and are advisory only. An employee's refusal to sign the notice shall not preclude testing that employee, or otherwise effect the implementation of this plan.*

C. Administrative Relief

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

VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

A. Determination

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

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

B. Mandatory Administrative Actions

An employee found to use illegal drugs shall be referred to the EAP. If the employee is performing duties requiring access to classified information, he or she will be immediately removed from that position without regard to whether it is a testing designated position. At the discretion of the Under Secretary for Management or his or her designee and with the concurrence from the ADAP Diplomatic Security, an employee may be allowed to return to duty to a sensitive position provided his or her return does not endanger public health or safety or national security.

C. Range of Consequences

The severity of the disciplinary action taken against an employee found to use illegal drugs would depend on the circumstances of each case. *The Department will initiate disciplinary action (up to and including removal) against any employee found to use illegal drugs. The only exception is for an employee who voluntarily refers himself or herself in accordance with subsection VIII F of this Plan.*

Such disciplinary action may include any of the following measures:

- (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 a rehabilitation program through Alcohol Drug Abuse Program or until the Department determines that action other than suspension is more appropriate;

(6) Reducing the employee's pay or grade; and

(7) Removing the employee from service.

D. Initiation of Mandatory Removal from Service

The Drug Program Coordinator shall initiate action to remove an employee for *the following reasons:*

(1) Refusing to obtain counseling or rehabilitation through Alcohol Drug Abuse Program after having been found to use illegal drugs; and

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

E. Refusal to Take Drug Test when Required

An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including removal.

Telecommuters are subject to the random drug testing requirements while telecommuting and must report to the testing site on the day requested. The fact that an employee is telecommuting is not a basis for refusing to be tested on the day called or for obtaining a deferral. Employees must make their own transportation arrangements to the testing site. Transportation costs to the drug-testing site for telecommuters will not be reimbursed by the Department.

Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral

A fundamental purpose of the Department's drug testing plan is to assist employees who themselves are seeking treatment for drug use. For this reason, the Department will not initiate disciplinary action against any employee who meets all three of these conditions:

(1) Voluntarily identifies him or her self as a user of illegal drugs prior to being identified through other means;

(2) Obtains counseling or rehabilitation through the Employee Assistance Program, and;

(3) Thereafter refrains from using illegal drugs.

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

Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit his or her problem, this provision will not be available to an employee who is asked to provide a urine sample, or who is found to have used illegal drugs pursuant to Sections VIII (A) (1), or VIII (A) (2) of this Plan and who thereafter requests protection under this provision.

IX. RANDOM TESTING

A. Testing Designated Positions for Random Drug Testing

In accordance with the Executive Order 12564 of September 15, 1986, the Department has determined that all employees who are cleared for access to information classified at Secret or above are "employees in sensitive positions" and are included in the random drug-testing program. The total number of employees cleared for access to information classified at Secret or above is approximately 16,000.

The Department of State will administer drug tests to all personnel in the Washington area and its domestic field offices who meet the criteria described above in a program that will provide for an annual frequency of approximately 10 per cent of the testing-designated positions. Budgetary constraints affecting the Department require that testing levels be set as low as possible, yet consistent with the goals of the Executive Order and with the Department's concern that secret unlawful drug use may be a factor in leading an employee to assist espionage or criminal activities against the U.S. Government.

B. Determining Who is a Covered Employee

The Under Secretary for Management reserves the right to add or delete positions determined to be testing designated positions pursuant to the criteria established in the Executive Order 12564.

C. Implementing Random Testing

In implementing the program of random testing, the Drug Program Coordinator *is responsible for the following:*

(1) Ensuring that the means of random selection remains confidential; and

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

D. Notification of Selection

An individual selected for random testing is notified by their designated Drug-Free Workplace Coordinator (DFWC) the same day the test is scheduled, preferably, within two hours of the scheduled testing. The DFWC may designate individuals in his or her bureau field offices to assist in the notification of employees in the field offices. The DFWC or field office designee explains to the employee that he or she is under no suspicion of taking drugs and that the employee's name was selected randomly. In the event the DFWC or field office designee is unable to locate and/or notify the employee, the assistance of the employee's first and/or second line supervisors will be obtained to locate the employee and ensure that notification is provided and that the employee reports for testing as scheduled.

E. Deferral of Testing

An individual selected for random testing may seek a deferral of testing if the employee's first line and second line supervisors submit written justification to the DPM that a compelling need necessitates a deferral. Examples of circumstance that may constitute a compelling need include the following:

(1) Where an employee is in a leave status (sick, annual, administrative or leave without pay), which was approved prior to testing notification;

(2) Where an employee is in official travel status or training away from the workplace or is about to embark on official travel scheduled prior to testing notification; and

(3) Where there is a compelling Department need necessitating a deferral.

The DPM has sole discretion for granting deferrals. Failure to appear for testing without a deferral from the DPM is considered a refusal to participate in testing and will subject an employee to the full range of disciplinary actions, including dismissal.

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

X. REASONABLE SUSPICION TESTING

A. Individuals Subject to Reasonable Suspicion Testing

Reasonable suspicion testing may be required of any employee in a testing designated position 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 other position when there is reasonable suspicion of on duty drug use or on duty drug impairment.*

B. Grounds

Reasonable suspicion testing may be based upon, *but not limited to, the following:*

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

(2) A pattern of abnormal conduct or erratic behavior;

(3) Arrest or conviction for a drug related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;

(4) Information as to illegal drug use provided either by reliable and credible sources or independently corroborated; or

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

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

C. Procedures

If an employee is suspected of using illegal drugs, the employee's supervisors will gather all information, facts, and circumstances leading to and supporting this suspicion. All evidence supporting this finding will be submitted through the bureau executive director to the Bureau of *Human Resources*, Office of Employee Relations, (*HR/ER*). *HR/ER* will review the case to determine sufficiency of documentation supporting the reasonable suspicion finding prior to recommending to the DPC that any action be taken regarding the employee.

If *HR/ER* determines that reasonable suspicion has been established, *HR/ER* will promptly detail, for the record and in writing, the circumstances that form the basis to warrant the testing. A written report will be prepared to include, at a minimum, the appropriate dates and times of reported drug related incidents, reliable and credible sources of information, rationale leading to the test, findings of the test, and the action taken.

D. Obtaining the Sample

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

E. Supervisory Training

In accordance with Section IV *of this Plan*, 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, does not invalidate otherwise proper reasonable suspicion testing.

XI. APPLICANT TESTING

A. Objective

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

B. Extent of Testing

The Department of State conducts thorough security investigations of all candidates selected for the Foreign Service, and of all Civil Service applicants selected for positions requiring a security clearance of secret or above. The security clearance process is an effective pre-employment screening device for uncovering many problems bearing on applicant suitability (including current and/or past patterns of drug abuse) and is the Department of State's primary method of preventing the employment of individuals who abuse drugs. Pre-employment drug testing shall be required of all individuals selected for employment in positions with either a statutory or regulatory requirement for pre-employment drug testing (i.e. drivers and pilots) and/or for positions which may be designated at the discretion of the Secretary as particularly sensitive because of the nature of the work (i.e., positions involving law or drug enforcement).

C. Vacancy Announcements

Every vacancy announcement for positions designated for applicant testing shall state *the following*:

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

D. Procedures

The DPM shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and normally within 48 hours of notification.

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

E. Consequences

The Department will decline to extend a final offer of employment to any applicant with a verified positive result, and such applicant may not reapply to the Department of State for a period of six months. The Department shall inform the applicant that a confirmed presence of drug in the applicant's urine precludes the Department from hiring the applicant.

XII. ADDITIONAL TYPES OF DRUG TESTING

A. Accident or Unsafe Practice Testing

The Department 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 either of the following criteria:

(1) The accident results in a death or personal injury requiring immediate hospitalization, or;

(2) The accident results in damage to U.S. Government and/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 either of the criteria stated above, the appropriate supervisor will present the facts and circumstances leading to and supporting this suspicion to the Director of Safety Programs for investigation. The Director of Safety Programs will report his or her findings to the DPC. If appropriate, arrangements will be made by the DPC for testing. The supervisor will be instructed to prepare a written report detailing the facts and circumstances that warranted the testing.

B. Voluntary Testing

In order to demonstrate their commitment to the Department's goal of a drug-free workplace and to set an example for other Federal employees, employees, not in testing designated positions, may volunteer for unannounced random testing by notifying the DPM. These employees will then be included in the pool of testing designated positions subject to random testing, and be subject to the same conditions and procedures, including the provisions of Section VIII (F) *of this Plan*. Volunteers shall remain in the TDP pool until the employee withdraws from participation by notifying the DPM of such intent at least 48 hours prior to a scheduled test.

C. Follow-up Testing

All employees referred through administrative channels that undergo a counseling or rehabilitation program for illegal drug use through EAP will be subject to unannounced testing for a period of at least one year as stipulated in an abeyance agreement. Such testing is in addition to any testing that may be imposed as a component of the EAP.

XIII. TEST PROCEDURES IN GENERAL

A. Technical Guidelines for Drug Testing

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

B. Privacy Assured

Any individual subject to testing under this plan shall be permitted to provide urine specimens in private, and in a restroom stall or similar enclosure so that the individual 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) Facts and circumstances suggest that the individual is an illegal drug user;

(2) Facts and circumstances suggest that the individual is under the influence of drugs at the time of the test;

(3) The individual has previously been found by the Department to be an illegal drug user;

(4) Facts and circumstances suggest that the individual has equipment or implements capable of tampering or altering urine samples; or

(5) The individual has previously tampered with a sample.

C. Failure to Appear for Testing

Failure to appear for testing without an approved deferral from the DPM will be considered refusal to participate in testing, and will subject an employee to the full range of disciplinary actions, including dismissal. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the DPM to obtain guidance on what action should be taken.

D. Opportunity to Justify Positive Test Result

When a confirmed, positive result has been received by the laboratory, the MRO *will give the donor an opportunity to discuss the test result with him or her. 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 the following:*

(1) A valid prescription; or

(2) *A statement from the individual's physician verifying a valid prescription.*

Following verification of a positive test result, the MRO reports the result to the DPM.

E. Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, and at the request of the program, the employee may be exempted from the random testing designated pool for a period not to exceed 60 days, or for a time period specified in an abeyance contract or rehabilitation plan approved by the DPC. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to Section XII C *of this Plan.*

F. Savings Clause

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

XIV. RECORDS AND REPORTS

A. Confidentiality of Test Results

The laboratory may disclose confirmed laboratory test results only to the MRO. Any positive result, which the MRO justifies by *appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug, will be treated as a negative test result and may not be released for purposes of identifying illegal drug use.* Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. 552a, et seq., and Section 503(e) of the Act, and may not be released in violation of either Act. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, except that the disclosure of the results of any audit may not include information identifying any employee.

The results of a drug test of a Department employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be *to the following:*

- (1) The MRO;
- (2) The DPM;
- (3) The Administrator of the EAP in which the employee is receiving counseling or treatment or is otherwise participating;
- (4) *Any management official within the Department having authority to take adverse personnel action against such employee, other administrative actions; or*
- (5) Pursuant to the order of a court of competent jurisdiction or where required by the U. S. Government to defend against any challenge against any adverse personnel action.

For purposes of this Section, “management official” includes any management or U.S. Government 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 Department personnel, including the DPC, for data collection and other activities necessary to comply with Section 503(f) of the Act.

B. Employee Access to Records

Any employee who is the subject of a drug test shall, upon written request, have access to any records relating to *the following*;

(1) Such employee's drug test; and

(2) The results of any relevant certification, review, or revocation of proceedings, as referred to in Section 503(a)-(1) (A) (ii) (III) of the Act.

C. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential except as set forth in this plan and should be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this plan and to make information readily retrievable, the DPM maintains all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this order.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the DPC. Such records remain confidential except as set forth in this plan, locked in a combination safe, with only authorized individuals who have a “need-to-know” *basis* having access to them.

D. Employment Assistance Program (EAP) Records

The EAP Administrator maintains only those records necessary to comply with this plan. After an employee has been referred to the EAP, the EAP maintains all records necessary to carry out its duties. All medical and or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 CFR Part 2, including the provision of written consent by the employee. *With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress.*

E. Maintenance of Records

The DPM, MRO, EAP, and HR/ER, maintain records related to the Department's Drug-Free Workplace Program consistent with the Department'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. Section 52a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Under Secretary for Management.

F. Records Maintained by U.S. Government Contractors

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

G. Statistical Information

The DPM collects and compiles anonymous statistical data for reporting the number of *the following*:

- (1) Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered;
- (2) Verified positive test results;
- (3) Voluntary drug counseling referrals;
- (4) Involuntary drug counseling referrals;
- (5) Termination or denial of employment offers resulting from refusal to submit to testing;
- (6) Termination or denial of employment offers resulting from alteration of specimens;
- (7) Termination or denial of employment offers resulting from failure to complete a drug abuse counseling program; and
- (8) Employees who successfully complete EAP.

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

3 FAH-1 H 2111, Exhibit 2111

RANDOM DRUG TESTING REQUIREMENTS ABROAD (TL-POH-089; 01-31-2003)

The Department has over 250 posts abroad, with staff sizes ranging from 1 to 220 people at each post. This vast disparity poses some special (sometimes unique) conditions and major issues that must be resolved before drug testing commences abroad. They are as follows:

(1) Whether it is cost effective to test all employees at all posts abroad;

(2) Whether medical and laboratory resources at posts abroad meet, or can be upgraded to meet, the legal and security requirements for chain of custody and testing reliability. Medical resources at many of our posts range from available and adequate to not available at all for hundreds of miles;

(3) Whether it is feasible to establish standardized drug testing capabilities in each post, considering the geographic dispersion of the 250 posts and the resource limitations; and

(4) Whether it is feasible and desirable to establish EAPs at each post, or whether EAPs can be established on a regional basis to serve several posts, and the effectiveness of this alternative might be.

These are examples of the many practical and technical questions that must be settled before the program can be extended to the operations abroad.