

Model Plan for a Comprehensive Drug-Free Workplace Program

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Supplement and Attachments

Substance Abuse and Mental
Health Services Administration
Rockville MD 20857

Since the publication of the Model Plan for a Comprehensive Drug Free Workplace Program in 1989, the following changes in language and implementation practice have been directed by the Office of Personnel Management and the Interagency Coordinating Group (ICG) Executive Committee acting for the Office of National Drug Control Policy, in coordination with the Department of Justice.

Guidance for the selection of Testing Designated Positions was issued by the ICG Executive Committee on January 24, 1992 and was supplemented by a June 10, 1993 Department of Justice letter (copies of both attached). The Mandatory Guidelines for Federal Workplace Drug Testing Programs, originally issued on April 11, 1988, have been revised and were reissued on June 9, 1994 (copy attached).

A. References and Authorities

Under Section I., Introduction, item G., References, 1., Authorities, letter e., "as revised (1994)" should be inserted after "(1988)."

Under item G., References, 2, Guidance, citations of Office of Personnel Management (OPM) Federal Personnel Manual (FPM) Letters should be deleted since the Federal Personnel Manual no longer exists.

B. Definitions

Under Section II., Definitions, item H, Employees in Sensitive Positions, sub-item 1., the phrase "... under Chapter 731 of the Federal Personnel Manual" should be deleted since the Federal Personnel Manual no longer exists.

C. Range of Consequences

Under Section VIII., Finding of Drug Use and Disciplinary Consequences, item C., Range of Consequences, a subparagraph 7, "Reducing the employee in pay or grade" should be added as a possible disciplinary action.

D. Reasonable Suspicion Testing

The following new paragraph should be inserted ahead of the present paragraph under Section X., Reasonable Suspicion Testing, item A., Grounds:

"Reasonable suspicion testing may be required of any employee in a position which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment."

E. Applicant Testing

Under Section XI., Applicant Testing, the testing of applicants for Testing Designated Positions is strongly encouraged and preferred by the Interagency Coordinating Group, Executive Committee. Testing of applicants for other positions remains within Agency discretion.

F. Accident or Unsafe Practice Testing

Under Section XII., Additional Types of Drug Testing, the following new paragraph A should be substituted for the present paragraph A., Accident or Unsafe Practice Testing:

G. Injury, Illness, Unsafe, or Unhealthful Practice Testing

[Agency] is committed to providing a safe and secure working environment. It also has a legitimate interest in determining the cause of serious accidents so that it can undertake appropriate corrective measures. Post-accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based upon the circumstances of the accident, their actions are reasonably suspected of having caused or contributed to an accident that meets the following criteria:

1. The accident results in a death or personal injury requiring immediate hospitalization; or
2. The accident results in damage to government or private property estimated to be in excess of \$10,000.

If an employee is suspected of having caused or contributed to an accident meeting the above criteria, the appropriate supervisor will present the facts leading to this suspicion to the [Agency Official] for approval. Once approval has been obtained and arrangements made for testing, the supervisor will prepare a written report detailing the facts and circumstances that warranted the testing."

H. Privacy Assured

Under Section XIII., Test Procedures in General, item B., Privacy Assured, the subparagraph 1 (a), " is being tested pursuant to Section X relating to reasonable suspicion testing;" should be deleted and the remaining subparagraphs re-lettered accordingly.

[Prepared by the Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, effective July 10, 1995, revised September 30, 1995.]

Acknowledgements

This model plan was developed by a Federal Interagency Coordinating Group composed of representatives from the Department of Health and Human Services, the Office of Personnel Management, and the Department of Justice and distributed to Federal agencies by the National Drug Policy Board.

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Foreword

Many private and non-Federal public sector employers are currently seeking advice and guidance in developing and implementing programs for achieving a drug-free workplace.

They are taking action because they have been stimulated by the realities of life in late 20th Century America: In spite of miraculous medical advances creating the possibility for good health and long life for more people than ever before, those possibilities are tragically wiped out in the individual lives crippled or destroyed mentally or physically by the use and effect of drugs. Those possibilities are stifled in families, communities, schools, and workplaces as individual drug use weaves its way into the fabric of society. Employers find themselves in a global marketplace while recognizing that this nation's rate of drug use is among the highest of any nation bringing goods and services into that marketplace.

Employers have also been stimulated by Federal leadership and incentives, initially articulated in 1986 when President Reagan issued Executive Order 12564 to the Federal Government — the nation's largest employer — requiring that it establish and maintain drug-free workplaces. The Congress set terms for implementation of that order in Pub. L. 100-71. There followed in late 1988 regulations from the Departments of Transportation and Defense and new legislation, the Drug-Free Workplace Act of 1988, all of which require or hold out incentives for implementation of drug-free workplace provisions.

To employers stimulated to act on their own or to those acting in response to a Federal requirement or incentive, this publication offers a model drug-free workplace plan to use as a compass, though not necessarily to set an exact course. The model plan points to the essential five elements set out in Executive Order 12564:

1. Development of a comprehensive written policy
2. Supervisory training
3. Employee education
4. Availability of employee assistance programs
5. Identification of illegal drug users, including drug testing on a controlled and carefully monitored basis.

The model plan's foundation is a policy which offers a helping hand while clearly communicating that use of illegal drugs will not be tolerated. Publication of the model offers non-Federal employers the benefit of the Federal experience. Just as application of this model within the Federal sector was affected by the uniqueness of each Federal Agency, its application outside the Federal context must be flexible enough to accommodate the needs of the great variety of employers, work sites, and workforce characteristics which constitute

the private and non-Federal public American workplace. Because of the need for flexible application of this model, because laws that affect the workplace may vary by State and locality, and because of the complexity of certain components of a comprehensive plan, e.g., the drug testing component, employers may want to consult with legal counsel prior to plan implementation.

This model plan was developed by a Federal interagency coordinating group composed of representatives of the Department of Health and Human Services, Office of Personnel Management, and Department of Justice and distributed to Federal agencies by the National Drug Policy Board to provide a prototype for developing a drug-free workplace plan appropriate to each Agency's own mission and work force.

There has been very little editing of the plan as distributed to Federal agencies. For the Federal audience, the use of the term "Agency" throughout invited substitution of the specific agency name. Private sector employers should substitute the name of their business in most instances. The model plan contains references to Federal authorities which do not impose requirements on private employers. While those references are retained for the purpose of reflecting the policies behind provisions of the Federal model plan, it is expected that private sector employers will modify the plan when they intend to preserve the principle without referencing Federal law or regulations.

Selected source documents for the Federal Drug-Free Workplace Program are published as Appendices: Appendix A is Executive Order 12564; Appendix B is section 503 of Pub. L. 100-71; and Appendix C is the Mandatory Guidelines for Federal Workplace Drug Testing Programs which include scientific and technical requirements and provisions for certification of laboratories engaged in urine drug testing for Federal Agencies. They are published along with the model in order to provide a framework for the existing application of the model.

The National Institute on Drug Abuse is making this model available, both for employers just initiating a program and for those who may be re-examining provisions of an on-going program, in the belief that the fight against illegal drugs in the workplace is critical to the Nation's war against drug use. This model, with its five essential elements, is worthy of careful consideration as employers chart or alter their course.

Charles R. Schuster, Ph.D. Director, National Institute on Drug Abuse

I. Introduction

A. Background

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off duty. In a letter to all executive branch employees dated October 4, 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all Federal workers.

The Executive Order recognized that illegal drug use is seriously impairing a portion of the national work force, resulting in the loss of billions of dollars each year. As the largest employer in the Nation, the Federal Government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The [Agency] is concerned with the well-being of its employees, the

successful accomplishment of agency missions, and the need to maintain employee productivity. The intent of the policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is, quite simply, incompatible with Federal service.

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

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

***NOTE TO PRIVATE SECTOR USERS OF THIS MODEL PLAN:**

Since section 503 of Pub. L. 100-71 places most attention on the drug testing component (the most sensitive aspect) of a comprehensive drug-free workplace program, compliance with its requirements stimulates in the Federal model plan an initial focus on the drug testing component of the Drug-Free Federal Workplace Program. Nevertheless, all Federal agencies' drug-free workplace plans implementing Executive Order 12564 are comprehensive and should be viewed as a whole; i.e., each agency has a written policy, provides for education of employees, training for supervisors, access to an employee assistance program, and for identification of illegal drug use.

B. Statement of Policy

The [Agency], as a result of its [describe type of] responsibilities, as well as the sensitive nature of its work, has a compelling obligation to eliminate illegal drug use from its workplace.

[Insert a one page summary that describes the two or three most significant aspects of your agency's mission. The summary should convey to the uninitiated reader, why drug testing is necessary at your agency. The purpose of the summary is to explicitly describe your agency's mission, and how illegal drug use would impact the accomplishment of that mission. In preparing this summary, a review of the following documents from your agency may help in identifying examples of the adverse impact which illegal drug use has had or could have on your agency mission: (1) personnel records; (2) security clearance revocations; (3) EAP records; (4) Merit Systems Protection Board actions; and any other relevant agency records to glean effective examples regarding public health, safety or security risks which have occurred in the past. Large numbers are neither necessary nor essential. The preamble focuses on the magnitude of risk of even one employee using illegal drugs.]

The mark of a successful drug-free workplace program also depends on how well the [Agency] can inform its employees of the hazards of drug use, and on how much assistance it can provide drug users. Equally important is the assurance to employees that personal dignity and privacy will be respected in reaching the [Agency's] goal of a drug-free workplace. Therefore, this plan includes policies and procedures for: (1) employee assistance; (2) supervisory training; (3) employee education; and (4) identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

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

Section 503 of the Act requires the [Agency] Plan to specify the nature, frequency, and type of drug testing to be instituted. The [Agency] Plan includes the following types of drug testing: (1) Applicant testing; (2) Random testing of those employees in sensitive positions that have been designated as testing designated positions; (3) Reasonable suspicion testing; (4) Accident or unsafe practice testing; (5) Voluntary testing, and (6) Testing as part of or as a follow-up to counseling or rehabilitation.

The frequency of testing for random testing, voluntary testing, and follow-up testing is specified in Section XV, Section XII(B), and Section XII(C), respectively. The [Agency Head] reserves the right to increase or decrease the frequency of testing based on the Agency's mission, need, availability of resources, and experience in the program, consistent with the duty to achieve a drug-free workplace under the Executive Order.

D. Drugs for Which Individuals Are Tested

Section 503 of the Act requires the [Agency] to specify the drugs for which individuals shall be tested. The [Agency] will test for the following drugs: Marijuana, Cocaine. [Agency may also add Amphetamines, Opiates, and Phencyclidine (PCP). If the Agency desires to test for any other drug, advance written approval from the Secretary, Department of Health and Human Services is required.]

E. Scope

Upon certification by the Department of Health and Human Services in accordance with Section 503 of the Act, this order shall be effective immediately for all [list divisions of the agency which will be affected by the order].

F. Union Cooperation

The active participation and support of labor organizations can contribute to the success of this program. Management will seek ways in which recognized bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe agreements already reached, will include union representatives in general orientation programs, and will continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978.

G. References

1. Authorities

- a. Executive Order 12564;
- b. Executive Order 10450;
- c. Executive Order 12356;
- d. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. §7301 note (1987);

- e. Mandatory Guidelines for Federal Workplace Drug Testing Programs, which includes Scientific and Technical Requirements and Certification of Laboratories Engaged in Urine Drug Testing, 53 FR 11970 (1988);
- f. Civil Service Reform Act of 1978, Pub. L. 95-454;
- g. Sections 523 and 527 of the Public Health Service Act and implementing regulations at 42 CFR Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records;
- h. The Privacy Act of 1974 (5 U.S.C. §552a), prescribing requirements governing the maintenance of records by agencies pertaining to individuals and access to these records by the individual(s) to whom they pertain;
- i. Regulations implementing the Privacy Act of 1974 for the [Agency];
- j. Federal Employees Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570;
- k. [Add any relevant Agency orders, including appropriate personnel orders.]

2. Guidance

- a. Office of Personnel Management (OPM), Federal Personnel Manual (FPM) Letters 792-16 (November 28, 1986), and 792-17 (March 9, 1987), and any subsequent FPM letters setting forth guidelines for Federal civilian agencies in establishing a drug-free workplace pursuant to Executive Order 12564;
- b. FPM Chapter 792, Federal Health and Counseling Programs, providing guidance to Federal agencies in establishing alcoholism and drug abuse programs (subchapter 5) and employee counseling services programs (subchapter 6) for Federal employees with alcohol or drug problems;
- c. FPM Supplement, Chapter 792-2, providing guidance for developing and maintaining appropriate prevention, treatment and rehabilitation programs and services for alcoholism and drug abuse among Federal employees;
- d. [Appropriate Agency personnel manual implementing FPM Chapter 792 and FPM Supplement, Chapter 792-2 within the Agency.]

II. Definitions

A. Applicant

Any individual tentatively selected—

1. For employment with the [Agency]; or
2. For a Testing Designated Position, and who has not, immediately prior to the selection, been subject to random testing.

B. Employee Assistance Program (EAP)

The [Agency]-based counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

C. Employee Assistance Program Administrator

The individual responsible for ensuring the development, implementation and review of the agency EAP.

D. Employee Assistance Program Coordinator

The individual designated by the EAP Administrator to be responsible for implementing and operating the EAP within the [Agency] component assigned to the coordinator, by providing counseling, treatment, and education services to employees and supervisors regarding the [component] EAP.

E. Medical Review Officer

The individual responsible for receiving laboratory results generated from the [Agency] Drug-Free Workplace Program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

F. Illegal Drugs

A controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

G. Random Testing

A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs, and may either be:

1. Uniform--unannounced testing of testing designated employees occupying a specified area, element or position; or
2. A statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

H. Employees in Sensitive Positions

1. Employees in positions designated by the [Agency head] as Special Sensitive, Critical Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual, or employees in positions designated by the [Agency head] as sensitive in accordance with Executive Order No. 10450, as amended;
2. Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the [Agency head] under Section 4 of Executive Order No. 12356;
3. Individuals serving under Presidential appointments;
4. Law enforcement officers as defined in 5 U.S.C. §8331(20) and 8401(17); or
5. Other positions that the [Agency head] determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

I. Supervisor

An employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgement. 5 U.S.C. §7103 (a)(10).

J. Testing Designated Positions (TDPs)

Employment positions within the [Agency] which have been designated for random testing under Section IX(B) of this plan.

K. Verified Positive Test Result

A test result that was positive on an initial FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by the Department of Health and Human Services), and reviewed and verified by the Medical Review Officer in accordance with this plan and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

III. Employee Assistance Programs

A. Function

The [Agency] EAP plays an important role in preventing and resolving employee drug use by: demonstrating the [Agency's] commitment to eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with

individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however, shall not be involved in the collection of urine samples or the initial reporting of test results. Specifically, the EAP shall--

1. Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been verified positive, and monitor the employees' progress through treatment and rehabilitation;
2. Provide needed education and training to all levels of the [Agency] on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP to drug testing, and related treatment, rehabilitation, and confidentiality issues;
3. Ensure that confidentiality of test results and related medical treatment and rehabilitation records is maintained in accordance with Section XIV.

B. Referral and Availability

Any employee found to be using drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to [Agency] employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems. In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to completion of the program. The decision of the EAP Administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor failed to consider one or more of the factors in Section VI(D)(5) in making a referral shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

C. Leave Allowance

Employees shall be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session, up to a maximum of [state limit here], during the assessment/referral phase of rehabilitation. Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

D. Records and Confidentiality

All EAP operations shall be confidential in accordance with Section XIV of this plan relating to records and confidentiality.

E. Structure

The [appropriate division of the agency] shall be responsible for oversight and implementation of the [Agency] EAP, and will provide, with the support of the [Agency head], high level direction and promotion of the EAP.

[Describe more fully the structure of the agency's EAP -- in-house, contracted, regional locations, etc.]

IV. Supervisory Training

A. Objectives

As supervisors have a key role in establishing and monitoring a drug-free workplace, the [Agency] shall provide training to assist supervisors and managers in recognizing and addressing illegal drug use by agency employees. The purpose of supervisory training is to understand-

1. Agency policies relevant to work performance problems, drug use, and [the Agency] EAP;
2. The responsibilities of offering EAP services;
3. How employee performance and behavioral changes should be recognized and documented;
4. The roles of the Medical Review Officer, medical staff, supervisors, personnel, and EAP personnel;
5. The ways to use [the Agency] EAP;
6. How the EAP is linked to the performance appraisal and the disciplinary process; and
7. The process of reintegrating employees into the workforce.

B. Implementation

The [appropriate division of the agency] shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the [Agency] Drug-Free Workplace Plan.

C. Training Package

Supervisory training shall be required of all supervisors and may be presented as a separate course, or be included as part of an ongoing supervisory training program. Training shall be provided as soon as possible after a person assumes supervisory responsibility. Training courses should include--

1. Overall Agency policy;

2. The prevalence of various employee problems with respect to drugs and alcohol;
3. The EAP approach to handling problems including the supervisor's role and relationship to EAP;
4. How to recognize employees with possible problems;
5. Documentation of employee performance or behavior;
6. Skills in confronting employees with possible problems;
7. Agency procedures for referring employees to EAP;
8. Disciplinary action and removals from sensitive positions as required by Section 5(c) of the Executive Order;
9. Reintegration of employees into the workforce; and
10. Written materials which the supervisor can use at the work site.

V. Employee Education

A. Objectives

The EAP Administrator shall offer drug education to all [Agency] employees. Drug education should include education and training to all levels of the [Agency] on--

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

B. Means of Education

Drug education activities may include:

1. Distribution of written materials;
2. Videotapes;
3. Lunchtime employee forums; and
4. Employee drug awareness days.

VI. Special Duties and Responsibilities

[Smaller agencies may choose to combine several of the duties listed into a single position upon advice from the Department of Health and Human Services.]

A. Drug Program Coordinator

Each [operating or other appropriate element] shall have a Drug Program Coordinator assigned to carry out the purposes of this plan. The Drug Program Coordinator shall be responsible for implementing, directing, administering, and managing the drug program within the [operating element]. The Drug Program Coordinator shall serve as the principal contact with the laboratory and for collection activities in assuring the effective operation of the testing portion of the program. In carrying out his responsibilities, the Drug Program Coordinator shall, among other duties:

1. Arrange for all testing authorized under this order;
2. Ensure that all employees subject to random testing receive individual notice as described in Section VII(B) of this plan, prior to implementation of the program, and that such employees return a signed acknowledgment of receipt form;
3. Document, through written inspection reports, all results of laboratory inspections conducted;
4. Coordinate with and report to the [Agency head] on Drug Program Coordinator activities and findings that may affect the reliability or accuracy of laboratory results;
5. In coordination with the EAP Administrator, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation; and
6. Coordinate all Drug Program Coordinator duties in field offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.

B. Employee Assistance Program Administrator

The EAP Administrator shall:

1. Receive verified positive test results from the Medical Review Officer;
2. Assume the lead role in the development, implementation, and evaluation of the EAP;
3. Supervise and designate the headquarters EAP Coordinator and counselors, and assist them in establishing field office EAPs; and
4. Advise [Agency] components on the submission of annual statistical reports, and prepare consolidated reports on the [Agency's] EAP activity.

C. Employee Assistance Program Coordinator

The EAP Coordinator shall:

1. Implement and operate the EAP within the [Agency] component assigned to the coordinator;
2. Provide counseling and treatment services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;
3. Coordinate with the [Agency head], the Medical Review Officer and supervisors, as appropriate;
4. Work with the Drug Program Coordinator to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace;
5. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
6. Monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records;
7. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;
8. Maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs, and include the following information on each such organization:
 - a. Name, address, and phone number;
 - b. Types of services provided;
 - c. Hours of operation, including emergency hours;
 - d. The contact person's name and phone number;
 - e. Fee structure, including insurance coverage;
 - f. Client specialization; and
 - g. Other pertinent information; and
9. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience,

certification and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.

D. Employee Assistance Counselors

The Employee Assistance Counselors shall:

1. Serve as the initial point of contact for employees who ask or are referred for counseling;
2. Be familiar with all applicable law and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program;
3. Meet the qualifications as determined by the EAP Administrator and be trained in counseling employees in the occupational setting, and in identifying drug use;
4. Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and
5. In making referrals, consider the--
 - a. Nature and severity of the problem;
 - b. Location of the treatment;
 - c. Cost of the treatment;
 - d. Intensity of the treatment environment;
 - e. Availability of inpatient/outpatient care;
 - f. Other special needs, such as transportation and child care; and
 - g. The preferences of the employee.

E. Medical Review Officer

Each [Agency or other appropriate element] shall have a Medical Review Officer assigned to carry out the purposes of this Order. The Medical Review Officer shall, among other duties:

1. Receive all laboratory test results;
2. Assure that an individual who has tested positive has been afforded an opportunity to discuss the test result in accordance with Section XIII(D) of this plan;

3. Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the EAP Administrator, and the appropriate official, including a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings;
4. Confirm with the appropriate personnel official whether an individual who has been tentatively selected for employment with the [Agency] has obtained a verified positive test result;
5. Coordinate with and report to the [Agency head] on all activities and findings on a regular basis;
6. Coordinate all Medical Review Officer duties in field offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.

F. Supervisors

Supervisors will be trained to recognize and address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. Except as modified by the [Agency head] to suit specific program responsibilities, first-line supervisors shall:

1. Attend training sessions on illegal drug-use in the workplace;
2. Initiate a drug test based on reasonable suspicion as described in Section X;
3. Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use;
4. Initiate appropriate disciplinary action upon a finding of illegal drug use; and
5. In conjunction with personnel specialists, assist higher-level supervisors and the EAP Administrator in evaluating employee performance and or personnel problems that may be related to illegal drug use.

A higher-level supervisor shall review and concur, in advance, with all tests ordered on the basis of a reasonable suspicion in accordance with Section X.

G. Implementation

At the direction of the [appropriate agency official], each [operating unit head] shall implement the Drug-Free Workplace Plan within [the operating unit head's division], and ensure that the Plan is efficiently and effectively accomplished in accordance with this order and all other applicable regulations.

H. General Program/Structural Provisions

The [appropriate agency official] shall develop implementation procedures to enable [Agency field offices] efficiently and swiftly to implement all aspects of this order, taking into account the unique geographical, personnel, budgetary and other relevant factors of the field offices. Such procedures will permit field office implementation to proceed independently of headquarters implementation and of any field office situs implementation. Testing may proceed under this order as soon as any field office or operating site is prepared to commence testing, and without regard to whether any other field office or operating site or headquarters is prepared to commence with testing. Such procedures shall also encourage cooperation and coordination among components so as to conserve resources and efficiently implement this order. [Agencies should give careful consideration to overall structures and determine whether additional management analysis provisions should be added.]

I. Government Contractors

Wherever existing facilities are inadequate to implement this order, the [appropriate agency official] shall:

1. Act as Contracting Officer for the administration of all related contracts;
2. Ensure that contract laboratories chosen to perform the drug screening tests are duly certified according to subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs and that any other contracts to implement this Order conform to the technical specifications of the Mandatory Guidelines; and
3. Establish, by contract or with [Agency] employees as deemed appropriate, the positions and specific responsibilities of the Drug Program Coordinator and the Medical Review Officer as required by the Mandatory Guidelines.

VII. Notice

A. General Notice

A general notice from the [Agency head] announcing the testing program, as required by the Executive Order Section 4(a), will be provided to all employees no later than sixty (60) days prior to the implementation date of the Plan. The notices shall be provided immediately upon completion of the congressional certification procedures pursuant to Section 503 of the Act, and shall explain:

1. The purpose of the Drug-Free Workplace Plan;
2. That the Plan will include both voluntary and mandatory testing;
3. That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that their position has been designated a Testing Designated Position;

4. The availability and procedures necessary to obtain counseling and rehabilitation through the EAP;
5. The circumstances under which testing may occur;
6. That opportunity will be afforded to submit medical documentation of lawful use of an otherwise illegal drug;
7. That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the Medical Review Officer;
8. That positive test results verified by the Medical Review Officer may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal in any adverse personnel action;
9. That all medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient, an authorizing court order, or otherwise as permitted by Federal law implemented at 42 CFR Part 2.

B. Individual Notice

In addition to the information provided in the general notice, an individual notice will be distributed to all employees in testing designated positions explaining:

1. That the employee's position has been designated a "testing designated position;"
2. That the employee will have the opportunity to voluntarily admit to being a user of illegal drugs and to receive counseling or rehabilitation, [If there is no safe harbor*, add: "in which case disciplinary action is not required;" If there is a safe harbor, add: "and shall not be subject to disciplinary action."];
*Refer to Section VIII(F) for safe harbor option to create an absolute bar to disciplinary action for certain volunteers.
3. That the employee's position will be subject to random testing no sooner than thirty days following the notice.

C. Signed Acknowledgement

Each employee in a Testing Designated Position shall be asked to acknowledge in writing that the employee has received and read the notice which states that the employee's position has been designated for random drug testing, and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal. If the employee refuses to sign the acknowledgement, the employee's supervisor shall note on the acknowledgement form that the employee received the notice. This acknowledgement, which is advisory only, shall be centrally collected for easy retrieval by the [operating unit head]. An employee's failure to sign the notice shall not preclude testing that employee, or

otherwise affect the implementation of this order since the general sixty-day notice will previously have notified all agency employees of the requirement to be drug-free.

D. Administrative Relief

If an employee believes his or her position has been wrongly designated a Testing Designated Position, that employee may file an administrative appeal to [specify the designated official] who has authority to remove the employee from the Testing Designated Position list. The appeal must be submitted by the employee, in writing, to [the designated official] within 15 days of notification, setting forth all relevant information. The [designated official] shall review the appeal based upon the criteria applied in designating that employee's position as a Testing Designated Position. The [official's] decision is final and is not subject to further administrative review.

VIII. Finding of Drug Use and Disciplinary Consequences

A. Determination

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

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

B. Mandatory Administrative Actions

The [Agency] shall refer an employee found to use illegal drugs to the EAP, and, if the employee occupies a sensitive position, immediately remove the employee from that position without regard to whether it is a Testing Designated Position. At the discretion of the [Agency head], however, and as part of an EAP, an employee may return to duty in a sensitive position if the employee's return would not endanger public health or safety or national security.

C. Range of Consequences

Disciplinary action taken against an employee found to use illegal drugs may include the full range of disciplinary actions, including removal. The severity of the action chosen will depend on the circumstances of each case, and will be consistent with the Executive Order. The [Agency] shall initiate disciplinary action against any employee found to use illegal drugs.

[Insert either:]

1. provided that such action is not required for an employee who voluntarily admits to illegal drug use, and obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.

[or if a safe harbor exists, add:]

2. but shall not discipline an employee who voluntarily admits to illegal drug use in accordance with subsection VIII(F) of this plan.

[In either case, add:]

Such disciplinary action, consistent with the requirements of any governing collective bargaining agreement and the Civil Service Reform Act and other statutes, [Agency] orders, and regulations, may include any of the following measures but some disciplinary action must be initiated:

1. Reprimanding the employee in writing;
2. Placing the employee in an enforced leave status;
3. Suspending the employee for 14 days or less;
4. Suspending the employee for 15 days or more;
5. Suspending the employee until the employee successfully completes the EAP or until the [Agency] determines that action other than suspension is more appropriate;
6. Removing the employee from service.

D. Initiation of Mandatory Removal From Service

The [Agency] shall initiate action to remove an employee for:

1. Refusing to obtain counseling or rehabilitation through an EAP as required by the Executive Order after having been found to use illegal drugs;
2. Not refraining from illegal drug use after a first finding of such use.

All letters to propose and decide on a separation action should be worked out in consultation with the [appropriate servicing personnel office].

E. Refusal to Take Drug Test When Required

An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal. No applicant who refuses to be tested shall be extended an offer of employment. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral

Under Executive Order 12564, the [Agency] is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except that such discipline is not

required for an employee who (1) voluntarily admits his or her drug use; (2) completes counseling or an EAP; and (3) thereafter refrains from drug use.

[If you do not wish to create an absolute bar to discipline for individuals who voluntarily come forward, insert the following language:]

The decision whether to discipline a voluntary referral will be made by the agency head on a case by case basis depending upon the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the [Agency], in determining whether to discipline, shall consider that the employee has come forward voluntarily. In coming forward voluntarily, and consistent with Section XII(B), an employee may volunteer for a drug test as a means of identification. The results of this test, however, shall not constitute a second finding of illegal drug use under subsection (D).

[If you wish to create an absolute bar to discipline for individuals who voluntarily come forward, insert the following language:]

1. Because the Order permits an agency to create a "safe harbor" for an employee who meets all three of these conditions, the [Agency] has decided to create such a "safe harbor" and will not initiate disciplinary action against employees who satisfy the provisions of this Section.
2. A fundamental purpose of the [Agency's] Drug-Free Workplace Plan is to assist employees who themselves are seeking treatment for drug use. For this reason, the [Agency] will not initiate disciplinary action against any employee who meets all three of these conditions:
 - a. Voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means;
 - b. Obtains counseling or rehabilitation through an EAP; and
 - c. Thereafter refrains from using illegal drugs.

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

3. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit his or her problem, this provision is not available to an employee who requests protection under this provision after:
 - a. Being asked to provide a urine sample in accordance with this plan; or
 - b. Having been found to have used illegal drugs pursuant to Section VIII(A)(1) or VIII(A)(2).

IX. Random Testing

A. Sensitive Positions Designated for Random Testing

The Executive Order requires random testing for employees in sensitive positions, subject to agency criteria. As specified in Section XV of this plan, the [Agency head] has determined that some of these sensitive positions are testing designated positions subject to random testing. The position titles designated for random drug testing are listed in Section XV, along with the criteria and procedures applied in designating such positions for drug testing, including the justification for such criteria and procedures. [Section XV must list those positions designated for random testing and contain "drug impact statements" describing the duties of each Testing Designated Position and the risks of harm arising from illegal drug use by an employee occupying that position.]

B. Determining the Testing Designated Position

Among the factors the [Agency head] has considered in designating a Testing Designated Position are the extent to which the [Agency]:

[Omit any factors which do not apply]

1. Considers its mission inconsistent with illegal drug use;
2. Is engaged in law enforcement;
3. Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;
4. Has national security responsibilities;
5. Has drug interdiction responsibilities; or
6. Has positions which:
 - a. Authorize employees to carry firearms;
 - b. Give employees access to sensitive information;
 - c. Authorize employees to engage in law enforcement;
 - d. Require employees, as a condition of employment, to obtain a security clearance; or
 - e. Require employees to engage in activities affecting public health or safety.

These positions are characterized by critical safety or security responsibilities as related to the mission of the [Agency]. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions are identified for random testing because they require the highest degree of trust and confidence. The [agency head] reserves the

right to add or delete positions determined to be testing designated positions pursuant to the criteria established in the Executive Order and this plan. Moreover, the [Agency head] has determined, pursuant to 42 U.S.C. 290ee-1(b) (2) (B), that all positions which have been or will be designated as testing designated positions under this plan are "sensitive positions" and are therefore exempted from coverage under 42 U.S.C. 290ee-1(b).

C. Implementing Random Testing

In implementing the program of random testing the Drug Program Coordinator shall:

1. Ensure that the means of random selection remains confidential; and
2. Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the [Agency's] duty to achieve a drug-free work force.

The number of sensitive employees occupying testing designated positions and the frequency with which random tests will be administered are specified in Section XV.

D. Notification of Selection

An individual selected for random testing, and the individual's first-line supervisor, shall be notified the same day the test is scheduled, preferably, within two hours of the scheduled testing. The supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employee's name was selected randomly.

E. Deferral of Testing

An employee selected for random drug testing may obtain a deferral of testing if the employee's first-line and higher-level supervisors concur that a compelling need necessitates a deferral on the grounds that the employee is:

1. In a leave status (sick, annual, administrative, or leave without pay); or
2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

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

X. Reasonable Suspicion Testing

A. Grounds

Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
2. A pattern of abnormal conduct or erratic behavior;

3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
4. Information provided either by reliable and credible sources or independently corroborated; or
5. Newly discovered evidence that the employee has tampered with a previous drug test.

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

B. Procedures

If an employee is suspected of using illegal drugs, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. [Agencies should insert a higher-level approval requirement that is consistent with their organizational structure. In some agencies, this may be the next level supervisor or a higher-level individual above the supervisor making the finding that a reasonable suspicion of illegal drug use exists.]

When higher-level concurrence of a reasonable suspicion determination has been made, the appropriate supervisor will promptly prepare a written report detailing the circumstances which formed the basis to warrant the testing. This report should include the appropriate dates and times of reported drug related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken.

C. Obtaining the Sample

The employee may be asked to provide the urine sample under observation in accordance with the criteria in Section XIII(B).

D. Supervisory Training

In accordance with Section IV, supervisors will be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training, however, shall not invalidate otherwise proper reasonable suspicion testing.

XI. Applicant Testing

A. Objectives

To maintain the high professional standards of the [Agency's] workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed on the employment rolls of the [Agency]. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within the [Agency], and will provide for a safer work environment. For these reasons, drug testing shall be required of all applicants as defined in Section II.

B. Vacancy Announcements

Every vacancy announcement for positions designated for applicant testing shall state:

"All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment."

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

C. Procedures

The Drug Program Coordinator shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for reasonable travel expenses.

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

D. Personnel Officials

Upon notification that an individual has been tentatively selected for employment with the [Agency], the [Manager of the Personnel Division] shall assure, after consultation with the Medical Review Officer, that a drug test has been conducted on that individual and determine whether the test result is a verified positive result.

E. Consequences

The [Agency] will decline to extend a final offer of employment to any applicant with a verified positive test result, and such applicant may not reapply to the [Agency] for a period of six months. The Personnel Officer working on the applicant's certificate shall be directed to object to the applicant on the basis of failure to pass the physical, a lack of personal characteristics necessary to relate to public employment or failure to support the goals of the [Agency]. The [Agency] shall inform such applicant that a confirmed presence of an illegal drug in the applicant's urine precludes the [Agency] from hiring the applicant.

XII. Additional Types of Drug Testing

A. Accident or Unsafe Practice Testing

The [Agency] is committed to providing a safe and secure work environment. Employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to others or the overall operation of the [Agency] may be subject to testing. Based on the circumstances of the accident or unsafe act, the [operating unit head] may initiate testing when such circumstances involve:

[State criteria here. Consider the following example of appropriate criteria:]

1. A death or personal injury requiring immediate hospitalization, or
2. Damage to government or private property in excess of \$____.]

B. Voluntary Testing

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

C. Follow-up Testing

All employees, referred through administrative channels, who undergo a counseling or rehabilitation program for illegal drug use through the EAP will be subject to unannounced testing following completion of such a program for a period of one year. Such employees shall be tested at the frequency stipulated in the abeyance contract, or, in the alternative, at an increased frequency of [state frequency: e.g. once a month]. Such testing is distinct from testing which may be imposed as a component of the EAP.

XIII. Test Procedures in General

A. Mandatory Guidelines for Federal Workplace Drug Testing

The [Agency] shall adhere to the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the Department of Health and Human Services consistent with the authority granted by Executive Order 12564, and to the requirements of Section 503 of the Act. The [Agency's] drug testing component shall have professionally trained collection personnel, quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

B. Privacy Assured

Any individual subject to testing under this plan shall be permitted to provide urine specimens in private and in a rest room stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided when:

1. The individual:
 - a. Is being tested pursuant to Section X relating to reasonable suspicion testing;

- b. Has previously been found by the [Agency] to be an illegal drug user; or
 - c. Has previously tampered with a sample; or
2. Facts and circumstances suggest that the individual:
- a. Is an illegal drug user;
 - b. Is under the influence of drugs at the time of the test; or
 - c. Has equipment or implements capable of tampering with or altering urine samples; or
3. The specimen:
- a. Has a temperature outside the range of 32.5-37.7 degrees C / 90.5-99.8 degrees F; or
 - b. Shows signs of contaminants.

C. Failure to Appear for Testing

Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the Drug Program Coordinator to obtain guidance on action to be taken.

D. Opportunity to Justify a Positive Test Result

When a confirmed positive result has been returned by the laboratory, the Medical Review Officer shall perform the duties set forth in the Mandatory Guidelines. For example, the Medical Review Officer may choose to conduct employee medical interviews, review employee medical history, or review any other, relevant biomedical factors. The Medical Review Officer must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include, but is not limited to:

- 1. A valid prescription; or
- 2. A verification from the individual's physician verifying a valid prescription.

Individuals are not entitled, however, to present evidence to the Medical Review Officer in a trial-type administrative proceeding, although the Medical Review Officer has the discretion to accept evidence in any manner the Medical Review Officer deems most efficient or necessary. If the Medical Review Officer determines there is no justification for the positive result, such result will then be considered a verified positive test result. The Medical Review Officer shall immediately contact the EAP Administrator and appropriate management official* upon obtaining a verified positive test result.

* The Mandatory Guidelines for Federal Drug-Free Workplace Programs provide at 2.7(c), "Following verification of a positive test result, the Medical Review Officer shall refer the case to the agency Employee Assistance Program and to the management official empowered to recommend or take administrative action."

E. Employee Counseling and Assistance

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

F. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the Department of Health and Human Services, or any subsequent amendment thereto, such Mandatory Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

XIV. Records and Reports

A. Confidentiality of Test Results

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

In order to comply with Section 503(e) of the Act, the results of a drug test of a [Agency] employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be:

1. To the Medical Review Officer;
2. To the EAP Administrator in which the employee is receiving counseling or treatment or is otherwise participating;
3. To any supervisory or management official within the [Agency] having authority to take adverse personnel action against such employee; or

4. Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

For purposes of this Section, "management official" includes any management, government, security or personnel official whose duties necessitate review of the test results in order to process adverse personnel action against the employee. In addition, test results with all identifying information removed shall also be made available to [Agency] personnel, including the Drug Program Coordinator, for data collection and other activities necessary to comply with Section 503(f) of the Act.

B. Employee Access to Records

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

1. Such employee's drug test; and
2. The results of any relevant certification, review, or revocation-of-certification proceedings, as referred to in Section 503(a)(l)(A)(ii)(III) of the Act.

Except as authorized by law, an applicant who is the subject of a drug test, however, shall not be entitled to this information.

C. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential and should be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this order and to make information readily retrievable, the Drug Program Coordinator shall maintain all records relating to reasonable suspicion testing, suspicion of tampering with evidence, and any other authorized documentation necessary to implement this order.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the [Servicing Personnel Office.] Such shall remain confidential, locked in a combination safe, with only authorized individuals who have a "need-to-know" having access to them.

D. Employee Assistance Program Records

The EAP Administrator shall maintain only those records necessary to comply with this order. After [an operating unit head] refers an employee to an EAP, the EAP will maintain all records necessary to carry out its duties. All medical and or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 CFR Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress. (42 CFR. §2.1 et seq. (1986), revised regulations promulgated at 52 FR 21796, June 9, 1987).

E. Maintenance of Records

The [Agency] shall establish or amend a recordkeeping system to maintain the records of the [Agency's] Drug-Free Workplace Program consistent with the [Agency's] Privacy Act System of Records and with all applicable Federal laws, rules and regulations regarding confidentiality of records including the Privacy Act (5 U.S.C. §552a). If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the [Agency head]. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of this order, and include:

1. Notices of verified positive test results referred by the Medical Review Officer;
2. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;
3. Anonymous statistical reports; and
4. Other documents the Drug Program Coordinator, Medical Review Officer, or EAP Administrator deems necessary for efficient compliance with this order.

F. Records Maintained by Government Contractors

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

G. Statistical Information

The Drug Program Coordinator shall collect and compile anonymous statistical data for reporting the number of:

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

This data, along with other pertinent information, shall be compiled for inclusion in the [Agency's] annual report to Congress required by Section 503(f) of the Act. This data shall also be provided to the Department of Health and Human Services semi-annually to assist in overall program evaluation and to determine whether changes to the Mandatory Guidelines may be required.

XV. Position Titles Designated for Random Testing

[List position titles designated for random drug testing, the criteria and procedures applied in designating the position titles, and justification for the criteria and procedures. State the number of employees occupying testing designated positions and the frequency with which random tests will be administered. Also include a "drug impact statement" describing the duties of each testing designated position and the risks of harm arising from illegal drug use by an employee occupying that position.]

APPENDIX A

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Title 3—The President

Executive Order 12564 of September 15, 1986

Drug-Free Federal Workplace

I, RONALD REAGAN, President of the United States of America, find that:

Drug use is having serious adverse effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year;

The Federal government, as an employer, is concerned with the well-being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity;

The Federal government, as the largest employer in the Nation, can and should show the way towards achieving drug-free workplaces through a program designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and potential drug users that drugs will not be tolerated in the Federal workplace;

The profits from illegal drugs provide the single greatest source of income for organized crime, fuel violent street crime, and otherwise contribute to the breakdown of our society;

The use of illegal drugs, on or off duty, by Federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust placed in such employees as servants of the public;

Federal employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs;

The use of illegal drugs, on or off duty, by Federal employees impairs the efficiency of Federal departments and agencies, undermines public confidence in them, and makes it more difficult for other employees who do not use illegal drugs to perform their jobs effectively. The use of illegal drugs, on or off duty, by Federal employees also can pose a serious health and safety threat to members of the public and to other Federal employees;

The use of illegal drugs, on or off duty, by Federal employees in certain positions evidences less than the complete reliability, stability, and good judgment that is consistent with access to sensitive information and creates the possibility of coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, the public safety, and the effective enforcement of the law; and Federal employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves.

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 3301(2) of Title 5 of the United States Code, section 7301 of Title 5 of the United States Code, section 290ee-1 of Title 42 of the United States Code, deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the Federal service, and in order to establish standards and procedures to ensure fairness in achieving a drug-free Federal workplace and to protect the privacy of Federal employees, it is hereby ordered as follows:

Section 1. Drug-Free Workplace.

- (a) Federal employees are required to refrain from the use of illegal drugs.
- (b) The use of illegal drugs by Federal employees, whether on duty or off duty, is contrary to the efficiency of the service.
- (c) Persons who use illegal drugs are not suitable for Federal employment.

Sec.2. Agency Responsibilities.

- (a) The head of each Executive agency shall develop a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the government, the employee, and the general public.
- (b) Each agency plan shall include:
 - (1) A statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;
 - (2) Employee Assistance Programs emphasizing high level direction, education, counseling, referral to rehabilitation, and coordination with available community resources;
 - (3) Supervisory training to assist in identifying and addressing illegal drug use by agency employees;
 - (4) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues; and
 - (5) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis in accordance with this Order.

Sec. 3. Drug Testing Programs.

- (a) 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) The head of each Executive agency shall establish a program for voluntary employee drug testing.
- (c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each Executive agency is authorized to test an employee for illegal drug use under the following circumstances:
 - (1) When there is a reasonable suspicion that any employee uses illegal drugs;
 - (2) In an examination authorized by the agency regarding an accident or unsafe practice; or
 - (3) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance Program.
- (d) The head of each Executive agency is authorized to test any applicant for illegal drug use.

Sec. 4. Drug Testing Procedures.

- (a) Sixty days prior to the implementation of a drug testing program pursuant to this Order, agencies shall notify employees that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation and inform them of the procedures for obtaining such assistance through the agency's Employee Assistance Program. Agency drug testing programs already ongoing are exempted from the 60-day notice requirement. Agencies may take action under section 3(c) of this Order without reference to the 60-day notice period.
- (b) Before conducting a drug test, the agency shall inform the employee to be tested of the opportunity to submit medical documentation that may support a legitimate use for a specific drug.
- (c) Drug testing programs shall contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting; and procedures, consistent with applicable law, to protect the confidentiality of test results and related medical and rehabilitation records. Procedures for providing urine specimens must allow individual privacy, unless the agency has reason to believe that a particular individual may alter or substitute the specimen to be provided.
- (d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and agencies shall conduct their drug testing programs in accordance with these guidelines once promulgated.

Sec. 5. Personnel Actions.

- (a) Agencies shall, in addition to any appropriate personnel actions, refer any employee who is found to use illegal drugs to an Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate.

- (b) Agencies shall initiate action to discipline any employee who is found to use illegal drugs, provided that such action is not required for an employee who:
 - (1) Voluntarily identifies himself as a user of illegal drugs or who volunteers for drug testing pursuant to section 3(b) of this Order, prior to being identified through other means;
 - (2) Obtains counseling or rehabilitation through an Employee Assistance Program; and
 - (3) Thereafter refrains from using illegal drugs.
- (c) Agencies shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, the head of an Executive agency may, in his or her discretion, allow an employee to return to duty in a sensitive position if it is determined that this action would not pose a danger to public health or safety or the national security.
- (d) Agencies shall initiate action to remove from the service any employee who is found to use illegal drugs and:
 - (1) Refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or
 - (2) Does not thereafter refrain from using illegal drugs.
- (e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing any adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in an administrative proceeding unless they are confirmed by a second analysis of the same sample or unless the employee confirms the accuracy of the initial test by admitting the use of illegal drugs.
- (f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, a criminal conviction, administrative inquiry, or the results of an authorized testing program. Positive drug test results may be rebutted by other evidence that an employee has not used illegal drugs.
- (g) Any action to discipline an employee who is using illegal drugs (including removal from the service, if appropriate) shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.
- (h) Drug testing shall not be conducted pursuant to this Order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of Title 21 of the United States Code received as a result of the operation of drug testing programs established pursuant to this Order.

Sec. 6. Coordination of Agency Programs.

- (a) The Director of the Office of Personnel Management shall:
 - (1) Issue government-wide guidance to agencies on the implementation of the terms of this Order;
 - (2) Ensure that appropriate coverage for drug abuse is maintained for employees and their families under the Federal Employees Health Benefits Program;
 - (3) Develop a model Employee Assistance Program for Federal agencies and assist the agencies in putting programs in place;
 - (4) In consultation with the Secretary of Health and Human Services, develop and improve training programs for Federal supervisors and managers on illegal drug use: and
 - (5) In cooperation with the Secretary of Health and Human Services and heads of Executive agencies, mount an intensive drug awareness campaign throughout the Federal work force.
- (b) The Attorney General shall render legal advice regarding the implementation of this Order and shall be consulted with regard to all guidelines, regulations, and policies proposed to be adopted pursuant to this Order.
- (c) Nothing in this Order shall be deemed to limit the authorities of the Director of Central Intelligence under the National Security Act of 1947, as amended, or the statutory authorities of the National Security Agency or the Defense Intelligence Agency. Implementation of this Order within the Intelligence Community, as defined in Executive Order No. 12333, shall be subject to the approval of the head of the affected agency.

Sec. 7. Definitions.

- (a) This Order applies to all agencies of the Executive Branch.
- (b) For purposes of this Order, the term "agency" means an Executive agency, as defined in 5 U.S.C. 105; the Uniformed Services, as defined in 5 U.S.C. 2101 (3) (but excluding the armed forces as defined by 5 U.S.C. 2101(2)); or any other employing unit or authority of the Federal government, except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.
- (c) For purposes of this Order, the term "illegal drugs" means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
- (d) For purposes of this Order, the term "employee in a sensitive position" refers to:

- (1) An employee in a position that an agency head designates Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position that an agency head designates as sensitive in accordance with Executive Order No. 10450, as amended;
 - (2) An employee who has been granted access to classified information or may be granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of Executive Order No. 12356;
 - (3) Individuals serving under Presidential appointments;
 - (4) Law enforcement officers as defined in 5 U.S.C. 8331(20); and
 - (5) Other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.
- (e) For purposes of this Order, the term "employee" means all persons appointed in the Civil Service as described in 5 U.S.C. 2105 (but excluding persons appointed in the armed services as defined in 5 U.S.C. 2102(2)).
- (f) For purposes of this Order, the term "Employee Assistance Program" means agency-based counseling programs that offer assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health programs that affect employee job performance. Employee Assistance Programs are responsible for referring drug-using employees for rehabilitation and for monitoring employees' progress while in treatment.

Sec. 8. Effective Date. This Order is effective immediately.

Ronald Reagan

THE WHITE HOUSE,
September 15, 1986.

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Editorial note: For the President's remarks of September 15 on signing EO 12564, see the Weekly Compilation of Presidential Documents (vol. 22, no. 38).

APPENDIX B

101 STAT. 468
PUBLIC LAW 100-71—July 11, 1987

TITLE 5
GENERAL PROVISIONS

Regulations	Applicable Sections
Drugs and drug abuse. Government organization and employees. 5 USC 7301 note. 3 CFR, 1986 Comp., p. 224.	<p>Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.</p> <p>Sec. 502. Except where specifically increased or decreased elsewhere in this Act, the restrictions contained within appropriations, or provisions affecting appropriations or other funds, available during fiscal year 1987, limiting the amount which may be expended for personal services, or for purposes involving personal services, or amounts which may be transferred between appropriations or authorizations available for or involving such services, are hereby increased to the extent necessary to meet increased pay costs authorized by or pursuant to law.</p> <p>Sec. 503. (a)(1) Except as provided in subsection (b) or (c), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564 (dated September 15, 1986), or any subsequent order, unless and until--</p> <p>(A) the Secretary of Health and Human Services certifies in writing to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, that--</p>

Regulations	Applicable Sections
<p>3 CFR, 1986 Comp., p.224.</p>	<p>(i) each agency has developed a plan for achieving a drug-free workplace in accordance with Executive Order Numbered 12564 and applicable provisions of law (including applicable provisions of this section);</p> <p>(ii) the Department of Health and Human Services, in addition to the scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, has, in accordance with paragraph (3), published mandatory guidelines which—</p> <p>(I) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order Numbered 12564, including standards which require the use of the best available technology for enduring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;</p> <p>(II) specify the drugs for which Federal employees may be tested; and</p> <p>(III) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order Numbered 12564; and</p> <p>(iii) all agency drug-testing programs and plans established pursuant to Executive Order Numbered 12564 comply with applicable provisions of law, including applicable provisions of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), title 5 of the United States Code, and the mandatory guidelines under clause (ii);</p> <p>(B) the Secretary of Health and Human Services has submitted to the Congress, in writing, a detailed, agency-by-agency analysis relating to—</p> <p>(i) the criteria and procedures to be applied in designating employees or positions for drug testing, including the justification for such criteria and procedures;</p> <p>(ii) the position titles designated for random drug testing; and</p> <p>(iii) the nature, frequency, and type of drug testing proposed to be instituted; and</p> <p>(C) the Director of the Office of Management and Budget has submitted in writing to the Committees on Appropriations of the House of Representatives and the Senate a detailed, agency-by-agency analysis (as of the time of certification under subparagraph (A)) of the anticipated annual costs associated with carrying out Executive Order Numbered 12564 and all other requirements under this section during the 5-year period beginning on the date of the enactment of this Act.</p> <p>(2) Notwithstanding subsection (g), for purposes of this subsection, the term "agency" means—</p> <p>(A) the Executive Office of the President;</p> <p>(B) an Executive department under section 101 of title 5, United States Code;</p> <p>(C) the Environmental Protection Agency;</p> <p>(D) the General Services Administration;</p> <p>(E) the National Aeronautics and Space Administration;</p> <p>(F) the Office of Personnel Management;</p> <p>(G) the Small Business Administration;</p> <p>(H) the United States Information Agency; and</p> <p>(I) the Veteran's Administration;</p> <p>except that such term does not include the Department of Transportation or any other entity (or component thereof) covered by subsection (b).</p>

Regulations	Applicable Sections
<p>Federal Register, publication. 5 USC 500 et seq.</p>	<p>(3) Notwithstanding any provision of chapter 5 of title 5, United States Code, the mandatory guidelines to be published pursuant to subsection (a)(1)(A)(ii) shall be published and made effective exclusively according to the provisions of this paragraph. Notice of the mandatory guidelines proposed by the Secretary of Health and Human Services shall be published in the Federal Register, and interested persons shall be given not less than 60 days to submit written comments on the proposed mandatory guidelines. Following review and consideration of written comments, final mandatory guidelines shall be published in the Federal Register and shall become effective upon publication.</p> <p>(b)(1) Nothing in subsection (a) shall limit or otherwise affect the availability of funds for drug testing by–</p> <p>(A) the Department of Transportation;</p> <p>(B) Department of Energy, for employees specifically involved in the handling of nuclear weapons or nuclear materials;</p> <p>(C) any agency with an agency-wide drug-testing program in existence as of September 15, 1986; or</p> <p>(D) any component of an agency if such component had a drug-testing program in existence as of September 15, 1986.</p> <p>(2) The Departments of Transportation and Energy and any agency or component thereof with a drug-testing program in existence as of September 15, 1986–</p> <p>(A) shall be brought into full compliance with Executive Order Numbered 12564 no later than the end of the 6-month period beginning on the date of the enactment of this Act; and</p>
<p>3 CFR, 1986 Comp., p. 224.</p>	<p>(B) shall take such actions as may be necessary to ensure that their respective drug-testing programs or plans are brought into full compliance with the mandatory guidelines published under subsection (a)(1)(A)(ii) no later than 90 days after such mandatory guidelines take effect, except that any judicial challenge that affects such guidelines should not affect drug-testing programs or plans subject to this paragraph.</p> <p>(c) In the case of an agency (or component thereof) other than an agency as defined by subsection (a)(2) or an agency (or component thereof) covered by subsection (b), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564, or any subsequent order, unless and until–</p> <p>(1) the Secretary of Health and Human Services provides written certification with respect to that agency (or component) in accordance with clauses (i) and (iii) of subsection (a)(1)(A);</p> <p>(2) the Secretary of Health and Human Services has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(B); and</p> <p>(3) the Director of the Office of Management and Budget has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(C).</p> <p>(d) Any Federal employee who is the subject of a drug test under any program or plan shall, upon written request, have access to–</p> <p>(1) any records relating to such employee's drug test; and</p> <p>(2) any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings, as referred to in subsection (a)(1)(A)(ii)(III).</p>

Regulations	Applicable Sections
Classified information.	(e) The results of a drug test of a Federal employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be— (1) to the employee's medical review official (as defined in the scientific and technical guidelines referred to in subsection (a)(l)(A)(ii)); (2) to the administrator 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 the employee's agency having authority to take the adverse personnel action against such employee; or (4) 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.
Reports. 3 CFR, 1986 Comp., p. 224.	(f) Each agency covered by Executive Order Numbered 12564 shall submit to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, an annual report relating to drug-testing activities conducted by such agency pursuant to such executive order. Each such annual report shall be submitted at the time of the President's budget submission to the Congress under section 1105(a) of title 31, United States Code. (g) For purposes of this section, the terms "agency" and "Employee Assistance Program" each has the meaning given such term under section 7(b) of Executive Order Numbered 12564, as in effect on September 15, 1986. Sec. 504. None of the funds appropriated by this Act may be obligated for the centralization, consolidation, or redeployment of the Customs Service Air Operations unless the Secretary of the Treasury submits a report to the Committees on Appropriations which sets forth specific details for the use of such funds thirty days in advance of such implementation.
Vessels.	Sec. 505. None of the funds appropriated or made available by this or any other Act or otherwise appropriated or made available to the Secretary of Transportation or the Maritime Administrator for purposes of administering the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et seq.), shall be used by the United States Department of Transportation or the United States Maritime Administration to propose, promulgate, or implement any rule or regulation, or, with regard to vessels which repaid subsidy pursuant to the rule promulgated by the Secretary May 3, 1985 and vacated by Order of the U.S. Court of Appeals for the D.C. Circuit January 16, 1987, conduct any adjudicatory or other regulatory proceeding, execute or perform any contract, or participate in any judicial action with respect to the repayment of construction differential subsidy for the permanent release of vessels from the restrictions in section 506 of the Merchant Marine Act, 1936, as amended: Provided,
46 USC 1156.	That such funds may be used to the extent such expenditure relates to a rule which conforms to statutory standards hereafter enacted by Congress. Sec. 506. Notwithstanding any other provision of this Act, appropriations made by the title I of this Act for the following account shall be as follows: