

NATIONAL SUPPLEMENT

Between

Department of Housing and Urban Development
and

American Federation of Government Employees Council #222

Subject: Drug-Free Workplace Program

Section 1 - General.

The employer agrees that the establishment and administration of its Drug-Free Workplace Program will be done in accordance with E.O. 12564, the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Testing Programs, and any subsequent changes thereto, other relevant laws, rules and Governmentwide 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 Governmentwide regulations. The parties agree that any subsequent proposed changes to these procedures that impact bargaining unit employees will be implemented subject to the procedures contained in applicable law and the parties existing negotiated agreement. By entering into 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 2 - Employees Subject to Testing.

Testing will be conducted in accordance with law, rule and regulation. E.O. 12564 provides for the following types of drug testing:

"Test for the use of illegal drugs by employees in sensitive positions;

Voluntary employee drug testing;

Reasonable Suspicion testing;

Accident and unsafe practice testing;

Follow-up to counseling or rehabilitation for illegal drug use through the EAP;

Applicant testing;

An employee who voluntarily identifies himself as a user of illegal drugs."

Section 3 - Positions Designated as Sensitive.

- A. The designation of sensitive 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."
- B. HUD 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.

Section 4 - Reasonable Suspicion.

- A. FPM Letter 792-19 states, "Reasonable suspicion is an articulable belief that an employee uses illegal drugs drawn from specific and particularized facts and reasonable inferences from those facts."
- B. Reasonable suspicion testing will be conducted in accordance with applicable laws, rules and regulations.

Section 5 - Accident or Unsafe Practice Testing.

The Department 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 the overall operation of the organization may be

subject to drug testing under the provision of E.O. 12564. This testing will be conducted in accordance with applicable law, rule, or regulation.

Section 6 - Volunteer Testing.

HUD 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 7 - Notification to Employees.

- A. HUD agrees to make every effort to fully inform employees about the goals, objectives, policies and procedures of any drug testing plan.
- B. Sixty (60) calendar days prior to the implementation of any drug testing plan, HUD will notify all employees that testing for use of illegal drugs may be conducted.
- C. HUD will give employees in Headquarters and Regional Office cities an opportunity to attend briefings on the Drug-Free Workplace Program prior to the implementation of the testing component of the program in each location. HUD will additionally provide briefings, awareness sessions and/or educational materials for all other employees prior to the implementation of the testing component in each locality. At briefings, employees shall have the opportunity to ask questions and get answers. Educational packages and any subsequent staff bulletins shall include the name and number of a contact person who will answer employees' questions. An annual staff bulletin will be issued to provide updates to employees on the status of the Drug-Free Workplace Program. Briefings, awareness sessions and educational materials shall include, but are not limited to the following:
 1. Participation in the program does not necessarily imply suspicion of drug use;
 2. Information about the MRO process as set forth in the HHS guidelines, including the procedures for submitting documentation that may support a justification for a positive test result;

3. The consequences of an unjustified positive test result or a negative test result;
 4. The reasons for the urinalysis test, and the circumstances under which testing may occur;
 5. Notice of the opportunity for and the consequences of an employee voluntarily identifying himself/herself as a user of illegal drugs and willing to undertake counseling and rehabilitation;
 6. Information about the test procedures and the HHS guidelines regarding quality assurance and control, and confidentiality;
 7. The availability of drug abuse counseling and referral services, including the name and telephone number of the local EAP Coordinator;
 8. The fact that the employee has a right to union representation as provided in the Master Agreement; and
 9. The consequences should they refuse counseling or rehabilitation.
- D. 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.
1. Whether the test is voluntary or mandatory;
 2. The reasons for ordering the drug test;
 3. How the employee was selected for the test;
 4. The consequences of a positive result or refusal to cooperate, including adverse action;
 5. What drug(s) or class of drugs they are being tested for;
 6. The 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;

7. The location of drug abuse counseling and referral services available through the Employee Assistance Program to which he/she can submit prior to testing. (However, the test will not be delayed to allow the employee to seek assistance);
8. The fact that the employee has a right to Union representation only as provided in the Master Agreement or the Labor Relations Statute;
9. The right to a split sample and a secondary laboratory test;
10. That employees may contact their Health Plan Representative to obtain information about possible cost reimbursement associated with a secondary laboratory test; and
11. The consequences should they refuse counseling or rehabilitation.

Section 8 - Methods and Procedures for Testing.

- A. 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, HUD agrees to review the Federal Register expeditiously to ensure that its contractor remains an HHS certified laboratory. In the event that the contractor is decertified in accordance with HHS Guidelines, HUD shall order the cessation of any further testing at the decertified laboratory. HUD agrees to cease further collections until an HHS certified laboratory is available to accept Agency specimens.
- B. HUD agrees that the following procedure will be utilized subject to law, rule or regulations, to assure drug testing is reliable and employee concerns are recognized:
 1. 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.
 2. The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy in accordance with the HHS guidelines. HUD will make every

reasonable effort to ensure that the specimen will be provided in a sanitary area.

3. At the employee's request, the urine sample will be split at the time of collection, and will be transmitted to an Agency contractor (SECONDARY LABORATORY) for storage in accordance with Chain of Custody procedures. The split sample will be retained in an appropriate, refrigerated, and secure storage facility in accordance with HHS Guidelines for a period of no longer than fifteen days. The cost of conducting the split sample, the materials, postage, and storage costs are the responsibility of the Agency.

Upon notification of a positive confirmatory test from the PRIMARY LABORATORY, 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 SECONDARY LABORATORY to conduct a confirmatory test on the retained split sample. This confirmatory test will be conducted in accordance with HHS Guidelines regarding "Retesting of Specimens" and will not utilize cutoff levels. 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 conducted by the SECONDARY LABORATORY utilizing the split sample refute the original test conducted by the Agency PRIMARY LABORATORY, the original test result will be negated and the Agency will assume the cost of the laboratory test in addition to the other aforementioned costs.

4. If sufficient volume of urine is not able to be provided within a reasonable period of time in accordance with HHS Guidelines, the collection site person will contact an appropriate authority within HUD. 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.

5. The authorized collection agent will collect all drug testing specimens. HUD agrees to monitor the collection contract to assure compliance with applicable HHS Guidelines.
6. 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.
7. Any employee who tests positive will be afforded an opportunity to justify the test results in accordance with HHS guidelines, including the opportunity to present evidence of the legitimate use of prescription medication, non-prescription medication, or other substance.
8. If the test is positive and the employee provides evidence that Management concludes demonstrates a disabling drug dependency, Management will 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.
9. Upon receipt of a positive test result resulting from the GC/MS (confirmatory test) conducted by the HHS certified laboratory, the MRO, in accordance with HHS 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."
10. When requesting that collection times be scheduled for drug testing under Reasonable Suspicion testing 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 9 - 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:

- A. 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 8.B.1.
- B. Employees will be assured confidentiality in all matters relating to drug testing. Information will only be released in accordance with law, rule or regulation.
- C. The agency shall destroy all agency records concerning non-confirmed or justified test results as required by law, rule, or regulation.
- D. In accordance with all applicable laws, rules, regulations, 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 agency.

Section 10 - Counseling and Rehabilitation.

- A. 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.
- B. To the extent feasible and to the extent of available HUD 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.
- C. After successful completion of rehabilitation, Management will seriously consider returning the employee to the same or similar position as the one occupied before the drug problem was identified.

Section 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 12 - Employee Rights.

- A. Employees may grieve disputes or conflicts only as provided in the Master Agreement.
- B. Any travel and/or per diem required in connection with drug testing will be provided in accordance with Federal Travel Regulations and HUD's current travel policy.

Section 13 - Union Rights.

- A. Prior to implementation and upon request by local Union representatives, local Management will meet with Union representatives at the local level to discuss and answer questions on the planned implementation of the Drug-free Workplace Plan. Once requested, the meeting will be held as soon as reasonably possible. The sole purpose of the meeting will be to facilitate a smooth implementation process by ensuring that both Union and Management representatives have a common understanding of major components of the plan.
- B. 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 pertains to the Drug-Free Workplace Program. The reasonable suspicion notice to the employee will be sanitized to guarantee total anonymity of the employee.

Section 14 - Savings Clause.

To the extent that any of the provisions of this agreement are inconsistent with the HHS guidelines, or any subsequent amendments thereto, such guidelines or amendments shall supersede this agreement.

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