

Drug-Free Workplace Plan

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Defense Logistics Agency

Drug-Free Workplace Plan

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DEFENSE LOGISTICS AGENCY DRUG-FREE WORKPLACE PLAN

I. INTRODUCTION

A. Background

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

E.O. 12564 recognized that illegal drug use is seriously impairing a portion of the national workforce, resulting in the loss of billions of dollars each year. As the largest employer in the nation, the federal government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The Defense Logistics Agency (DLA) is concerned with the well being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity. The intent of this policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is incompatible with federal service.

On July 11, 1987, Congress passed legislation affecting implementation of E.O. 12564 under Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100-71, (hereafter referred to as the "Act") in an attempt to establish uniformity among federal agency drug testing plans and to guarantee reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the federal government's drug testing program.

The purpose of the DLA Drug-Free Workplace Plan is to set forth objectives, policies, procedures, and implementation guidelines to achieve a drug-free federal workplace, consistent with E.O. 12564 and Section 503 of the Act.

B. Statement of Policy

It is the policy of DLA to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act, hereafter referred to as the Act) by the employees of the agency.

DLA, as a result of its responsibilities in support of the national defense, as well as the sensitive nature of its work, has a compelling obligation to eliminate illegal drug use from its workplace.

Because DLA's contract administration and procurement missions put it in a position of stewardship over substantial federal funds; the agency is under constant public scrutiny. Any perception of unreliability or illegal activity on the part of DLA employees is a matter of general public concern. That DLA operates a drug-free workplace is essential to the public confidence in our ability to perform our mission of providing the Department of Defense (DOD) with the highest quality goods and services at the lowest possible cost. Because DLA employees must demand and ensure high standards of quality and professional ethics from federal contractors, it is imperative that they themselves demonstrate the highest degree of integrity.

It is therefore doubly important that DLA ensure the absence of drug abuse from positions where drug effects could result in a threat to safety or national security. A drug-related accident or security breach, be it the destruction of expensive and urgently needed equipment in a forklift accident or the leaking of information regarding a weapons system contract, sends a message to the public that one of the watchdogs assigned to guard their tax dollars and promote their security is seriously impaired.

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

C. Drugs for Which Individuals Will be Tested

Section 503 of the Act requires DLA to specify the drugs for which an individual will be tested. DLA will not test for more drugs than:

- (1) marijuana,
- (2) cocaine,
- (3) opiates (codeine/morphine),
- (4) 6-Acetylmorphine (heroin),
- (5) phencyclidine
- (6) amphetamines (amphetamine/methamphetamine), amphetamine designer drugs (methylenedioxymethamphetamine (MDMA), methylenedioxyamphetamine (MDA), and methylenedioxyethylamphetamine (MDEA)-(otherwise known as Ecstasy).

If DLA desires to test for any other drug, advance written approval from the Secretary, Department of Health and Human Services is required.

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

1. The DLA Drug-Free Workplace Plan includes the following types of drug testing:
 - a. Applicant testing;

- b. Random testing of employees in testing designated positions;
 - c. Reasonable suspicion testing of all DLA employees based on the criteria stated in Section X of this plan;
 - d. Accident or unsafe practice testing of all DLA employees involved in an accident or unsafe practice based on the criteria stated in Section XII.A of this plan;
 - e. Voluntary testing; and
 - f. Testing as part of or as a follow-up to counseling or rehabilitation.
2. The frequency of testing for random testing, voluntary testing, and follow-up testing is specified at Appendix B. The Director reserves the right to increase or decrease the frequency of testing based on the agency's mission, availability of resources, and experience in the program, consistent with the duty to achieve a drug-free workplace under E.O. 12564.

E. Union Cooperation

The active participation and support of labor organizations can contribute to the success of this program. Management will seek ways in which recognized bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe negotiated agreements already reached in the Master Labor Agreement with the DLA Council of American Federation of Government Employees (AFGE) Locals; will include union representatives in general orientation program; and will continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978 as applicable.

F. References

1. Authorities

- a. E.O. 12564
- b. E.O. 10450
- c. E.O. 12958
- d. Section 503 of the Supplemental Appropriations Act of 1987, Public Law (P. L.) 100-71, 101 Statute 391, 468-471, codified at 5 United States Code (U.S.C.) 7301 (1987).
- e. Mandatory Guidelines for Federal Workplace Drug Testing Programs, which includes scientific and technical requirements and certification of laboratories engaged in urine drug testing, 53 FR 11970 (1988), as amended.
- f. Civil Service Reform Act of 1978, P.L. 95-454.

- g. 42 Code of Federal Regulation (CFR) Part 2, establishing requirements for assuring the confidentiality of alcohol and drug abuse patient treatment records.
- h. The Privacy Act of 1974 (5 U.S.C. Section 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain.
- i. 49 CFR Part 10, implementing the Privacy Act of 1974 within the agency.
- j. Federal Employees Substance Abuse Education and Treatment Act of 1986, P.L. 99-570.

2. Guidance

- a. DOD Instruction 1010.6, March 13, 1985, Rehabilitation and Referral Services for Alcohol and Drug Abusers.
- b. DOD Directive 1010.4, September 3, 1997, Drug and Alcohol Abuse by DOD Personnel (Incorporating Change 1, January 11, 1999).
- c. DOD Directive 1010.9, August 23, 1988, Civilian Employees Drug Abuse Testing Program. (Includes Administrative Reassurance Incorporating Change 1, January 20, 1992). Updated on June 22, 2012.
- d. DOD Administrative Instruction Number 17, November 6, 2007, Civilian Employee Alcohol and Drug Abuse Prevention, Testing and Control Program.
- e. Interagency Coordinating Group (ICG) Executive Committee Memo, subject: Guidelines for Selection of Testing Designated Positions (TDPs), dated April 5, 2010.
- f. DLA Instruction 7203 – Drug Free Workplace, dated September 8, 2009.
- g. DLA Instruction 7106 – Maintaining Discipline, dated September 15, 2009.

II. DEFINITIONS

- A. Applicant-- any individual tentatively selected for employment in a position that has been designed at a Testing Designated Position (TDP) with DLA who has not, immediately prior to the placement, been subject to random testing.
- B. Drug Program Administrator (DPA)-- the individual responsible for ensuring the development, implementation, and review of the DLA Drug-Free Workplace Program.

- C. Drug Program Coordinator (DPC) -- the individual responsible for implementing and operating the drug testing program within the PLFA.
- D. Drug Program Manager (DPM) -- the individual responsible for service population within the appropriate DLA Human Resources Services.
- E. Employee Assistance Program (EAP)-- the DLA counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.
- F. EAP Administrator-- the individual responsible for ensuring the development, implementation, and review of the DLA EAP.
- G. EAP Coordinator-- the individual responsible for implementing and operating the EAP within the primary level field activity (PLFA), by providing for counseling, treatment, and education services to employees and supervisors regarding the PLFA EAP.
- H. Illegal Drug-- a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the U.S.C., the possession of which is unlawful under Chapter 13 of that Title. The term “illegal drugs” does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
- I. Medical Review Official (MRO)-- the individual responsible for receiving laboratory results generated from the DLA Drug-Free Workplace Program. The MRO is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual’s medical history and any other relevant biomedical information.
- J. Management Official-- includes any management or government official whose duties necessitate review of the test results in order to process adverse personnel action against the employee.
- K. 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 occupying a specified area, element or position, or may be a statistically random sampling of such employees based on a neutral criterion.
- L. Employees in Sensitive Positions
 - 1. Employees in positions designated by the DLA Director as Special Sensitive, Critical Sensitive or Non-Critical Sensitive in accordance with E.O. 10450, as amended;

2. Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the DLA Director under Section 4 of E.O. 12356;
 3. Individuals serving under Presidential appointments;
 3. Law enforcement officers as defined in 5 U.S.C. §8331 (20) and §8401 (17); or
 4. Other positions that the DLA Director determines involve law enforcement, police officers, security guards, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.
- L. Supervisor-- an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term “supervisor” includes only those individuals which devote a preponderance of their employment time to exercise such authority. 5 U.S.C. §7103(a) (10).
- M. Testing Designated Positions-- positions described in Section 7(d) of E.O. 12564 (reference I.D.1.a) that are designated (per Section IX.B of this plan) by the Director of DLA and listed in Appendix A as subject to random drug testing.
- N. Verified Positive Test Result-- a test result that has been positive on an initial Food and Drug Administration (FDA)-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by the Department of Health and Human Services (DHHS)), reviewed and verified by the MRO in accordance with this plan and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

III. EAPs

A. Function

The DLA EAP plays an important role in preventing and resolving employee drug use by: demonstrating the DLA’s commitment to eliminating illegal drug use; providing employees an opportunity with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP,

however, shall not be involved in the collection of urine samples or the initial reporting of test results. Specifically, the DLA EAP shall:

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

B. Referral and Availability

Any employee found to be using drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to DLA employees, but, when feasible, to the families of an employee with drug problems, and to an employee with family members who have drug problems.

In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP counselor's referral by notifying the DLA EAP administrator in writing prior to completion of the program. The decision of the DLA EAP administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor failed to consider one or more of the above factors in making a referral shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete the treatment.

C. Documentation

In all cases, employees have the burden of providing documentation that they have followed and completed the required treatment from the EAP, substance abuse counselor, or the rehabilitation or treatment provider.

D. Leave

Employees shall be allowed up to 1 hour, plus travel time, for each counseling session, up to a maximum of six visits, without charge to leave (i.e., annual leave, sick leave, etc.) during the assessment/referral phase of rehabilitation. Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

E. Records and Confidentiality

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

F. Structure

1. Human Resources (J1) shall be responsible for oversight and implementation of the DLA EAP, and will provide, with the support of the DLA Director high-level direction, and promotion of the EAP. The DLA EAP is currently provided under a contract with Federal Occupational of Health, which services DLA employees world-wide.

IV. SUPERVISORY TRAINING

A. Objectives

As supervisors have a key role in establishing and monitoring a drug-free workplace, DLA shall provide training to assist supervisors and managers in recognizing and addressing illegal drug use by agency employees. The purpose of the supervisory training is to convey an understanding of:

1. DOD and DLA policies relevant to work performance problems, drug use, and the DLA EAP;
2. The responsibility to offer EAP services;
3. How employee performance and behavioral changes should be recognized and documented;
4. The roles of the MRO, medical staff, supervisors, DLA Human Resources (J1), and EAP personnel;
5. The ways to use the EAP;
6. How the EAP is linked to the performance appraisal and the disciplinary process;
7. The process of reintegrating employees into the workforce;
8. Disciplinary action and removals from sensitive positions as required by Section 5 (C) of the E.O. 12564; and
9. Written materials, which the supervisor can use at the worksite.

Supervisory training can be found at:

<http://www.hr.dla.mil/downloads/eldpnew/CorePolicies/DrugTesting.pdf>

B. Implementation

DLA Human Resources (J1) shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the DLA Drug-Free Workplace Plan.

C. Training Package

Supervisory training shall be required of all supervisors and may be presented as a separate course, or be included as part of an ongoing supervisory training program. The training course will include those items described in the objectives above and shall be provided as soon as possible after a person assumes supervisory responsibility.

V. EMPLOYEE EDUCATION

A. Objectives

The EAP administrator shall provide a drug education program for all DLA employees. Drug education should include education and training to all levels of the agency on:

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

B. Means of Education

Drug education activities may include:

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

VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. DPA. DLA Human Resources (J1) shall have a DPA designated to carry out the purposes of the plan. The DPA shall be responsible for implementing, directing, administering, and managing the drug program within the agency. The DPA will:

1. Act as the main liaison between DLA and the DOD Drug Program Manager, Office of the Deputy Assistant Secretary of Defense for Counternarcotics.

2. Oversee and implement the DLA EAP, and provide, with the support of the DLA Director, DLA high-level direction, and promotion of the EAP.

3. Implement supervisory training, and develop a training package to ensure that all employees and supervisors are fully informed of the DLA Drug-Free Workplace Plan.

2. Update DOD contact information.

3. Provide quarterly drug testing statistics to the DOD Drug Program Manager, Office of the Deputy Assistant Secretary of Defense for Counternarcotics.

4. Coordinate DOD policy issues.

5. Review and revise DLA's Drug-Free Workplace Plan and DLA's Standard Operating Procedures.

6. Provide information, respond to inquiries, and ensure employees understand the purpose of the plan.

7. Advise and coordinate with Drug Program Managers on the submission of annual statistical reports in preparation of consolidated reports.

B. DPM. Shall serve as the principal contact with the laboratory in assuring the effective operation of the testing portion of the program. In carrying out this responsibility, the DPM shall, among other duties:

1. Arrange for all testing authorized under this order;

2. Coordinate with and report to the DPA activities and finding that may affect the reliability or accuracy of laboratory results;

3. In coordination with EAP, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation;

4. Coordinate all DPC duties at PLFAs whenever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives;

5. Monitor progress of referred employees during and after rehabilitation period; and

6. Upon receipt of a verified positive test result transmit the test result to the DLA Headquarters Security office and the DPA.

C. DPC. When possible, each PLFA shall have a DPC assigned to carry out the purposes of this plan within the PLFA. Under no circumstances shall an EAP counselor also be designated the PLFA DPC. The DPC shall:

1. Coordinate testing of PLFA employees and make any necessary local arrangements for testing;

2. Ensure that all employees subject to random testing receive individual notice as described in Section VII A of this plan, and that such employees return a signed acknowledgment of receipt form;

3. Coordinate with and report to the DPM on all DPC activities;

4. Provide information to and respond to inquiries from PLFA employees to ensure employee understanding of the purposes of the plan.

D. EAP Administrator. The EAP Administrator shall:

1. Assume the lead role in the development, implementation, and evaluation of the EAP;

2. Supervise all EAP Coordinators;

3. Advise PLFAs on the submission of annual statistical reports, and prepare consolidated reports on the Agency's EAP activity.

E. Employee Assistance Program (EAP) Coordinators. The DLA Headquarters EAP and PLFA EAP Coordinators shall:

1. Implement and operate the EAP within the PLFA;

2. Provide counseling and referral services for all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;

3. Coordinate with DLA Headquarters, the MRO, and supervisors, as appropriate;

4. Work with the DLA Human Resources Services, DLA Training to provide educational material and training managers, supervisors, and employees on illegal drugs in the workplace;

5. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;

6. Monitor progress of referred employees during and after the rehabilitation period and provide feedback to supervisors in accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records;

7. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;

8. Maintain a list of rehabilitation or treatment organizations, which provide counseling and rehabilitative programs, and include the following information on each such organization:

- a. Name, address, and phone number;
- b. Types of services provided;
- c. Hours of operation, including emergency hours;
- d. The contact person's name and phone number;
- e. Fee structure, including insurance coverage;
- f. Client specialization; and
- g. Other pertinent information.

9. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the sites, and ascertain the experience, certification, and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.

F. EAP Counselors. Shall:

1. Serve as the initial point of contact for employees who ask or are referred for counseling;

2. Be familiar with all applicable laws and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program;

3. Meet the qualifications as determined by the EAP Administrator and be trained in counseling employees in the occupational setting and in identifying drug use;

4. Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and

5. In making referrals, consider the:

- a. Nature and severity of the problem;
- b. Location of the treatment;
- c. Cost of the treatment;
- d. Intensity of the treatment environment;
- e. Availability of inpatient/outpatient care;
- f. Other special needs, such as transportation and child care;
- g. The preferences of the employee.

G. MRO shall:

- 1. Receive all laboratory test results;
- 2. Assure that an individual who has tested positive, substituted or adulterated has been afforded an opportunity to justify the test result in accordance with Section VIII.E of this plan.
- 3. Consistent with confidentiality requirements, refer written determinations regarding all verified positive, substituted or adulterated test results to the DPM, including a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings;
- 4. Coordinate with and report to the DPM on all activities and findings on a regular basis; and
- 5. Coordinate all MRO duties in field offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.

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

- 1. Attend training sessions on illegal drug use in the workplace;
- 2. Initiate a reasonable suspicion test as described in Section X
- 3. Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use;

4. Initiate appropriate disciplinary action upon a finding of illegal drug use using the table of charges and recommended penalties in the DLA Instruction Maintaining Discipline; and

5. In conjunction with Human Resources specialists, assist higher-level supervisors in evaluating employee performance and or personnel problems that may be related to illegal drug use.

A higher-level supervisor shall review and concur, in advance, with all reasonable suspicion tests ordered under their supervision in accordance with Section X.

I. Implementation

At the direction of the staff director, DLA Human Resources Policy (J14), DLA Headquarters and each PLFA shall implement the Drug-Free Workplace Plan and ensure that the plan is efficiently and effectively accomplished in accordance with this order and all other applicable regulations.

J. General Program/Structural Provisions

The Staff Director, DLA Human Resources Policy (J14), shall develop implementation procedures to enable PLFAs to efficiently and swiftly implement all aspects of this plan, taking into account the unique geographical, personnel, budgetary and other relevant factors of the PLFAs. Such procedures will permit PLFA implementation to proceed independently of DLA Headquarters implementation, and of any other PLFA implementation. Such procedures shall also encourage cooperation and efficiently implement this order.

VII. NOTICE

A. Individual Notice

An individual notice will be distributed to all employees in new testing designated positions explaining;

1. The employee's position has been designated a testing designated position;
2. The employee will have the opportunity to voluntarily identify himself as a user of illegal drugs and to receive counseling or rehabilitation, in which case disciplinary action is not required.
3. That the employee's position will be subject to random testing no sooner than 30 days.
4. For bargaining unit employees, the notice must include any other requirements specified in the applicable bargaining unit agreement.

B. Signed Acknowledgement

1. Each employee in a new testing designated position shall be asked to acknowledge in writing that the employee has received and read the notice, which states that the employee's position has been designated for random testing and that refusal to submit to testing will result in initiation of disciplinary action, up to and including removal.

2. If the employee refuses to sign the acknowledgement, the employee's supervisor shall note on the acknowledgement form that the employee received the notice. Failure to sign the notice shall not preclude testing that employee or otherwise affect the implementation of this order.

3. All signed or annotated acknowledgement forms will be forwarded to the DPM.

4. For bargaining unit employees, the notice must include any other requirements specified in the applicable bargaining unit agreement.

C. Administrative Relief

If an employee believes his or her position has been wrongly designated as a TDP, that employee may file an administrative appeal to the supervisor. The supervisor in conjunction with the DPM will make a recommendation to the staff director, DLA Human Resources Policy (J14) for a final determination on whether the position should be a TDP. The decision will not be subject to further administrative review. The appeal must be submitted by the employee, in writing, to the supervisor within 15 days of notification, setting forth all relevant information.

D. Notification of Testing

Before each drug test, the employee shall be informed in writing of the following:

1. The reasons for ordering the drug testing and how the employee was selected for the test; e.g., random, reasonable suspicion, post-accident investigation, etc;

2. The time at which they will be tested;

3. The consequences of a positive result;

4. The consequences of a refusal to cooperate, including possible adverse action(s);

5. The opportunity for submission of supplemental medical documentation to support the legitimate use of a specific drug;

6. The availability of drug-abuse counseling and referral services available through the EAP;

7. The right to union representation at any investigatory interviews which may precede or result from the drug test. Consult the appropriate bargaining unit agreement for any additional applicable situations where the union has a right to be present;

8. The right, in the event of a positive drug test, to have the specimen tested by a second certified laboratory;

9. In accordance with the Master Labor Agreement (MLA) dated April 2007, bargaining unit employees represented by AFGE Council 169 also have the right to union representation during the collection process. Unavailability of a union representative will not delay collection of the sample.

VIII. TEST PROCEDURES IN GENERAL

A. Technical Guidelines for Drug Testing

DLA shall adhere to the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by DHHS consistent with the authority granted by E.O. 12564, and to the requirements of Section 503 of the Act. DLA's drug testing component shall have professionally trained collection personnel, quality assurance requirement for urinalysis procedures, and strict confidentiality requirements.

B. Privacy Assured

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

- a. Facts and circumstances suggest that the individual is an illegal drug user;
- b. Facts and circumstances suggest that the individual is under the influence of drugs at the time of the test.
- c. The individual has previously been found by DLA to be an illegal drug user;
- d. Facts and circumstances suggest that the individual has equipment or implements capable of tampering or altering urine samples;
- e. The individual has previously tampered with a sample;
- f. The sample has a temperature outside the acceptable range; or
- g. Shows signs of contaminants.

When there is any reason to believe that a donor may have altered or substituted the specimen to be provided, another specimen shall be obtained as soon as possible under direct observation of a person of the same gender and both specimens shall be forwarded to the laboratory for testing.

When there is reason to believe that a dilute specimen was altered or substituted, an observed collection will be authorized.

C. Refusal to Take Drug Test When Required and Failure to Appear for Testing

An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal. No applicant who refuses to be tested shall be extended an offer of employment.

Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

Failure to appear for testing without a deferral and failure to complete the collection process as directed by the collector will also be considered refusal to take a drug test when required, and will subject an employee to the range of disciplinary action, including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the DPM/DPC to obtain guidance on action to be taken.

D. Opportunity to Justify a Positive Test Result

When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the Mandatory Guidelines for Federal Workplace Drug Testing Programs. For example, the MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include, but is not limited to: 1) A valid prescription; or 2) A verification from the individual's physician verifying a valid prescription.

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO shall immediately contact the DPM, upon obtaining a verified positive test result.

Consult the applicable collective bargaining agreement for any additional requirements on employee discussions with the MRO.

E. Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, and at the request of the program, the employee may be exempted from the random testing designated position pool for a period not to exceed 60 days, or for a time specified in an abeyance or last chance agreement or rehabilitation plan. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to Section XII(C).

F. Official Time

Participation in any required drug testing is part of an employee's official duties; consequently, there will be no charge to leave for participation in the testing program. Union representatives will be granted official time in accordance with applicable collective bargaining agreements when representing employees at any investigatory interviews which may precede or result from a drug test.

Consult the applicable collective bargaining agreement for any additional applicable situations where the union has a right to be present.

G. Savings Clause

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

IX. RANDOM TESTING

A. Position Titles Designated for Random Drug Testing

The position titles designated for random drug testing are listed in Appendix A. Accompanying the list of testing designated positions are the criteria used in selecting the positions for drug testing and the justification for including them in the list of testing designated positions.

B. Employees in Testing Designated Positions

E.O. 12564 requires random testing for employees in sensitive positions that have been determined to be testing designated positions. In accordance with the guidelines provided in reference I.D.2.e, the positions listed in Appendix A are the TDPs within DLA that have been approved by the Interagency Coordinating Group Executive Committee.

C. Determining the Testing Designated Positions

The 1999 guidance consolidated the results of court decisions and established specific categories of TDPs. In January 2010, the Department of Justice reviewed legal activity since the issuance of the 1999 guidance and concluded that there were no decisions altering the following TDP categories:

- **Presumptive Positions:** Must be included in all plans. Agencies desiring to *exclude* any of these positions must submit a written justification for doing so. Exclusions require the prior written approval of the Interagency Coordination Group Executive Committee (ICGEC).
- **Preferred Positions:** Should, but may not be included in all plans. Agencies desiring to *exclude* any of positions must provide a clear justification for doing so.
- **Discretionary Positions:** Agency specific. Agencies desiring to *include* such positions must present a clear justification for doing so, including a detailed description/statement of the immediate risks posed by incumbents using illegal drugs.
- **Disfavored Positions:** May not be included in any plan.

The positions listed in Appendix A are characterized by critical safety or security responsibilities related to the mission of the agency. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions are singled out for random testing because they require the highest degree of trust and confidence.

The DLA Director reserves the right to add or delete positions determined to be testing designated positions pursuant to the criteria established in the E.O. 12564, the DOD Directive, Number 1010.9 dated August 23, 1988, and this plan.

D. Implementing Random Testing

In implementing the program of random testing, the DLA DPA shall:

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

The frequency with which random tests will be administered is specified in Appendix B.

E. Notification of Selection

1. An individual selected for random testing, and that individual's first-line supervisor, shall be notified the same day the test is scheduled, preferably within 2 hours of the scheduled testing. The supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employee's name was selected randomly. The employee shall be provided with written notification in accordance with Section VII D above.

F. Deferral of Testing

1. An employee selected for random drug testing may obtain a deferral of testing if the employee's first-line and second-line supervisors concur that a compelling need necessitates a deferral because the employee is:

- a. In an approved leave status.
- b. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

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

X. REASONABLE SUSPICION TESTING

A. Individuals Subject to Reasonable Suspicion Testing

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

B. Grounds

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

- 1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
- 2. A pattern of abnormal conduct or erratic behavior consistent with the use of illegal drugs or drug related impairment;
- 3. Arrest or conviction of a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking/distribution.
- 4. Information provided whether by reliable and credible sources or independently corroborated; or
- 5. Newly discovered evidence that the employee has tampered with a previous drug test.

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

C. Procedures

1. If an employee is suspected of using or possessing illegal drugs, the employee's supervisor will gather all pertinent information and facts regarding the circumstances leading to and supporting this suspicion. The employee's supervisor will present the facts and circumstances to the next level supervisor to establish the finding that reasonable suspicion of illegal drug use exists. Once approval by the employee's second level supervisor and the employee's servicing DLA Human Resources Services director, has been obtained, the employee's supervisor will prepare a written report detailing the circumstances which formed the basis to warrant the testing. This report should include the appropriate dates and times of reported drug related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken. This information will be maintained by the appropriate DPM.

D. Obtaining the Sample

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

E. Supervisory Training

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

XI. APPLICANT TESTING

A. Objectives

To maintain the high professional standards of the DLA workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed on the employment rolls of the agency. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within DLA and will provide for a safer work environment.

B. Extent of Testing

Drug testing shall be required of all individuals selected for employment with the agency in testing designated positions, who have not, immediately prior to placement, been subject to random testing.

C. Vacancy Announcements

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

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

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

D. Procedures

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

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

E. Personnel Officials

The DLA Human Resources Services office will make no final offer of employment to any individual tentatively selected for employment with DLA in a testing designated position until notification has been received from the DPM/DPC that a drug test has been conducted and a negative test result received. A tentative offer will be withdrawn for any applicant tentatively selected for a testing designated position who receives a verified positive drug test result, refuses to be tested, or tampers with a specimen.

F. Consequences

The Human Resources specialist working on the applicant's certificate shall be directed to object to the applicant based on failure to pass the physical, a lack of personal characteristics necessary for public employment or failure to support the goals of the agency. The agency shall inform such applicant that a confirmed presence of drug in the applicant's urine precludes the agency from hiring the applicant.

XII. ADDITIONAL TYPES OF DRUG TEST

A. Accident or Unsafe Practice Testing

DLA is committed to providing a safe and secure working environment. It also has a legitimate interest in determining the cause of serious accidents so that it can undertake appropriate corrective measures. Post-accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based

upon the circumstances of the accident, their actions are reasonably suspected of having caused or contributed to an accident that meets the following criteria:

- (1) A death or personal injury requiring immediate hospitalization;
- (2) Damage to government or private property estimated to be in excess of \$10,000

If an employee is suspected of having caused or contributed to an accident meeting any of the criteria stated above, the appropriate supervisor will present the facts and circumstances leading to and supporting this suspicion to the activity commander/director for approval. Once approval has been obtained and the arrangement made with the DPM for testing, the supervisor will prepare a written report detailing the facts and circumstances that warranted the testing.

B. Voluntary Testing

In order to demonstrate their commitment to the agency's goal of a drug-free workplace and to set an example for other Federal employees, employees not in testing designated positions may volunteer for unannounced random testing by notifying the DPM in writing. These employees will then be included in the pool of testing designated positions subject to random testing and will be subject to the same conditions and procedures, including the same disciplinary consequences for a finding of illegal drug use.

Volunteers shall remain in the TDP pool for the duration of the position which the employee holds, or until the employee withdraws from participation by notifying the DPM at least 48 hours prior to a scheduled test.

Employees will not be coerced or otherwise required to participate in voluntary testing. Participation in voluntary testing will neither advantage nor disadvantage employees.

C. Follow-up Testing

All employees referred through administrative channels that undergo counseling, treatment or rehabilitation programs for illegal drug use through the EAP will be subject to unannounced testing following completion of such a program for a period of 1 year. Such employees shall be tested at the amount stipulated in the abeyance or last chance agreement or, in the alternative, at an increased frequency as specified in Appendix B. Such testing is distinct from any testing, which may be imposed as a component of the EAP.

XIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

A. Determination

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

1. Direct Observation;

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

B. Mandatory Administrative Actions

DLA shall refer an employee found to use illegal drugs to the EAP. Referral to the EAP will be in writing and will inform the employee of the consequences of refusal of counseling or rehabilitation. If the employee occupies a sensitive position, the agency shall immediately remove the employee from the position without regard to whether it is a testing designated position. At the discretion of the DLA Director however, and as part of the EAP rehabilitation program, an employee may return to duty in a sensitive position if the employee's return will not endanger public health, safety or national security.

C. Range of Consequences

The severity of the disciplinary or adverse action taken against an employee found to use illegal drugs will depend on the circumstances of each case, will be consistent with the E.O. 12564 and the Agency's Maintaining Discipline Instruction, and will include a minimum of 15 days suspension proposed for the first time an employee has a verified positive test result, and removal proposed should the employee have a second verified test result. Disciplinary action must be initiated against any employee who is found to use illegal drugs, refuses to participate in required drug test, unauthorized possession, sale, exchange, trade or transfer of ownership of an illegal drug, marijuana, a narcotic, or other dangerous drug on government premises, or during the work hours of any employee involved. This excludes employees who voluntarily admit to illegal drug use in accordance with subsection XII F of this plan.

D. Initiation of Mandatory Removal from Federal Service

1. The agency shall initiate action to remove an employee for:
 - a. Refusing to obtain counseling or rehabilitation OR comply with a recommended EAP course of action as required by the E.O. 12564 after having been found to use illegal drugs;
 - b. Not refraining from illegal drug use after a first finding of such use.
2. Proposed notices and decision letters for removal action based on illegal drug use must be coordinated with the PLFA DPM, DPC, and the servicing DLA Human Resources specialist (Employee/Labor Relations).

E. Refusal to Take Drug Test When Required

1. An employee who refuses to be tested will be subject to a proposed disciplinary action based on the table of penalties in the DLA's Maintaining Discipline Instruction located on eWorkplace homepage under the DLA Issuances , and then under "M" for Maintaining Discipline.

2. No applicant who refuses to be tested shall be extended an offer of employment.

3. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral

1. Under E.O. 12564, DLA is required to initiate action to discipline any employee found to use illegal drugs, except that such discipline is not required when an employee (1) voluntarily admits his or her drug use; (2) completes counseling and/or rehabilitation; and (3) thereafter refrains from drug use.

2. The decision whether to discipline a voluntary referral will be made by the PLFA commander on a case-by-case basis depending on the facts and circumstances. The decision whether to discipline a voluntary referral within DLA Headquarters will be made by the DLA Director. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the agency, in determining whether to discipline, shall consider that the employee has come forward voluntarily. Provisions agreed to in negotiated Collective Bargaining Agreements take precedence.

XIV. RECORDS AND REPORTS

A. Confidentiality of Test Results

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

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

a. To the MRO;

b. To the EAP Administrator in which the employee is receiving counseling or treatment or is otherwise participating;

c. To any supervisory or management official within the agency having authority to take adverse personnel action against such employee; or

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

For the purposes of this Section, “management official” includes any management or government official whose duties necessitate review of the test results in order to process adverse personnel action against the employee.

In addition, test results with all identifying information shall also be made available to agency personnel, including the DPM/DPC, for data collection and other activities necessary to comply with Section 503(f) of the Act.

B. Employee Access to Records

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

a. Such employee’s drug test; and

b. The results of any relevant certification, review, or revocation of proceedings, as referred to in Section 503(a) (1) (A) (ii) (III) of the Act.

The employee shall be informed in writing of his/her right to receive this above information.

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

C. Confidentiality of Records in General

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

All records and information of the personnel actions taken on employees with verified positive test results shall remain confidential and shall be maintained by the DLA Human

Resources Services office in a locked cabinet, with only authorized individuals who have a “need-to-know” having access to them.

D. Employee Assistance Program Records

The EAP Administrator shall maintain only those records necessary to comply with this plan. After a supervisor refers an employee to an EAP, the EAP provider will maintain all records necessary to carry out its duties. All medical and/or rehabilitation records concerning the employee’s drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment, are confidential and may be disclosed only as authorized by 42 CFR, Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient’s employer for verification of treatment or for a general evaluation of treatment progress.

E. Maintenance of Records

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

- a. Notices of verified positive test results referred by MRO;
- b. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;
- c. Anonymous statistical reports; and
- d. Other documents the DPA, MRO, DPM, or EAP provider deems necessary for efficient compliance with this order.

No employee records shall be kept concerning negative test results. Any such records, except the record that the test was conducted and that the test result was negative, shall be destroyed, to the extent that such destruction is allowed by relevant regulations.

F. Records Maintained by Government Contractors

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

G. Statistical Information

The DPM shall collect and compile anonymous statistical data for reporting the number of:

- a. Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered;
- b. Verified positive test results;
- c. Voluntary drug counseling referrals;
- d. Involuntary drug counseling referrals;
- e. Terminations or denial of employment offers resulting from refusal to submit to testing;
- f. Terminations or denial of employment offers resulting from alteration of specimens;
- g. Terminations or denial of employment offers resulting from failure to complete a drug abuse counseling program; and
- h. Employees who successfully complete EAP.

This data, along with other pertinent information, shall be compiled for inclusion in the DLA's annual report to Congress required by Section 503(f) of the Act. This data shall also be provided to DHHS on a semiannual basis to assist in overall program evaluation and to determine whether changes to the HHS guidelines may be required.