

GOVERNMENT OF GUAM



DRUG-FREE WORKPLACE PROGRAM POLICY

DEPARTMENT OF ADMINISTRATION
HUMAN RESOURCES DIVISION

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PURPOSE

To establish and implement an updated Drug-Free Workplace Program (DFWP) in the Government of Guam, consistent with Executive Order 2025-03, Public Law (P.L.) 35-5, P.L. 37-119, P.L. 38-04, and Title 10 Guam Code Annotated, Chapter 75. This DFWP will reflect any subsequent and superseding applicable laws and executive orders through amendments and circulars approved by the Director of the Department of Administration. This program aims to deter substance abuse, ensure workplace safety, and support rehabilitation efforts through drug testing, compliance requirements, administrative enforcement and employee assistance.

POLICY STATEMENT

It is the policy of the Government of Guam to provide a workplace that is safe, secure and supports the health, well-being and productivity for all employees. Being impaired by drugs or alcohol while on duty or at the workplace poses a significant risk to employees and the public. In order to promote this policy, the Government of Guam prohibits the manufacture, distribution, dispensation, possession, and use of any controlled, intoxicating or hallucinogenic substances, such as cannabis (to include medical use of cannabis) and alcohol in any Government of Guam work site, office, or workplace to ensure employees are not under the influence of such substances during work. Such substances may impair the ability of employees to perform their duties, or create safety hazards for the public and employees of the Government of Guam if used in the workplace. Therefore, all who are employed in the Government of Guam must abide by the Government of Guam Drug-Free Workplace Policy and submit to pre-employment drug testing and where authorized, post employment drug testing to include testing for alcohol. Violations may result in disciplinary or administrative action, including but not limited to temporary reassignment, reprimand, suspension, demotion, termination and dismissal.

The Government of Guam recognizes that employees may need to take prescription or even over-the-counter medication; however, employees should not be on duty if such medication makes them have side effects which may endanger themselves and others, or negatively affects their decision-making abilities.

The Government of Guam also recognizes that as part of its policy, it has an obligation to assist employees who seek assistance for drug and alcohol treatment and rehabilitation. Employees have an obligation to disclose any drug or alcohol dependency especially before any workplace incident. These employees may be provided assistance if they meet certain criteria and maintain committed to their treatment and rehabilitation program; such assistance may be rendered through “safe harbor”, or self admission.

The Government of Guam also recognizes that it has a legal obligation to adhere to the American with Disabilities Act which provides limited protection from discrimination for employees who have a history of substance abuse, or are enrolled in a drug or alcohol rehabilitation program.

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SECTION 1: APPLICABILITY

This policy applies in its entirety to include drug testing of:

- Government of Guam employees (classified/unclassified), and department/agency heads and their deputies
- Applicants and those conditionally selected for employment
- Employees under contract

In addition, this policy applies to:

Interns, volunteers, program participants and contractors in so far as they are prohibited from manufacturing, distributing, dispensing, possessing, and using any controlled, intoxicating or hallucinogenic substances, including cannabis and alcohol in any Government of Guam work site, office, or workplace. Departments and agencies who have interns, volunteers, program participants and contractors are responsible for determining any violations and take appropriate action which may include the termination of the participation in these activities.

The DOA may drug test applicants and employees of autonomous departments and agencies pursuant to a memorandum of understanding (MOU) or an appropriate agreement. Unless otherwise specified in the MOU, autonomous departments and agencies are required by Executive Order to follow the DFWP. In conjunction with the drug testing vendor, the DOA will schedule drug testing and provide the results. These department and agencies are responsible for the notification and actions to be taken if any, according to their governing laws, and personnel rules and regulations. Payment must be made prior to scheduling any pre-employment, re-employment, or reinstatement drug testing. Payment for all other testing (e.g. random, post-accident) shall be made within 30 days of the test. The DOA reserves the right to terminate an MOU upon written notice to applicable autonomous department/agency.

The DFWP cannot be negotiated or altered through a collective bargaining agreement.

As this is a drug-free workplace policy which is administrative in nature, law enforcement organizations are not authorized to request or order the DOA to conduct drug testing for the purpose of gathering evidence for use in criminal proceedings, or to determine whether to file criminal charges against employees.

This policy does not apply to elected officials.

This DFWP may be supplemented through administrative policies and procedures established by the Department of Administration.

SECTION 2: ROLES AND RESPONSIBILITIES

Each role outlined in the policy is responsible for implementing, enforcing, or supporting the Drug-Free Workplace Program:

- **Director of Administration:** Oversees the DFWP, establishes and issues circulars and procedures in support of the DFWP, approves Test Designated Position (TDP) designations, and ensures program compliance across agencies and maintains confidentiality requirements.
- **Drug Program Specialist (DPS):** Administers the DFWP, coordinates and schedules all drug testing, provides drug testing results, and guidance and assistance to DFWP Coordinators and heads of departments/agencies, prepares drug testing memorandums and correspondence, oversees records, ensures confidentiality, and serves as the primary contact between the contracted vendor who provides drug and alcohol testing services and the DOA, maintains the TDP list and processes requests to modify the TDP listing as approved by the Director of DOA. The DPS is an employee of the Drug Testing Branch of the Department of Administration's Human Resources Division.
- **Heads of Departments/Agencies:** Ensures DFWP policies and procedures are disseminated and implemented, designates agency DFWP Official Coordinators and Employee Assistance Program (EAP) Counselors as a collateral duty, reviews and acts on post-accident and probable cause drug testing requests from supervisors, and requests and authorizes random drug testing as appropriate. Ensures all staff cooperate during random drug testing. Imposes administrative and disciplinary actions as needed based on information received from their DFWP Coordinators and from the DOA. Requests the Director of DOA to add or delete positions on the TDP list.
- **DFWP Designated Official Coordinators:** Serves as the liaison between the DPS and the Coordinator's Department, provides guidance and assistance in their respective departments/agencies, receives test results and correspondence on the behalf of the respective agencies and provides to their agency heads, and tracks compliance and data reporting. Typically, the Personnel Officer or employee designated to handle human resources related activities within a department serves as the Coordinator.
- **Employees:** refrains from the illegal and prohibited use of drugs as per the DFWP, provides urine specimen or other specimen as required by the tests, be responsible for successful completion of any rehabilitation or treatment required, cooperates with the Medical Review Officer (MRO) as requested to provide additional information, notifies the department/agency head of any criminal drug or alcohol statute conviction for a violation no later than five (5) days after such conviction, and for classified employees, they must provide notification within 72 hours of an arrest, charged by indictment, information or magistrate's complaint, or conviction of a drug related offense.
- **DOA Human Resources Division and Personnel Officers at all Departments/Agencies:** ensures job announcements include appropriate and applicable information about drug testing requirements such as those that are hired and occupy Testing Designated Positions will be subjected to unannounced random drug testing. Ensures that after an offer of employment has been accepted, that a required drug test has been conducted and the results indicate that the applicant/person being hired has passed. Issues a copy of

SECTION 2: ROLES AND RESPONSIBILITIES (continued)

the General Notice to all new employees. Notifies the Drug Program Specialist if a specimen or drug testing record needs to be retained longer due to an appeal or court proceeding. Coordinates with the Drug Program Specialist within the Drug Testing Branch and the department's DFWP Designated Official Coordinators on on-boarding processes related to drug testing.

- **EAP Administrator:** The supervisor or designee within the Human Resources Division's Employee Management Relations Branch is responsible for implementing and administering the Employee Assistance Program (EAP). The Drug Program Specialist, or any employee in the Drug Testing Branch cannot be designated as the EAP Administrator. The EAP Administrator offers confidential assistance to employees, manages rehabilitation efforts, maintains counseling records, and supports reintegration.
- **EAP Counselors:** Employees designated within each agency as a collateral duty to serve as the initial point of contact for employees who ask for, or are referred to counseling which may lead to treatment and rehabilitation. Contacts the EAP Administrator to coordinate with the Guam Behavioral Health & Wellness Center or other authorized treatment and rehabilitation organization. Offers confidential assistance to employees, serves as a liaison between the employee and agency head, manages rehabilitation efforts, maintains counseling records, and supports reintegration. EAP Counselors cannot serve as DFWP Designated Official Coordinators.
- **Medical Review Officer (MRO):** Reviews laboratory test results, provides an opportunity for the donor (i.e. applicant/employee who provided specimen) to discuss and provide medical explanations for positive test results, or non-negative or inconclusive results (e.g. donor was unable to produce a sufficient amount of urine), and confidentially transmits verified findings along with the chain of custody form to the Drug Program Specialist, and as designated by the Department of Administration.
- **Supervisors/Managers:** assists in enforcing the DFWP through observations of the actions and behaviors of employees, refers employees for drug testing such as for probable cause, or post-accident under certain conditions, refers employees to the EAP, and upholds testing protocol and confidentiality.

SECTION 3: TYPES OF DRUG TESTING & APPLICABLE NOTICES AND FORMS

The DFWP includes several testing categories of which those that undergo testing must pass:

Pre-employment Testing: drug testing of applicants and other persons hired into the line departments and agencies as employees, which include those who have a break in service, and drug testing of former employees returning to the government under re-employment or reappointment, or reinstatement. Pre-employment testing also includes the drug testing of an active employee from an autonomous agency who did not previously pass drug testing conducted under the DOA's DFWP and is being hired by a line department/agency with no break in service.

Should an applicant or person to be employed have a passing Pre-employment drug test result conducted under the authority of the DOA, that result may be used to satisfy the testing requirement provided that there is no break in service or if there is a break in service, the drug test result is still valid pursuant to Section 6.

A Pre-employment Drug Testing Consent and Acknowledgement Form is required to be signed and acknowledged by the applicant/person who has been offered employment prior to scheduling the drug test. The form indicates that the applicant/person must undergo and pass drug testing as a condition of employment. Applicants/persons selected for and offered employment with the Government of Guam shall undergo and pass a drug test before being employed. It also provides information as to how the applicant/person will be scheduled, what substances will be tested, the consequences for not providing their specimen and general information regarding testing which is relevant to not only pre-employment drug testing, but other types of testing as well.

As part of the onboarding process, incoming employees are given a DFWP General Notice Form, which informs them of the DFWP. All employees are also expected to maintain a drug and alcohol-free work environment, in accordance with applicable executive orders, laws and DOA Rules and Regulations.

An active employee moving from a Non-Test Designated Position to a Test Designated Position will only be required to sign an Employee Individual Testing Designated Position Notice Form. The active employee will not be required to be tested unless the position is covered under Sections (d) or (e) of PL 37-119. If the position is covered under one of these Sections, drug testing will be scheduled if the active employee was never tested for marijuana as this drug is recognized by the Federal Government as a Schedule I controlled substance.

Probable Cause Testing: drug testing (to include alcohol) based on documented indicators such as direct observations, behavior, appearance, or other credible evidence which causes reason to believe that an employee is either in possession of, is under the influence of, or impaired by drugs (to include alcohol) while on duty, or at the worksite, or workplace.

A Probable Cause Drug Testing Form is required to be completed by the supervisor and the department head of the employee and preferably witnessed by another employee and must be individually documented for each employee. The form must be reviewed with the employee who is allowed to provide an explanation.

This testing is normally conducted as unobserved; however, the department may request to have it conducted as observed depending on the observed behavior and actions of the employee which may lead the department to believe that the employee may tamper with the test.

SECTION: 3 TYPES OF DRUG TESTING & APPLICABLE NOTICES AND FORMS (continued)

Post-Accident Testing: drug testing (to include alcohol) conducted following incidents involving injuries, fatalities, transportation of hazardous materials, transportation of other employees or minors, or significant property damage.

A Post-Accident Form is required to authorize drug testing of an employee following an accident that occurred while on duty or at the workplace. The form must be completed by the employee's supervisor, any witnesses (if applicable), the department head, and the employee. It must also be reviewed with the employee, who should be given the opportunity to provide an explanation.

This testing is normally conducted as unobserved; however, the department may request to have it conducted as observed depending on the observed behavior and actions of the employee which may lead the department to believe that the employee may tamper with the test.

Random Testing: drug testing conducted unannounced on a particular day based on a previously approved percentage of randomly selected employees occupying Testing Designated Positions in a particular department ranging from five percent (5%) to up to fifty percent (50%). A department head also has the option to request a random drug test be conducted on a pre-determined percentage of TDP employees within a particular division, section or unit of his department. The division, section, or unit as well as the TDP employees within these areas must be clearly distinguished by organizational chart or internal memorandum/order prior to the request for a random drug test to be conducted is received from a department. This is necessary so both management and employees clearly know if the random testing is applicable to them.

The percentage may be reduced by the DOA depending on staff and resources of the DOA and the drug testing vendor and the capabilities of the available facility to hold the drug testing. Random selection is accomplished by the drug testing vendor using a computer program designed to randomly generate names.

Employees who are hired into or occupy Testing Designated Positions are the only employees who are subject to unannounced random drug testing. An Employee Individual Testing Designated Position (TDP) Notice Form must be signed by each employee occupying a Testing Designated Position.

Follow-Up Testing: unannounced drug testing required as a condition of continued employment during and/or after rehabilitation. Follow-Up Testing is an observed collection. Such testing may include alcohol testing if treatment and rehabilitation was based on such use or abuse.

A Follow Up Drug Testing Form is required of the employee to complete. After completion of such program, drug testing may occur for up to one (1) year as stipulated in the rehabilitation plan.

Re-employment Retention (P.L. 38-4): classified employees occupying TDP positions who submits a notice of resignation within 30 days of the random drug test within the employee's department that would subject the employees to the drug test are required to complete and pass the drug test prior to the effective date of their resignation. Failure to do so will result in employee forfeiting their re-employment rights.

SECTION 4: SUBSTANCES TESTED

Employees, applicants and other persons being considered for employment as applicable under the DFWP must pass drug testing based on being tested for the following:

- Amphetamines (e.g. Methamphetamines)
- Barbiturates
- Cocaine
- Opiates/Opioids (e.g. Heroin, Fentanyl)
- Phencyclidine (PCP)
- Cannabis (Marijuana)- psychoactive or non-psychoactive cannabis metabolites as authorized by law and this policy (see below)

In addition to the testing of substances indicated above, the testing of employees for alcohol is authorized based on probable cause, post accidents and follow up testing.

Public Law 37-119 made it unlawful for an employer to discriminate against a person in hiring, or any term or condition of employment, or otherwise penalize a person if the discrimination is based on a drug test that screens for non-psychoactive cannabis metabolites with some exceptions.

The drug testing for non-psychoactive cannabis metabolites and the controlled substances indicated above is only authorized for pre-employment, re-employment, random, and all other types of testing for those positions which are federally required to be tested for marijuana [i.e. exempted under Section (d) or (e) of Public Law 37-119]. Departments and agencies are responsible for informing the Department of Administration to drug test based on these exemptions prior to scheduling.

The drug testing for psychoactive cannabis metabolites and the controlled substances indicated above shall only be conducted based on probable cause, random, post accident and follow up drug testing.

The Drug Test Panels that are applicable to this Policy are included as **Attachment A**. The Director of Administration may add or remove substances tested based on what is authorized between the DOA and the drug testing vendor. Such changes must be made pursuant to a DOA Organizational Circular issued to all departments and agencies and such changes will be effective no earlier than thirty (30) calendar days after issuance of the circular. Only drugs indicated in the schedules defined in Appendix A – E of Chapter 67 of Title 9 Guam Code Annotated may be tested, or mandated by local or federal laws.

“Passing” a drug test means that the drug test results are below the “cut-off levels” (initial and confirmatory) for any drugs indicated in the drug testing panels consistent with U.S. drug testing industry standards such as state, local or federal standards [e.g. Department of Health & Human Services (DHHS), Mandatory Guidelines for Federal Workplace Drug Testing Programs for drugs recognized under these guidelines]. U.S. drug testing industry standards shall be followed for any drugs or controlled substances that do not have cut-off levels indicated in these Guidelines. The drug testing vendor shall provide these cut-off levels to the DOA.

For alcohol, passing an alcohol test means that the amount of detectable alcohol is less than 0.08 blood alcohol content (BAC). A BAC of 0.08 or greater means that the person “failed” the alcohol test.

SECTION 5: PROHIBITED APPLICANT / EMPLOYEE CONDUCT

The following constitute violations of the DFWP. Such violations may result in the immediate cessation or cancellation of a drug test. For job applicants, violations will lead to the hiring department or agency withdrawing or canceling the job offer. For employees, the employee's department or agency is required to take disciplinary action, which may range from a reprimand to dismissal or termination, depending on the severity of the violation and the safety sensitivity of the employee's position:

- A. Unauthorized use, possession, sale or solicitation of drugs, drug paraphernalia, or alcohol on a Government of Guam worksite, workplace, property (to include vehicles), or while on duty.
- B. Reporting to work or engaging in any work activity in a condition caused by the use of drugs and/or alcohol which could pose a threat to the safety of the employee or other person, reporting to or engaging in any work in a condition which could impair the ability to satisfactorily perform any essential function of the job due to the use of drugs or alcohol.
- C. Although it is desirable to establish "use" by an employee through the drug testing of an employee that yields a positive result, there may be times when drug testing is not able to be accomplished or unable to be accomplished in a timely manner, or the employee refuses to be tested. Departments/agencies may still take disciplinary action based on "use", as well as "possession" which may be established from direct observation of the employee consuming, or having in possession, the prohibited drug or alcohol, preferably by the supervisor, and a witness which is documented and reported to the department head.
- D. Use of prescription drugs or over-the-counter medication, including medical marijuana, while on duty, at the workplace, or on the worksite is prohibited if such drugs could impair or interfere with the safe or satisfactory performance of any essential job function or endanger the employee or others. This includes, but is not limited to, the use, possession, sale or solicitation for the purpose of purchase or sale of any prescription medication for which the employee does not have prescription. Should employees experience side effects from prescription drugs or over-the-counter medication immediately before or while on duty that affect their ability to perform safely and satisfactorily, they must immediately cease work, inform their supervisor, be relieved of duty, and be sent home on sick leave. Emergency assistance should be called if necessary. The employee should be highly discouraged from driving home until any adverse side effects subside.
- E. Hindering, obstructing or refusing to cooperate or participate in any investigation involving suspected violations of the DFWP. This includes but is not limited to providing false, misleading or incomplete information in response to any inquiry from a supervisor or management regarding a suspected violation of this policy. It also includes refusing to undergo a drug or alcohol test(s).
- F. Refusal to submit to a drug and/or alcohol test for pre-employment, re-employment, or re-instatement will result in the withdrawal or cancellation of job offer for applicants. In addition, refusal by an applicant to sign a consent form will be considered a refusal to submit to a drug and/or alcohol test as a condition of employment which will result in the withdrawal/cancellation of job offer for applicants.

SECTION 5: PROHIBITED APPLICANT / EMPLOYEE CONDUCT (continued)

- G. Hindering, delaying, obstructing a drug or alcohol test, including but not limited to, tampering with a sample or interfering with the chain of custody, or admitting to possessing equipment or a substance that will be used to interfere with the testing process or results.
- H. The DOA will request all parties involved (e.g. the specimen collectors, MRO, DOA staff, etc....) to provide a report on any violations which occur in their presence which will be used to substantiate any actions that may be taken against the employee.
- I. Regarding alcohol testing, should an amount of alcohol in the concentration of 0.08 blood alcohol content (BAC) or greater be established, the employee will be designated as not have passed.
- J. At management's discretion, the employee may be allowed to return to work and duties may be reassigned pending drug testing results; however, for TDP employees, if the TDP employee is allowed to return to work, any safety sensitive duties must be mandatorily reassigned.

SECTION 6: VALIDITY OF PASSING DRUG TEST RESULTS ADMINISTERED UNDER PRE-EMPLOYMENT

Passing drug test results based on tests conducted for Pre-employment, which also applies to Re-employment, and Re-Instatement are valid for up to 60 calendar days beginning the date the Drug Testing Branch received the results from the drug testing facility. This time period is provided to allow for time to process the incoming employee and the incoming employee time to settle current work and personal matters prior to beginning employment with the government. The DOA at its discretion, may end the valid time period based on evidence which indicates illegal or prohibited drug use, or prohibited conduct within this time period; the affected individual will be notified should this occur.

If the incoming employee cannot start employment on or before the 60th calendar day, the incoming employee will need to retake and pass the drug test, if approved by and paid for by the hiring department. If it is not approved by the hiring department, the hiring department must withdraw or cancel the job offer.

Passing test results based on pre-employment testing cannot be carried over to a probable cause, post accident, random or follow up drug testing even though 60 days has not yet elapsed. The employee would still need to take and pass a separate drug test for these types of testing.

SECTION 7: SAFE HARBOR

“Safe Harbor” is a provision within the DFWP that allows classified employees occupying non-TDP positions who voluntarily disclose illegal drug use, to enter a counseling and rehabilitation program without facing disciplinary action directly related to the illegal drug use, provided they meet the criteria for “safe harbor”:

- A. Voluntarily identifies himself or herself as a user of drugs illegally to a supervisor or management official prior to being identified through other means. This is accomplished through the submission of the Safe Harbor Admission Referral Form and routing to the Employee Assistance Program (EAP). A verbal disclosure to a supervisor or management official may be recognized, provided that there is a witness, and immediately followed by the submission of the Safe Harbor Admission Referral Form to their supervisor no later than the close of the next business day.
- B. Agrees to participate in a treatment program.
- C. Consents to follow-up drug testing on a monthly basis, for one year.
- D. Consents in writing to the release to appropriate management and drug DFWP officials of all counseling and rehabilitation records related to the employee’s drug use.
- E. Successfully refrains from further illegal drug use.

All of these conditions must be documented in the agreement between the employee and the employee’s department/agency. If the employee meets the safe harbor provisions, the employee, and the employee’s department EAP Representative will work with the EAP Administrator from the DOA to complete the Employee Assistance Program Referral Form, the Treatment Rehabilitation Authorization Release of Information Form, the Treatment Rehabilitation Appointment Verification Form, and the Follow-Up Drug Testing Form to complete the enrollment process.

An employee who admits to illegal drug use anytime after being notified that he or she is scheduled for a test, or who is found to use drugs on the basis of other appropriate evidence (e.g. direct observation, or evidence obtained from an arrest or criminal conviction), is not eligible for safe harbor. For example, an employee is arrested over the weekend on drug-related charges and is released and reports to work as usual on Monday, and requests “safe harbor”. Since the department/agency is unaware of the arrest, the department/agency signs the agreement. A safe harbor agreement signed under this circumstance will be considered invalid and obtained by the employee under false pretences. Furthermore, safe harbor is for illegal users of drugs, not drug dealers, or those involved in other drug-related misconduct.

Safe Harbor does not apply if the employee has already been notified of having to undergo a drug test, is under investigation, involved in criminal drug activity, or is occupying a TDP position, a law enforcement position, or under an unclassified appointment or position, or any other exemptions indicated under Chapter 75 Title 10 GCA.

The department/agency head may issue an adverse action against an employee who had invoked safe harbor but subsequently tests positive for illegal or prohibited drug use. The subsequent positive drug test or blood alcohol content results that are above acceptable limits is considered a second finding which will result in adverse action.

SECTION 8: SELF ADMISSION FOR EMPLOYEE ASSISTANCE

Classified employees who voluntarily disclose illegal drug use, drug abuse, or difficulties controlling their consumption of legal substances such as cannabis or alcohol that negatively affect their work performance or safety may request help even if they are ineligible for safe harbor. To do so, they must disclose this to a supervisor or management official and submit a Self-Admission Referral Form to their supervisor and department head.

If the employee's agency head and employee agree to the self admission of the employee, the employee, and the employee's department EAP Representative will work with the EAP Administrator from the DOA to complete the Employee Assistance Program Referral Form, the Treatment Rehabilitation Authorization Release of Information Form, the Treatment Rehabilitation Appointment Verification Form, and the Follow-Up Drug Testing Form to complete the enrollment process.

The employee however, is subject to disciplinary action and the severity of discipline is at the discretion of the employee's department. In the event of dismissal, the former employee will need to contact the rehabilitation and treatment provider to make arrangements for continued services.

Unclassified employees' ability to enroll in the Employee Assistance Program is subject to management's discretion.

SECTION 9: DRUG TESTING PROCEDURES – URINE AND BREATH SPECIMEN COLLECTION

Urine shall be the primary specimen to be collected for drug testing. The exception to this is for alcohol testing of which breath shall be the specimen to be tested. In addition, a specimen other than urine may be collected in order to accurately test for the psychoactive metabolites of cannabis. The type of specimen to be collected from donors for each test must apply to all donors. (i.e. urine is collected from one donor for a 5 Panel Drug Test; urine must be collected from all other donors for the same 5 Panel Drug Test).

Alcohol screening will be conducted using a federally approved evidential breath alcohol measurement device. An initial screening test of one breath sample will be conducted first, and if the initial test detects a level of alcohol of 0.02 or greater, a second confirmation test of one additional breath sample will be completed.

Drug testing methods and specimen collection procedures must follow drug testing industry standards. Protocols for the type of specimen to be collected, which generally include the identification of the donor (i.e. government-issued photo ID, e.g. driver's license, passport), the provision of a private and secure area or facility for the donor to produce the specimen, an observer of the appropriate sex for observed collections, a chain of custody form and procedures to ensure the specimen is properly collected in the presence of the donor and as applicable, ensure that it is properly sealed, and labeled in the presence of the donor, and properly stored and delivered for testing. The contracted vendor will provide a copy of the chain of custody form to the donor and the "employer copy" of the form to the DOA Drug Testing Branch. Specimens are tested at a laboratory, and all non-negative results are reviewed by an MRO. The contracted vendor will provide a copy of its procedures to the DOA and any updates for its records. The contracted vendor is responsible to respond to any administrative or legal requests for information regarding its testing procedures, protocols, and test results.

SECTION 10: PRIVACY DURING URINE COLLECTION

The drug testing vendor will follow standard collection procedures to ensure that the urine collection is collected without tampering and the specimen is properly identified.

Unobserved Collection: donor is permitted to provide a urine specimen privately in a restroom stall or similar enclosure so that the individual is not visually observed while providing the sample. Collection site personnel will escort the employee or applicant to the restroom and remain outside the stall during the test.

Observed Collection: Contracted vendor provides an observer of the appropriate sex to directly observe the collection; observed collection is required for follow-up testing, and may be required based on probable cause testing, post accident testing, or if tampering may be suspected, or as recommended or required by the Medical Review Officer (MRO), (e.g. re-test based on observed collection due to initial test result being an invalid specimen).

All non-negative test results will be analyzed and interpreted by a medical review officer (MRO) before results are reported to the DOA Drug Testing Branch. The MRO will make reasonable efforts to contact the applicant/employee for the purpose of allowing the employee to provide a medical explanation for a positive test result. If the MRO is able to make contact with applicant/employee and determines there is a legitimate medical explanation for the positive result, the result will be communicated to the DOA as a negative. The MRO's inability to contact the employee before providing test results to the DOA will not void the test result or make the test result unusable in any disciplinary action. An MRO is not required for alcohol testing since the employee is present for the interpretation of an alcohol test.

SECTION 11: PROBABLE CAUSE DRUG TESTING

Probable Cause Testing is drug testing based on documented indicators such as direct observations, behavior, appearance, or other credible evidence which gives reason to believe that an employee is either in possession of, or is under the influence of, or impaired by drugs (to include alcohol) while on duty, or at the worksite, or workplace. A Probable Cause Drug Testing Form must be completed by the employee's supervisor, preferably in the presence of a witness, and must be individually documented for each employee who is to be drug tested based on probable cause.

Probable cause may be based on direct observation of drug and/or alcohol use or possession and/or the physical symptoms, behavior and actions of being under the influence, newly discovered evidence that the employee has tampered with a previous work-related drug test, the temperature or color of the urine sample or other evidence indicates probable adulteration, tampering or substitution. It may also be based on arrest or conviction for an on-duty drug or alcohol related offense, or the identification of an employee as the focus of a work-related investigation that involves drugs or alcohol while on duty.

Although excessive absenteeism could possibly be an indicator that an employee uses drugs, it cannot be the only basis to authorize a probable cause drug test. Absenteeism could be due to other reasons and a supervisor cannot observe their employee being under the influence or inhibited by drugs or alcohol when the employee is not present at work.

Authorization to drug test must be based on at least two or more observed factors or indicators; however, if an employee was arrested, cited, or indicted for a drug or alcohol work related offense, or was directly observed consuming or possessing drugs or alcohol, these single events alone can authorize a probable cause drug test.

Based on the employee's observed physical signs, behaviors and actions, as well as the time that has passed since the observations/incident, the supervisor indicates on the form which test(s) the employee should undergo.

For a drug test to be authorized, it should be conducted within 32 hours of the incident/observations and within 8 hours for an alcohol test. Due to factors beyond the control of the employee's department, a drug test may be authorized up to 72 hours after the incident/observation has occurred (e.g. incident occurred on a Friday evening and the drug test is not able to occur until the following Monday). If the drug test or alcohol test was not able to be scheduled within 72 hours or 8 hours respectively, the supervisor must document the reasons.

This testing is normally conducted as unobserved; however, the department may request to have it conducted as observed if there is specific reason to believe that the employee may alter, tamper or substitute the specimen depending on the observed behavior and actions of the employee which leads the department to believe that the employee may tamper with the test. This justification must be indicated on the form. If justification is provided, the department shall notify the employee of the requirement of the test to be conducted under direct observation prior to the collection.

The form must be reviewed with the employee, and the reason for the drug test should be explained to them. The employee should be asked if he/she would like to explain his/her behavior, appearance, etc.... which lead to the department requesting for probable cause drug testing. The supervisor may decide to cancel the probable cause

SECTION 11: PROBABLE CAUSE DRUG TESTING (continued)

drug test based on a legitimate and non-drug/alcohol related reason. The supervisor can write down the employee's explanation, or the employee can write for himself/herself. If the employee needs time to make a statement, the employee's statement can be collected immediately after the test is conducted so as to not unnecessarily delay the testing.

If the employee refuses to undergo drug and/or alcohol testing, the department must inform them that refusal will result in disciplinary action. If the employee still refuses after being advised, the supervisor or official who presented the form must document the refusal on the form, including the date, time, and location it was presented (e.g. inside the department's meeting room), and must print and sign their name.

After the form is completed, it shall be forwarded to the Drug Testing Branch for review and test scheduling. The DOA may not schedule the test if the form is incomplete or if it is clear that the information provided does not warrant a probable cause drug test. However, ultimately, the department that authorized the probable cause drug test is responsible and must respond to any administrative or legal appeals made by the employee.

For the safety of the employee and the public, management may secure the employee from duty even prior to the completion of the Probable Cause Testing Form, especially if the employee normally performs safety sensitive work. In addition, the employee needs to be escorted to the testing facility by the employee's supervisor or another supervisor or manager assigned to the same area and/or shift of the employee, and not allowed to drive to the testing facility when testing has been scheduled.

SECTION 12: POST-ACCIDENT DRUG TESTING

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 which may or may not be vehicle related. Drug and alcohol testing after an accident can provide invaluable information in furtherance of that interest.

Accordingly, employees may be subject to testing when, based on the circumstances of an on-the-job accident, their actions are reasonably suspected to have caused or contributed to the accident, which meets one or more of the following criteria:

- A. The accident resulted in a death or personal injury requiring medical attention;
- B. The accident caused serious damage to government or private property;
- C. The accident involved hazardous materials, other employees, the public, or minors;
- D. The vehicle driven by or damaged by the employee required towing;
- E. The employee received a citation, was arrested, or indicted in connection with the accident

A Post-Accident Testing Form must be completed by the supervisor who authorizes the drug and/or alcohol testing of the employee following an accident that occurs while on duty, at the workplace, or on the worksite. Additionally, the form should be completed by any willing witnesses, the agency director, and the employee.

Based on the amount of time that has passed after the accident has occurred, the supervisor indicates on the form which test(s) the employee needs to be administered.

For a post accident drug test to be authorized, it must be conducted within 32 hours of the accident and within 8 hours for an alcohol test; there are no exceptions. This is due to fact that testing is being requested based on an accident that has occurred and the employer is trying to establish if drugs and/or alcohol may have been a contributing factor. If the drug test or alcohol test is not able to be scheduled within 32 hours or 8 hours respectively, the supervisor must document the reasons.

This testing is normally conducted as unobserved; however, the department may request to have it conducted as observed if there is specific reason to believe that the employee may alter, tamper with, or substitute the specimen based on the employee's observed behavior and actions. This justification must be indicated on the form. If justification is provided, the department shall notify the employee of the requirement of the test to be conducted under direct observation prior to the collection.

The form must be reviewed with the employee, and the reason for the drug test should be explained to them. The employee should be asked if he/she would like to explain his/her actions, etc... in relation to the accident which lead to the department authorizing post-accident drug and/or alcohol testing. The supervisor may decide to cancel the post-accident drug test based on a legitimate and non-drug/alcohol related reason. The supervisor can write down the employee's explanation, or the employee can write for himself/herself. If the employee needs time to make a statement, the employee's statement can be collected immediately after the test is conducted so as to not unnecessarily delay the testing.

SECTION 12: POST-ACCIDENT DRUG TESTING (continued)

If the employee refuses to undergo drug and/or alcohol testing, the department must inform them that refusal will result in disciplinary action. If the employee still refuses after being advised, the supervisor or official who presented the form must document the refusal on the form, including the date, time, and location it was presented (e.g. inside the department's meeting room), and must print and sign their name.

After the form is completed, it shall be forwarded to the Drug Testing Branch for review and test scheduling. The DOA will normally not schedule tests if the form is incomplete; however, the DOA can make an exception since time is of the essence in post-accident testing. The signature of the Agency Director can be obtained after testing, as well as the employee's statement; however, the employee must be given the opportunity to sign the form and the supervisor's signature is required. The form must be completed no later than the morning of the next business day after the test was administered. The department which authorized the post-accident drug test is responsible and must respond to any administrative or legal appeals by the employee.

For the safety of the employee and the public, management must secure the employee from duty even prior to the completion of the Post Accident Form, especially if the employee normally performs safety sensitive work. In addition, the employee needs to be escorted to the testing facility by the employee's supervisor or another supervisor or manager assigned to the same area and/or shift of the employee, and not allowed to drive to the testing facility when testing has been scheduled.

SECTION 13: RANDOM DRUG TESTING

Random Testing is drug testing conducted unannounced on a particular day based on a previously approved percentage of randomly selected employees occupying Testing Designated Positions in a particular department. The random drug test is conducted at the employee's department or a facility nearby that meets testing requirements, which may include the drug testing vendor's facility.

A department head submits a request to the Director of Administration to conduct a random drug test on TDP positions within his department. The request identifies the percentage of employees occupying TDP positions. The percentage can range from five percent (5%) to up to fifty percent (50%). In order to assure random testing, one hundred percent (100%) testing of all employees occupying TDP positions is not authorized.

A department head also has the option to request that a random drug test be conducted on a pre-determined percentage of TDP employees within a particular division, section, or unit of their department. The division, section, or unit, as well as the TDP employees within these areas, must be clearly identified by organizational chart, internal memorandum, or order prior to the department's request for the random drug test. This is to ensure that the employees occupying TDP positions are easily identified by the DOA and the employees themselves are able to identify that they are subject to the random drug test.

The percentage may be reduced by the DOA depending on staff and resources of the DOA and the drug testing vendor, and the capabilities of the available facility to hold the drug testing.

Random selection is accomplished by the drug testing vendor using a computer program designed to randomly generate a list of names for testing based on the total pool of employees that are eligible and subject to the random drug test. It must be noted that since the selection of employees is completely random, it is possible that employees may be tested multiple times, while others may never get tested under a random testing, over the course of multiple random tests for the same department.

Some TDP employees who work shift duty may be off duty on the day that the DOA conducts a random drug test, as testing is typically done during normal business hours. In such cases, departments are responsible for contacting these employees and ordering them to report for testing. Departments should handle these situations in the same manner as they normally handle orders for employees to return to work.

Employees who are hired into or occupy Testing Designated Positions are the only employees who are subject to unannounced random drug testing. An Employee Testing Designated Position Notice Form must be signed by each employee that is newly hired, or occupying a Testing Designated Position.

After receiving the random drug testing request, the Drug Testing Branch will contact the department's DFWP Designated Official Coordinator to confirm receipt and ensure there is no conflict of interest. Because the date of the random drug test is confidential, the Coordinator cannot be an employee in a TDP position, or reside in the same household as any employee occupying a TDP position.

The Drug Testing Branch will request from the Coordinator a list of active employees occupying the TDP positions identified for random drug testing. They will review the list to ensure all Employee TDP Notice Forms are present and will obtain any missing forms from the Coordinator.

SECTION 13: RANDOM DRUG TESTING (continued)

The Drug Testing Branch will set up a number of meetings with the departments' Coordinators to brief them on the requirements to conduct a random drug test at their department and obtain from them such information as to the location of the facility that has a sufficient number of restrooms, waiting area, the availability of their Coordinators, any dates that would not be ideal to conduct a random test, etc... all of which are necessary to conduct the test successfully.

Based on the number of employees to be tested and the information gathered from the meetings, the Drug Testing Branch will contact the drug testing vendor to request for a certain number of specimen collectors and for their availability within a certain time period that the Drug Testing Branch believes would be ideal.

A tentative date is identified and the Drug Testing Branch identifies HR staff who may assist and verifies with the Coordinators their readiness. The test is confirmed with the drug testing vendor; however, the vendor is not informed of the department where the random drug test will be conducted, no earlier than the day before the test date. The test date is confidential and, on a need, to know basis to maintain the surprise.

On the morning of test date, the Drug Testing Branch contacts the Coordinators at least 1.5 to 2 hours prior to the time that the DOA testing staff and the vendor's collectors will appear on site so as to provide time for the Coordinators to prepare for arrival.

Upon arrival, DOA testing staff will meet with the Coordinators who will assist in setting up the testing area with the collectors and it is at this time the Coordinators may inform their department head of the random drug test being conducted. The coordinators begin contacting employees who are subject to the random drug test to appear for testing. The employees are informed that they have been identified for random drug testing and have one hour to report to the site and bring a valid photo identification. For those employees that are unable to report within one hour due to acceptable excuses (e.g. on sick leave, military leave, etc.), their testing may be deferred depending on their reasons which are worked out between the DOA Testing Staff and the Coordinators. The Coordinators will contact the Drug Testing Branch upon the excused employee's return to work so they may be tested.

An employee who refuses to submit to drug testing will be subject to the same range of discipline as a verified positive test result for illegal drug use as indicated in the DOA Personnel Rules and Regulations under the Adverse Action chapter.

An attempt must be made before the end of the work day to contact all employees subject to the random drug test to ensure enough time for anyone that may have a "shy bladder", whereby they are unable to produce urine and a 3 hour wait period must be provided during which up to 40 oz of water will be provided for the employee to drink to encourage urination. The Drug Testing staff and collectors will stay on site until all on the list have been contacted or attempted to be contacted.

However, if at any time during the day the Drug Testing Staff and/or collectors are harassed or not treated appropriately by an employee of the department where the random drug test is being conducted, disciplinary action may be taken against the employee.

After the random drug test is conducted, Drug Testing Staff will work with the Coordinators to identify who appeared for testing, who did not appear with valid and without valid excuses, and who still needs to be tested.

SECTION 13: RANDOM DRUG TESTING (continued)

In terms of drug test results, the DOA will inform the department of the names of the employees whose test results are non-negative. Appropriate action will be taken accordingly.

Any TDP employee who was subject to the random testing and who the Coordinators were not able to be contacted on the day of the test, must be informed that a random drug test was conducted on that particular day and notate the date that they were informed. This is important to keep this information in relation to Public Law 38-4.

SECTION 14: EMPLOYEE INDIVIDUAL TESTING DESIGNATED POSITION (TDP) NOTICE

Each employee upon entering a TDP will receive an individual notice. The employee will be required to acknowledge in the notice that they have received and read it. The notice states that the employee's position has been designated for random drug testing. An employee who refuses to submit to drug testing will be subject to the same range of discipline as a verified positive test result for illegal drug use as indicated in the DOA Personnel Rules and Regulations under the Adverse Action chapter.

If the employee refuses to sign the form or take a copy, the employee's supervisor or other government official who presented the form shall notate what happened on the form. An employee is still subject to random testing even if the employee refuses to sign the form. All forms shall be forwarded to the DOA HR DFWP Drug Program Specialist and a copy maintained by the Designated DFWP Official Coordinator of the employee's agency.

SECTION 15: FOLLOW UP DRUG TESTING

All employees referred to counseling, rehabilitation or treatment for illegal or prohibited drug use to include alcohol and cannabis will be subject to unannounced observed testing either while undergoing the program or upon completion of his or her program. This testing is separate from random drug testing for TDP employees. The employee will be subject to drug testing on a monthly basis for up to one year, as per written agreement based on the employee's rehabilitation and treatment plan. The employee's supervisor or manager must notify the DOA Drug Testing Branch of the follow up testing requirements outlined in the agreement to ensure compliance through ongoing drug testing. The Follow Up Drug Testing Form is required to be completed and provided to the EAP Administrator, and a copy of it, along with the follow up testing agreement needs to be provided to the Branch and maintained by the employee's supervisor and rehabilitation counselor. Since this is a follow up testing and it is unannounced, the employee would need to be escorted to the testing facility by the employee's supervisor or another supervisor or manager assigned to the same area and/or shift of the employee, and not allowed to drive to the testing facility when testing has been scheduled.

SECTION 16: DEFERRAL OF DRUG TESTING

An employee selected for unannounced drug testing (random or follow up) may be given a deferral from testing when:

- A. The employee is off-island
- B. The employee is in a non-duty status (e.g., sick leave, suspension, military active duty; provided that such leave was not requested the same day that the random test was conducted. If sick leave was requested on the same day, a doctor's excuse is mandated to be provided by the employee even if the employee was only absent for one day)
- C. The employee is working during a time period which does not coincide with the time of the random drug testing and the employee was not able to be contacted due to being at rest

Deferrals must be jointly approved between the employee's department and the Drug Testing Branch. The department is responsible for contacting the Drug Testing Branch upon the employee's first day of returning to duty in order to schedule the drug test. The employee must be escorted by a supervisor to the drug testing facility. The drug test must take place on the same day as the employee's first day of reporting back to work, otherwise it will no longer be authorized.

SECTION 17: RELEASE, NOTIFICATION AND REVIEW OF DRUG TEST AND ALCOHOL TEST RESULTS

Negative drug test results will be provided by either the contracted drug testing vendor or MRO to the Drug Testing Branch. Passing alcohol test results will be provided by the contracted test vendor. The Drug Testing Branch in turn will notify the DFWP Designated Official Coordinators of the appropriate department/agency of these results. These coordinators will share this information on a need-to-know basis within their organization in order to make decisions related to the employment of the applicant/employee tested.

Drug test results that are other than negative, are reviewed by the MRO and depending on the type of result, the MRO will attempt to contact the employee or applicant to give an opportunity for them to provide a medical explanation for the test results. 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.

Depending on the findings, the MRO may recommend a re-test be conducted as soon as possible. This will be conveyed to the Drug Testing Branch who in turn will advise the applicant's/employee's department. The affected department has the option to have the re-test conducted at the department's expense. If the department decides not to have the re-test conducted, then the job offer would need to be rescinded in the case of pre-employment testing, or disciplinary action would need to be taken in the case of other types of testing since "passing" of the drug test is required. In the event that the results are positive which was confirmed by the MRO, the Drug Testing Branch will notify the hiring agency.

If the MRO determines there is no medical justification for a positive result, such result will be considered a verified positive test result. The MRO will report this to the Drug Program Specialist.

For any non-negative result, an official memorandum from the DOA will be prepared and sent to the affected agency for their information and appropriate action. The hiring or employing agency will notify the applicant or employee of the results in writing. The agency will also inform the individual that they may appeal the test results by notifying the agency and completing the Drug Test Result Appeal Form, which must be submitted to the Drug Testing Branch; however, it will be at the individual's expense, and the same specimen will be re-tested.

SECTION 18: TEST RESULT APPEAL: DRUG TEST / ALCOHOL TEST & FINAL DETERMINATION

Individuals who are drug tested and have non-negative test results have the option to appeal their test results. They have ten (10) work days from the date they were notified by the agency director to formally indicate in writing to the DOA Human Resources Division (HRD) that they contest the drug test results. This is accomplished through completing the Drug Test Appeal Form and paying for the retest which will be conducted on the same urine sample. All cost associated will be at the individual's expense. If in the event the results of the re-test of the same specimen is different from the original results, this information will be reviewed and will be resolved on a case-by-case basis. Otherwise, if the re-test results are reported the same as the original, then these results are final. With regards to alcohol testing, since a confirmation test is conducted if the blood alcohol content of the initial test is greater than or equal to 0.02 after a mandatory 15-minute wait period, the results of the confirmation test is final.

SECTION 19: FAILURE TO REPORT FOR TESTING

If an individual fails to appear at the collection site at the assigned date and time, the Drug Program Specialist will confirm with the drug test vendor and inform the affected DFWP Drug Testing Official Coordinator.

An employee who fails to appear for any type of testing (unless deferred), will be subject to the same range of discipline as a verified positive test result for illegal drug use as indicated in the DOA Personnel Rules and Regulations under the Adverse Action chapter.

Due to the nature of this offense, there is no requirement for referral to employee counseling or rehabilitation under the employee assistance program.

An applicant or person selected to be hired who failed to appear for a test without just cause will result in the cancellation or rescindment of their job offer.

An official letter from the DOA will be prepared and sent to the affected agency.

SECTION 20: REFUSAL TO BE TESTED

If an employee refuses to be tested, regardless of the reason for the testing (random, probable cause, post accident, and follow up), the employee will be subject to the same range of discipline as a verified positive test result for illegal drug use as indicated in the DOA Personnel Rules and Regulations under the Adverse Action chapter.

Examples of what is considered a refusal to test are as follows:

- A. Fails to remain at the testing site until the testing process is completed.
- B. Fails to allow the direct observation of urine collection, or fails to cooperate in the direct observation process when direct observation is required.
- C. Fails to cooperate with any part of the testing process (e.g. refuses to empty pockets when directed by the collector, behaves in a confrontational way that disrupts the collection process).
- D. Engages in conduct that obstructs the drug test (e.g. possesses or wears a prosthetic or other device that could be used to interfere with the collection process).
- E. Admits to the collector or MRO that he/she adulterated or substituted the specimen.

Due to the nature of this offense, there is no requirement for referral to employee counselling or rehabilitation under the employee assistance program.

An applicant or person selected to be hired who refuses to be tested will result in the cancellation or rescindment of their job offer.

An official letter from the DOA will be prepared and sent to the affected agency.

SECTION 21: FAILURE TO PROVIDE SAMPLE OR INSUFFICIENT SAMPLE

Failure to provide a sample means that the individual is unable to void or urinate and insufficient sample means that the individual was unable to provide at least 30 ml of urine (or the minimum standard amount required as per drug testing vendor should this amount change; if it does change, then the new amount shall apply consistently). These events are what is referred to as “shy bladder” and the individual is provided three (3) hours to attempt to urinate and provide a sufficient sample. During this 3-hour period, the individual is provided up to 40 oz of water to consume throughout the period. They are not allowed to drink any fluids that they brought to the testing site and they cannot be provided any more water beyond the 40 oz. Also, urine cannot be combined from one collection with another collection in order to meet the 30 ml amount.

If at the end of the 3 hours, the individual is still unable to provide a sample or provides an insufficient sample, this information will be recorded by the collector on the chain of custody form. The form will be forwarded to the MRO for review who will contact the individual to ask if the person has any medical condition or is taking any prescription medication that prevented the person from providing a sample or providing an adequate sample to be tested. If the person is able to provide such information, and after review, the MRO deems it medically justified, the MRO should report the result as a negative, or Test Cancelled. If the person does not provide any information or the information does not provide an acceptable medically related reason for not being able to void or provide a sufficient sample, the MRO will inform the Drug Program Specialist as such.

Failure to provide a sufficient sample for testing without a medically acceptable justification is considered as a refusal to be tested and the employee will be subject to the same range of discipline as a verified positive test result for illegal drug use as indicated in the DOA Personnel Rules and Regulations under the Adverse Action chapter.

Due to the nature of this offense, there is no requirement for referral to employee counselling or rehabilitation under the employee assistance program.

An applicant or person selected to be hired who fails to provide a sufficient sample for testing without a medically acceptable justification will result in the cancellation or rescindment of their job offer.

An official letter from the DOA will be prepared and sent to the affected agency.

SECTION 22: CONSEQUENCES OF TESTING POSITIVE FOR ILLEGAL OR PROHIBITED DRUG / ALCOHOL USE

Pre-employment: For applicants and any person being considered for a job and test positive, the hiring agency shall rescind or cancel the job offer.

Employee Assistance Program Referral: an employee who tests positive for drugs or fails their alcohol test must be referred to the Employee Assistance Program. The DOA will indicate this requirement in the memorandum to the affected agency upon transmittal of the official test results. In this instance, the agency director must inform their EAP counselor of the positive result with their employee and confidentially arrange to meet and then contact the EAP Administrator at the DOA who will provide initial assistance.

TDP/Non-TDP Employees: For employees who occupy a TDP, the employee must be immediately removed from any safety sensitive duties and assignments. The employee should be assigned to a non-TDP, if available. The agency director 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 from the Drug Program Specialist, the MRO, the EAP Counselor and the employee's supervisor.

Disciplinary/Adverse Action: Agency directors will initiate disciplinary action against any employee for the first instance of illegal or prohibited drug and/or alcohol use, except for those employees who are under "safe harbor". The agency director will initiate action to dismiss an employee: (a) who refuses to obtain counselling or rehabilitation through the Employee Assistance Program after having been referred to the program; or (b) for a second finding of illegal or prohibited drug and/or alcohol use.

SECTION 23: NON-NEGATIVE TEST RESULTS AS DETERMINED BY MRO

Based on the analysis of urine specimens, there are instances when the MRO reports a non-negative test result which may still result in a positive finding, or a finding that the specimen provided is questionable in some way. These types of findings are as follows:

Diluted Positive Urine Specimen:

The MRO may determine that a urine specimen is a “diluted positive” test result. This means that the urine specimen still tested positive for a particular drug in the urine even though the sample also contained a higher concentration of water than the average human excretion. Since this result is still considered positive, such a result is unsatisfactory for any type of testing since the donor did not have passing results and therefore the agency will be advised that it must rescind the job offer in the case of pre-employment, or take disciplinary action in the case of an active employee since the result is not a passing result.

Invalid Specimen:

An “invalid specimen” refers to the result reported by the laboratory for a urine specimen containing an unidentified adulterant, which is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration. With such a result, the MRO will cancel the test and recommend a recollection under direct observation as soon as possible. If the recollection is approved by the hiring agency, the donor will be scheduled immediately. If it is not approved, the agency will be advised that it must rescind the job offer in the case of pre-employment, or take disciplinary action in the case of an active employee since the result is not a passing result.

Adulterated and Substituted Specimens:

An adulterated specimen refers to a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

A substituted specimen is a urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

For both an adulterated and substituted specimen, if the MRO does not recommend a second collection, then the agency will be advised that it must rescind the job offer in the case of pre-employment, or take disciplinary action in the case of an active employee since the result is not a passing result.

SECTION 24: CONFIDENTIALITY OF TEST RESULTS & RECORDKEEPING

All drug testing records must be securely stored. Only authorized personnel with a legitimate need-to-know may access them. Records shall be retained according to the retention schedule. As part of the testing process, the test results and related forms pertaining to the applicant/employee are provided to the hiring department in order for the department to make decisions regarding the applicant/employee, such as to complete the hiring process, or rescind a job offer, or take adverse action. Once this information is provided to the department to fulfill the initial purpose of the testing, a Request Access to Drug Testing Records Form must be provided and signed by the person that was tested in order for the DOA to release results and related information to any entity, (unless required by legal subpoena or equivalent legal requirement).

SECTION 25: TESTING DESIGNATED POSITION (TDP) APPROVAL, AMENDMENTS AND REVIEW PROCESS

In determining which positions to identify as Testing Designated Positions (TDP), which will be subject to random drug testing, the Department of Administration conducts a review of the job functions commonly associated with each classification category occupied by employees in areas of health, public safety, and those dealing with counseling, psychotherapy, the handling and/or dispensing of medications, laboratory employees, and other positions as determined by the Director of Administration to have met the criteria established by the President's Executive Order 12564. Those positions were placed on the Department of Administration's TDP list. The identification of positions as TDP's is viewed as an ongoing process for the Department with the initial list first compiled for the implementation of the Drug-Free Workplace procedures under the Department of Administration's Personnel Rules and Regulations.

Agency heads may request additions or deletions from the TDP list from the Director of Administration. The request must contain, the exact position title, a description of duties and justification which warrant including the position on the TDP list, the reasons why the agency head is requesting for the position to be deleted from the TDP list in sufficient detail to support the request. The Human Resources Division will review the request and provide a recommendation to the Director of Administration who will approve or disapprove the request. Approval will result in the amendment of the TDP list. Any positions added to the list will require employees who occupy these positions to sign an Employee Individual Testing Designated Position Notice Form.

Employees who believe their position was incorrectly designated as a TDP may submit a written appeal to the Director of Administration within 15 days of receiving his/her Employee Individual Testing Designated Position Notice. The appeal must include justification and supporting documentation. The Director will issue a written response to the employee with the employee's agency head copied.

All newly created positions or amended positions pursuant to 4 GCA, § 6303, shall be reviewed by the Human Resources Division, who shall then properly identify said position as either being a TDP or Non-TDP. If the position is identified as a TDP, the Human Resources Division will make a recommendation to the Director of Administration for his approval to add the position to the TDP List.

SECTION 26: REPORTING REQUIREMENTS

The DOA shall request information from departments on an as-needed basis that may be used to amend and improve its DFWP and procedures. Such information may include disciplinary action taken for DFWP-related offenses, the number of employees sent to rehabilitation, and other related information (with private and medical information appropriately redacted).

SECTION 27: DEFINITIONS FOR THE PURPOSE OF THE DFWP

Alcohol: any beverage or substance containing alcohol which when consumed causes intoxication.

Applicant: any individual who applies for or is otherwise considered for employment within the government to include those being hired under re-employment, hired under unclassified appointment (e.g. exempted appointment, limited term appointment, temporary appointment and contract), transfers, promotion, demotion.

Cannabis: means (1) all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including cannabis concentrate. (2) Cannabis does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other products. (11 GCA, Ch. 8)

Chain of Custody: procedures to ensure the integrity of each specimen collected by tracking its handling and storage from the point of collection to final disposition.

Controlled Substance: any drug listed in Appendix A – E of Chapter 67 of Title 9, Guam Code Annotated, also known as the Guam Uniform Controlled Substances Act.

Direct Observation: the process by which an observer from the drug testing vendor of the same gender as the donor, watches the urine pass from the donor's body into the specimen container.

Donor: person (e.g. applicant, employee, etc...) who produced a specimen for drug testing

Government of Guam Office, Workplace or Work Site: area where official Government of Guam business is normally conducted, this includes any building that is owned, leased or occupied by a government agency and it also includes any public motor vehicle being used to conduct government business such as a school bus. The area may also be a location that is not known to be a place where normal government operations take place, however official business is temporarily being conducted such as a stretch of road where government employees are doing construction or maintenance work.

Illegal Drugs: controlled substances as defined in the DFWP of which is unlawful especially without legal authorization such as a valid prescription from a physician.

Intoxicating Substance: anything which if taken into the body may alter or impair normal mental or physical functions, can cause a temporary state of altered consciousness, behavior and/or physical or mental impairment which includes alcohol, cannabis (marijuana) and other drugs.

Hallucinogenic Substance: substance which taken into the body that induce alterations in perception, mood and thought, and can cause hallucinations which are sensory experiences that appear real but they are not.

Marijuana: means cannabis as defined. For purposes of this policy, the terms marijuana and cannabis shall carry the same meaning and shall be used interchangeably. (11 GCA, Ch. 8)

SECTION 27: DEFINITIONS FOR THE PURPOSE OF THE DFWP (continued)

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.

Need-to-Know: confidential information to be made known to individuals if it is necessary to comply with DFWP program.

Psychoactive cannabis metabolites drug test: drug test that only screens for the psychoactive cannabis metabolites whereby a positive result means that the donor was high or intoxicated at the time the donor's specimen was collected.

Non-psychoactive cannabis metabolites drug test: drug test whereby a positive result is unable to distinguish whether the donor was high at the time the donor's specimen was collected; the result can only confirm that the donor was positive for cannabis, it cannot distinguish if the donor for example, consumed cannabis hours ago, or days ago.

Probable Cause: defined as those circumstances, where there is reasonable suspicion or belief, based on objective evidence about the employee's conduct in the workplace that would cause a reasonable person to believe that the employee is demonstrating signs of impairment due to alcohol or drugs. Examples of objective evidence include, when an employee shows signs of impairment such as difficulty in maintaining balance, slurred speech, erratic or atypical behavior, or otherwise appears unable to perform his/her job in a safe or satisfactory manner. Other examples are the direct observation of the use or possession of alcohol or drugs, being arrested or convicted of a drug related offense, or being identified in an investigation into illegal drug possession or use or trafficking.

The examples noted must be observed and documented by the employee's supervisor and preferably confirmed by the observation and documentation of at least one other witness.

Probable cause means a reasonable ground for belief in the existence of facts that induce a person to believe that an employee may be under the influence of an intoxicating substance, provided that the existence of probable cause may not be based exclusively on any of the following:

- Information received from an anonymous informant;
- Any information tending to indicate that an employee may have possessed or used a tested-for substance off duty, except when the employee is observed possessing or ingesting any intoxicating substance either while on the employer's premises or in the proximity of the employer's premises during or immediately before the employee's working hours;

Random drug testing: drug testing conducted unannounced on a particular day based on a previously approved percentage of randomly selected employees occupying Testing Designated Positions in a particular department.

SECTION 27: DEFINITIONS FOR THE PURPOSE OF THE DFWP (continued)

Safe Harbor: a provision of the DFWP which gives a classified employee a one-time opportunity to voluntarily identify himself/herself as a user of illegal drugs, user of prohibited substances in the workplace, or while on duty (e.g. cannabis and alcohol) willing to undertake counselling and as necessary, rehabilitation. Safe harbor insulates the employee from discipline for these admitted, but otherwise unknown past acts of illegal and prohibited drug and alcohol use. It does not protect the employee from discipline for admitting to drug trafficking or other drug related offenses.

Testing Designated Positions (TDPs): positions that have been determined to meet the criteria for random drug testing.

Urine Sample/Urine Specimen: two terms used interchangeably in the procedure to refer to urine collected from an individual.

SECTION 28: ATTACHMENTS AND REFERENCES

Attachment A: Drug Test Panels

The Director of Administration may add or remove substances tested based on what is authorized between the DOA and the drug testing vendor. Such changes must be made pursuant to a DOA Organizational Circular issued to all departments and agencies and such changes will be effective no earlier than thirty (30) calendar days after issuance of the circular. Only drugs indicated in the schedules defined in Appendix A – E of Chapter 67 of Title 9 Guam Code Annotated may be tested, or mandated by local or federal laws.

5-Panel Drug Test

For pre-employment testing of all positions to include law enforcement and TDP positions, AND those positions which are NOT federally required to be drug tested for marijuana [i.e. NOT exempted under Section (d) or (e) of P.L. 37-119]

This panel screens for the following substances:

- Amphetamines (to include Methamphetamines)
- Barbiturates
- Cocaine
- Opiates/Opioids (to include Heroin and Fentanyl)
- Phencyclidine (PCP)

6-Panel Drug Test (Non-FED)

For probable cause, random, post-accident and follow up testing for all positions to include law enforcement and TDP positions, AND are NOT federally required to be drug tested for marijuana [i.e. NOT exempted under Section (d) or (e) of P.L. 37-119]

This panel screens for the following substances:

- Cannabis (marijuana)- test that screens for only the presence of psychoactive metabolites of cannabis and **NOT** the non-psychoactive metabolites
- Amphetamines (to include Methamphetamines)
- Barbiturates
- Cocaine
- Opiates/Opioids (to include Heroin and Fentanyl)
- Phencyclidine (PCP)

6-Panel Drug Test (FED)

For pre-employment testing, probable cause, random, post-accident and follow up testing, but ONLY for positions which ARE federally required to be tested for marijuana [i.e. exempted under Section (d) or (e) of P.L.37-119 – these positions may or may not be law enforcement or TDP positions]

This panel screens for the following substances:

- Cannabis (marijuana)- standard screening for marijuana which may include the presence of non-psychoactive metabolites of cannabis.
- Amphetamines (to include Methamphetamines)
- Barbiturates
- Cocaine
- Opiates/Opioids (to include Heroin and Fentanyl)
- Phencyclidine (PCP)

SECTION 28: ATTACHMENTS AND REFERENCES (continued)

Attachment B: Public Laws and Executive Order

Please refer to the following website for the Public Laws and the Executive Order: www.hr.doa.guam.gov , click “HR Branches” tab, then click on “Drug Testing Branch” link.

Public Law 37-119	10 GCA Chapter 75
Public Law 38-4	Executive Order 2025-03

Attachment C: Drug Testing Forms:

The Drug Testing Forms are subject to change. Please refer to the following website for the Forms: www.hr.doa.guam.gov , click “HR Branches” tab, then click on “Drug Testing Branch” link.

- DFWP-01 Pre-Employment Drug Testing Consent and Acknowledgement Form
- DFWP-02 DFWP General Notice Form
- DFWP-03 Employee Individual Testing Designated Position Notice Form
- DFWP-04 Probable Cause Drug Testing Form
- DFWP-05 Post-Accident Form
- DFWP-07 Drug Test Result Appeal Form
- DFWP-08 Request Access to DT Records Form

Attachment D: Employee Assistance Program Related Forms:

The Employee Assistance Program Related Forms are subject to change. Please refer to the following website for the Forms: www.hr.doa.guam.gov , click “HR Branches” tab, then click on “Drug Testing Branch” link.

- DFWP-09 Employee Assistance Program Referral Form
- DFWP-10 Safe Harbor Admission Agreement Form
- DFWP-11 Self-Admission Agreement Form
- DFWP-12 Treatment Rehabilitation Authorization Release Form
- DFWP-13 Treatment Rehabilitation Appointment Verification Form
- DFWP-06 Follow-Up Drug Testing Form

Attachment E: List of Testing Designated Positions

The list of Testing Designated Positions (TDPs) is subject to change. Please refer to the following website for the list: www.hr.doa.guam.gov , click “HR Branches” tab, then click on “Drug Testing Branch” link.

DOA Testing Designated Position List

SECTION 29: EFFECTIVE DATE

UPON APPROVAL:

- APPROVED
- DISAPPROVED



EDWARD M. BIRM
DIRECTOR OF ADMINISTRATION

8/22/25

DATE

- APPROVED
- DISAPPROVED



LOURDES A. LEON GUERRERO
GOVERNOR OF GUAM

12/18/2025

DATE