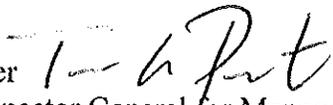




Department of Energy
Washington, DC 20585

December 8, 2014

MEMORANDUM FOR NEW OFFICE OF INSPECTOR GENERAL EMPLOYEES

FROM: Tara A. Porter 
Assistant Inspector General for Management and Administration

SUBJECT: 30-Day Advance Notice of Random Drug Testing
Inspector General

Department of Energy (DOE) Order 343.1, *Federal Substance Abuse Testing Program*, dated January 30, 2014, outlines the Department's Federal Substance Abuse Testing Program (FSATP) to eliminate illegal drugs from the Federal workforce. One component of the program is the random testing of employees in testing designated positions (TDPs). The purpose of this memorandum is to inform you that if you occupy a position which has been designated as TDP (see Attachment 1), you will be subject to random drug testing for illegal drugs.

Consistent with the provisions of DOE Order 343.1, this is to also advise you of the following:

1. Purpose. The purpose of the FASTP is to eliminate illegal drugs from the Federal workplace and to help employees who have drug abuse problems.
2. Requirement. You must provide a urine specimen for drug testing unless one of the following conditions apply:
 - a) You go to your Employee Assistance Program (EAP) Coordinator, acknowledge that you have a drug abuse problem, and seek counseling and/or rehabilitation assistance for this problem before being selected for random drug testing. In this event, you may be temporarily excused from drug testing. To determine if this will occur, see paragraph 6 below. If, however, you go to your EAP Coordinator seeking assistance after being selected for random drug testing, you must provide a specimen for drug testing unless you take the action specified in paragraph 2(b) below.
 - b) You go to your supervisor or a higher level management official in the chain of command directly above your supervisor, acknowledge that you have a drug abuse problem, and seek counseling and/or rehabilitation assistance for this problem before or after being selected for random drug testing. If you go before being selected for random testing, your supervisor will refer you to the EAP Coordinator for assistance, and you may also be temporarily excused from drug testing. If you go after being selected for random testing, your supervisor will refer you to the EAP

- c) Coordinator for assistance, and excuse you from this particular random drug test. You may also be temporarily excused from subsequent drug testing. To determine if this will occur, see paragraph 6 below. In addition, your supervisor or the higher level management official will initiate appropriate corrective actions as discussed in paragraph 8 below.
3. Procedure. At the time of collection, you will be given specific information about the procedures to be followed in collecting a specimen for testing. To assure that the sample collected from you is not accidentally confused with any other sample, strict chain of custody procedures will be used when collecting, transferring, and testing the specimens. Specimens will normally be provided in private (i.e., unobserved) but under controlled conditions. You will be advised of any exception to this procedure at the time of the collection.
 4. Types of Tests Used. Drug testing for the Department is performed through urinalysis by an independent contract laboratory certified by the Federal Government. The testing methodology reflects the scientific and technical procedures necessary to assure that the results are highly reliable and accurate. The initial test uses a method known as immunoassay. Those samples that test positive on the initial test will be analyzed further through a process known as gas chromatography/mass spectrometry. A confirmed positive test result reported by the laboratory will be reviewed by the Medical Review Officer (MRO) before a determination is made that an employee has used illegal drugs. All test results will be handled with maximum respect for individual confidentiality, consistent with safety and security.
 5. When Testing May Occur. In addition to random drug testing of employees in the drug testing pool, DOE administered testing may also be done at any time under the following circumstances: (1) when there is a reasonable suspicion that an employee uses illegal drugs; (2) when an employee's actions are reasonably suspected to have caused or contributed to an accident or unsafe practice; (3) when it is determined that follow-up drug testing is required as a result of a positive determination of the use of illegal drugs; (4) when it is determined that an employee, who is scheduled for a physical examination under DOE's Human Reliability program, has gone 12 months since his or her last test for the use of illegal drugs; and (5) when an employee is reassigned or promoted from a non-TDP to a TDP.
 6. Counseling and Rehabilitation. It is the policy of DOE to provide employees who have substance abuse or other related medial behavioral problems with counseling and/or rehabilitation assistance through the EAP. Employees may obtain assistance on their own volition, or they may be referred to the EAP for assistance by their supervisor or the MRO. Employees who do not know the name and telephone number of the EAP Coordinator may obtain it from their supervisor or a representative in their servicing personnel office.

The EAP Coordinator will offer employees limited counseling services and may refer them to one or more private drug treatment or rehabilitation facilities. Typically, these facilities will offer more extensive counseling and rehabilitation

services. Upon contacting the EAP Coordinator employees will be asked to sign one and possibly two consents for the release of information. Copies of these consents may be obtained from the EAP Coordinator.

- a) The first consent will always be required. It shall be addressed to a named individual in the personnel office and will authorize the EAP Coordinator to ask that the employee's name be temporarily removed from the random test pool while the employee undergoes counseling and/or rehabilitation assistance. The consent will cover the release of information pertaining to the employee's participation in a counseling and/or rehabilitation program to help the employee stop using illegal drugs. Employees who do not sign this consent will remain in the random test pool and will be required to provide a specimen for testing if the employee's name is randomly selected for testing.
- b) The second consent will be required only when the employee goes to his or her supervisor or the appropriate higher level management official as described above and acknowledges a drug abuse problem on or before being tested. This consent shall be addressed to the employee's supervisor or appropriate higher level management official and is required before assistance is provided. The consent will cover the release of information pertaining to the employee's compliance with his or her agreed upon treatment plan and the employee's progress during and at the end of treatment. If the employee does not sign this consent, the EAP Coordinator will not provide the employee with assistance and the employee will be immediately entered into follow-up drug testing.

Upon obtaining the first signed consent, the EAP Coordinator will contact the named individual in the personnel office and ask that the employee's name be temporarily removed from the random test pool.

Upon obtaining the second signed consent, the EAP Coordinator will assess the employee's problems, review the employee's health insurance coverage, and where appropriate, refer the employee to one or more appropriate treatment facilities in the community. While in treatment, the EAP Coordinator will monitor the employee's progress and keep his or her supervisor informed as to the employee's progress. If the employee participates in counseling or rehabilitation through a private facility, the employee will be responsible for paying the cost of such treatment. If the employee has health insurance, the employee's plan may pay some of these costs. After treatment, the employee will be immediately entered into follow-up drug testing. In addition, the EAP Coordinator will periodically follow up with the employee and the employee's supervisor and offer support and assistance as needed.

7. Confidentiality of Drug Test Results. Representatives of the drug testing laboratory shall only disclose drug test results to the MRO or the staff of the MRO. Test results are protected under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a, et. seq.) and the Supplemental Appropriations Act of 1987 (Public Law 100-71), section 503(e) and may not be released in violation of either Act. In order to comply with section 503(e) of the Supplemental

Appropriations Act, the results of a drug test of a DOE employee may not be disclosed without the prior written consent of the employee, unless the disclosure would be:

- a) To the MRO;
 - b) To the Coordinator of an EAP in which the employee is receiving counseling or treatment or is otherwise participating;
 - c) To any supervisory or management official within the DOE having authority to take a personnel or security action that is adverse to the employee; or
 - d) Pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any personnel or security action that is adverse to the employee.
8. Corrective Actions. If an employee is found to use illegal drugs as a result of a drug test or as a result of an admission to the employee's supervisor, two actions may be required. If the employee possess an active DOE access authorization or is in the process of obtaining one; the supervisor shall report this information to the appropriate DOE security officials. If the employee occupies a sensitive position, the supervisor shall immediately remove the employee from his or her sensitive duties pending the outcome of counseling and/or rehabilitation. To accomplish this action, the supervisor may either:
- a) Reassign the employee to a non-sensitive position, if one is available;
 - b) Bar the employee from performing the sensitive duties of his/her position where such separation of duties is possible;
 - c) Suspend the employee; or
 - d) Propose the employee's removal from the Federal Service.

The action taken will be determined on a case-by-case basis. In addition, under Executive Order 12564, "Drug-Free Federal Workplace," DOE is also required to initiate disciplinary action against an employee if that employee is found to use illegal drugs, except that discipline is not required if the employee (1) voluntarily admits the use of illegal drugs; (2) completes counseling or rehabilitation through an EAP; and, thereafter refrains from the use of illegal drugs. The decision whether to discipline an employee who has voluntarily identified himself or herself as a user of illegal drugs will be made by the employee's management on a case by-case basis depending upon the facts and circumstances in each case. Although an absolute bar to discipline cannot be provided for certain incumbents of positions because of the extreme sensitivity of their positions, DOE, in determining whether to discipline, will consider that the employee has come forward voluntarily.

Also, under Executive Order 12564, DOE is required to initiate removal against any employee who is found to use illegal drugs and:

- a. Refuses to obtain counseling and rehabilitation through an EAP; or
- b. Does not thereafter refrain from using illegal drugs.

The refusal to submit to testing or failure to cooperate with the collection procedures are independent grounds for disciplinary action up to and including removal from the Federal Service.

9. Grievances. If you believe that your duties do not involve the performance of sensitive tasks ascribed to your position when it was nominated for drug testing or that the procedures used to nominate your position were misapplied, you may file a grievance. If you are represented by a union that has been granted exclusive recognition by DOE, you must follow the negotiated grievance procedure found in the labor-management agreement for your office. If you are not represented by a union, you must follow the administrative grievance procedure found in DOE Order 342.1.

Please sign and date the attached acknowledgment (see Attachment 2) and return it to your Human Resource Specialist. Your signature indicates that you have received and read this memorandum and that you understand that a verified positive test result may lead to a disciplinary action. For a more complete description of your rights and responsibilities, please consult DOE Order 343.1 which is available through the DOE Directives website (<http://www.directives.doe.gov>). Questions concerning the program should be addressed to your supervisor. If further assistance is needed you may contact Edith M. Ramos at (202) 586-2470. Your eligibility for selection for random testing will begin no sooner than 30 days from the date of this memorandum

Attachments

TESTING DESIGNATED POSITIONS (TDPS)
Employee Categories and
Sensitivity Codes

1. **Positions Involving National Security.** This category includes positions/employees having a secret clearance or higher as designated as “L” or “Q.” This category is divided into subcategories, called sensitivity codes. Employees in subcategory “D” will also be subject to alcohol testing as part of the substance abuse testing program.

<u>Sensitivity Code</u>	<u>Description</u>
A	Employee who have a secret clearance or higher (L or Q Clearance).
B	(Reserved)
C	Employees who have unescorted or unrestricted access to Category A nuclear reactor control rooms and/or access to Category 1 quantities of special nuclear material.
D	Employees who are in the Human Reliability Program (HRP). This code shall take precedence over code “A” for employees in the HRP.
E (Reserved)	

2. **Positions Involving Public Health or Public Safety.** This category includes positions having health and safety responsibilities, usually involving a potentially dangerous instrument or machine that could cause immediate, substantial physical injury to the public if carried out under the influence of drugs. Also included are medical positions that provide direct patient care and positions that involve work where mistakes are life-threatening and in which instant judgments are required with little opportunity for review. This category is divided into subcategories of employees as described below.

<u>Sensitivity Code</u>	<u>Description</u>
F	Employees who are authorized to carry firearms.
G	Employees who have access to firearms.
H	Employees who serve on Aviation flight crews. Aviation personnel, including flight attendants, flight instructors, ground instructors, flight testing personnel, aircraft dispatchers, maintenance personnel, and aviation security and screening personnel.
J	Medical doctors and allied medical personnel who are responsible for direct patient care and who prescribe and administer drugs.

- K Employees who serve as direct service staff of alcohol and drug counseling programs.
- L Firefighters.

3. **Positions filled by Presidential Appointees.**

Sensitivity Code Description

- M Employees who are appointed by the President and confirmed by the Senate.
- N (Reserved)

4. **Positions Involving Law Enforcement.** This category includes law enforcement personnel with close proximity to criminals. In DOE only one subcategory is included in this category.

Sensitivity Code Description

- O Criminal Investigators in the Office of Inspector General.

5. **Positions Involving the Construction, Operation, and Maintenance of Transportation or Major Electrical Equipment.** This category includes all employees who are required to maintain commercial driver's licenses (CDLs). This category is divided into subcategories of employees as described below. All CDL holders are subject to alcohol testing.

Sensitivity Code Description

- P Employees who operate motor vehicles carrying passengers under 5 CFR 930.102.
- Q Employees who operate commercial motor vehicles and who are required to have a CDL under 49 CFR 391.85. This code is to take precedence over all other codes that could be assigned to this group of employees except those covered by subcategory U.
- U Employees who are in the HRP who operate commercial motor vehicles and who are required to have a CDL under 49 CFR section 391.85. This code is to take precedence over all other codes that could be assigned to HRP employees.
- R Employees who maintain or construct high voltage (600 volts or higher) electrical equipment or facilities.
- S Employees who are involved in dispatching, controlling, or the operation of high voltage (600 volts or higher) electrical equipment or facilities.

6. **Other Sensitive Positions.** In DOE only one subcategory is included in this category.

<u>Sensitivity Code</u>	<u>Description</u>
T	Employees who are not specifically included in one of the other categories that involves public health, safety, or national security, including a supervisor or program manager who directs or oversees an employee in one of those categories. This category includes positions previously approved that didn't fall in another category and management-initiated determinations.

7. **Positions Filled by Volunteers.** In DOE only one subcategory is included in this category.

<u>Sensitivity Code</u>	<u>Description</u>
V	Employees who are not in a TDP and who request to participate in random drug testing (employee-initiated requests).

ACKNOWLEDGMENT OF RECEIPT

ADVANCE NOTICE OF RANDOM DRUG TESTING
EMPLOYEES IN TESTING DESIGNATED POSITIONS

I acknowledge receipt of the "Advance Notice of Random Drug Testing." I understand that I may be randomly selected for urinalysis testing for the presence of illegal drugs. Further, I am aware of the corrective actions that will be taken or initiated against employees who are found to use illegal drugs or who refuse to submit to a drug test.

I know that a description of the Department's drug testing program and my rights and responsibilities under this program are contained in DOE Order 343.1, which is available for my review on the DOE directives webpage (<http://www.directives.doe.gov>). I understand that questions on the drug testing program or the information in this notice can be addressed to my supervisor. Further, I recognize that if I have any questions after consulting with my supervisor, I may contact the Beau Newman, Drug Program Coordinator for assistance.

Return to your Human Resource Specialist.

Print Name (Last, First, M.):	Signature:
Title:	Date:
Organization:	Duty Station:

•• See Privacy Act Statement below.

Privacy Act Statement

This form is subject to the provisions of Title 5 U.S.C. 552a, The Privacy Act of 1974. The authority to request this information is Executive Order 12564, "Drug-Free Federal Workplace," of 9-15-82; and 5 U.S.C. 7301 note, The Supplemental Appropriations Act of 1987 (Public Law 100-71, Title V, Section 503).

Furnishing the information on this form is not required by law and is voluntary. Your refusal to provide the information on this form will not result in the denial of any right, benefit, or privilege provided by law. If you refuse to provide the information requested on this form, you will still be subject to random drug testing and all other provisions of the Advance Notice of Random Drug Testing no sooner than 30 days from the date of the notice.

The primary use of this information by you supervisor and the Drug Program Coordinator for your office is to record your receipt of the Advance Notice of Random Drug Testing for the presence of illegal drugs. In addition, this form documents your notification of the corrective actions that will be taken or initiated against employees who are found to use illegal drugs or who refuse to submit to a drug test.

Further disclosures of the information on this form may be made to other individuals having a need to know. Examples would include the following:

1. To the Department's Medical Review Officer;
2. To the administrator (i.e., the Employee Assistance Program Coordinator) of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;
3. To any supervisory or management official within DOE having authority to take an adverse personnel action (including the suspension or revocation of access authorization or security clearance) against the employee;
4. To any individual pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action; or
5. To other DOE personnel, including the Departmental Drug Testing Program Manager, for data collection and other activities necessary to comply with section 503(f) of the Supplemental Appropriations Act of 1987.