

**ARTICLE 40
DRUG-FREE WORKPLACE PROGRAM**

Section 40.01 - General. Management agrees that the establishment and administration of its Drug-Free Workplace Program will be done in accordance with Executive Order (E.O.) 12564, the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs, and any Government wide regulations. For the purposes of this agreement, the term "rules or regulations" shall mean those rules or regulations of authorities outside the agency, such as the Office of Personnel Management, HHS, and other Government wide regulations. Any subsequent proposed changes to these procedures that impact bargaining unit employees will be implemented subject to the procedures contained in applicable law and this agreement. The parties recognize that the Union is not authorized to waive and does not waive any legal challenge or Constitutional or legal rights employees may have regarding any facet of drug testing.

Section 40.02 - Employees Subject to Testing. Testing will be conducted in accordance with laws, rules and regulations. E.O. 12564 provides for the following types of drug testing:

- (1) Random testing for the use of illegal drugs by employees in designated testing positions;
- (2) Voluntary employee drug testing;
- (3) Reasonable Suspicion testing;
- (4) Accident and unsafe practice testing;
- (5) Follow-up to counseling or rehabilitation or illegal drug use through the Employee Assistance Program (EAP);
- (6) Applicant testing; and
- (7) An employee who voluntarily identifies himself as a user of illegal drugs.

Section 40.03 - Testing-Designated Position (TDP)

- (1) The designation of testing positions will be done in accordance with applicable laws, rules and regulations. Executive Order 12564 states that "the head of each Executive agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. The extent to which such employees are tested and the criteria for such testing shall be determined by the head of each agency, based upon the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to the public health and safety or national security that could result from the failure of an employee adequately to discharge his or her position.
- (2) Management will provide the appropriate local Union President with any amendments to

Appendix A of the Plan (Positions Subject to Random Testing). The Amendments contain the justification in support of the position designation. The appropriate local Union President will also be provided a copy of the position description. If the position is encumbered at the time of notification, the appropriate local Union President will be provided the name and duty station of the employee in the position. This information will be sent to the appropriate local Union President at the same time it is sent to the employee. The Union will provide Management with the names and addresses of all local Union Presidents.

- (3) Employees encumbering designated testing positions will be notified in writing of the designation in the vacancy announcement or if the designation changes. Management will post on HUD@work a reminder that some employees may be designated for random testing and if they are unsure, they should check with their supervisor or their servicing HR Specialist.
- (4) The Department will not schedule random drug tests during an employee's approved leave schedule.
- (5) The Department will reimburse employees for costs associated to address false positive test results.

Section 40.04 - Reasonable Suspicion.

- (1) Reasonable suspicion is an articulable belief that an employee uses illegal drugs drawn from specific and particularized facts and reasonable inferences from those facts. Mere hunches are not sufficient to meet this standard.
- (2) Reasonable suspicion testing will be conducted in accordance with applicable laws, rules and regulations.
- (3) Prior to directing an employee to testing based on a reasonable suspicion that the employee uses illegal drugs, official ordering such testing will receive concurrence from a higher level official or authorized management official. A written statement will be prepared that will document the concurrence and articulate the reasons for such testing including but not limited to the date and time of the determination factors.
- (4) Employees encumbering a designated testing position may be ordered to undergo a drug test if there is a reasonable suspicion of illegal drug use whether on or off duty.
- (5) Employees who are not in designated testing positions are only subject to drug testing if the reasonable suspicion is based on on-duty illegal drug use or impairment.

Section 40.05 - Accident or Unsafe Practice Testing. Management is committed to providing a work environment that is safe and secure. Employees involved in accidents while operating agency motor vehicles, or who engage in unsafe practices that are job-related and that pose a danger to staff, the public, or to the overall operation of the organization may be subject to drug testing under the provisions of E.O. 12564. This testing will be conducted in accordance with applicable laws, rules, or regulations.

Section 40.06 - Volunteer Testing. Management will not coerce or require employees to participate in voluntary programs established under Section 3(b) of E.O. 12564, or any other voluntary program. Participation or non-participation in these programs will neither advantage nor disadvantage employees in any aspect of their employment. To the extent that random testing may be conducted on volunteers, it must be conducted in accordance with applicable laws, rules and regulations.

Section 40.07 - Notification to Employees.

- (1) Management agrees to make every effort to fully inform employees about the goals, objectives, policies and procedures of any drug testing plan.
- (2) An annual staff bulletin will be issued to provide updates to employees on the status of the Drug-Free Workplace Program.
- (3) On the day of drug testing, the employee to be tested shall receive in writing the information set forth below. If the testing is to take place at a location other than the employee's duty station, the information shall be given prior to leaving the duty station. Otherwise, the information shall be given to the employee prior to the scheduled collection time. Inadvertent failure to provide this information will not invalidate the results of an employee's drug test. The time an employee requires to provide a specimen including travel time shall be considered duty time.
 - (a) Whether the test is voluntary or mandatory;
 - (b) The reasons for ordering the drug test;
 - (c) How the employee was selected for the test;
 - (d) The consequences of a positive result or refusal to cooperate, including adverse action;
 - (e) What drug(s) or class of drugs they are being tested for;
 - (f) The Medical Review Officer (MRO) process as set forth by the HHS guidelines, including the procedures relating to the submission of information to justify a positive result caused by prescription medication, non-prescription medication or other substance;
 - (g) The location of drug abuse counseling and referral services available through the EAP to which he/she can submit prior to testing. (However, the test will not be delayed to allow the employee to seek assistance);
 - (h) The fact that the employee has a right to Union representation only as provided in this Agreement or the Federal Labor-Management Relations Statute;
 - (i) The right to a split sample and a test of the split sample;

- (j) That employees may contact their Health Plan Representative to obtain information about possible cost reimbursement associated with a split sample test;
- (k) The consequences should they refuse counseling or rehabilitation; and
- (l) Notification that employees shall have access to test results and associated documents.

Section 40.08 - Methods and Procedures for Testing.

- (1) The parties agree that methods and equipment used to test for abuse of drugs yield the best results when the most reliable are used. Therefore, Management agrees to review the Federal Register to ensure that its contractor remains an HHS certified laboratory. In the event that the contractor is decertified in accordance with HHS guidelines, Management shall order the cessation of any further testing at the decertified laboratory. Management agrees to cease further collections until an HHS certified laboratory is available to accept Agency specimens.
- (2) Management agrees that the following procedures will be utilized subject to applicable laws, rules or regulations, to assure drug testing is reliable and employee concerns are recognized:
 - (a) The collection, handling, and transportation of all specimens will be strictly in accordance with HHS Chain of Custody Procedures, other HHS requirements, and any other pertinent laboratory requirements.
 - (b) The individual may provide their specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy in accordance with the Department of Health and Human Services' Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). Management will make every reasonable effort to ensure that the specimen will be provided in a sanitary area.
 - (c) At the employee's request, the urine sample will be split at the time of collection in accordance with procedures set forth in the Mandatory Guidelines. Upon notification of a positive confirmatory test, the MRO will notify the employee and he/she will have the opportunity to provide any/all relevant information that will assist the MRO in determining whether the positive test result is justified. At the employee's request, the MRO will notify the Laboratory to conduct a confirmatory test on the retained split sample. The cost of the confirmatory test will be billed to the employee by the agency if the results do not refute the results of the original test. Should the employee-requested confirmatory test refute the original test conducted, the original test result will be negated and the Department will assume the cost of the laboratory test in addition to the other aforementioned costs.
 - (d) If sufficient volume of urine is not able to be provided within a reasonable period of time in accordance with the Mandatory Guidelines, the collection site person will contact an appropriate Management official. Normally, "a reasonable period of time" should not extend beyond the employee's scheduled work day. Consideration will be given to re-scheduling the employee for testing at a later date.

- (e) The authorized collection agent will collect all drug testing specimens. Management agrees to monitor the collection contract to assure compliance with the Mandatory Guidelines.
- (f) Employees will not be required to reveal legitimate use of legal or prescription drugs at the time of collection. Employees may, however, provide this information if they so desire. This information is confidential and will only be released to the MRO.
- (g) Any employee who tests positive will be afforded an opportunity to justify the test results in accordance with I-IHS guidelines, including the opportunity to present evidence of the legitimate use of prescription medication, non-prescription medication, or other substance.
- (h) If the test is positive and the employee provides evidence that Management concludes demonstrates a disabling drug dependency, Management may provide any appropriate reasonable accommodations in accordance with applicable laws, rules and regulations. Follow up testing conducted on employees who successfully complete a rehabilitation program will comply with applicable laws, rules and regulations.
- (i) Upon receipt of a positive test result resulting from the Gas Chromatography/Mass Spectrometry (GC/MS, i.e., confirmatory test), or successor technology, conducted by the HHS certified laboratory, the MRO, in accordance with HI-IS guidelines, will examine alternate medical explanations for the test results. If the MRO concludes that the employee's medical documentation does not provide a legitimate medical explanation for the positive test result, the MRO must explain the basis for his/her rejection of the documentation in writing for the benefit of the employee. If the MRO determines there is a legitimate medical explanation for the positive test result, he/she shall determine that the result is consistent with legal drug use and will take no further action. The test result reported back to the agency would be "negative."
- (j) When requesting that collection times be scheduled for drug testing under Reasonable Suspicion tests and Accident or Unsafe Practices testing, where appropriate, the Authorizing Management Official will take into consideration leave and travel plans which have been scheduled and approved by the employee's supervisor. Management retains the right to cancel leave or travel orders as the circumstances warrant.

Section 40.09 - Confidentiality and Safeguarding of Information. The parties recognize the responsibility to protect the confidentiality of employees under any drug testing plan. This process shall include the following:

- (1) The collection, handling, and transportation of all specimens will be strictly in accordance with HHS Chain of Custody Procedures, and other HHS requirements. Confidentiality and safeguarding of information will be handled in accordance with Section 48.08 (2)(a).

- (2) Employees will be assured confidentiality in all matters relating to drug testing. Information will only be released in accordance with applicable laws, rules or regulations.
- (3) The Department shall destroy all Departmental records concerning non-confirmed or justified test results as required by applicable laws, rules, or regulations.
- (4) In accordance with applicable laws, rules, regulations, Mandatory Guidelines, and subsequent changes thereto, the employee who was subject to a drug test shall, upon written request, have copies of all records relating to his or her drug test within the control of the Department.

Section 40.10 - Counseling and Rehabilitation.

- (1) Employees whose tests have been confirmed positive will be referred to an Employee Assistance Program Counselor for counseling and/or referral assistance for appropriate treatment and rehabilitation.
- (2) To the extent feasible and to the extent of available Management resources, counseling and rehabilitation services will be offered to employees and their family members with substance abuse problems, and also to employees who have family members with substance abuse problems.
- (3) If an employee voluntarily reports to management illegal drug use and/or addiction, that employee shall be referred to the Employee Assistance Program for treatment by a health care professional and will not be disciplined for the conditions reported. It is understood that employees are responsible for their conduct regardless of conditions reported. Subsequent use of illegal drugs may result in disciplinary action once the employee's due process rights are met.
- (4) After successful completion of rehabilitation, Management will return the employee to the same or similar position, or a position at the same grade as the one occupied before the drug problem was identified.

Section 40.11 - Acknowledgement Forms. No employee shall be required to sign any document stating that he or she agrees with a drug testing program. Employees' signatures on any acknowledgement documents will merely signify notice of the terms of the document.

Section 40.12 - Employee Rights.

- (1) Employees may grieve disputes or conflicts as provided in this Agreement.
- (2) Any travel and/or per diem required in connection with drug testing will be provided in accordance with Federal Travel Regulations and Management's current travel policy.

Section 40.13 - Union Rights. Upon request, Management shall timely provide the Union copies of all statistical data pertaining to drug testing, sanitized copies of reasonable suspicion determination notices to employees, and pertinent parts of its annual report to Congress which

pertain to the Drug-Free Workplace Program. The reasonable suspicion notice to the employee will be sanitized to guarantee total anonymity of the employee.

Section 40.14 - Savings Clause. To the extent that any of the provisions of this article are inconsistent with the HHS Mandatory Guidelines, or any subsequent amendments thereto, such Mandatory Guidelines or amendments shall supersede this article.