

Approved: 01-30-2014

SUBJECT: FEDERAL SUBSTANCE ABUSE TESTING PROGRAM

1. PURPOSE. To establish the requirements and responsibilities for the Department of Energy (DOE) Federal Substance Abuse Testing Program which covers drug and alcohol testing.
2. CANCELLATION. DOE Order 3792.3, Change 1, *Drug-Free Federal Workplace Testing Implementation Program*, dated 08-21-1992.
3. APPLICABILITY.

- a. Departmental Applicability. This Order applies to all DOE elements, including the Bonneville Power Administration.

The National Nuclear Security Administration (NNSA) Administrator will assure that NNSA employees comply with their respective responsibilities under this Order. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.

- b. DOE Contractors. This Order does not apply to contractors.
- c. Equivalencies/Exemptions for DOE O 343.1. Equivalencies and exemptions to this Order are processed in accordance with DOE O 251.1C, *Departmental Directives Program*.

In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.

4. REQUIREMENTS. The requirements in this Order do not supersede applicable laws, regulations, Executive Order and Substance Abuse and Mental Health Services Administration (SAMHSA) Mandatory Guidelines.
 - a. General. DOE Headquarters will administer and/or contract for a corporate drug and alcohol testing program and identify which categories of positions are subject to drug and/or alcohol testing.
 - b. Types of Drug Testing. Testing for the use of illegal drugs may occur as follows.
 - (1) Employees in the positions listed in Appendix A, referred to as testing designated positions (TDP), are subject to random testing.

- (2) All applicants including current DOE employees, for TDP are subject to pre-employment (also referred to as applicant) testing.
 - (3) Employees in TDP who fall within U.S. Department of Transportation (DOT) testing regulations are subject to return-to-duty testing.
 - (4) Employees who volunteer to be included in the random testing program are treated as if they are in TDP.
 - (5) All employees are subject to post accident or post incident (also referred to as unsafe practice), reasonable suspicion or follow-up testing. Follow-up testing is only used when an employee has either tested positive for and/or admitted to the use of illegal drugs.
- c. Types of Alcohol Testing. The following employees and applicants are also subject to alcohol testing, which is conducted by a Breath Alcohol Technician (BAT).
- (1) Employees in TDPs who are required to maintain a commercial driver's license (CDL), aviation certificate, flight crew, or other transportation requirement per DOT regulations are subject to random, pre-employment/applicant, follow-up, post accident or post incident/unsafe practice, reasonable suspicion, and return-to-duty testing.
 - (2) Employees in TDPs who are in the DOE Human Reliability Program (HRP) are subject to random, pre-employment/applicant, follow-up, post accident or post incident/unsafe practice, reasonable suspicion, and return-to-duty testing.
- d. Random Testing. Employees in TDP are subject to random testing using a random sampling technique established by the Departmental Substance Abuse Program Manager.
- (1) Databases.
 - (a) The TDP random test databases will be maintained by the Departmental Substance Abuse Program Manager. The Department maintains separate random test databases, one for positions that are tested using the SAMHSA Mandatory Guidelines and one for positions tested using DOT regulations. Random selections of Federal employees are made using these databases by the Program Manager or designee.
 - (b) Each Local Substance Abuse Program Coordinator will maintain a list of TDPs within his/her organization subject to testing and provide a periodic update to the Departmental Substance Abuse Program Manager to maintain the random testing database.

- (2) Selection. Random selection for testing of employees will be centrally controlled and only made by the Departmental Substance Abuse Program Manager or designee. The percentage of employees selected for testing will be that established by Federal regulation or by the Secretary. Random testing cycles will follow a formula and schedule established by the Departmental Substance Abuse Program Manager in consultation with affected program offices (see Appendix A for the percentage of testing for each TDP).
- (3) Collection Procedures. Collections will be in accordance with either the SAMHSA Mandatory Guidelines or DOT regulations depending on the authority for which the test is being conducted.
- (4) Refusal to Test. Is considered when the donor interferes with and/or refused to participate at any point in the collection/testing process.
 - (a) This may include but is not limited to: failure to cooperate in the collection process; failure to appear within a reasonable time frame and/or at the designated time to the collection site; failure to remain at the collection site; failure to provide a specimen; failure to follow instructions given by the collector; failure to permit an observer to monitor the collection during an observed collection; failure to take an additional drug test when directed; and failure to undergo medical evaluations as directed by the Medical Review Officer (MRO).
 - (b) The MRO will also report a refusal to test on verified adulterated or substituted test. For an employee, the refusal to submit to testing will result in the initiation of corrective action, up to and including dismissal. For an applicant, the offer of employment will be withdrawn.
- (5) Testing Positive. Employees who have been reported by the MRO that have tested positive will:
 - (a) be notified in writing;
 - (b) be removed from their sensitive duties or their sensitive duties removed from them;
 - (c) have their Personnel and/or Personnel Security staff notified as appropriate;
 - (d) be referred to Employee Assistance Program (EAP) or to a Substance Abuse Professional (SAP). If entered into a formal rehabilitation program, the employee may be removed from the

random testing pool during rehabilitation if requested through the Local Substance Abuse Program Coordinator; and

- (e) be subject to corrective action up to and including removal.
- (6) Vacancy Announcements. A vacancy announcement for a TDP must state that the position is subject to the DOE substance abuse program, a negative test result will be required before an offer of employment becomes final, and the applicant selected will be subject to future random testing.
- (7) Biennial Notice. A general notice will be issued by the Departmental Substance Abuse Program Manager every other year to remind all employees, especially those in TDPs, of the Department's testing program and the availability of assistance through EAP.
- (8) Individual Notice.
 - (a) A one-time notice will be (or has been) issued by the applicable Local Substance Abuse Program Coordinator to an employee whose position is subject to random testing at least 30 days before initiation of random testing. At a minimum, the notice must contain the following:
 - 1 the purpose of the testing program, which is to ensure that employees in the positions listed in Appendix A are able to perform the tasks of their positions safely at all times;
 - 2 why the employee is subject to unannounced random testing;
 - 3 the effective date that the employee will be subject to random testing;
 - 4 the types of tests that will be administered;
 - 5 a statement that the applicable testing procedures will comply with the SAMHSA Mandatory Guidelines for drug testing and/or the DOT regulations;
 - 6 a statement on the role of the donor (employee) in the testing process;
 - 7 a statement that a positive test result, i.e., a positive test result that indicates the employee has recently used an illegal drug or alcohol, may result in disciplinary action or security clearance/access authorization revocation based on

applicable laws, regulations, Executive Order, SAMHSA Mandatory Guidelines, and/or Departmental directives;

8 a statement that counseling and rehabilitative assistance are available through the EAP or SAP for an employee who tests positive or for an employee who voluntarily identifies himself or herself as a user of an illegal drug or an abuser of alcohol and requests referral to the EAP; and

9 a statement that the employee may file a grievance pursuant to the provisions of DOE O 342.1, Grievance Policy and Procedures; negotiated local collective bargaining agreements; or other applicable appeal processes.

(b) An employee must acknowledge receipt of the notice in writing or the employee's supervisor must certify that the notice was given to the employee but the employee was unwilling to sign the acknowledgement.

e. Pre-employment/Applicant Testing. All applicants who have been tentatively selected for a TDP will be drug tested; this includes current DOE employees who are currently in a TDP. An applicant drug test for a current DOE employee in a TDP may be waived if the employee has a negative drug test result from a DOE-initiated test within 60 calendar days of the new position offer. An applicant alcohol test will be conducted for applicant/employee applying for the HRP. Applicants for DOT regulated positions may be alcohol tested in accordance with DOT regulations.

(1) DOE Employees. If the test is positive and:

(a) the employee is currently not in a TDP, the employee will not be selected for the TDP for which they applied; the positive test result will be shared with the applicant's current supervisor and the personnel security office if applicable; the employee will be referred for counseling and/or rehabilitation; and the employee may be subject to follow-up testing and corrective action.

(b) the employee is currently in a TDP, the employee will not be selected for the new TDP for which they applied; the positive test result will be shared with the applicant's current supervisor and the personnel security office; the employee will be removed from their sensitive duties; the employee will be referred for counseling and/or rehabilitation; and the employee will be subject to follow-up testing and corrective action.

(2) Non-DOE Applicants. Non-DOE applicants who test positive will not be selected.

- f. Follow-up Testing. When an employee has tested positive or admitted to illegal drug use or alcohol abuse, testing may be required during formal counseling or rehabilitation. Testing will be required for a minimum of 12 months following the last date tested or the date that a "Substance Abuse Acknowledgement" document is signed, whichever is later. Testing will be conducted in accordance with either SAMHSA Mandatory Guidelines or DOT regulations depending on the authorization for which the positive drug test was conducted. For employees tested under DOT regulations, the follow-up testing plan will be established by the SAP for employees who seek to resume their safety sensitive duties. All other employees will have their testing plan established by a management official above the supervisor of the employee with consultation from the EAP, supervisor, and the Local Substance Abuse Program Coordinator who will carry out the follow-up testing plan. Follow-up testing is an observed collection and may be conducted at any time and/or with any frequency.
- g. Post Accident or Post Incident/Unsafe Practice Testing. Employees who are involved in an accident or a reportable safety incident while on official duty may be tested. Determination to conduct a post accident test will be made by the supervisor or management official based on several factors that may include, but are not limited to, duty status, the use of a government vehicle, the direct cause of the accident, and/or the type and severity of injuries and property damage. A post accident test must be completed in cases of human fatality or bodily injury with immediate medical treatment away from the scene or damage to property in excess of \$8000 as soon as practical. DOT regulations will be used for employees performing safety sensitive duties under DOT rules. The time frames for conducting testing are:
- (1) within 32 hours for a drug test; and
 - (2) within 8 hours for an alcohol test for employees who are also subject to being tested under DOT regulations.
- The Department will not attempt to administer a post accident test if it has not been conducted within the assigned time frames. The Local Substance Abuse Program Coordinator shall prepare and maintain on file a record stating the reason the test was not administrated.
- h. Reasonable Suspicion Testing. Any employee may be tested when there is a reasonable suspicion that he/she may have engaged in illegal drug use or appears impaired by drugs. Only employees in the HRP or who are subject to DOT regulations may be tested for alcohol impairment under reasonable suspicion. A reasonable suspicion testing is an observed collection.
- (1) Notice. A supervisor must provide a written notice to the employee that explains the basis for the reasonable suspicion and the required testing procedures. The fact that an employee has tested positive or has undergone

a period of rehabilitation will not be used solely as grounds for reasonable suspicion testing. The reasonable belief criteria include, but are not limited to:

- (a) observed phenomena, such as observation of illegal drug use, physical symptoms of being under the influence of an illegal drug, or smell of an illegal drug or alcohol;
 - (b) a pattern of abnormal conduct or erratic behavior;
 - (c) arrest or conviction for a drug-related offense or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
 - (d) information provided either by reliable and credible sources or independently corroborated about illegal drug use or abuse of alcohol; or
 - (e) newly discovered evidence that the employee has tampered with a previous drug test.
- (2) Level of Approval. The Head of the Departmental Element or designee, but no more than one level below, must concur/non-concur on the supervisor's request for reasonable suspicion testing of an employee.
- i. Return-To-Duty Testing. An employee in a TDP tested under DOT regulations who has been removed from his/her sensitive duties is subject to being tested for illegal drugs and alcohol before being returned to his/her sensitive duties. When an employee has completed a rehabilitation program, the return-to-duty test may be regarded as the initial follow-up test. A return-to-duty test is an observed collection.
- j. Return to Sensitive Duties.
 - (1) If an employee is in a TDP and has undergone rehabilitation, the rehabilitation facility must provide the local EAP counselor or SAP Coordinator and Local Substance Abuse Program Coordinator with certification that the employee has successfully completed the rehabilitation program and tested negative.
 - (2) The determination as to when the employee may be returned to sensitive duties will be made by the supervisor after consultation with the Local Substance Abuse Program Coordinator and EAP counselor or SAP Coordinator and after concurrence by the Head of the Departmental Element or designee.

- (3) The return to sensitive duties that involves a security clearance/access authorization is not covered by this Order. Eligibility for continued access will be a decision made by the cognizant personnel security office.

k. Test Results.

- (1) All drug test results will be reported to the Local Substance Abuse Program Coordinator by the Department's MRO using criteria set forth in the SAMHSA Mandatory Guidelines and/or DOT regulations depending on the applicable authority. The alcohol test results conducted under DOT regulations will be reported by the BAT to the Local Substance Abuse Program Coordinator.
- (2) A centralized, secure computerized file of the outcome of all drug tests performed for DOE will be maintained by or available to the Departmental Substance Abuse Program Manager. Local Substance Abuse Program Coordinators and designated Personnel Security staff will have access to the drug test results for employees in their organizations.
- (3) When the certified laboratory that analyzes a drug test sample reports to the MRO a test result, the MRO, in accordance with the SAMHSA Mandatory Guidelines or DOT regulations will conduct a review of the laboratory result and the associated paperwork and may contact the donor (applicant or employee) for an interview. The donor will be given an opportunity to provide an explanation and documentation for the reason of the laboratory test results. The MRO will make the determination as to what test result will be reported to the Department. The employee will be notified in writing of a positive test result.
- (4) Whenever the certified laboratory reports a negative-dilute test result, the MRO will report the result to the Department and direct the Department to immediately collect another specimen from the donor. The Local Substance Abuse Program Coordinator will conduct another collection in accordance with either SAMHSA Mandatory Guidelines or DOT regulations depending on what rules/procedures were used for the previous test. If the second specimen is also reported by the MRO as negative-dilute, there will be no additional test required.
- (5) The employee may request a copy of the MRO results of his/her drug test through the Local Substance Abuse Program Coordinator.
- (6) In order to ensure proper safeguarding within DOE, confidential test results information in any form (e.g., verbal, hard copy, records in a databases, etc.) must be identified and protected in accordance with the requirements for Official Use Only information found in DOE M 471.3-1.

1. Records. All records, including laboratory test results, MRO interviews notes, MRO results as reported, tracking history, and other testing documentation, will be retained by the MRO and/or the drug testing laboratory or alcohol testing company in a secure manner that allows for the retrieval of all information pertaining to the employees tested for a minimum of two years after the date of notification of the test results to the Department. The Department must identify and protect all records produced and/or received in accordance with DOE M 471.3-1.

5. RESPONSIBILITIES.

- a. Office of the Secretary.
 - (1) Approves or disapproves requests to include or exempt certain positions or groups of positions as TDP.
 - (2) Approves the percentage of random testing of TDP not covered by laws or regulations.
 - (3) Determines whether to allow deviations from the drug testing procedures outlined in Executive Order 12564, Drug-Free Federal Workplace, September 15, 1986.
- b. Director, Office of Human Capital Management. Develops, and, in coordination with the Director, Office of Human Capital Management, NNSA for NNSA Elements, implements and administers the Departmental substance abuse testing program.
- c. Departmental Substance Abuse Program Manager.
 - (1) Provides advice and guidance on policies, standards, and procedures concerning the DOE substance abuse testing program consistent with applicable laws, regulations, Executive Order, SAMHSA Mandatory Guidelines, and DOE Directives.
 - (2) Maintains the substance abuse testing databases and recommends approval or disapproval of requests to exempt certain positions or groups of positions from the substance abuse testing program.
 - (3) The Program Manager or his/her designee is the only Office or individual within DOE authorized to make the random selections for the Department's random drug and alcohol testing of employees and distribute the random lists to the Local Substance Abuse Program Coordinators.
 - (4) Ensures that adequate funds are requested for conducting testing programs.

- (5) Provides for laboratory and collection services, including the MRO, and supplies needed for the testing program.
- (6) Provides annual reports to SAMHSA on the substance abuse testing program and provides periodic internal reports.
- (7) Maintains liaison with the Office of Personnel Management, SAMHSA, the Departments of Transportation and Justice, and other organizations on drug and alcohol testing policy and other pertinent matters.
- (8) Evaluates the effectiveness of the DOE substance abuse testing program.

d. Heads of Departmental Elements.

- (1) Identify the employees in TDPs.
- (2) Concur or non-concur in determinations that an employee should be returned to his/her sensitive duties. This responsibility may not be delegated further than the Principal Deputy level.
- (3) Concur or non-concur in determinations that the reasonable suspicion criteria for testing have been met. This responsibility may not be delegated further than the Principal Deputy level.
- (4) Designate the Local Substance Abuse Program Coordinator(s). There are no restrictions on the number of Local Substance Abuse Program Coordinator(s) a Departmental Element may have.

e. Local Substance Abuse Program Coordinator(s).

- (1) Issue written notices to employees in TDP and maintain the acknowledgement receipts.
- (2) Coordinate the scheduling of all testing for their offices.
- (3) Receive drug test results from the MRO and alcohol test results for the BAT.
- (4) Provide written notification of positive test results from the MRO to the applicable supervisor and as necessary, to the employee/applicant, other management officials, the EAP counselor and/or SAP Coordinator.
- (5) Report positive drug and/or alcohol test results to the Departmental Substance Abuse Program Manager and report the result for all positive pre-employment/applicant tests to the appropriate servicing Human Resources Office and personnel security official if the applicant has or is under consideration for security clearance/access authorization.

- (6) Maintain a local database(s) of TDPs, employees in those positions, and supervisors of those employees.
- (7) Notify the Departmental Substance Abuse Program Manager of changes in TDP employees in the local database(s).
- (8) Ensure the removal and, if subsequently warranted, the reinstatement of the names of employees in the local database.
- (9) Assist supervisors in administering the execution of a "Substance Abuse Acknowledgement" document.
- (10) Provide assistance and guidance to supervisors and management officials when determinations are required for reasonable suspicion and post accident or post incident testing.
- (11) Provide or secure training for supervisors and managers about the drug and alcohol testing program to include post accident or post incident, unsafe practice or reasonable suspicion testing, and maintain confidentiality regarding testing and test results.
- (12) These duties may be delegated as necessary to cover multiple sites.

f. Managers and Supervisors.

- (1) Ensure employees are available and direct them to report for scheduled testing.
- (2) Identify, justify, and recommend employees for reasonable suspicion testing and request concurrence from the Head of the Departmental Element or designee. The responsibility to authorize a reasonable suspicion test may not be delegated further than the Principal Deputy level.
- (3) Identify employees who should be tested following accidents, incidents or unsafe practice, and provide information to the Local Substance Abuse Program Coordinator.
- (4) Respond to grievances related to the testing program.
- (5) Consult with the local EAP counselor and the organization's servicing human resources office before taking action following the determination of an employee's use of illegal drug or alcohol abuse.
- (6) Implement decisions on removal from sensitive duties, leave, and corrective action as a results of an employee's positive test results and/or request for EAP counseling or rehabilitation due to substance abuse.

- (7) Recommend whether an employee removed from sensitive duties should be returned to his/her sensitive duties.
- (8) Maintain the confidentiality of test results and discuss this and related information only with those who have a need to know.

g. Employee or Applicant (Donor).

- (1) Comply with the instructions provided by the Local Substance Abuse Program Coordinator(s) and/or applicable supervisors or servicing human resources office.
- (2) Report to the clinic or collection location at the appropriate time with photo identification and the least amount of personal items as possible.
- (3) Follow the instructions of the drug test collector and/or the BAT to ensure the collection process is conducted in accordance with SAMHSA Mandatory Guidelines or DOT regulations.
- (4) If the MRO contacts the donor as part of his/her review of the laboratory drug test result, respond to the MRO in a timely manner and provide information and/or documentation that may assist the MRO in determining the test result.

h. Employee Assistance Program (EAP) Counselors.

- (1) Ensure that employees who have tested positive are offered the opportunity to participate in the EAP.
- (2) Provide counseling and/or assistance to the employee as a referral source to assist in the employee's entry into an acceptable program that best provides the recommended assistance.
- (3) Monitor the results of counseling and rehabilitation activities in order to inform supervisors and the Local Substance Abuse Program Coordinator of an employee's status.

i. Substance Abuse Professional (SAP) Coordinators (for DOT-regulated testing).

- (1) Provide a comprehensive assessment and clinical evaluation to determine the level of assistance the employee needs in resolving problems associated with alcohol use or prohibited drug use.
- (2) Serve as a referral source to assist the employee's entry into an acceptable program that best provides the recommended assistance.

- (3) Complete an evaluation with the employee to determine if the individual has successfully complied with the requirements and report those to the Department.
- (4) Establish a written follow-up testing plan and provide a copy to the Local Substance Abuse Program Coordinator.
- (5) Provide EAP counselor and/or Local Substance Abuse Program Coordinators with updates as needed.

j. Medical Review Officer.

- (1) Complies with the requirements of the SAMHSA Mandatory Guidelines and/or DOT regulations.
- (2) Reviews all drug test results reported by the certified laboratory and report the results to the Departmental Substance Abuse Program Manager and/or the Local Substance Abuse Program Coordinator.
- (3) Reports summaries of all activities and findings to the Departmental Substance Abuse Program Manager.

k. Breath Alcohol Technicians (BAT).

- (1) Comply with the DOT alcohol testing regulations.
- (2) Report test results to the Local Substance Abuse Program Coordinator.

6. DEFINITIONS.

- a. Adulterated Specimen. A specimen that has been altered, as evidenced by the test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.
- b. Breath Alcohol Technician (BAT). A person who instructs and assists employees in the collection process and operates an evidential breath testing device for alcohol testing.
- c. Cancelled Test. The results reported by the MRO to the Department when (1) a specimen has been reported to the MRO by the laboratory as an invalid test result when the donor has no legitimate explanation or when a split specimen (bottle B) fails to reconfirm (bottle A), or (2) when the MRO determines that a fatal flaw or unrecovered correctable error exists in the forensic records.
- d. Certified Laboratory. An approved laboratory where initial and confirmatory testing, reporting of results, and recordkeeping is performed. The laboratory will have been certified by a team of inspectors from the Department of Health and

Human Services (HHS) showing they meet the SAMHSA Mandatory Guidelines to perform Federal drug testing.

- e. Collection Site. A place where individuals present themselves for the purpose of providing urine or breath specimens to be analyzed. The collection site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for collection in privacy and provide for security, temporary storage, and transportation of urine specimens to a drug testing laboratory as established by contractual obligation in compliance with SAMHSA Mandatory Guidelines or DOT regulations.
- f. Designated Employee Representative (DER). For the purpose of this Order the Local Substance Abuse Program Coordinator is the DER and will receive test results and other communications for the employer from the MRO and/or BAT.
- g. Donor. The individual reporting to the collection site to provide a urine specimen or a breath sample as part of the Departments testing program. This may be an applicant or an employee.
- h. Follow-up Testing. Testing conducted after an employee has tested positive or admitted to illegal drug use or alcohol abuse. Testing will be conducted for a minimum of 12 months following the last date tested or the date that a "Substance Abuse Acknowledgement" document has been executed, whichever is the latest. This is an observed collection that may be conducted at any time and/or frequency during the follow-up testing period.
- i. Illegal Drugs. A controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by Federal law. Note: Applicants and/or employees (donors) are not exempt under state laws that permit medical and/or recreational use of marijuana; Federal drug testing will continue to operate in accordance with Federal law, which identifies marijuana as a Schedule I drug under the Controlled Substance Act. As such, federal civilian employees within the executive branch will continue to be tested for marijuana at the established cutoff levels noted in the SAMHSA Mandatory Guidelines.
- j. Negative-Dilute Drug Test. A negative test result as reported by the MRO with weight and creatinine values lower than expected, but still within the physiologically producible range of human urine, that causes another specimen to be collected immediately.
- k. Observed Collection. Uses the same collection procedure as that of a routine drug collection, except an observer and/or collector will watch the donor urinate into the collection container.

- l. Positive Drug Test Results. As reported by the MRO in accordance with the cutoff levels as established by SAMHSA Mandatory Guidelines or DOT regulations for positive drug test.
- m. Random Testing. Unannounced testing of employees in TDP who have been selected using a random sampling technique.
- n. Reasonable Suspicion. An articulated belief drawn from specific and particularized facts and reasonable inferences from those facts that an employee used illegal drugs or abused alcohol.
- o. Substituted Specimen. A specimen that has been submitted in place of the donor's urine, as evidenced by creatinine and specific gravity values that are outside the physiologically producible ranges of human urine.

7. REFERENCES.

- a. 5 United States Code (U.S.C.) 552a. Records maintained on individuals, describes the protection of employee records under the Privacy Act (see http://www.justice.gov/oip/foia_updates/Vol_XVII_4/page2.htm)
- b. 5 U.S.C. 7301. Presidential Regulations; Historical and Revision, Notes, established appropriations to support the Federal Drug-Free Workplace Program; Public Law (P.L.) 100-71, as amended by P.L. 102-54 (b)(1)(B) provided funding for DOE employees who handle nuclear weapons or nuclear materials (see <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-partIII-subpartF-chap73.htm>).
- c. Title V of P.L. 102-143, Omnibus Transportation Employee Testing Act of 1991, established the substance abuse testing for the safety and welfare of the Nation in the transportation industry. (see http://www.dot.gov/sites/dot.dev/files/docs/199111028_Omnibus_Act.pdf).
- d. 10 Code of Federal Regulations (CFR) 712, Human Reliability Program, established the DOE HRP and the substance abuse testing requirements for the employees in the HRP (see <http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=10:4.0.2.5.6>).
- e. 49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs, established testing program requirements for the substance abuse testing of transportation workers (see http://www.dot.gov/sites/dot.dev/files/docs/PART40_2012.pdf).
- f. 49 CFR 382, Controlled Substances and Alcohol Use and Testing, established programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles, i.e., CDL holders (see

<http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/FmcsrGuideDetails.aspx?menukey=382>).

- g. Executive Order 12564, Drug-Free Federal Workplace, September 15, 1986, required agencies to establish a drug-free workplace program (see http://www.archives.gov/federal_register/codification/executive_order/12564.html).
- h. Mandatory Guidelines for Federal Workplace Drug Testing Programs (SAMHSA) established technical collection procedures for drug testing programs and standards for certification for drug testing laboratories (see <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/html/E8-26726.htm>).
- i. Medical Review Officer Manual for Federal Workplace Drug Testing Programs, DHHS, CSAP; October 1, 2010, established the role and responsibilities of the MRO. (see http://workplace.samhsa.gov/DrugTesting/pdf/MRO_Manual_2010_100908.pdf).
- j. Department of Health and Human Services 2013 Guidance for Selection for Testing Designated Positions (TDP), consolidated the results of court decisions and establishes specific categories of TDP. (see <http://workplace.samhsa.gov/pdf/2013GuidanceforSelectionofTestingDesignatedPositions.pdf>).
- k. DOE O 471.3, *Identifying and Protecting Official Use Only Information*, 1-13-2011, established a program within DOE to identify certain unclassified controlled information as Official Use Only (OUO) and to identify, mark, and protect documents containing such information. (see <https://www.directives.doe.gov/directives/restrict/0471.3-BOrder/view>).
- l. DOE M 471.3, *Manual for Identifying and Protecting Official Use Only Information*, 1-13-2011, established requirements for the DOE program to identify certain unclassified information as Official Use Only and to identify, mark, and protect documents containing such information. (see <https://www.directives.doe.gov/directives/0471.3-DManual-1admc1/view>).
- m. DOE O 206.1, *Department of Energy Privacy Program*, 1-16-2009, established Departmental implementation of agency statutory and regulatory requirements for privacy, specifically those provided in the Privacy Act of 1974, as amended. (see <https://www.directives.doe.gov/directives/0206.1-BOrder/view>).
- n. DOE O 342.1, *Grievance Policy and Procedures*, dated 02-02-2006, established requirements and responsibilities for processing grievances associated with the substance abuse testing program. (see <https://www.directives.doe.gov/directives/0342.1-BOrder/view>).

- o. DOE O 3750.1, *Workforce Discipline*, dated 8-21-1992, addresses taking corrective (disciplinary) action as a result of a positive test result (see <https://www.directives.doe.gov/directives/3750.1-BOrder-c6/view>).
- 8. CONTACT. Questions concerning this Order should be addressed to the Office of the Chief Human Capital Officer, Office of Human Capital Policy, Accountability and Technology, at 202-586-8585.

BY ORDER OF THE SECRETARY OF ENERGY:



DANIEL B. PONEMAN
Deputy Secretary

TESTING DESIGNATED POSITIONS (TDPs)
EMPLOYEE CATEGORIES, SENSITIVITY CODES, AND ANNUAL TESTING RATES

1. Positions Involving National Security. This category includes positions where the employee has a security clearance. These positions include those employees with a secret, top secret, or "L" or "Q" security clearance. These positions involve access to sensitive information or facilities; therefore, it is reasonable to assume that employees in such positions may damage the country's national interests if compromised. This category is divided into subcategories, called sensitivity codes of employees as described below. Employees in subcategories A and C are subject to the 30 percent annual testing rate, while employees in subcategory D are subject to the 100 percent annual testing rate. Employees in subcategory D will also be subject to alcohol testing as part of the substance abuse testing program.

<u>Sensitivity Code</u>	<u>Description</u>
A	Employees who have a Secret, Top Secret, or "L" or "Q" clearance.
B	(Reserved)
C	Employees who have unescorted or unrestricted access to category A nuclear reactor control rooms and/or access to category I quantities of special nuclear material.
D	Employees who are in the HRP. This code is to take precedence over code A or C for an employee in the HRP.
E	(Reserved)

2. Positions Involving Public Health or Public Safety. This category includes positions filled by employees having health and safety responsibilities, usually involving a potentially dangerous instrument or machine that could cause immediate, substantial physical injury to the public if carried out under the influence of drugs. Also included are medical positions that provide direct patient care and positions that involve work where mistakes are life-threatening and in which instant judgments are required with little opportunity for review. This category is divided into subcategories of employees as described below. Employees in all subcategories in this group are subject to the 30 percent annual testing rate. However, employees in subcategories H and I may be subject to a higher testing rate as required by DOT regulations.

<u>Sensitivity Code</u>	<u>Description</u>
F	Employees who are authorized to carry a firearm.
G	Employees who have access to a firearm.
H	Employees who serve as members of aviation flight crews.

I	Aviation personnel, including flight attendants, flight instructors, ground instructors, flight testing personnel, aircraft dispatchers, maintenance personnel, and aviation security and screening personnel.
J	Medical doctors and allied medical personnel who are responsible for direct patient care and who prescribe or administer drugs.
K	Employees who serve as a direct service staff of alcohol and drug counseling programs.
L	Firefighters.

3. Positions filled by Presidential Appointees. This category is divided into subcategories as described below. All employees in this category are subject to the 30 percent annual testing rate.

<u>Sensitivity Code</u>	<u>Description</u>
M	Employees who are appointed by the President and confirmed by the Senate.
N	(Reserved).

4. Positions Involving Law Enforcement. This category includes law enforcement personnel with close proximity to criminals or individuals suspected of criminal activity. In DOE only one subcategory is included in this category. An employee in this category is subject to the 30 percent annual testing rate.

<u>Sensitivity Code</u>	<u>Description</u>
O	Criminal Investigators

5. Positions Involving the Construction, Operation, and Maintenance of Transportation or Major Electrical Equipment. This category includes all employees who are required to maintain commercial driver's licenses (CDL) and/or employees who work in some field of high voltage electricity (construction, maintenance, dispatch, operations or control of electrical equipment or facilities). This category is divided into subcategories of employees as described below. Employees in subcategories P and Q are subject to the 30 percent annual testing rate or as required by DOT regulations. Employees in subcategories R and S are subject to the 30 percent annual testing rate while employees in subcategory U are subject to the 100 percent annual testing rate, as they are also included in the HRP. All CDL holders are subject to alcohol testing under DOT regulations.

<u>Sensitivity Code</u>	<u>Description</u>
P	Employees who operate a motor vehicle carrying passengers under 5 CFR 930.102.
Q	Employees who operate commercial motor vehicles, are required to maintain a CDL under 49 CFR 391.11, and who work in some field of high voltage electricity. This sensitivity code is to take precedence over all other codes that could be assigned to an employee except those covered by subcategory U.
R	Employees who maintain or construct high voltage (600 volts or higher) electrical equipment or facilities.
S	Employees who are involved in dispatching, controlling, or operating high voltage (600 volts or higher) electrical equipment or facilities.
U	Employees who are in the HRP, who operate commercial motor vehicles and are required to maintain a CDL under 49 CFR 391.11, and have a security clearance. This sensitivity code is to take precedence over all other codes that could be assigned to an employee in the HRP.

6. Other Sensitive Positions. Only one subcategory is included in this category. All employees in this category are subject to the 30 percent annual testing rate.

<u>Sensitivity Code</u>	<u>Description</u>
V	Employees who are not in TDP and who request to participate in random drug testing. Such employee-initiated requests do not need Secretarial approval.