

**U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons**



**PROGRAM STATEMENT
Drug and Alcohol Testing of Employees –
Drug-Free Workplace and Commercial Driver's License**

Approved by	 William K. Marshall III Director, Federal Bureau of Prisons
DPI	HSD
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Summary of Changes

<i>Program Statement Rescinded:</i> 1627.01 Commercial Drivers, Testing for Use of Controlled Substances and Alcohol (11/29/1996) 3735.04 Drug Free Workplace (6/30/1997)
<i>Changes:</i> Merged the Program Statements Commercial Drivers, Testing for Use of Controlled Substances and Alcohol and Drug-Free Workplace into one program statement.

1. PURPOSE AND SCOPE

Any illegal drug use, or abuse of legal drugs or alcohol by Federal Bureau of Prisons (Bureau) staff has an adverse impact on the accomplishment of the Bureau's law enforcement mission and will not be tolerated.

Regardless of individual state legislation or initiatives, the use of any drug classified as Schedule I under The Federal Controlled Substances Act (CSA) of 1970, established under 21 U.S.C. § 801 et. seq., whether for non-medical or ostensible medical purpose, violates federal law and the Federal Drug-Free Workplace Program (DFWP). It is also inconsistent with performance of safety-sensitive, health-sensitive, and security-sensitive positions, and with other testing circumstances.

Given the Bureau's law enforcement mission, the Bureau has reason to operate a comprehensive drug testing program including pre-employment testing, random staff testing, reasonable

suspicion testing, post-accident testing, post-substance abuse treatment testing, and voluntary testing.

Testing programs under the Department of Health & Human Services (HHS) (i.e., Federal DFWP) and Department of Transportation (DOT) (Commercial Drivers Licenses [i.e., CDL]) are separate and not interchangeable. Therefore, correct regulatory authority, procedures, and Custody and Control Forms (CCF) must be used to maintain compliance and program integrity.

HHS Testing. A full table of comparison between HHS and DOT testing can be found in Appendix A.

- HHS testing applies to federal staff, applicants for employment, and staff in Test Designated Positions (TDP) to promote institutional security and workforce reliability, consistent with Executive Order 12564 and 41 CFR Part 102-34. HHS drug testing is mandated to support a drug-free workplace by ensuring staff reliability, integrity, and compliance with the federal employment standards. HHS testing is administrative in nature and is used to promote safety, security, and public trust.
- In accordance with Bureau policy and applicable federal regulations, the Bureau conducts drug testing under the HHS Mandatory Regulations as part of its Drug-Free Workplace Program.

DOT Testing. A full table of comparison between HHS and DOT testing can be found in Appendix A.

- Drug and alcohol testing regulated by the DOT applies only to staff performing safety-sensitive transportation functions and is governed by 49 CFR Part 40 and applicable DOT regulations. DOT testing includes drug testing under the federally prescribed panel and mandatory alcohol testing. It requires immediate removal of the affected staff from safety-sensitive duties and their evaluation by a substance abuse professional following a violation.

a. **Program Objectives.**

- Bureau staff will not use drugs illegally or abuse legal drugs or alcohol that may directly impact the safety, health, or security of the workplace.
- Applicants for employment found to currently use drugs illegally or abuse legal drugs or alcohol will be eliminated from employment consideration.
- Staff who voluntarily identify themselves as an illegal drug user or abuser of legal drugs or alcohol, prior to identification through other means, will be given an opportunity for treatment and protection from disciplinary action. Refer to Section 5. Voluntary Admission/Safe Harbor Program for more information.

- Disciplinary action will be taken against any Bureau staff member determined to use drugs illegally or abuse legal drugs or alcohol, and who has not presented themselves for assistance according to the terms of Section 5 of this program statement.
- The privacy rights of staff concerning drug testing or treatment will be maintained under the Privacy Act of 1974.

b. **Institution Supplement.** None.

2. PROGRAM RESPONSIBILITY

This program statement is under the general direction of the Health Services Division (HSD), with the Bureau's National DFWP Coordinator (National Coordinator) administering the program. The National Coordinator reports to the Chief, Occupational Safety & Health (OSH) within HSD. Consistent with HHS and DOT regulations, the National Coordinator must perform all duties specified in Chapter 6, Section A of the Model Plan for a Comprehensive Drug-Free Workplace Program.

a. **Local Responsibility.** Chief Executive Officers (CEOs) must implement and administer this program statement within their respective locations. In this program statement, CEO refers to the following:

- Wardens
- Directors, Staff Training Centers
- Community Corrections Managers
- Regional Directors
- Assistant Directors
- Director, Federal Bureau of Prisons

b. **Office of General Counsel.** The Employment Law Branch, Office of General Counsel, will provide legal counsel to management officials regarding all aspects of the program, and provide advice and guidance to management officials concerning the following:

- Reasonable suspicion testing
- Post-accident testing
- Random testing
- Identification of specific positions as TDPs
- Disciplinary/adverse actions

3. EMPLOYEE ASSISTANCE PROGRAM (EAP)

The EAP is a confidential program available to all Bureau staff who have alcohol, drug, or emotional problems or who have immediate family with these problems. The EAP's role is

assisting staff in the following:

- Accept early counseling
- Regain their productive capability
- Minimize absenteeism, sick leave, and grievances
- Reduce the need for disciplinary action
- Improve morale

Staff are encouraged to seek confidential EAP assistance for any emotional or substance misuse/abuse problems with which they may be trying to cope. Additionally, staff who contact a management official seeking assistance in dealing with a drug or alcohol use problem may be entitled to protection against disciplinary action. See Section 5. Voluntary Admission/Safe Harbor Program and the Program Statement **Employee Assistance Program** for further information.

Staff are solely responsible for all drug rehabilitation costs. Such expenses for staff or their family members are not chargeable to the Bureau, the Department of Justice, or the United States Government.

4. SUPERVISORY AND MANAGERIAL TRAINING

EAP Coordinators must provide Bureau supervisors and managers with information and training regarding the following:

- Procedures and requirements for drug testing
- Staff referral to the EAP
- Signs of possible drug use, or drug induced impairment
- Confidentiality of staff in treatment programs

The training must also include information to help supervisors and managers be aware of drug-related behavior and recognize facts that give rise to a reasonable suspicion that a staff member may be using or abusing drugs or alcohol. The training must be documented in their training record.

5. VOLUNTARY ADMISSION/SAFE HARBOR PROGRAM

Since a fundamental purpose of the Bureau's drug testing plan is to assist staff who seek treatment for use or abuse of drugs or alcohol, the Bureau must not initiate disciplinary action for illegal drug use or abuse of legal drugs or alcohol against any staff member who meets all three of the following conditions:

- Voluntarily admits illegal drug use or abuse of legal drugs or alcohol to their CEO prior to being identified through other means
- Obtains counseling or rehabilitation through EAP
- Thereafter refrains from illegal drug use or abuse of legal drugs or alcohol

Since the key to this provision's rehabilitative effectiveness is staff's willingness to freely admit their problem, this provision is not available to staff who request protection under this provision after any of the following situations:

- Being asked to provide a urine sample in accordance with this program statement
- Being identified as the subject of a Bureau investigation concerning illegal drug use or abuse of legal drugs or alcohol
- Being identified as the subject of a law enforcement investigation concerning illegal drug use or abuse of legal drugs or alcohol
- Having been found to have used illegal drugs or abuse of legal drugs or alcohol by direct observation, or by evidence obtained from an arrest or criminal conviction

a. **Request for Assistance.** Staff who are using drugs illegally or abusing legal drugs or alcohol and wish to seek treatment and rehabilitation should contact their supervisor for an EAP referral or contact the EAP Coordinator directly. The staff's own admission of drug use is sufficient for determination of drug use, and a urinalysis test is not necessary. The staff may refer to this voluntary admission process as electing for Safe Harbor.

Staff may seek confidential assistance from EAP; however, no protection from disciplinary action will be available unless the staff voluntarily discloses their illegal drug use or abuse of legal drugs or alcohol to their CEO. The staff may voluntarily disclose to the CEO directly, through an immediate or higher supervisor, or through the EAP Coordinator, provided the EAP Coordinator has obtained a properly completed release of information. CEOs and other non-EAP staff are not bound by the same confidentiality regulations to which EAP Coordinators and Counselors must adhere.

b. **Disposition.** Although staff who meet the voluntary admission criteria may not be disciplined for illegal drug use or abuse of legal drugs or alcohol, other action must be taken. The CEO must immediately review the staff member's job functions to determine if that staff member will be relieved from their duties. While the staff member is undergoing treatment, the CEO may reassign the staff member to a position where they will not pose a threat of danger to the safety of others or to the organization's operation. Absent such a position, the staff member may elect to be placed on sick, annual, or other appropriate leave status while undergoing short-term (less than 30 days) treatment and rehabilitation under the EAP.

Results of any urinalysis testing conducted by a treatment facility may be released to the Bureau only if the staff member provides proper consent.

Positive test results released by a treatment provider to the Bureau may not be counted against the staff member in mandatory dismissal actions under Section 6 below; however, any positive test results the Bureau obtains through other permissible testing procedures, described in Section 13, are fully actionable, even if the testing occurs while a self-referring staff member is participating in a rehabilitation program.

Staff who are referred for treatment of 30 days or less will not be included in a random drug testing pool for the duration of such treatment. When a self-referring staff member enters short-term treatment, the CEO must notify the National Coordinator to ensure the staff member's name does not appear on a random testing list inappropriately. Staff in longer treatment may be exempted from random drug testing, as described in subsection 5.e. Exemption from Testing Pool, below.

Upon voluntarily agreeing to participate in a Safe Harbor Agreement Plan, the staff member must:

- Acknowledge their understanding of the requirements of participation
- Acknowledge no disciplinary action will be initiated against them as long as they successfully and continuously meet the provisions of the Safe Harbor program, as outlined in this program statement
- Acknowledge and understand the requirements of the Safe Harbor Program provisions contained in this program statement, and the use of any alcohol or illegal drugs in which the staff member is receiving treatment for must result in forfeit of the protections under the Safe Harbor Program which may lead to disciplinary action up to and including removal
- Acknowledge the terms of this agreement were fully explained to them by the Bureau, and they were afforded the opportunity to ask any clarifying questions
- Attest they understand participation in the Safe Harbor Program is a one-time opportunity regardless of the substance(s) they are currently using
- Acknowledge the requirement to be assessed by a provider within 48 hours from the date of this agreement and comply with all treatment recommendations made by the provider, up to and including participation in an inpatient/outpatient treatment program
- Acknowledge and understand they are responsible for all costs associated with their treatment
- Understand that absent exigent circumstances, the Bureau agrees to permit them to use their leave and/or place them in a Leave without Pay (LWOP) status for Bureau verified treatment, related appointment(s), and/or admission(s). They may also seek leave, if appropriate, pursuant to the Family and Medical Leave Act (FMLA) for this purpose
- Acknowledge they are required to comply with all inpatient/outpatient treatment program rules and regulations, and they must successfully complete all the program requirements. A Substance Abuse and Mental Health Services Administration (SAMHSA) certified treatment program representative or the designated local EAP Coordinator must

determine whether the staff is in compliance with the treatment program rules and regulations

- Acknowledge failure to successfully complete the inpatient/outpatient treatment program requirements will result in their forfeiture of the protections under the Safe Harbor Program and lead to disciplinary action up to and including removal
- Acknowledge they will be subject to urinalysis testing for a period of 24 months, which will be conducted without notice. Such testing is at the Bureau's discretion and may occur unannounced at any time during the 24-month period covered by this agreement
- Understand and agree that a positive result from a urinalysis test administered to them indicating the illegal or unauthorized use of a substance and/or any use will result in their forfeiture of the protections afforded them under the Safe Harbor Program and may lead to disciplinary action up to and including removal
- Agree, pursuant to the terms of this agreement, to waive any and all appeal and grievance rights including before the Merit Systems Protection Board (MSPB), Equal Employment Opportunity Commission (EEOC), Federal Labor Relations Authority (FLRA), or any other forum as related to the terms of this agreement or any future discipline related to alcohol and/or drug use or abuse, in the event they are found to have breached this agreement
- Waive, release, and forever discharge the Bureau, its officers, agents, staff, and representatives, in their official and/or personal capacities, from any claims, demands, or causes of action, which the staff has or may have, arising from or implied in this matter or any matter associated with this agreement. This release includes, but is not limited to, a release of all rights and claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended, and the Age Discrimination in Employment Act of 1967, and any other administrative or judicial relief or any other type of relief, or of any claim to back pay, attorney's fees and costs, or other types of compensation
- Understand the terms of this agreement will be confidential except in limited circumstances
- Understand the definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this agreement and are controlling
- Agree that should a dispute arise regarding the implementation or interpretation of this agreement, no party to the agreement will seek enforcement of this agreement until that party first makes a good faith effort through the other party or that party's representative to resolve a difference of interpretation of the terms of the agreement
- Agree they have full authority to enter into this agreement and to make promises, obligations, and consideration contained herein
- Declare that at the time they execute this agreement they are not under the influence of any illegal substance, prescription medication, or any substance, legal or illegal, which could affect their ability or competency to enter into this agreement
- Acknowledge having a full opportunity to consult with counsel or any other representative of their choosing

- Agree that the terms of this agreement constitute the entire agreement among the parties and that no other promises or representations, either express or implied, have been made or sought to induce acceptance of this agreement. No other promises or agreements are binding unless memorialized in writing and signed by the staff member and the CEO.
- Acknowledge there is adequate consideration for each and every promise contained herein
- Acknowledge if any provision of the agreement will be held invalid or unenforceable, the remainder of the agreement will not thereby be held invalid or unenforceable

c. **Return to Former Assignment.** When the treatment provider certifies the staff member has successfully completed a rehabilitation program, the CEO and the Regional Director or appropriate Assistant Director will determine whether the staff member will return to their former assignment.

d. **Confidentiality.** To maintain the integrity and confidentiality of staff rehabilitation activities, the National Coordinator will maintain all patient records consistent with the requirements of 42 CFR Part 2.1.

e. **Exemption from Testing Pool.** The CEO may request staff participating in treatment be exempted from the random selection pool for a period not to exceed 60 days, or for a time period specified in an agreement between the staff member and management, or a rehabilitation plan approved by the CEO.

If a determination is made to temporarily remove the staff member from the random selection pool, the CEO must notify the National Coordinator to ensure the staff member's name does not appear on a testing list. Upon completing the program, the staff member will be returned to the random selection pool.

Staff who are referred for treatment of 30 days or less will not be included in a random drug testing pool for the duration of such treatment. When a self-referring staff member enters short-term treatment, the CEO must notify the National Coordinator to ensure the staff member's name does not appear on a random testing list inappropriately. Staff in longer treatment may be exempted from random drug testing, as described in this subsection.

6. DETERMINATION OF DRUG USE AND DISCIPLINARY CONSEQUENCES

a. **Determination of Drug Use.** Staff may be determined to be using illegal drugs or abuse of legal drugs or alcohol based on any appropriate evidence including, but not limited to:

- Direct observation of illegal drug use or abuse of legal drugs or alcohol (e.g., drinking alcohol on duty)
- Evidence obtained from an arrest or criminal conviction

- A verified positive test result
- Staff's voluntary admission

b. **Mandatory Administrative Action.** Staff determined to be using illegal drugs or abusing legal drugs or alcohol must be referred to EAP by the appropriate Medical Review Officer (MRO), CEO, or the National Coordinator. If the staff member occupies a TDP, described in Section 8, or other sensitive position, the CEO must immediately remove the staff member from that position and place them in a nonsensitive position until appropriate action is taken by the Bureau.

At the discretion of the CEO, staff may return to duty in a test-designated or sensitive position if the staff member's return will not endanger national security, public safety, or institution security.

c. **Range of Consequences.** The severity of the disciplinary action taken against staff determined to be using illegal drugs or abusing legal drugs or alcohol will depend on the circumstances of each case and will be consistent with Executive Order 12564. A full range of disciplinary actions, up to and including dismissal, are available.

The Bureau will initiate disciplinary action against any staff member determined to be using illegal drugs or abusing legal drugs or alcohol but may not discipline staff who voluntarily admit to illegal drug use in accordance with Section 5 of this program statement. Such disciplinary action must be consistent with the requirements of existing disciplinary and adverse action regulations and procedures.

d. **Refusal to Provide or Attempts to Alter a Specimen.** Staff who refuse to be tested when required will be subject to the full range of disciplinary action, up to and including dismissal.

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

No applicant who refuses to be tested may be extended an offer of employment.

7. COLLECTION AND RESULTS CERTIFICATION

a. **Collection.** Each institution or Administrative site must have a minimum of two trained collectors. Specimen collection at the institution level is restricted to staff in supervisory positions.

Human Resource staff may serve as collectors at institutions. Their authority is strictly limited to conducting pre-employment drug test collections for applicants. Human Resource staff are

prohibited from conducting staff drug test collections, including random, reasonable suspicion, post-accident, return-to-duty, or follow-up-testing.

At Central Office, the National Coordinator will be the primary specimen collector. The National Coordinator may choose a second collector from within the Central Office HSD.

- A memorandum detailing any changes to an individual site's collector(s) must be communicated from the local CEO to the National Coordinator to assure appropriate required training and certification is attained before any urine collections are initiated by the staff in question under this program statement. Bureau collectors must be guided in this program by the Collector's Procedure Manual, located on the Drug-Free Workplace page of the Bureau's intranet site.

The National Coordinator may arrange for a collection by a community provider for Bureau facilities without appropriately trained staff.

b. **Medical Review.** The National Coordinator must ensure an appropriately trained physician is available to review and make a final determination regarding all drug tests reported as positive by the contract laboratory. This review may be provided by any of the following:

- Bureau physician
- Contract with another agency
- A community provider

8. TEST DESIGNATED POSITIONS (TDPs)

TDPs are those positions for which it has been determined an incumbent's use of illegal drugs or abuse of legal drugs or alcohol would pose a significant threat to national security, public safety, patient care, or fellow staff.

These positions include:

- Positions where staff may establish eligibility for federal law enforcement retirement
- Non-institution positions which are safety-sensitive; require Central Inmate Monitoring certification; or otherwise may provide access to information regarding participants in the Witness Security or Victim Witness programs.
- Staff having a secret or higher security clearance

All Public Health Service (PHS) Officers detailed to the Bureau will be considered as a test designated position. The Classification and Compensation Section, Personnel and Staff Development Branch, Human Resource Management Division, determines which civil service positions are TDPs.

a. **Notification to Staff.** Staff identified as filling a TDP must be notified of their testing status prior to implementation of random testing. If staff believe their position has been wrongly classified, they may file an administrative appeal to the Director, who has authority to remove the position from the TDP list.

Staff must submit the administrative appeal, in writing, to the Director within 15 days of notification, setting forth all relevant information. The Director's decision is a final administrative decision.

b. **Acknowledgement.** Each staff member in the TDP must be asked to sign an acknowledgment of notice regarding their testing status prior to implementation of a random testing program (Attachment A). The acknowledgment must be maintained in the staff member's official personnel folder. Henceforth, all newly affected staff must also acknowledge their awareness of the Safe Harbor Program and receipt of a copy of the current version of this program statement.

If staff refuse to sign the acknowledgement, the staff member's supervisor or other staff member tasked with distribution of the notice, must note on the acknowledgement form the staff member received the notice. This acknowledgement is advisory only, and failure to provide a signed acknowledgement must not preclude drug testing of the said staff member.

Once the staff member has signed the acknowledgement, the staff member must not thereafter be required to sign a new acknowledgement, unless the staff member changes from a TDP to a non-TDP and then changes back to a TDP once again.

9. URINE SPECIMEN TESTING BY CONTRACT LABORATORY

In accordance with Executive Order 12564, the Bureau must use only laboratories certified by SAMHSA.

Pre-employment and random selection testing must be conducted for the following drug classes:

- Marijuana
- Fentanyl
- Cocaine
- Morphine, codeine, and other opiates
- Amphetamines
- Phencyclidine

Reasonable suspicion, post-accident, and post-substance abuse treatment testing must be conducted for a minimum of the above listed drug classes. However, as indicated on a case-by-

case basis, the testing may be expanded to include any drug found on Schedules I and II of the Controlled Substances Act or alcohol as reasonably suspected.

If an initial screening through the immunoassay method yields a positive result, the laboratory must automatically perform a confirmation test on the specimen using Gas Chromatography / Mass Spectrometry (GC/MS). This is the most reliable combination of testing available.

10. BREATH ALCOHOL TESTING (BAT)

While alcohol is a legal substance, abuse or misuse can lead to cognitive and physical impairments hindering the safe performance of law enforcement duties and safety-sensitive activities. Staff reasonably suspected of impairment related to alcohol use at the workplace will be ordered to undergo BAT by trained staff members under reasonable suspicion testing.

11. OPPORTUNITY TO JUSTIFY A POSITIVE RESULT

When the laboratory has confirmed a result as positive and has reported this result to the MRO, the MRO must provide the individual providing the urine sample (donor) with the opportunity to justify the result based on the donor's medical history. Only a licensed physician will make a determination of illegal drug use. Such determination must be made only after the physician has afforded the donor an opportunity to justify the positive laboratory finding. When the MRO determines there is a legitimate reason for the presence of the identified drug, the test result must be identified as negative.

Regardless of state or local law, MROs must not accept a prescription, or the verbal or written recommendation of a physician for a Schedule I substance as a legitimate medical explanation for the presence of a Schedule I drug or metabolite in federal staff or applicant specimen.

12. TESTING BY LABORATORY OF STAFF'S CHOICE

Staff may request, from the MRO, a retest of their original sample within 72 hours following notice of their positive result. This consists of a retest of the original specimen at a second SAMHSA-certified laboratory selected by the staff member. The Bureau must bear the cost of re-analysis.

A decision by the staff member to pursue a retest must not delay notice to the CEO of a positive drug test. If the retest fails to confirm the presence of the previously identified substance, the original test must be considered negative. If the retest is negative, any disciplinary action will be discontinued, and all records of such action must be removed from the staff member's official personnel folder.

13. CATEGORIES OF TESTING

Drug use testing will be performed in these categories:

- Pre-employment
- Random
- Reasonable suspicion
- Post-accident
- Active enrollment in Safe Harbor Program and post-treatment – EAP
- Voluntary

a. **Pre-employment.** All applicants are to be notified of the Bureau's drug testing program, and notification of drug testing is to be posted on vacancy announcements.

Applicants tentatively selected for employment with the Bureau must be required to submit to urinalysis drug screening prior to appointment to any Bureau position. The applicant is not to be notified of the actual date and time of the drug test.

Positive results which cannot be justified by the presence of a prescription drug must preclude the applicant from any further consideration from all Bureau locations for a period of two years. The appropriate Human Resource Management staff must remove the applicant from any further consideration based on a lack of personal characteristics necessary to relate to an inmate population, and failure to support the organization's goals.

If an applicant has entered on duty before positive results are confirmed and has denied drug usage during the pre-employment interview, action must be taken to separate the staff.

b. **Random.** The random testing selection pool must include all staff occupying TDPs and staff who have volunteered to be subject to random testing. Selection must be determined by simple random sampling conducted quarterly with an annual selection rate of 10 percent.

Each quarter, the National Coordinator must provide each CEO a list of staff, to include PHS, to be tested. Quarterly sampling must be drawn from the complete TDP pool. Every staff member filling a TDP will have an equal chance for selection each quarter. Although the chances of such are very low, staff could be selected multiple times in a given year.

- **Special Cases.**

- **Institution CEOs.** The National Coordinator will notify the Regional Director, who will instruct the CEO to report to the institution trained collector for drug testing.
- **Regional Directors, Assistant Directors, Deputy Director, and the Director.** The National Coordinator will notify the Chief, Occupational Safety & Health, who will

notify the Regional Directors, Assistant Directors, Deputy Director, or the Director to report to the nearest available trained collector for drug testing.

In these cases, final test results will be provided to the donor and to the next level supervisor.

c. **Reasonable Suspicion.** The CEO may require a urinalysis test be conducted on the basis of a reasonable suspicion of drug use or alcohol misuse.

All staff may be tested for suspicion of on-duty use or impairment. Staff in TDPs may also be tested for suspicion of off-duty use or impairment. Testing for reasonable suspicion will be conducted in accordance with the following criteria:

- Facts and circumstances known warrant a rational inference that a person is using drugs
- Suspicion is supported by evidence of specific personal observations concerning job performance, appearance, behavior, speech, or bodily odors of the staff, or if based on hearsay evidence, there is corroborative evidence from a manager or supervisor with training and experience in the evaluation of drug-induced impairment.
- **Procedure.** If staff is suspected of using illegal drugs or misuse of legal drugs or alcohol, the appropriate supervisor or management official must gather all information, facts, and circumstances leading to and supporting that suspicion, and report that information, in writing, to the CEO.

The CEO will determine if there is sufficient evidence to substantiate reasonable suspicion and document in a memorandum the specific facts and circumstances that led them to believe the staff in question is, or has been, using drugs illegally or misusing legal drugs or alcohol. The memorandum must be sent to the National Coordinator, and include, at a minimum:

- the appropriate dates and times of reported drug-related incidents
- reliable/credible sources of information or corroborating information, if any
- the rationale leading to the test

A subsequent report must be prepared to document the test result and the action taken regarding the staff.

- **Notification & Specimen Collection.** When grounds for reasonable suspicion have been established, the CEO must ensure:
 - The staff is notified that they are required to submit to a drug or alcohol test based on reasonable suspicion of illegal drug use or misuse of legal drugs or alcohol. The suspected staff must be explicitly ordered to submit to a reasonable suspicion drug test in the presence of a witness
 - The trained specimen collector is notified

- A supervisory staff member is assigned to accompany the suspect staff to the appropriate collection site
- **Privacy.** The staff's privacy is an important concern; however, when there is an independent reason to believe the staff is likely to alter or substitute the specimen, provision of the sample may be directly observed. If the donor staff is of different sex than the collector, provision must be made for a same sex observer. The observer is not to participate in the chain-of-custody of the specimen and will be clearly instructed not to touch the specimen or any collection paraphernalia.

No direct observation must occur without authorization of the CEO ordering the test. Rationale for use of direct observation must be clearly documented in the CEO's record.

d. **Post-Accident or Unsafe Practice.** Staff filling a TDP may be subject to drug or alcohol testing if they appear to have caused or contributed to a work-site accident resulting in:

- Death, or personal injury requiring immediate medical treatment
- Property damage in excess of \$10,000

If the accident involved the operation of a qualifying commercial motor vehicle, post-accident testing may be required under the authority of the Department of Transportation, Federal Highway Administration (DOT/FHWA).

Based on satisfaction of the above criteria, the immediate or higher-level supervisor may arrange for the driver to undergo drug or alcohol testing. Local CEOs may further restrict the level of authority required for post-accident testing.

When testing is conducted because of a work-site accident, the decision maker must promptly detail in writing for the CEO the basis of the decision to require a drug test. The written report must include, at a minimum:

- Date and time of the reported accident
- Circumstances surrounding the accident
- Rationale for perceived appearance the staff may have caused or contributed to the accident
- Documentation of the order to require a drug screen

Having determined a drug or alcohol test is warranted, the CEO or designee will contact the certified collector with instructions to conduct a post-accident staff drug screen. The CEO or designee will be responsible for ensuring the staff is notified of the required drug or alcohol test, and the individual clearly understands they are being required to submit to a post-accident drug

or alcohol screen. The CEO will document in a memorandum sent to the National Coordinator, the specific facts and circumstances, and include, at a minimum:

- Date and time of the reported accident
- Circumstances surrounding the accident
- Rationale for perceived appearance the staff may have caused or contributed to the accident
- Documentation of the order to require a drug test

A subsequent report must be prepared to document the test result and the action taken regarding the staff.

Drug or alcohol tests ordered under this provision are to be collected as soon as possible after the accident; however, the drug test will not interfere with the provision of required medical treatment. Staff must be given the same privacy and safeguards provided under the reasonable suspicion category of testing.

e. **Post Completion of Substance Abuse Treatment or Follow-Up.** Staff will be subject to follow-up testing after completing a drug-related treatment program required by the Bureau. Follow-up testing must be conducted without notice of regularity and will continue for 24 months at the discretion of the CEO and the National Coordinator.

f. **Voluntary Submission to Testing.** Staff not occupying a TDP are offered the opportunity to submit themselves for inclusion in the random testing program. Volunteers must be subject to random testing as if they occupied positions deemed to be test designated.

Staff may be included in the random selection testing pool by submitting a memorandum of request to the National Coordinator, HSD, Central Office. Such staff must be maintained as a volunteer until written notice of withdrawal is provided to the National Coordinator.

14. REPORTING

Applicant test results must be reported to the local Human Resource Management office initiating the request for drug testing. Staff test results must be reported by the MRO to the National Coordinator. The National Coordinator must immediately notify the appropriate CEO of any positive staff test results and any non-random selection (reasonable suspicion, post-accident, etc.) staff result. The results of negative random selection results must not be reported to individual CEOs except on request.

15. CONFIDENTIALITY AND PROCESSING OF RECORDS

MROs must store all positive staff test reports for a minimum of five years. All records and

information of personnel actions taken on staff who tested positive must be forwarded to the appropriate branch within the Office of General Counsel, Central Office. All drug testing information specifically relative to individuals is protected under the Privacy Act of 1974, as amended, 5 U.S.C. § 552a and must be available to authorized individuals only on a need-to-know basis.

Patient records concerning staff in the EAP are confidential and will not be forwarded. The EAP will disclose EAP records only as authorized by 42 CFR Part 2, or upon the staff's written consent. With written consent, the patient may authorize the limited disclosure of those records to the Bureau for verification of treatment or for a general evaluation of treatment progress.

REFERENCES

Program Statements

Employee Assistance Program
Standards of Employee Conduct

Federal Statutes

Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq.
Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.
Controlled Substances Act, 21 U.S.C. § 801 et seq.
Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2654
Privacy Act of 1974, as amended, 5 U.S.C. § 552a The Federal Controlled Substances Act (CSA) of 1970, established under 21 U.S.C. § 801 et seq.

Federal Regulations

41 CFR Part 102-34
42 CFR Part 2
49 CFR Part 40
Executive Order 12564
Mandatory Regulations for Federal Workplace Drug Testing Programs, 53 FR 11970.

Other References

Regulations Model Plan for a Comprehensive Drug-Free Workplace Program

ACA Standards

Performance-Based Standards and Expected Practices for Adult Correctional Institutions (5th Edition): 5-ACI-1C-16

Performance-Based Standards and Expected Practices for Adult Detention Facilities (5th Edition): 5-ALDF-7C-01

Standards for Administration of Correctional Agencies: 2-CO-1C-20

Standards for Correctional Training Academies: 1-CTA-1C-07

Records Retention Requirements

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on the Bureau's intranet site.

Category	HHS Drug Testing (Federal Staff)	DOT Drug & Alcohol Testing (Safety-Sensitive Positions)
Governing Authority	Department of Health and Human Services (HHS) Mandatory Regulations	Department of Transportation (DOT) Regulations
Primary Purpose	Support a drug-free federal workplace and ensure staff reliability and integrity	Protect public safety by preventing substance use among safety-sensitive transportation workers
Who Is Covered	Federal staff, applicants for employment, and Test Designated Positions (TDPs)	Staff performing DOT-defined safety-sensitive transportation functions only
Applicable Regulations	Executive Order 12564; 41 CFR Part 102-34; HHS Mandatory Regulations	49 CFR Part 40 and applicable DOT agency regulations
Testing Panel	Marijuana (THC), Cocaine, Amphetamines, Opioids, PCP, and Fentanyl (including norfentanyl)	DOT-mandated drug panel
Alcohol Testing	Authorized only for Reasonable Suspicion	Required under DOT regulations
Medical Review	Review by a certified Medical Review Officer (MRO)	Review by an MRO; violations trigger additional regulatory actions
Post-Violation Action	Administrative personnel actions consistent with federal employment policy and the Program Statement Standards of Employee Conduct	Immediate removal from safety-sensitive duties; mandatory evaluation by a Substance Abuse Professional (SAP)
Nature of Program	Administrative and employment-based	Safety-driven and public-protection focused
Custody & Control Form (CCF)/COC Form	HHS federal CCF only	DOT CCF only
Interchangeability	Not interchangeable with DOT testing	Not interchangeable with HHS testing