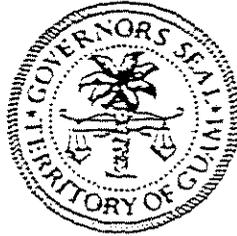

DEPARTMENT OF ADMINISTRATION

DRUG-FREE
WORKPLACE
PROGRAM (DFWP)

OPERATING
PROCEDURES



TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U.S.A.

EXECUTIVE ORDER NO. 95-29

RELATIVE TO ADOPTING AND PROMULGATING A COMPREHENSIVE DRUG FREE WORKPLACE POLICY FOR THE GOVERNMENT OF GUAM WHICH INCLUDES MANDATORY DRUG TESTING AS A CONDITION OF EMPLOYMENT IN THE GOVERNMENT OF GUAM; RANDOM DRUG TESTING FOR DESIGNATED POSITIONS; AND PROCEDURES FOR DEALING WITH ILLEGAL DRUG USE IN THE WORKPLACE.

WHEREAS, over the last several years Guam has experienced an increase in the use of illicit drugs and this increase has led to a corresponding increase in the island's crime rate; and

WHEREAS, the use of illicit drugs has found its way into our elementary and middle school age children and there is a growing awareness that the health, safety, and welfare of our community is jeopardized by the prevalent use of illicit drugs and alcohol abuse; and

WHEREAS, the Gutierrez-Bordallo Administration is committed to the eradication of the presence and use of deadly drugs within the workplace and throughout our community; and

WHEREAS, approximately 14,000 employees who work for the government of Guam should represent the highest integrity in insuring a drug free workplace and anyone who aspires to become a government of Guam employee shall be free from drugs;

WHEREAS, substance abuse is a serious island crisis which has a detrimental effect on the lives of many of our citizens, and has exerted a negative effect on the operation of business and government; and

WHEREAS, the government of Guam experiences a loss in productivity due to drug-related absenteeism, injuries on-the-job, decreased work productivity and quality; and

WHEREAS, employees under the influence of illegal substances function below established standards and make impaired work decisions which may seriously affect their co-workers and members of the public; and

WHEREAS, government employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves; and

WHEREAS, the illegal use of the workplace as a market place for drugs endangers the health, safety, and welfare of government employees and the community; and



WHEREAS, the government must maintain a work environment which eliminates waste and supports the health, well-being and productivity of all its employees as they carry out their responsibilities for the people of Guam; and

WHEREAS, the Federal Omnibus Drug Abuse Act of 1988 stipulates that any state or territory of the United States which is a recipient of federal dollars must establish a drug-free workplace; and

WHEREAS, a drug free workplace is fundamental to efficient, effective and responsive government;

NOW, THEREFORE, I, CARL T. C. GUTIERREZ, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, deeming such actions in the best interests of public health and safety, law enforcement and the efficiency of government service, and in order to establish standards and procedures in achieving a drug-free workplace while protecting the privacy of government employees, hereby proclaim the following:

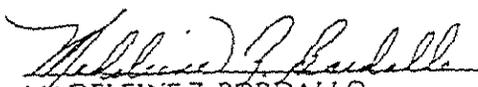
- 1) The Department of Administration Drug Free Workplace Program Operating Procedures approved by the Civil Service Commission on December 5, 1995, are hereby adopted and promulgated.
- 2) Autonomous agencies or those outside the personnel jurisdiction of the Department of Administration may participate in the Drug Free Workplace Program through a Memorandum of Understanding as provided in the Drug Free Workplace Program Operating Procedures.
- 3) All government agencies shall cooperate to ensure that the Drug Free Workplace Program is successful and effective.
- 4) Applicants selected for and offered employment with the government of Guam shall undergo and pass a mandatory drug test before being employed. Failure to submit to or pass such drug test shall be grounds for rescinding the offer of employment, unless the applicant is undergoing treatment through a rehabilitation program approved or recognized by the Department of Mental Health and Substance Abuse, in which case the applicant must successfully complete the program within the prescribed time before being employed.

SIGNED AND PROMULGATED at Agaña, Guam this 6th day of December, 1995.



CARL T. C. GUTIERREZ
Governor of Guam

COUNTERSIGNED:



MADELEINE Z. BORDALLO
Lieutenant Governor of Guam

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EMPLOYEE ASSISTANCE PROGRAM

DRUG-FREE WORKPLACE PROGRAM OPERATING PROCEDURES

1. **PURPOSE.** To establish a Drug-Free Work-Place Program within the Government of Guam.
2. **POLICY.** It is the policy of the Department of Administration that effective immediately, it is unlawful to manufacture, distribute, dispense, possess or use a controlled substance in the workplace. Violation of this policy will not be tolerated. As a condition of employment with the Government of Guam, all employees will abide by the terms of this policy and will comply with rules and regulations established for its implementation by the Department of Administration and the individual agencies. It shall further be the obligation of each employee to notify the head of his or her agency of any drug statute conviction by the employee for a violation occurring in the workplace no later than five (5) days after such conviction. In the event of a violation of this policy, personnel action up to and including termination from employment may be effected. Designation of Testing Designated Position's is not negotiable for collecting bargaining.
3. **APPLICABILITY.** This policy applies to all Government of Guam employees in line agencies and non-autonomous agencies, regardless of type of appointment, and all persons providing contractual services with the Government of Guam, and applicants tentatively selected for employment.
4. **DEFINITIONS.** Definitions are provided in Attachment (1).
5. **RESPONSIBILITIES**
 - a. The Director, Department of Administration:
 - (1) Establish and issue procedures, guidance and training programs on the DFWP.
 - (2) Approve additions to and deletions from the Testing Designated Position (TDP) list after conferring with the Department of Mental Health and Substance Abuse and the Attorney General's Office, subject to CSC approval.

- (3) Appoint, in writing, a Drug Program Specialist (DPS) to administer the DFWP for all line and non-autonomous agencies; ensure training is provided to the DPS on the DFWP in the collection of urine sampling and chain of custody procedures; provide general information on drug testing laboratory procedures; require records and reports; and maintain confidentiality requirements.

b. The Drug Program Specialist (DPS):

- (1) Ensure that Drug Screening Laboratories (DSLs) test all employee samples under forensic conditions following the requirements established by the U. S. Department of Health and Human Services as provided in Attachment (2).
- (2) Ensure that Blind Performance Test Specimens (BPTS) are submitted following the requirements provided in Attachment (2).
- (3) Assume the lead role in the development, implementation, and evaluation, and education of the DFWP and the preparation of required reports on the DFWP.
- (4) Provide guidance and assistance, as required, to the Director of the Department of Administration and all other department/agency heads on the implementation of this policy and the submission of any DFWP reports.
- (5) Serve as the primary liaison with the Department of Mental Health and Substance Abuse, Department of Public Health and Social Services, Guam Memorial Hospital, or other external agencies on the DFWP.
- (6) Maintain the TDP list and process requests from department/agency heads for changes to that list as approved by the Director of the Department of Administration.
- (7) Ensure confidentiality of test results.

c. Heads of line and non-autonomous agencies/departments:

- (1) Ensure that the DFWP policies and procedures are carried out at the department/agency level.

- (2) Appoint a collateral duty department/agency DFWP Coordinator (DFWPC) to work with the DOA DPS in the administration of the program in-house. This coordinator will also receive all test results on behalf of the department/agency. Every department/agency must designate a coordinator regardless of whether it has any TDPs. However, it is permissible to designate or share a coordinator with a larger department/agency through mutual written agreement to perform the function on behalf of the small department/agency.
- (3) Ensure that mandatory training is provided to all supervisors and managers. Ensure that prior to implementation of the DFWP in the organization, the designated department/agency coordinator is sufficiently trained to perform the functions of the DFWP.
- (4) Ensure that a copy of the "General Notice" (Attachment 3) is distributed to all employees and new hires.
- (5) Ensure that the provisions of the DFWP are publicized to all employees including drug awareness, the hazards of illegal drug use, the Employee Assistance Program, and "safe harbor" provisions.
- (6) Ensure that department/agency positions are reviewed and a determination made that the positions match the titles on the Department of Administration TDP list provided in Attachment (4). These positions will then form the department/agency TDPs.
- (7) Sign and ensure timely distribution of an individual notice to each employee whose position has been determined to meet the criteria of a TDP at least thirty (30) days before the individual is subjected to unannounced random testing. This notice form is provided in Attachment (5) and must be issued without revision.
- (8) Request that the Director, Department of Administration, make additions and/or deletions to the TDP list.
- (9) Authorize each random sampling conducted and ensure that employees who volunteer for the random testing program are released on administrative time off without charge to leave.
- (10) Identify the approval level for either accident/unsafe practice or reasonable suspicion testing which may be re-delegated to no lower than one level above the supervisor or manager requesting the test.

- (11) Ensure that an employee who has tested positive is immediately taken out of his or her TDP. The employee may be returned to his or her position as part of a counseling or rehabilitation program if the department/agency head determines that such action will not endanger public safety or security. This authority to reinstate the employee to the TDP shall not be delegated.
 - (12) Ensure that necessary disciplinary action is taken following the provisions of this regulation.
 - (13) Ensure that the department's/agency's bargaining obligations with exclusively recognized labor organizations as required by the Public Employee Management Relations Act (PEMRA) are satisfied.
- d. Department/Agency DFWP Coordinator will:
- (1) Provide guidance and assistance in their respective organizations.
 - (2) Ensure managers and supervisors are trained on DFWP policies and procedures.
 - (3) Ensure procedures established on Attachment (6) are followed by the department/agency head when requesting changes, additions or deletions to the list of Department of Administration TDPs.
- e. The Medical Review Officer (MRO) will:
- (1) Receive all drug testing results from the Drug Screening Laboratories (DSLs).
 - (2) Assure that an individual who has tested positive is afforded an opportunity to offer alternate medical justification for the test result.
 - (3) Immediately report all verified drug test results to the DPS.
 - (4) Coordinate with and report to the DPS and department/agency head on all drug testing functions and findings on a regular basis.
 - (5) Ensure complete confidentiality except for those who need-to-know.

- f. **The Employee Assistance Program (EAP) Administrator.** The EAP Administrator is responsible for implementing and operating the EAP and must not be designated to serve as a Drug Program Specialist, coordinator, collection site officer, or in any capacity related to the collection or transportation of samples collected under the drug testing program for employees. The EAP Administrator, collateral or full-time, will be designated officially in writing by the Director of Administration, and shall:
- (1) provide counseling services to all employees referred to EAP by their supervisors or through self-referral and otherwise offer employees the opportunity for counseling and rehabilitation.
 - (2) ensure the provision of appropriate supervisory training and other activities needed to educate and inform employees about EAP and the use of illegal drugs in the workplace.
 - (3) develop and maintain an adequate counseling capability through the personnel office, medical, or other counseling sources, including contracting out.
 - (4) monitor the progress of referred employees during and after the rehabilitation period.
 - (5) maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitation programs to include name, address, phone number, types of service available, hours of operation, contact's name and telephone number, fee structure and insurance coverage, client specialization, and other pertinent information. Publicize the name and location of designated agency or department counselors.
 - (6) periodically visit rehabilitation or treatment organizations to meet administrative and staff members; tour the sites; ascertain the experience, certification, and education level of the staff; and determine policies concerning progress reports of clients and post treatment follow-up.
 - (7) evaluate the EAP and report to the agency/department head on findings and effectiveness, at least annually, and recommend changes.
 - (8) effectively publicize the program.

- g. **Employee Assistance Program (EAP) Counselors.** EAP Counselors serve as the initial point-of-contact for employees who ask or are referred for counseling and must not be designed to serve as a Drug Program Coordinator, or in any capacity related to the collection or transportation of samples collected under the drug testing program for employees. As a minimum, a person designated as a counselor should, or arrangements should be made for him/her to be:
- (1) familiar with personnel rules and regulations regarding the Drug Free Workplace Program, disciplinary actions, and other policies and statutes governing employee conduct and performance.
 - (2) knowledgeable of EAP policies and procedures.
 - (3) able to counsel employees in the occupational setting and identify drug and alcohol abuse and personal problems impacting on job performance or conduct.
 - (4) able to communicate effectively with employees, supervisors, and managers about alcohol abuse, personal problems and illegal drug use and their symptoms and consequences.
 - (5) knowledgeable about community resources for treatment and rehabilitation, and when making referrals, consider the nature and severity of the problem; location and cost of the treatment, intensity of the treatment environment, in-patient/out-patient care availability; preferences of the employee; and other special needs such as transportation and child care.
 - (6) able to discuss treatment for alcohol, drug, and other personal problems, as well as rehabilitation insurance coverage available to employees under the government employees health benefits plan.
 - (7) able to distinguish the occasional alcohol or drug user from the addicted user and to suggest appropriate treatment based on the distinction.
 - (8) able to provide training and education relating to alcohol and illegal drug use and other personal problems to employees, supervisors, and other interested groups.
- h. **Supervisors will:**
- (1) Notify individual employees of a scheduled drug test.

- (2) Defer an employee's random or follow-up drug test and notify the DPS of the deferral per paragraph 22b(3).
- (3) Initiate a reasonable suspicion test, after first making appropriate factual observations and obtaining approval as provided in paragraph 24.
- (4) Initiate an accident test as provided in paragraph 25.
- (5) Upon a finding of a positive drug test, refer employees for assistance in obtaining counseling and rehabilitation, and initiate appropriate administrative and disciplinary actions after consultation with the EAP Counselor on the progress of the employee's rehabilitation program.
- (6) Not select an applicant who has a verified positive test.
- (7) Notify Appointing Authority of employee's refusal to take the test or if employee failed to show for a scheduled test.

i. Employees will:

- (1) Refrain from the illegal use of drugs on or off-duty at all times.
- (2) Provide a urine sample when required.
- (3) Be responsible for successful completion of any rehabilitation or treatment required as the result of illegal use of drugs.
- (4) Cooperate with the Medical Review Officer (MRO), as requested, to provide additional information regarding a drug test.
- (5) Notify the appointing authority of any criminal drug or alcohol statute conviction for a violation no later than five (5) days after such conviction.

j. The DOA Division of Personnel Management and Personnel Officers at all Departments/Agencies will:

- (1) Ensure that vacancy announcements, if used, include notice, if applicable, that the TDP is subject to random drug testing.
- (2) Ensure, prior to making a final offer of employment or processing another type of position placement action, that a required drug test has been conducted and that the results are negative.

- (3) Issue a copy of the General Notice signed by the Director of Administration to all new employees.
 - (4) Maintain records and information relating to personnel actions taken against employees following the requirements in this regulation.
 - (5) Notify the DPS if positive specimens need to be retained by the Drug Screening Laboratories longer than the normal one-year period, e.g., because of an adverse action appeal or enforcement of a rehabilitation plan or agreement.
- k. The DOA Training and Development Division will conduct training for all managers and supervisors on their roles in the Drug-Free Workplace Program and in recognizing and addressing the illegal use of drugs by employees. The training should include information on:
- (1) Department of Administration policy on the illegal use of drugs.
 - (2) The supervisor's role in the DFWP.
 - (3) How to recognize, document, and deal with employee performance and conduct problems due to the illegal use of drugs.
 - (4) The role of the DPS, department/agency DFWP Coordinator, and medical and personnel staffs.
 - (5) The supervisor's responsibilities to offer employee assistance services and take required administrative and disciplinary actions.
 - (6) Education on behavioral effects of prescribed or over-the-counter medications.

The DOA Training and Development Division will also offer drug education and training programs for all employees. This should include information on types and effects of drugs, symptoms of drug use, effects on performance/conduct, the relationship between the employee assistance program and drug testing program, and other relevant treatment, rehabilitation, confidentiality, and "safe harbor" provisions of the DFWP. The drug education process may be accomplished through such means as the distribution of written materials, video tapes, lunchtime employee forums, or employee drug awareness days.

6. **NOTICES.** A "General Notice" signed by the Director of Administration announcing the drug testing program will be issued to all employees. A copy of this notice is included as Attachment (3) and should also be issued to all new hires during the employee's orientation process. An "Individual Notice" to an employee in the TDP that his or her position has been determined to meet the criteria and justification for random drug testing will be issued at least thirty (30) days before the individual is subjected to unannounced random testing. See paragraph 22b for procedural requirements and Attachment (5) for a copy of the notice.

7. **TYPES OF TESTING.** The Department of Administration program includes the following types of drug testing: (1) random testing of employees in TDPs; (2) reasonable suspicion testing; (3) accident or unsafe practice testing; (4) voluntary testing; (5) testing as part of, or as a follow-up to, counseling or rehabilitation; and (6) applicant testing.

8. **TYPES OF DRUGS.** Employees and applicants selected for employment will be tested for cocaine, cannabis (marijuana), amphetamines, opiates, phencyclidine (PCP) and/or the metabolites of these drugs. Tests will also be conducted for any other drugs or classes of drugs listed in Chapter 67 of Title 9, Guam Code Annotated, or on Schedules I and V of the Controlled Substance Act (CSA).

9. **VOLUNTARY SELF-REFERRAL FOR "SAFE HARBOR"**
 - a. Agencies shall provide an opportunity for assistance to those employees who voluntarily seek treatment for drug use. "Safe harbor" insulates the employee from discipline for admitted acts of using illegal drugs when the agency is unaware of such use. "Safe Harbor" will be offered to any employee who meets all of the following conditions:
 - (1) Voluntarily identifies himself or herself as an illegal user of drugs to a supervisor or other higher level management official prior to being identified through other means.
 - (2) Obtains counseling and rehabilitation through any form of employee assistance programs.
 - (3) Agrees to be tested by the department/agency as part of or as a follow-up to counseling and rehabilitation.
 - (4) Consents, in writing, to the release to appropriate management and DFWP officials of all counseling and rehabilitation records related to the illegal use of drugs.

- (5) Subsequently refrains from illegal use of drugs.

All of these conditions must be documented in the agreement between the employee and the department/agency.

- b. An employee who admits to drug use after being notified that he or she is scheduled for a test or just after a sample is collected, or who is found to use drugs on the basis of other appropriate evidence (for example, direct observation or evidence obtained from an arrest or criminal conviction) is not eligible for "safe harbor". EXAMPLE: An employee arrested over the weekend on drug-related charges is released and reports to work as usual on Monday requesting "safe harbor". Since the department/agency is unaware of the arrest, it signs the agreement. A "safe harbor" agreement signed under these circumstances will be considered invalid and obtained by the employee under false pretenses. Further, "safe harbor" is for illegal users of drugs, not drug dealers or those involved in other drug-related misconduct.
- c. An employee who meets the "safe harbor" conditions will not be subject to discipline for the admitted acts of illegal use of drugs, including possession, incident to such personal use. However, if the employee occupies a TDP subject to random testing, he or she must immediately be removed from the TDP.
- d. The department/agency head will initiate removal action against an employee who invokes safe harbor, and subsequently tests positive for illegal drug use. The subsequent positive drug test is considered a second finding of illegal drug use.

10. *PRIVACY DURING URINE COLLECTION*

- a. *Unobserved.* Generally, an individual subject to testing will be permitted to provide a urine specimen privately in a rest-room stall or similar enclosure so that the employee is not visually observed while providing the sample, except as provided below. Collection site personnel of the same gender will escort the employee or applicant (selected for employment) to the rest-room and remain outside the stall during the test.
- b. *Observed.* If a department/agency has reason to believe that the individual may alter or substitute the specimen, the individual may be required to provide the specimen under direct visual observation. Examples of situations calling for direct visual observation include when (1) the individual has previously been found by the department/agency to be an illegal drug user and is undergoing follow-up testing, including employees with "safe harbor" agreements; (2) facts and circumstances suggest that the individual has equipment or materials

capable of tampering with or adulterating a urine sample; or (3) the individual has previously tampered with a sample.

Any such reason must be documented, in writing, and retained with the collection records by the DPS or with adverse action files.

11. ***FAILURE TO REPORT TO THE DESIGNATED COLLECTION SITE***

- a. If an individual fails to appear at the collection site at the assigned time, the DPS will note the fact in the record and immediately notify the supervisor. If the collection is being managed by a designated Collection Site Officer (CSO), or the specific department/agency DFWP Coordinator, that individual will immediately notify the DPS who will notify the supervisor.
- b. An employee who fails to appear for any type of testing (except for a deferral granted by a supervisor from random or follow-up testing under paragraph 22b.3) will be subject to the same range of discipline as a verified positive test result for illegal drug use.
- c. Due to the nature of this offense, there is no requirement for referral to employee counseling or rehabilitation under the employee assistance program.
- d. An applicant who has been selected for employment who failed to appear for a test without just cause will result in the cancellation of any tentative offer of employment.

12. ***REFUSAL TO BE TESTED.*** If an employee refuses to be tested, regardless of the reason for the testing (random, reasonable suspicion, accident/unsafe practice, and follow-up), he or she will be informed that refusal will be considered failure to follow a direct order and will result in discipline.

If the refusal occurs at the work site, the supervisor will immediately notify the DPS. If the refusal occurs at the collection site, the DPS will immediately notify the supervisor and Appointing Authority.

Due to the nature of this offense, there is no requirement for referral to counseling or rehabilitation under the employee assistance program. Any applicant's refusal to be tested will result in the cancellation of any tentative offer of employment.

13. FAILURE TO PROVIDE A SAMPLE

- a. *Insufficient Sample.* An employee should be given a reasonable amount of time to provide the sample. If an employee is unable to provide at least 30 milliliters of urine, the sample should be submitted, the temperature checked, and the partial specimen should be placed in a secure area. The following steps should then be taken: (1) The employee will be asked to drink sufficient fluids and will remain at the collection site within view of the DPS of DFWP Coordinator until he or she is able to provide a sufficient sample. (2) When the employee is ready to provide the second specimen, he or she will void into a new bottle or catch container and the temperature of that sample will be checked. If it is within the acceptable temperature range (90.5° - 99.8°F, both the first and second samples will be combined in a single container.
- b. *Unable to Void (Urinate).* If the employee is unable to void, he or she should be asked to drink sufficient fluids to facilitate urination. The employee will be required to remain at the collection site within view of the DPS until ready to provide the sample.

Under either of these conditions, the department/agency may elect to release the employee. Such a release is not considered a deferral under paragraph 22b.3.

14. COLLECTION EXTENDING BEYOND THE REGULAR SHIFT. If the collection extends beyond the end of the employee's regular shift, the following options are available to the department/agency depending on an assessment of the situation by the DPS after a discussion with the employee's supervisor or higher level manager:

- a. The department/agency may require the employee to remain at the collection site and give compensatory time.
- b. The department/agency may release the employee, which will not be considered the same as a deferral as described in paragraph 22b.3; no special test will be scheduled.

15. OPPORTUNITY TO JUSTIFY A POSITIVE TEST RESULT. The Drug Screening Laboratories will provide drug test results to the Medical Review Officer. The MRO will give the employee of a positive test result an opportunity to justify the result by submitting medical records, a valid prescription, biomedical, and/or other relevant information. The employee will be allowed to discuss the test results with the MRO. This discussion will not necessarily be in person, but may be by telephone. The MRO review is described in paragraph 28.

16. RELEASE OF TEST RESULTS

- a. The laboratory will disclose test results only to the MRO. Any positive result which the MRO determines to be justified by legitimate medical use will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. An employee's test results may not be disclosed without prior written consent of the employee, unless the disclosure would be (1) to the MRO; (2) After MRO review, to the DPS; (3) After MRO review, to the employee assistance program for purposes of counseling and rehabilitation; (4) After MRO review, to any supervisor or management official within the department/agency having the authority to recommend, decide, or process an adverse personnel action against the employee or to an administrative tribunal in a review of an adverse personnel action; (5) Under an order of a court of competent jurisdiction or required by the Department of Administration to defend against a challenge against an adverse personnel action.
- b. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, for data collection or other purposes consistent with requirements to comply with the Drug-free Workplace Program regulations. This form of disclosure may not include personal identifying information on any employee.

- 17. RANDOM TESTING.** Certain positions within the line and non-autonomous agencies have been identified as TDPs that may be subject to random testing. The list of TDPs is provided at Attachment (4) along with the descriptions and justifications for including the positions on the list.

Position titles not on the TDP list will not be included in a random drug testing program. Additions to and deletions from the TDP list may be considered when requested by the agency/department director to the Director of Administration. The procedures to follow when requesting for deletions or additions to the TDP list are included in Attachment (6).

Agencies/departments will review individual positions to determine whether the basic titles match the titles set forth in Attachment (4).

The DPS will compile the agency/department TDP list of positions. This forms the agency/department TDP pool for random testing. The list will contain at a minimum:

- a. The employee's name, social security number and gender.
- b. The position title, pay grade, and step.

- c. Agency/Department name or other organizational information, such as work location.

This list of positions and employees must be maintained to ensure that it is current and accurate at all times. The DPS should be advised by the agency/department when positions are established or abolished; significant changes are made to the duties of any position; a personnel action results in a change of the employee of a TDP; and the organizational location of any TDP is changed.

Positions may not be selected for random drug testing on the basis of a desire to test particular individual employees.

18. **INDIVIDUAL NOTICE.** Each employee in a TDP must be issued an individual notice at least thirty (30) days before that employee is subjected to unannounced random testing. In addition, each employee, upon entering a TDP, will receive an individual notice. For those employees not occupying a TDP immediately prior to this position change, the agency/department will not subject the employee to random testing for at least thirty (30) days following issuance of the notice. The individual notice in Attachment (5) has been reviewed for legal sufficiency and must be issued without change.

Each employee in a TDP will be required to acknowledge in writing that (a) he or she has received and read the notice which states that the employee's position has been designated for random drug testing; and (b) he or she understands that refusal to submit to testing will result in administrative action and the initiation of disciplinary action, up to and including removal as specified in the Personnel Rules and Regulations.

If the employee refuses to sign the acknowledgment, the employee's supervisor will note on the acknowledgment form that the employee received the notice and forward the form to the agency/department DFWP Coordinator. An employee's failure to sign the notice will not preclude testing of the employee.

A copy of the signed acknowledgment or supervisor's note on the form must be retained by the DFWPC for that department/agency.

19. **REVIEW OF TDP DESIGNATION.** An employee who believes his or her position has been wrongly designated as a position in the agency/department TDP pool may request the Director of Administration to review the determination. The request must be submitted by the employee in writing via his or her agency/department head within fifteen (15) days of receipt of the individual notice or other form of notification of the TDP decision. It must set forth the reasons why the employee believes it should not be a TDP and include all other relevant information. The agency/department head will

review and concur or not concur with the request based upon the criteria applied in designating the employee's position as a TDP and forward to the Department of Administration. The Department of Administration will issue a final written decision.

A bargaining unit employee covered by a collective bargaining agreement who seeks review of the designation of his or her position as a TDP must grieve the designation under the negotiated grievance procedure, provided the agreement does not exclude these decisions from that procedure.

Seeking review of the TDP determination, whether or not the employee is covered by a bargaining unit, will not except the employee from random testing during the review process or negotiated grievance procedure.

20. *TEMPORARY POSITION CHANGES*

An employee who is detailed, temporarily promoted, or reassigned to a TDP through a personnel action documented by a GG-1, will be subject to random drug testing during that period, provided that the assignment is expected to exceed thirty (30) days.

Since testing of the employee prior to temporary placement will not be required, the employee will be issued the individual 30-day notice contained in Attachment (5) when he or she enters the position. The employee will be subject to unannounced random testing thirty (30) days after receiving the notice. However, a new notice is not required if the employee is moving between two TDPs.

If an employee is temporarily detailed out of a TDP for over thirty (30) days, the employee should be issued another individual notice upon reentry. However, if the employee is only temporarily assigned out of his or her permanent TDP, no notice is required because the employee remains in his or her permanent position.

21. *RANDOM TESTING PROCEDURES*

- a. *Frequency.* The frequency of testing will be determined by the DPS, Department of Administration. The rate of random testing will optimize overall deterrence; it is not necessary to ensure each employee in a TDP is tested every year or to limit any employee to a specific number of tests. The Director of Administration reserves the right to increase or decrease the frequency of testing based on the government's needs, availability of resources, and experience in the program consistent with the duty to achieve a drug-free workplace.

- b. *Procedures Prior to Collection.* The Department of Administration Drug Program Specialist (DPS) will request the authorization of the agency/department director to conduct random tests. When authorization is received, the DPS will notify the agency/department DFWPC to randomly select employees to be tested from the TDP pool and document the method or means of selection. The selection may be generated by computer or other means which will ensure randomness, such as the method described in Attachment (7). All information will be strictly guarded to ensure that employees do not know in advance that random testing will be conducted. The identities of individuals selected will remain confidential.

The DFWPC will schedule the selectees for testing, preferably in the first half of the shift, at a rate which the collection team can process efficiently and effectively.

- (1) Supervisor Notification. The DFWPC will notify the selected employee's first-level supervisor approximately two (2) hours prior to the actual time of collection. If the first level supervisor is unavailable, the next higher level of supervision will be contacted. The supervisor should review the checklist provided at Attachment (8). The DFWPC shall annotate the list with the date and time the supervisor has been contacted.
- (2) Employee Notification. Approximately 15 to 30 minutes prior to the scheduled collection, the supervisor will privately inform the employee with the exact time and location of the test. In the event the collection site is distant from the work site, appropriate adjustments will be made to the notification time so long as the advance notice is as brief a time as possible.

The supervisor will explain to the employee that he or she is under no suspicion of taking drugs and that the employee's name was randomly selected. The supervisor will attempt to respond to any employee questions to avoid misunderstanding. The supervisor should consider providing the employee with a checklist similar to the sample in attachment (9).

The employee will be instructed to take an appropriate photo identification to the test site.

The supervisor will discuss with a higher level supervisor any problem which may arise with regard to the employee reporting for the test as scheduled. If a deferral, as described immediately below, is necessary, the DFWPC will be notified as soon as possible.

- (3) Deferral of Testing. An employee selected for drug testing (random and follow-up) may be given a deferral from testing if the employee's first-line and a higher level supervisor concur that a compelling need necessitates a deferral on the grounds that the employee is:
- In a non-duty status such as annual leave, sick leave, suspension, absent without leave, and other reasons.
 - In an official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.
 - Working a different shift.
 - Performing a task or project that requires the employee's presence at the work site during the time the test is scheduled. The supervisor will inform the DFWPC of the deferral and attempt to reschedule for the same day at a different time.

If the test is not administered that day, the supervisor will inform the employee that he or she may be tested within sixty (60) days from the date of the deferral or the date the employee returns to duty or the work site.

- (4) Exemption during Treatment and Rehabilitation. While undergoing initial treatment or rehabilitation through the Employee Assistance Program, the employee may be exempted from random testing for a period not to exceed sixty (60) days or for a time period specified in an abeyance agreement or rehabilitation plan. Upon completion of the stipulated exemption, the employee will be included in a separate testing pool as follow-up to counseling or treatment for illegal drug use for a period of one year, in addition to remaining in the regular random testing pool if occupying a TDP.

22. **VOLUNTARY TESTING.** To demonstrate a commitment to the goal of a drug-free workplace and to set an example for others, an employee not in a TDP may volunteer to be included in the random testing program. This employee will then be included in the pool of TDPs and will be subject to the same conditions and procedures for random testing. The volunteer employee must be informed that he or she may withdraw from the random program at any time, even after being notified of an impending random drug test.

23. REASONABLE SUSPICION TESTING

- a. **Determination of Reasonable Suspicion.** For employees in TDPs, a test may be authorized when management has a reasonable suspicion that any employee in a TDP is using drugs illegally. This belief must be based on specific objective facts and reasonable inferences drawn from these facts. Reasonable suspicion testing of employees in TDPs may be based upon, among other things: Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug; arrest or conviction for an on or off-duty drug-related offense or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking; information provided either by reliable and credible sources or independently corroborated; newly discovered evidence that the employee has tampered with a previous drug test; the temperature or color of the urine sample, or other evidence, indicates probable adulteration, tampering, or substitution.

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

Employees in non-TDPs may only be tested when management has a reasonable suspicion that the employee is using drugs illegally on-duty or performing work while drug-impaired.

- b. **Authorization.** If an employee is suspected of illegal use of drugs, the appropriate supervisor or management official will gather all information, facts, and circumstances leading to and supporting this suspicion. Approval for testing must be received from at least one level above the supervisor or manager requesting the test. If practicable, the decision to conduct a test will be made the same day the event or behavior occurred or as soon as management becomes aware of the event or behavior. The DPS will then be notified of the requirement to arrange for a test.
- c. **Types of Drugs.** Tests will be conducted for cocaine, marijuana, amphetamines, opiates, and PCP. Agencies/departments performing a reasonable suspicion test are also authorized to include any drug on Chapter 67, Title 9, Guam Code Annotated. The agency/department must specify the drug or drugs for which the employee is being tested on the Urine Sample Custody Document.
- d. **Documentation.** As an immediate follow-up procedure to the test, the appropriate supervisor or manager will detail, in writing, the circumstances which warranted the test. At a minimum, the report will include the appropriate dates and times of reported drug-related incidents, reliable and/or credible sources of information, reasons leading to the test, the second-level

concurrency, findings of the test, and any action taken. If the collection is being performed under direct observation, the reason for this method of collection must also be documented. The DFWPC will retain a copy of this documentation.

- e. **Scheduling.** The DFWPC will usually arrange for the collection to be conducted immediately, on the same day as the test was approved by management. This test may be conducted without regard to the employee's regular work shift, etc., and overtime pay or compensatory time will be provided as needed.
- f. **Notification.** The supervisor, if not directly involved in the reasonable suspicion determination, will be notified by the DFWPC that an emergency collection procedure has been initiated. If the immediate supervisor is not available, a next higher level of supervision will be contacted. The DFWPC will provide the supervisor with the estimated time and location of the collection and any necessary information to be conveyed to the employee.

The employee will be notified by the supervisor or management official, after the DFWPC confirms the time and location, of the test and will be issued the specific written notice that he or she is being tested for reasonable suspicion. A sample of that notice is included as Attachment (10). The employee will be informed of the exact time and location of the test and directed to take an appropriate photo identification to the test site. The supervisor or other management official will escort the employee to the site.

- g. **Collection Procedures.** If there is specific reason to believe that an employee may alter or substitute the specimen, the employee will provide the urine sample under direct observation. If there is no specific reason to believe that an employee may alter or substitute the specimen, standard collection procedures must be followed to ensure strict chain of custody and specimen control as provided at Attachment (12).

24. ACCIDENT OR UNSAFE PRACTICE TESTING

- a. **Determination.** The government of Guam is committed to providing a safe and secure work environment. It also has a legitimate interest in determining the cause of serious on-the-job accidents or unsafe, on-duty, job-related activity so that it can undertake appropriate corrective measures. Drug testing after an accident or unsafe practice can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based upon the circumstances of the on-the-job accident or unsafe, on-duty, job-related activity, their actions are reasonably suspected of having caused or contributed to an accident or unsafe practice that meets either of the following criteria:

- (1) The accident or unsafe practice results in a death or personal injury requiring hospitalization.
 - (2) The accident or unsafe practice results in severe damage to government or private property in excess of \$10,000.
- b. **Authorization.** If a supervisor or manager suspects that an employee has caused or contributed to an on-the-job accident or unsafe, on-duty, job-related activity that meets either of the criteria stated in paragraph 25a above, he or she will gather all information, facts, and circumstances leading to and supporting this requirement. Approval for testing must be received from at least one level above the supervisor or manager requesting the test. If practicable, the decision to conduct a test will be made the same day the event or behavior occurs, or as soon as management becomes aware of the event or behavior. The DFWPC will then be notified of the requirement to arrange for a test.
- c. **Types of Drugs.** In addition to testing for cocaine, marijuana, amphetamines, opiates, and Phencyclidine (PCP), agencies and departments performing accident testing are authorized to include any drug on Chapter 67 of 9GCA or Schedules I and II of the CSA. The agency/department must specify the drug or drugs for which the employee is being tested on the Urine Sample Custody Document.
- d. **Documentation.** Once approval has been obtained from respective the Appointing Authority for testing, the supervisor will prepare written documentation which, at a minimum, will include the appropriate dates and times, circumstances surrounding the incident, the reasons leading to the test, the second-level concurrence, findings of the test, and any action taken.
- e. **Scheduling.** The DFWPC will usually arrange for the collection on the same day as the incident giving rise to the test. The test may be conducted without regard to the employee's regular work shift, etc. and overtime pay or compensatory time will be provided as needed.
- f. **Notification.** The supervisor, if unaware of the incident, will be notified by the DFWPC that an emergency collection procedure has been initiated. If the immediate supervisor is not available, the next higher level of supervision will be contacted. The DFWPC will provide the supervisor with the estimated time and location of the collection and any necessary information to be conveyed to the employee.

After the DFWPC confirms the time and location, the supervisor or management official will notify the employee of the test and issue the specific written notice that he or she is being tested because of the accident or unsafe

practice. A sample of that notice is included in Attachment (11). The employee will be informed of the exact time and location of the test, directed to take an appropriate photo identification, and escorted to the test site by the supervisor or other management official.

- g. **Standard Collection Procedures.** These procedures must be followed to ensure strict chain of custody and specimen control. The specific procedures to be followed are provided at Attachment (12).

25. FOLLOW-UP TESTING

- a. **Description.** All employees referred through administrative action to counseling or rehabilitation for illegal drug use will be subject to unannounced drug testing as a follow-up to his or her program. This testing is separate from the regular random testing conducted by the department/agency. The employee will be tested for a period of one year or for such time as specified in an abeyance agreement, rehabilitation plan, or other form of written agreement. In addition, a department/agency may elect to impose testing as part of the rehabilitation or treatment program.
- b. **Documentation.** The abeyance agreement, rehabilitation plan, or other form of written agreement will be retained and serve as evidence that the employee was aware of the requirement for follow-up testing.
- c. **Notification.** The supervisor or manager will notify the DPS upon the employee's return to work so that follow-up testing can begin, if the employee was in a non-duty status. The rehabilitation counselor will notify the DPS upon the employee's completion of any initial or in-patient counseling or rehabilitation for illegal drug use or as part of the rehabilitation process in order for testing to be initiated.
- d. **Frequency.** Such employees will be tested at a frequency determined by the department/agency; the rate need not be specified in the agreement or rehabilitation plan.
- e. **Collection Procedures.** The employee will be directed to provide the urine sample under direct observation to ensure strict chain of custody and specimen control as provided in Attachment (12).

26. APPLICANT TESTING

a. *Coverage.* Drug testing will be required of all individuals tentatively selected for a TDP unless the selection involves only a temporary position change of thirty (30) days or less, or the individual currently occupies a TDP within the Government of Guam. These selections may include those made under merit promotion procedures and any other personnel action resulting in the placement of an individual in a TDP. Departments/agencies are not authorized to test other than TDP applicants.

b. *Vacancy Announcements*

- (1) All vacancy announcements for TDPs will contain the following statement:

An applicant tentatively selected for this position will be required to submit to urinalysis for illegal use of drugs prior to a final selection. (Exception: If the position change is for thirty (30) days or less, or the applicant currently occupies a Government of Guam Testing Designated Position (TDP), no applicant test is authorized.) The selection is contingent upon a negative drug test result and, thereafter, the selectee will be subject to drug testing on a random basis as the incumbent of a TDP. Further, all government employees may be subject to drug testing under certain circumstances such as reasonable suspicion and after an accident of unsafe practice. All individuals will have an opportunity to submit medical documentation that may support the legitimate use of a specific drug to a Medical Review Officer. An applicant's test results will be provided to the selecting official and the Department of Administration, Personnel Management Division, before a final selection is made. A verified positive drug test result of a current employee occupying a TDP will also be provided to the employing appointing authority. Situations in which applicant refused or ignored the requirement to take a pre-employment drug test without just cause are to be handled as disqualifications.

- (2) Failure of the vacancy announcement to contain such notice will not preclude testing if advance written notice is provided to the applicant.

- c. **Notification.** The DOA Division of Personnel Management (DOPM) will notify the DPS as soon as possible when a drug test needs to be scheduled for a tentative selectee. The DPS will arrange for the test and inform the DOPM of the date, time, and place of the test. The DOPM will provide this information to the individual to be tested. The drug test must be undertaken as soon after notification of the applicant as possible and not later than 48 hours.
- d. **Opportunity to Justify a Positive Test Result.** All applicants will have an opportunity to justify a positive test result per the Guidelines (see paragraphs 28b(2)(b)).
- e. **Standard Collection Procedure.** These procedures must be followed to ensure strict chain-of-custody and specimen control. The specific procedures to be followed is provided in Attachment (12).
- f. **Test Results.** The MRO will notify the DPS of the test results and the DPS will inform the DOPM which will document the test result in the selection package so that the process can continue. If an applicant has a verified positive test result, the following procedures apply:
 - (1) **Employee Applicant.** The DPS will notify DOPM who will inform the selecting official so that another tentative selection can be made. The DPS will also notify the applicant that the verified presence of a drug in his or her urine precludes the department/agency from hiring or placing the applicant in the position. If the applicant is an employee of the same department/agency occupying a TDP where the vacancy existed, the DPS will notify the employee's supervisor of the positive test result.

The Appointing Authority shall exercise the authority to refer employees to rehab and counseling. If the applicant is an employee of the government in a TDP from another department or agency, the DPS is required to notify the employee's appointing authority.

- (2) **Other Applicants.** The DPS will notify the DOPM who will inform the selecting official so that another tentative selection can be made. The DOPM will then notify the applicant that the positive test has disqualified him/her and precludes the department/agency from hiring the applicant.

27. *REVIEW OF DRUG TEST RESULTS*

- a. Receipt of Results. The Drug Screening Laboratory will send or deliver all drug test results, positive and negative, to the MRO with a certified copy of the original Urine Sample Custody Document.
- b. Procedures
 - (1) Negative Drug Test Results. The MRO will immediately forward all negative drug test results to the DPS.
 - (2) Positive Drug Test Results. The Medical review of positive test results by the MRO will be initiated and completed within the timeframe agreed upon by the department/agency. The purpose of the review is to determine if the positive result is evidence of illegal drug use.
 - (a) The MRO will evaluate alternative medical explanations of a positive test result. This may include conducting a medical interview with the individual, review of the individual's medical history, or consideration of other relevant biomedical factors.
 - (b) Any requests for medical information will be made by the MRO directly to the individual to ensure maximum confidentiality. The MRO will obtain the information necessary to contact the employee from the DPS. The MRO will review all medical records, including valid prescriptions, made available by the tested individual when a positive test could have resulted from legally prescribed medications. The individual will have an opportunity to discuss the test results with the MRO, although a face to face interview is not required. Individuals are not entitled to present evidence to the MRO in a "hearing" or other similar administrative proceeding, although the MRO has the discretion to accept evidence in any manner deemed efficient or necessary.
 - (c) The MRO is authorized to order a reanalysis of the original sample should questions arise as to the accuracy or validity of a positive test result. Since some drug levels may deteriorate or are lost during freezing and/or storage, the retest must only show that the drug or its metabolite is present to reconfirm its presence during retesting.
 - (d) Detailed scientific guidance is contained in the "Medical Review Officer Guide" prepared by the U. S. Department of Health and Human Services (DHHS) and provided to each MRO.

c. Notification

- (1) Negative Drug Test Results. The MRO will forward all negative drug test results to the DPS who will ensure that employees are informed of their results. See paragraph (27f) for information on applicant test results.
- (2) Verified Positive Drug Test Results. If the MRO determines there is no medical justification for the positive result, such result will be considered a verified positive test result. Within the timeframe agreed upon by the department/agency, the MRO will forward the report of the verified positive test result to the DPS. The DPS will notify the supervisor or management official having authority to take a personnel action against the employee. See paragraph (27c) for information on notification procedures regarding applicant test results.

28. CONSEQUENCES OF TESTING POSITIVE FOR ILLEGAL DRUG USE

a. Mandatory Administrative Actions

- (1) Employee Assistance Program Referral. An employee who tested positive must be referred to the Employee Assistance Program.
- (2) Position Actions. If the employee occupies a TDP, the employee must be immediately removed from his/her current assignments. The employee will be assigned to a non-TDP, if available. The head of the agency/department may return the employee to duty in a TDP as part of a rehabilitation and counseling program, if it would not endanger public safety. This determination should consider information obtained from the DPS, the MRO, Employee Assistance Program counselor, and the employee's supervisor.

b. Disciplinary/Adverse Action

- (1) Agency/department heads will initiate disciplinary action against any employee for the first instance of illegal drug use, except under the circumstances set forth in paragraph 10. The agency/department head will initiate action to remove an employee: (a) who refuses to obtain counseling or rehabilitation through the Employee Assistance Program after having been tested positive for drugs; or (b) for a second finding of illegal drug use.
- (2) Failure to Report to the Designated Collection Site. An employee who fails to appear for testing will be subject to discipline. See paragraph 12b.

- (3) Refusal to be Tested When Required. An employee's refusal to be tested will be subject to discipline. See paragraph 13.
- (4) Disciplinary action must be taken consistent with the provisions of the Department of Administration Personnel Rules and Regulations, and the requirements of any applicable collective bargaining agreement.
- (5) Advice and guidance on disciplinary or adverse actions will be provided by the DOA Division of Personnel Management, as necessary.

- c. Reasonable Accommodation Requirements. A verified positive result does not equate to a requirement that the employee be afforded reasonable accommodation. A verified positive result indicates that the employee ingested a controlled substance at some recent time prior to providing the urine sample. The result will not show whether the employee was a first time drug abuser, a casual drug abuser, or a drug addict. Casual or occasional use of drugs is not a disabling condition which invokes the requirements of the American with Disabilities Act of 1990.

29. **ACTION.** Heads of departments/agencies may commence urinalysis testing only after:

- a. The DPS, department/agency DFWP coordinator, and a MRO are appointed and trained on the requirements of the DFWP and testing collection procedures under the U.S. DHHS guidelines.
- b. Mandatory training for supervisors and managers has been conducted.
- c. The agency/department positions have been reviewed to confirm that the position titles and pay grades match that of a TDP.
- d. An individual notice complying with the requirements of P.L. 100-71 is given to each agency/department employee in a TDP no later than thirty (30) days before the employee is subject to unannounced random testing.
- e. Bargaining obligations under 4 GCA, Chapter 10, have been satisfied.

30. **RECORDS AND REPORTS**

- a. Records. All drug testing information on specific individuals is confidential and should be treated as such by anyone authorized to review or compile DFWP records. Records and information described in this paragraph will remain confidential, must be marked "For Official Use only," and retained in a secure file cabinet with only authorized individuals who have a "need-to-know" having

access. These records will be retained on board for two (2) years unless otherwise covered by another record keeping system, such as the Employee Medical File.

- (1) DPS. To efficiently implement this regulation and to make information readily available, the DPS will maintain all records relating to DFWP including drug testing and any other authorized documentation necessary to support the program.
 - (2) DOA Division of Personnel Management. All records and information relating to the drug testing of selectees will be retained in the recruiting, examining, and placement records. Discipline and adverse action records resulting from employee verified positive test results will be maintained in that system of records by the Division of Personnel Management.
 - (3) Medical Review Officer. All drug test results and other related records necessary to perform the functions of the position will be maintained by the MRO.
 - (4) Employee Assistance Program (EAP) Counselor. If appropriate, drug test results may be retained in the employee counseling records maintained by the counselor. The EAP counselor will maintain only those records necessary to comply with this regulation. After an employee referral, the EAP counselor 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, must be marked "For Official Use only," and may be disclosed only as authorized by federal and local statutes, including the provision of written consent by the employee. By written consent, the patient may authorize the disclosure of these records to the patient's employer for verification of treatment or for a general evaluation of treatment progress.
- b. **Maintenance of Records.** The DPS will maintain the records of the Drug Free Workplace Program consistent with all local and federal laws, rules, and regulations regarding confidentiality of records. If necessary, records may be maintained for two years or as required by subsequent administrative or judicial proceedings.
- c. **Employee Access to Records.** Any employee or applicant who is the subject of a drug test will, upon request to the DPS, have access to any records relating to such employee's drug test; and the results of any relevant laboratory certification, review, or revocation of certification proceedings.

- d. **Statistical Report.** The Drug Free Workplace Coordinator (DFWPC) at the department or agency will collect and compile anonymous statistical data for reporting the number of:
- (1) Random, reasonable suspicion, accident or unsafe practice, follow-up, voluntary, or applicant tests administered.
 - (2) Verified positive test results, by type of test and drug.
 - (3) Voluntary drug counseling referrals.
 - (4) Involuntary drug counseling referrals.
 - (5) Disciplinary actions, terminations, employee-applicant non-selection, or denials of employment offers from a verified positive drug test result.
 - (6) Disciplinary actions, terminations, or denials of employment offers resulting from refusal to submit to testing.
 - (7) Disciplinary actions, terminations, or denials of employment offers resulting from alteration of specimens.
 - (8) Disciplinary actions, terminations, or denials of employment offers resulting from failure to complete a drug abuse counseling program.
 - (9) Employees who successfully complete rehabilitation under the Employee Assistance Program.

This data, along with other pertinent information will be compiled and submitted to the DPS on the last day of each quarter; for inclusion in the Department of Administration's annual report to the Governor. The Governor may use the data to assist in overall program evaluation, determine whether changes to the program are required, and request for additional funding as necessary.

DEFINITIONS

1. **APPLICANT.** Any individual who applies for or is otherwise being considered for placement in a Testing Designated Position (TDP).
2. **ASSAY.** To subject a drug to an analysis for the determination of its potency.
3. **BLIND PERFORMANCE TEST SPECIMENS.** An audit of the accuracy of the screening process and check on the chain of custody of urine specimens. This is accomplished by submitting prepared urine samples (blind samples) to the Drug Screening Laboratory (DSL) along with the urine samples collected from employees by the agency/department. These blind samples must meet the specifications of the Department of Health and Human Services (DHHS) "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published at 53 Federal Register 11970 (June 9, 1994 or most recent guidelines).
4. **CHAIN OF CUSTODY.** Procedures to ensure the integrity of each urine sample by tracking its handling and storage from point of collection to final disposition.
5. **COLLECTION SITE OFFICER (CSO).** An individual assigned by the Drug Program Specialist (DPS) to a collection site who has full responsibility for coordinating all collection activities at that site including instructing and assisting individuals being tested, determining the temperature of the urine specimen, etc.
6. **CONTROLLED SUBSTANCE.** Any drug, narcotic or immediate precursor which is specified or referenced in Chapter 67 of Title 9 GCA, Uniform Controlled Dangerous Substance Act, which may subject a person to criminal penalties. Alternatively, any controlled substance which is listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).
7. **CONVICTION.** A finding of guilt by any judicial body charged with the responsibility to determine violations of the Federal or local government criminal drug statutes.
8. **CRIMINAL DRUG STATUTE.** A law that makes it a crime to manufacture, distribute, dispense, use, or possess any controlled substance.
9. **DRUGS TESTED.** These are cocaine, cannabis (marijuana), opiates, amphetamines, and phencyclidine (PCP). When conducting reasonable suspicion, accident, or unsafe practice testing, the urine may be tested for any drug listed in Chapter 67 of Title 9 GCA (Uniform Controlled Dangerous Substance Act) or Schedules I through V of the Controlled Substances Act.

10. **EMIT IMMUNOASSAY.** Highly automated and computerized procedure used in the initial specimen screening. Complies with National Institute on Drug Abuse (NIDA) and Department of Transportation (DOT) test requirements.
11. **GAS CHROMATOGRAPHY.** A confirmation method which can identify compounds by their retention times rather than by standard chemical identification procedures.
12. **GAS CHROMATOGRAPHY/MASS SPECTROMETRY.** This confirmation method uses gas chromatography, described above, with a mass spectrometer which can be used to identify compounds on the basis of molecular structure. It is the only confirmation method authorized by NIDA.
13. **ILLEGAL DRUGS.** Controlled substances included in Chapter 67 of Title 9 GCA, Uniform Controlled Dangerous Substance Act, and Schedules I through V of the Controlled Substances Act, the possession of which is unlawful and which may subject an individual to criminal penalties.
14. **IMMUNOASSAY.** The test that identifies a substance through its capacity to act as an Antigen.
15. **MEDICAL REVIEW OFFICER (MRO).** A licensed physician responsible for receiving laboratory results generated by the DFWP who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his/her medical history and any other relevant biomedical information.
16. **NEED-TO-KNOW.** Confidential information to be made known to individuals if it is necessary to comply with DFWP Program.
17. **OBSERVER.** An individual assigned responsibility for accompanying the person being tested while he or she is providing the specimen.
18. **PERMANENT RECORD BOOK.** A permanently bound record book or binder which must be maintained by the DPS to record data on each specimen collected.
19. **RANDOM TESTING.** A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform unannounced testing of testing designated employees working in a specific geographic area, organizational unit, or position or randomly selected employees based on a neutral criterion, such as social security number or specific alphabetical identification of last names, e.g., last names beginning with C, K, O, and R.

20. **SAFE HARBOR.** A provision of the DFWP which gives an employee a one-time opportunity to voluntarily identify himself/herself as a user of illegal drugs willing to undertake counseling and, as necessary, rehabilitation. "Safe harbor" insulates the employee from discipline for these admitted, but otherwise unknown, past acts of illegal drug use. It does not protect the employee from discipline for admitting to drug trafficking or other drug-related offenses.
21. **SCREENING.** The initial test performed on urine specimens to determine the presence or absence of drugs, and if positive, the probable identity of the drug.
22. **TESTING DESIGNATED POSITIONS (TDPs).** Positions within the line and non-autonomous agencies and departments which have been determined to meet the criteria for random drug testing.
23. **URINE SAMPLE/URINE SPECIMEN.** These two terms are used interchangeably in this procedure to refer to the urine collected from an individual which will be tested for evidence of illegal drug use.
24. **VERIFIED POSITIVE TEST RESULT.** A test result that has been screened positive by an approved immunoassay test, confirmed by a gas chromatography/mass spectrometry assay (or other approved confirmatory tests), and determined by the Medical Review Officer to have no legitimate medical reason for the drug's presence in the employee's system.
25. **REASONABLE SUSPICION TESTING.** Also termed "for cause", testing conducted when there is evidence to suspect drug or alcohol usage.
26. **NON-REASONABLE SUSPICION TESTING.** Testing without any direct evidence, i.e., applicant screening, post accident testing and random testing.
27. **URINALYSIS.** Urine specimen test which determines the presence of a substance in the body.