

VA DRUG-FREE WORKPLACE PROGRAM

1. **REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) policy regarding the Drug-Free Workplace Program (DFWP).
2. **SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook is a complete revision of VA Handbook 5383 dated December 23, 2004, as amended. This handbook is maintained on the [Office of the Chief Human Capital Officer SharePoint](#) and the [VA Publications website](#). Significant changes include:
 - a. Moving definitions from the directive to the handbook;
 - b. Including responsibilities for the Under Secretary for Health that align with Health and Human Services regulations;
 - c. Adding a provision that volunteers in equivalent positions as testing designated positions are subject to drug testing;
 - d. Adding a provision that applicant drug tests expire after 90 calendar days;
 - e. Eliminating Part II of the previous version of the handbook and incorporating relevant portions into the current revision; and
 - f. Including language within policy that the list of testing designated positions (TDP) will be maintained on the Office of the Chief Human Capital Officer (OCHCO) [OCHCO Employee Relations and Performance Management Service SharePoint](#).
3. **RESPONSIBLE OFFICE:** Human Resources and Administration/ Operations, Security, and Preparedness (HRA/OSP) (006), Office of the Chief Human Capital Officer (OCHCO) (05), Employee Relations and Performance Management Service (051).
4. **RELATED DIRECTIVE:** VA Directive 5383, VA Drug-Free Workplace Program.
5. **RESCISSIONS:** VA Handbook 5383, dated November 20, 2012; VA Handbook 5383.1, VA Drug-Free Workplace Program App B; VA Handbook 5383.2, VA Drug-Free Workplace Program, dated April 11, 1997; VA Handbook 5383.2, VA Drug-Free Workplace Program App A, B, D, F, dated April 11, 1997.

Department of Veterans Affairs
Washington, DC 20420

VA HANDBOOK 5383
Transmittal Sheet
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CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
Guy T. Kiyokawa
Assistant Secretary for
Enterprise Integration

/s/
Cassandra M. Law
Assistant Secretary for
Human Resources and Administration/
Operations, Security, and Preparedness

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VA DRUG-FREE WORKPLACE PROGRAM

1. **SCOPE.** This policy contains mandatory Department of Veterans Affairs (VA) procedures for the Drug-Free Workplace Program (DFWP).
2. **PURPOSE.**
 - a. On September 15, 1986, President Ronald Reagan signed Executive Order 12564, Drug-Free Federal Workplace, establishing the goal of a drug-free Federal workplace. The Executive Order made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off duty.
 - b. The Executive Order recognized illegal drug use has serious adverse effects upon a significant proportion 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.
 - c. On July 11, 1987, Congress passed legislation affecting implementation of the EO under Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100-71, 101 Stat. 391, 468-471, codified at Title 5 U.S.C. § 7301 note (1987), (hereafter, known as “the Act”), in an attempt to establish uniformity among federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results and centralized oversight of the Federal Government's drug testing program. Similar implementing legislation is contained in successor appropriations acts.
 - d. The purpose of VA's DFWP is to set forth objectives, policies, procedures and implementation guidelines, to achieve a drug-free Federal workplace, consistent with the Executive Order and § 503 of the Act.
3. **DEFINITIONS.**
 - a. **Employee Assistance Program (EAP).** A voluntary, work-based program providing cost free and confidential assessment, short-term counseling, referral and follow-up services to employees who have personal and/or work-related problems that may affect attendance, work performance and/or conduct such as substance abuse, biopsychosocial problems or life stresses. VA's EAP policy is contained in VA Handbook 5019, Employee Occupational Health Service.
 - b. **Illegal Use.** Use of a controlled substance found in Schedule I or II, as defined by 21 U.S.C. § 802(6), the possession of which is unlawful under chapter 13 of that Title. The term illegal use does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
 - c. **Random Testing.** A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing is based on a random sampling of employees coded as being in a TDP.

- d. Release of Information for Drug Testing and Participation in EAP.** VA Form 10-5345, Request for and Authorization to Release Health Information, is used to both authorize the release of drug test results and provide information regarding an employee's participation in EAP. A sample of each form is located on the [OCHCO Employee Relations and Performance Management Service SharePoint](#). It is mandatory for individuals to sign VA Form 10-5345 prior to being drug tested. A release form (either VA Form 10-5345 or another release form specifically required by EAP if it is managed by an entity other than VA) is mandatory for employees participating in EAP due to a finding of illegal drug use, including voluntary admission.
- e. Sensitive Positions.** Sensitive positions are:
- (1) All positions which have been or will be designated as TDPs;
 - (2) Employees in positions designated by the Secretary as Critical/Special Sensitive or employees in positions designated by the Secretary as sensitive in accordance with Executive Order 10450, Security Requirements for Government Employment, as amended;
 - (3) Employees granted access to national security classified information or who may be granted access to national security classified information pursuant to a determination of trustworthiness by the Security Office under § 3.1 of Executive Order 12968, Access to Classified Information and 5 C.F.R., Part 732;
 - (4) Individuals serving under Presidential appointments;
 - (5) Law enforcement officers as defined in 5 U.S.C. §§ 8331(20) and 8401(17); or
 - (6) Other positions the Secretary determines involve law enforcement, national security, the protection of life and property, public health or safety.
- f. TDPs.** Positions within VA, approved by Health and Human Services (HHS), which have been designated for random testing. All individuals occupying a TDP are subject to random drug testing including appointments designated as Without Compensation (WOC) and Fee Basis. Those individuals appointed as a volunteer by the VA Center for Development and Civic Engagement to a TDP are considered WOC appointments and are subject to random drug testing. A list of all positions within VA designated as TDPs is maintained on the [OCHCO Employee Relations and Performance Management Service SharePoint](#).
- g. Verified Positive Test Result.** A positive test result received from the laboratory and reviewed by the Medical Review Officer (MRO) in accordance with guidelines published in the most recent version of the HHS MRO Guidance Manual for Federal Workplace Drug Testing Programs. If the MRO determines

there is no justification for the positive test result, such result will be considered a verified positive test result.

4. SUPERVISORY TRAINING.

a. **Objectives.** Supervisors have a key role in establishing and monitoring a drug-free workplace. VA will provide training to assist supervisors and managers in recognizing and addressing illegal drug use by employees. The purpose of supervisory training is to understand:

- (1) Department policies related to work performance problems, drug use, and Employee Assistance Program (EAP);
- (2) The responsibilities for offering EAP services;
- (3) How employee performance and behavior changes should be recognized and documented;
- (4) The roles of the medical staff, supervisors, Human Resources (HR) and EAP personnel;
- (5) Appropriate uses of EAP; and
- (6) The process of reintegrating employees back into the work force.

b. **Implementation.** Each Under Secretary, Assistant Secretary or Other Key Official, or designee, is responsible for developing a training package and for implementing supervisory training to ensure all employees and supervisors are fully informed of VA's DFWP.

c. **Training.**

- (1) Supervisory training will be required of all supervisors and may be presented as a separate course or included as part of an ongoing supervisory training program.
- (2) Each Under Secretary, Assistant Secretary or Other Key Official, or designee, will ensure training is provided as soon as possible after an individual assumes supervisory responsibility. Training courses should include topics such as:
 - (a) Overall Department policy;
 - (b) Information regarding the availability of EAP to all employees;
 - (c) How to recognize employees who may be impaired due to drug use;

- (d) Documentation of employee performance or behavior including documentation needed to justify ordering a reasonable suspicion drug test;
- (e) How to approach an employee suspected of using illegal drugs;
- (f) How to utilize EAP;
- (g) Disciplinary action and removals from sensitive positions when required by § 5 of Executive Order 12564, Drug-Free Federal Workplace and VA Handbook 5021, Employee/Management Relations;
- (h) Reintegration of employees into the work force; and
- (i) Written materials the supervisor can use at the work site.

5. EMPLOYEE EDUCATION.

- a. **Objectives.** The Department EAP Administrator will assist facility EAP Coordinators in offering drug education to all VA employees. Drug education should include education and training on:
 - (1) Types of drugs for which VA tests;
 - (2) Symptoms of drug use and the effects on performance and conduct;
 - (3) The relationship of EAP to the drug testing program; and
 - (4) Other relevant treatment, rehabilitation and confidentiality issues.
- b. **Means of Education.** Drug education activities may include, but are not limited to:
 - (1) Distribution of written materials;
 - (2) Audio-visual media;
 - (3) Lunchtime employee forums; and
 - (4) Employee drug awareness events.

6. GENERAL NOTICE. A general notice from the Secretary announcing the testing program was provided to all employees at the time the testing program was implemented in accordance with Section 4(a) of Executive Order 12564, Drug-Free Federal Workplace. The General Notice may be found on the [OCHCO Employee Relations and Performance Management Service SharePoint](#).

7. 30-DAY ADVANCE NOTICE PRIOR TO TESTING.

- a. When an employee enters a TDP by appointment, transfer, promotion, reassignment or any other personnel action, Drug Program Coordinators (DPC) will ensure a 30-day advance notice is provided to the employee no later than the first week of employment explaining:
- (1) The employee's position is sensitive as defined in Section 7(d) of Executive Order 12564, Drug-Free Federal Workplace and as such is designated as a TDP;
 - (2) The employee will be subject to random drug testing no sooner than 30 calendar days from issuance of the notice;
 - (3) The employee will be given the opportunity to provide a legitimate medical explanation for use of an otherwise illegal drug to the Medical Review Officer (MRO);
 - (4) VA will initiate action to discipline an employee who is found to use illegal drugs based on a verified positive drug test;
 - (5) VA will refer the employee to VA EAP; however, the referral does not preclude initiation of disciplinary action;
 - (6) VA will initiate removal action against an employee who is found to use illegal drugs and who refuses to obtain counseling or rehabilitation through EAP;
 - (7) VA will initiate action to remove the employee upon a finding of illegal drug use a second time;
 - (8) The employee will not be allowed to perform the duties associated with any sensitive position until they have successfully completed rehabilitation through EAP unless it is determined by an authorized VA official, as part of the EAP, that the employee's return to the sensitive position will not pose a danger to public health or safety or national security;
 - (9) Disciplinary action up to and including removal will be initiated against the employee if they refuse to be tested; and
 - (10) The employee may voluntarily disclose they are an illegal drug user at any time; however, the voluntary admission must be done prior to being notified

of a drug test. If the voluntary admission is made prior to the employee being notified of a drug test, VA will not initiate disciplinary action against them provided the employee obtains counseling or rehabilitation through EAP and thereafter refrains from using illegal drugs.

- b. Signed Acknowledgment.** When the employee is issued the 30-day specific notice they will be asked to sign acknowledging receipt of the notice attesting they understand the position has been designated for random drug testing and refusal to submit to testing will result in initiation of disciplinary action up to and including removal. A sample 30-day specific notice and acknowledgment is maintained on the [OCHCO Employee Relations and Performance Management Service SharePoint](#).
- (1) If the employee refuses to sign the acknowledgment, the DPC will note on the acknowledgment form the employee received the notice but refused to sign. The name and date of the employee attesting to the refusal will be annotated on the acknowledgement form. An employee's failure to sign the notice will not preclude testing the employee.
 - (2) Signed acknowledgments (and those in which an employee refused to sign) will be filed in the employee's electronic official personnel folder (eOPF) no later than 30 calendar days after appointment.
 - (3) If an employee believes their position has been wrongly designated as a TDP, they may file an administrative appeal to the Assistant Secretary, HRA/OSP through the OCHCO Employee Relations and Performance Management Service (051), and include any relevant information they want considered, within 15 calendar days of the date the employee was notified their position is designated as a TDP. The Assistant Secretary, HRA/OSP will review the appeal based upon the criteria applied in designating the employee's position as a TDP within 15 calendar days of receipt of the appeal. The Assistant Secretary, HRA/OSP's decision is final and is not subject to further administrative review.

8. RELEASE OF INFORMATION (ROI).

- a. Drug Testing.** Prior to a drug test being administered, all applicants and employees in TDPs are required to sign VA Form 10-5345, Request for and Authorization to Release Health Information, which serves as an ROI. A sample VA Form 10-5345 for release of drug test results is maintained on the [OCHCO Employee Relations and Performance Management Service SharePoint](#). An applicant or an employee, who refuses to sign the ROI authorization form, will not be drug tested. Applicants refusing to sign the ROI will have their tentative job offer rescinded. Employees refusing to sign the ROI will be subject to the initiation of disciplinary action, up to and including removal from employment. There are no exceptions to this requirement.

- b. Confirmation of Mandatory Participation in EAP.** If an employee is participating in EAP due to a finding of illegal drug use, including voluntary admission, they must sign an ROI authorizing EAP to share information with VA about the employee's participation in the program. Failure to sign an ROI constitutes a failure to obtain counseling or rehabilitation through EAP, which requires VA to initiate a mandatory removal from Federal service. The ROI may be VA Form 10-5345, Request for and Authorization to Release Health Information, or a form specifically required by EAP if it is managed by an entity other than VA. A sample VA Form 10-5345 for confirmation of mandatory participation in EAP is maintained on the [OCHCO Employee Relations and Performance Management Service SharePoint](#).
- c.** The party providing the ROI to the applicant/employee is responsible for explaining the consequences of such failure to sign, e.g., applicant will not be tested and tentative job offer will be rescinded; employee refusing to sign ROI prior to drug testing will not be drug tested and considered failure to test; employee refusing to sign ROI for verification of participation in EAP will be considered a failure to obtain counseling or rehabilitation through EAP.

9. TEST PROCEDURES IN GENERAL.

- a. Technical Guidelines for Drug Testing.** VA will adhere to the most recent Health and Human Services (HHS) requirements, as defined in the Federal Register, including having trained collection personnel, a laboratory certification program, rigorous analytical standards and quality assurance requirements for urinalysis procedures and strict confidentiality requirements. The Under Secretary for Health has overall responsibility for these requirements in accordance with paragraph 3.b. of VA Directive 5383.
- b. Specimen Collection.** Specimens shall be collected in accordance with the most recent version of the Department of Health and Human Services Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention Urine Specimen Collection Handbook for Federal Agency Workplace Drug Testing Programs (HHS Urine Specimen Collection Handbook).
- c. HHS Certified Laboratory.** All specimen collections will be processed and validated by the Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory which is an HHS-certified laboratory.
- d. Failure to Appear for Testing.** If an individual fails to report to the collection site after notification (i.e., within 48 hours for applicants and normally within 2 hours for employees), the collector will notify the DPC of the individual's failure to appear for testing. Failure to appear for testing, unless a deferral has been authorized in accordance with paragraph 10.b.(2), will be considered a refusal to participate in testing and will subject an employee to the full range of disciplinary

actions, up to and including removal and an applicant to the rescission of a tentative job offer.

- e. **Opportunity to Justify a Positive Test Result.** When a positive result is communicated by the laboratory to the MRO, the MRO will follow the steps outlined in the most recent version of the HHS MRO Guidance Manual for Federal Workplace Drug Testing Programs. The MRO will report a verified positive result to the local DPC after they have followed all applicable steps in the MRO manual.
- f. **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 calendar days, or for a time period specified in an abeyance agreement approved by the facility Director or equivalent. Upon completion of the program, the employee will be subject to follow-up testing immediately pursuant to paragraph 10.f. of this handbook.

10. TYPES OF DRUG TESTING.

a. Applicant Testing.

- (1) To maintain the high professional standards of VA's work force, it is imperative individuals who use illegal drugs be screened out during the initial employment process before they are placed on the employment rolls of VA. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within VA and will provide for a safer work environment.
- (2) Applicants subject to drug testing include the following:
 - (a) Any individual tentatively selected for employment in a TDP with VA, including any individual currently employed in VA who has tentatively been identified for placement in a TDP and who has not, immediately prior to placement, been subject to random testing with VA. This includes any former VA employee who had a break in service and is being rehired.
 - (b) An individual tentatively selected for employment in a TDP with VA who is in a TDP at another Federal agency is subject to applicant testing.
 - (c) An employee in a TDP who is transferring from one VA to another VA, or an employee in a TDP going to another TDP in the same facility, with no break in service is exempt from applicant testing.
 - (d) All individuals appointed as a volunteer by the VA Center for Development and Civic Engagement who are in a TDP.

Note: Health professions trainees, e.g., interns, residents, fellows, students, appointed on a temporary appointment are the only individuals excluded from applicant testing; however, they are subject to all other types of testing as their positions are identified as TDPs. Applicant testing will be required if tentatively selected for conversion from a health professions trainee position to a permanent appointment in a TDP.

- (3) Applicant drug tests are valid for 90 calendar days. If an applicant is not appointed to the position for which they were tested within 90 calendar days from the date the negative drug test result was received, they must be drug tested again prior to appointment to the position.
- (4) Exception to Receipt of Test Results Prior to Appointment in Special Situations.
 - (a) Occasionally the need may arise to make an emergency appointment to meet exigent needs, however, this generally results from a demand to provide critical health care services. In such unusual circumstances, Administration Heads, Assistant Secretaries, other Key Officials, Deputy Assistant Secretaries and field facility Directors may approve the temporary appointment of an applicant to a TDP prior to receipt of the applicant's drug test results. A Memorandum of Understanding (MOU) must be signed by the applicant prior to appointment indicating they understand the appointment is temporary and subject to immediate termination if the test result is verified positive by the MRO. Appointments may be effected only after the MOU is signed by the applicant and the specimen has been collected by laboratory personnel. A sample MOU is maintained on the [OCHCO Employee Relations and Performance Management Service SharePoint](#).
 - (b) Temporary appointments made under this provision may not exceed 60 calendar days in duration and may not be extended. Applicants for TDPs may not be appointed to a non-TDP position to circumvent drug testing requirements.
 - (c) The basis for the exception will be fully documented, to show the emergent situation upon which the determination was made to hire an applicant to a TDP on a temporary basis without a negative drug test result and approved by the respective official listed above. Records of all such exceptions will be maintained by the servicing HR office for at least two years from the date of appointment and will be made available for review by the Drug Program Administrator upon request.
- (5) Vacancy Announcements for TDPs must include information stating:
 - (a) A drug test is required for the position; and

- (b) The position is subject to random drug testing.
- (6) Upon notification an individual has been tentatively selected for employment in a TDP, the servicing HR office will be responsible for scheduling applicant testing at the appropriate collection site. The applicant must report for drug testing as soon after notification as possible and no later than 48 hours after the applicant receives notice. At the time the applicant is advised they must report for a drug test, they should be notified the test may take up to three hours to administer. Except as provided in paragraph 10.a.(4), an applicant may not be appointed unless they receive a negative test result.
 - (7) VA will not appoint any applicant with a verified positive test result or a finding of illegal drug use. If an applicant for permanent appointment is serving on a temporary appointment, the temporary appointment will be terminated immediately upon receipt of a verified positive test result. VA will inform the applicant a verified positive test result disqualifies them from employment with VA. If the applicant meets the criteria for a finding of illegal drug use as described in 5 C.F.R. § 731.202(b)(6), procedures regarding debarment will be followed as outlined in VA Handbook 0710, Personnel Security and Suitability Program.
 - (8) If an employee in a non-TDP is tested as an applicant due to receiving a tentative job offer to a TDP and the employee's drug test is verified positive by the MRO, the employee will not be appointed to the TDP and the procedures for a finding of drug use will be followed in accordance with paragraph 12.

b. Random Drug Testing.

- (1) Notification of Selection and Procedures for Testing.
 - (a) The OCHCO will implement a statistically random selection process for identifying employees to be tested during the specified month. Employees selected for random drug testing will not be tested outside the month they were selected unless a deferral is obtained in accordance with paragraph (2) of this section. A statistically random listing of employees to be tested will be generated monthly from HR Smart and provided to the DPC. The DPC is responsible for retrieving the list of randomly selected employees no later than three business days from the beginning of the month. When scheduling employees for random drug testing, DPCs will coordinate specimen collection with the designated collection site, e.g., VHA laboratory, Occupational Health. Collection sites must meet HHS criteria for specimen collection.

- (b) Specimens will be collected for all employees at a designated collection site or nearest VHA facility. More information about specimen collection sites can be found in the directive of this handbook. Notification to report for specimen collection will occur on the same day, normally within two hours, of the scheduled collection unless the employee's travel to the collection site will exceed two hours. If travel will exceed two hours, the actual travel time may be considered in addition to the two-hour notification window. At the time of notification to report for the drug test, the employee will be given a written notice detailing their selection for random testing. A sample notice is maintained on the OCHCO Employee Relations and Performance Management Service website. They will be advised the test is not being ordered for suspicion of illegal drug use and their name was selected randomly. Specimen collection, including chain of custody and transportation of the specimen to testing laboratories, will conform to HHS guidelines.

(2) Deferral of Random Testing.

- (a) Employees selected for random drug testing may have their test deferred under the limited conditions listed below (a sample deferral memo is maintained on the [OCHCO Employee Relations and Performance Management Service SharePoint](#)):
 - i Employee is in a leave status for the majority of the month in which they were selected for testing;
 - ii Employee is in official travel status away from the test site for the majority of the month in which they were selected for testing.
- (b) The random drug test of a fee-basis or without compensation (WOC) employee (including volunteers and health professions trainees) may be deferred on the rare occasion they are unable to report to a VA testing site for the majority of the month in which they are selected for testing, e.g., out of the country, approved sabbatical leave, doctors without borders, out of clinical rotation or training at an affiliated hospital for a period of weeks to months. A detailed explanation must be provided in the deferral memo explaining why the fee-basis or WOC employee could not report for testing.
- (c) Occasionally there may be a need to identify additional conditions for deferring a drug test during a VA-identified health crisis. In such unusual circumstances, the Chief Human Capital Officer (CHCO) will provide specific guidance on the expansion of random drug testing deferrals.
- (d) A deferral must be approved by:

- i Medical Center Directors (or equivalent for Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA) employees), or persons officially appointed as acting in the position in the absence of the Director or
 - ii Under Secretaries, Assistant Secretaries, other Key Officials, Deputy Assistant Secretaries, or CHCO for VA Central Office personnel, or designees.
- (e) An employee whose random test is deferred will be subject to an unannounced test within the following 60 calendar days from their return to duty.

c. Reasonable Suspicion Testing.

NOTE: Reasonable suspicion testing may only be ordered for suspected illegal drug use. These procedures do not apply to employees who are suspected of being impaired due to alcohol.

- (1) **Employees in TDPs.** Testing may be required of any employee in a TDP when there is a reasonable suspicion the employee uses illegal drugs whether on or off duty. Reasons for ordering reasonable suspicion testing include but are not limited to the following:
- (a) Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
 - (b) A pattern of abnormal conduct or erratic behavior in the workplace setting indicative of illegal drug use;
 - (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 distribution of controlled substances;
 - (d) Information regarding an employee's illegal drug use provided either by reliable and credible sources or independently corroborated;
 - (e) Evidence the employee tampered with a previous drug test; or
 - (f) Information regarding suspected drug diversion by a specific employee provided either by reliable or credible sources or independently corroborated.
- (2) **Employees in non-TDPs.** Testing may be required of an employee in a non-TDP when there is a reasonable suspicion of on duty use or on duty impairment. Reasons for ordering reasonable suspicion testing include but are not limited to the following:

- (a) Observable phenomena, such as direct observation of on duty drug use or possession and/or the physical symptoms of being under the influence of a drug while on duty;
 - (b) A pattern of abnormal conduct or erratic behavior in the workplace setting indicative of illegal drug use;
 - (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 distribution of controlled substances, if the circumstances surrounding the arrest, conviction or investigation suggest use while on duty or impairment while on duty; or
 - (d) Information provided either by reliable and credible sources or independently corroborated which indicates on duty use or impairment.
- (3) **Procedures.**
- (a) Although reasonable suspicion testing does not require certainty, mere “hunches” are not sufficient to meet this standard. If an employee is suspected of using illegal drugs, the appropriate supervisor will gather all information, facts and circumstances leading to and supporting the suspicion. The supervisor will prepare a written report including the circumstances that formed the basis to warrant the testing including, at a minimum, the appropriate dates and times of reported drug-related incidents, reliable/credible sources of information and rationale leading to the reason for the test.
 - (b) The official authorized to approve reasonable suspicion testing will be the official authorized to propose adverse or major adverse actions or a higher level official than the proposing official in accordance with VA Handbook 5021, Employee-Management Relations or VA Handbook 5027, Senior Executive Service, as applicable. In the event a reasonable suspicion test needs to be conducted after hours when authorized officials are not on duty to approve the test, the facility Director (or equivalent for VBA and NCA) may appoint an official to approve after hours testing. The basis for requiring reasonable suspicion testing will be fully documented by the designated officials. Testing after hours must be performed by a trained collector and follow mandatory HHS guidelines.
 - (c) Reasonable suspicion testing should be ordered and conducted as soon as possible after the event(s) giving rise to the suspicion, ideally the same day, especially for employees suspected of on duty use or on duty impairment.

d. Accident, Injury, or Unsafe Practice Testing.

- (1) VA is committed to providing a safe and secure work environment. It also has a legitimate interest in determining the cause of serious accidents so it can undertake appropriate corrective measures. Post-accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees, whether or not their position is a TDP, may be subject to testing when, based upon the circumstances of the accident, there is reasonable suspicion illegal drugs caused or contributed to an accident meeting the following criteria:
 - (a) The accident results in a death or personal injury requiring medical treatment and/or hospitalization; or
 - (b) The accident results in damage to Government or private property estimated to be in excess of \$10,000.
- (2) If an employee is suspected of having caused or contributed to an accident meeting the above criteria, the supervisor will prepare a written report detailing the facts and circumstances and present it to the official authorized to propose adverse or major adverse actions or a higher level official than the proposing official in accordance with VA Handbook 5021, Employee-Management Relations or VA Handbook 5027, Senior Executive Service, as applicable. In the event an accident, injury or unsafe practice drug test needs to be conducted after hours when authorized officials are not on duty to approve the test, the facility Director (or equivalent for VBA and NCA) may appoint an official to approve after hours testing. The report will be reviewed and a drug test may be ordered if supported by the facts and circumstances.
- (3) Drug tests ordered under this provision should be done as soon as possible after the accident or unsafe practice occurs ideally the same day or, if necessary, the next workday.

e. Voluntary Testing. In order to demonstrate VA's commitment to a drug-free workplace and to set an example for other Federal employees, employees not in TDPs may volunteer for unannounced random testing by notifying their servicing HR office in writing. The servicing HR office will ensure the employee is coded as being in a TDP and thus included in the pool of TDPs subject to random testing. An employee who volunteers to be included in the TDP pool will remain in the pool until the employee withdraws from participation. If an employee's drug test is verified positive by the MRO, the procedures for a finding of drug use will be followed in accordance with paragraph 12.

f. Follow-up Testing after Completion of EAP. All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through EAP will be subject to unannounced testing following

completion of such a program for a period of one year. Such employees will be tested at the amount stipulated in any applicable abeyance agreement, or in the alternative, at an increased frequency of at least six times per year through placement in a separate random pool that will be maintained by the DPC.

11. FINDING OF APPLICANT DRUG USE.

- a. **Determination.** An applicant 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 drug test result; or
 - (4) An individual's voluntary admission.
- b. **Consequences.** Any applicant with a verified positive test result or a finding of illegal drug use will not be appointed. If an applicant for permanent appointment is serving on a temporary appointment, the permanent appointment will not be affected and the temporary appointment will be terminated immediately. The applicant will be informed that the positive test result, verified by the MRO, disqualifies them from employment with VA. If the applicant meets the criteria for a finding of illegal drug use as described in 5 C.F.R. § 731.202(b)(6), procedures regarding debarment will be followed as outlined in VA Handbook 0710, Personnel Security and Suitability Program. If an employee in a non-TDP is tested as an applicant due to receiving a tentative job offer to a TDP and the employee's drug test is verified positive by the MRO, the employee will not be appointed to the TDP and the procedures for a finding of drug use will be followed in accordance with paragraph 12.
- c. **Prior Marijuana Use.** An applicant's prior marijuana use must be evaluated on a case-by-case basis to determine the impact, if any, to the integrity and the efficiency of the government in accordance with the [OPM Memo](#) entitled, "Assessing the Suitability/Fitness of Applicants or Appointees on the Basis of Marijuana Use; Maintaining a Drug-Free Workplace."

12. FINDING OF EMPLOYEE DRUG USE.

- 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 drug test result; or

(4) An individual's voluntary admission.

b. Mandatory Referral to EAP. An employee found to use illegal drugs will be referred to EAP. If the employee occupies a TDP, they may not remain in that position until successful completion of EAP. However, if the employee is participating in EAP and the program recommends it, the DPC (not the designee) as indicated in VA Directive 5383 may, at their discretion, allow the employee to return to duty in the position if the employee's return would not endanger public health or safety or national security.

c. Mandatory Disciplinary Action.

- (1) VA will initiate disciplinary action against any employee found to use illegal drugs but will not discipline an employee who voluntarily admits to illegal drug use in accordance with paragraph 12.e. The severity of disciplinary action proposed against an employee found to use illegal drugs will depend on the circumstances of each case, will be consistent with Executive Order 12564, Drug-Free Federal Workplace and includes the full range of disciplinary actions, including removal.
- (2) Such disciplinary action will be consistent with the requirements of P.L. 95-454, Civil Service Reform Act of 1978 and other applicable statutes, policies and regulations.
- (3) All disciplinary, adverse, or major adverse actions will fully conform to the policies and procedures contained in VA Handbook 5021, Employee-Management Relations, VA Handbook 5027, Senior Executive Service, or any other guidance such as Human Resources Management Letters or Notices as appropriate.
- (4) Appropriate action, including separation, for individuals not subject to these procedures, (e.g., title 5, hybrid-title 38, title 38 employees serving a probationary or trial period, employees appointed under the provisions of 38 U.S.C. § 7405), will be taken.

d. Mandatory Initiation of Removal Action.

- (1) An action will be proposed to remove an employee for:
 - (a) Refusing to obtain counseling or rehabilitation through EAP as required by Executive Order 12564, Drug-Free Federal Workplace after having been found to use illegal drugs; or
 - (b) Not refraining from illegal drug use after a first finding of such use.
- (2) The servicing HR office should be consulted for advice and assistance prior to proposing adverse actions under this program.

e. Self-Disclosure of Drug Use (Safe Harbor).

- (1) A fundamental purpose of VA's drug testing program is to assist employees who initiate treatment for drug use. For this reason, VA will not initiate disciplinary action against any employee who meets all three of the following "safe harbor" conditions:
 - (a) Voluntarily admits they are an illegal drug user prior to being identified through other means;
 - (b) Obtains and successfully completes counseling or rehabilitation through EAP; and
 - (c) Thereafter refrains from using illegal drugs.
- (2) This self-referral option allows an employee to step forward and identify as an illegal drug user for the purpose of entering a drug treatment program under the EAP. In stepping forward and consistent with paragraph 10.e., an employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result will not subject the employee to discipline assuming the three safe harbor requirements are met.
- (3) Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit they have a drug problem, the safe harbor provision will not be available to an employee who is asked to provide a specimen when required in connection with VA's drug testing program, or who is found to have used illegal drugs and who thereafter requests protection under this provision.

13. REFUSAL TO TAKE DRUG TEST WHEN REQUIRED.

- a. An applicant who fails to appear for testing, refuses to be tested when so required or fails to remain at the collection site until the collection process is complete will not be extended an offer of employment.
- b. An employee who fails to appear for testing, refuses to be tested when so required or fails to remain at the collection site until the collection process is complete will be subject to the full range of disciplinary action, up to, and including removal.
- c. When applicable, collectors will document and report refusals to test in accordance with procedures outlined in the most recent version of the HHS Urine Specimen Collection Handbook.

14. EAP.

- a. Function.** EAP plays an important role in preventing and resolving employee drug use by demonstrating VA's commitment to eliminating illegal drug use. Additionally, EAP provides employees with an opportunity to discontinue their drug use by making referrals to appropriate treatment and rehabilitative facilities, following up with individuals during the rehabilitation period to track progress and encourages successful completion of the program. Specifically, the EAP will:
- (1) Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been verified positive and monitor the employee's progress through treatment and rehabilitation;
 - (2) Provide information to keep management informed of the employee's participation and compliance with the program; and
 - (3) Ensure that confidentiality of test results and related medical treatment and rehabilitation records are maintained in accordance with paragraph 15.
- b. Referral and Availability.** Any employee found to be using drugs will be referred to EAP. EAP will provide counseling or rehabilitation for all referrals and is administered separately from the drug testing program. Counseling and referral to rehabilitation services will also be available to employees who are seeking assistance with substance abuse problems outside of the DFWP.

Note: For information regarding EAP, refer to VA Handbook 5019, Employee Occupational Health Service.

15. RECORDS AND REPORTS.

a. Confidentiality of Drug Test Results.

- (1) The laboratory may disclose confirmed laboratory drug test results only to the MRO or the staff of the MRO. Any positive drug test result which the MRO justifies in accordance with established guidelines outlined in the HHS MRO Guidance Manual for Federal Workplace Drug Testing Programs 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 may maintain only those records necessary for compliance with the DFWP and will comply with the HHS MRO Guidance Manual for Federal Workplace Drug Testing Programs regarding record retention. Any records of the MRO or the staff of the MRO, including drug test results, may be released to any supervisor or 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 on any employee.

- (2) The results of a drug test of a federal employee may not be disclosed without the prior completion of the signed ROI form in accordance with paragraph 8.
- b. Access to Records.** Any applicant or employee who is the subject of a drug test will have access to any records relating to:
- (1) Such individual's drug test; and
 - (2) The results of any relevant certification, review, or revocation of certification proceedings, as referred to in § 503(a)(1)(A)(ii)(III) of the Act.
- 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 program and to make information readily retrievable, the DPC will maintain all records relating to reasonable suspicion testing, suspicion of tampering with evidence and any other authorized documentation necessary to implement this program.
- d. EAP Records.** All records maintained in connection with EAP will be maintained in accordance with procedures described in VA Handbook 5019, Employee Occupational Health Service.
- e. Maintenance of Records.** Records of the VA's DFWP will be maintained consistent with the National Archives Records Administration's, General Records Schedule 1 and all applicable Federal laws, rules and regulations regarding confidentiality of records, including the Privacy Act, 5 U.S.C. § 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Secretary. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of this program and include:
- (1) Notices of verified positive test results referred by the MRO;
 - (2) Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen which are kept by the MRO in accordance with the HHS MRO Guidance Manual for Federal Workplace Drug Testing Programs;
 - (3) Anonymous statistical reports; and
 - (4) Other documents the DPC, MRO, or EAP Administrator deem necessary for efficient compliance with this program.

- f. Records Maintained by Government Contractors.** Any contractor hired to satisfy any part of this program will comply with the confidentiality requirements of this program and all applicable Federal laws, rules, regulations and guidelines.

APPENDIX A. TESTING DESIGNATED POSITIONS

- 1. Positions Designated for Random Drug Testing.** Employees occupying TDPs are subject to random drug testing. Other positions meeting the criteria in paragraph 2 below may be considered for inclusion as TDPs and submitted through the appropriate Administration to OCHCO who will submit to HHS for final approval.
- 2. Determining the TDP.**
 - a.** Among the factors the Secretary has considered in determining a position is a TDP are the extent to which VA:
 - (1) Considers its mission inconsistent with illegal drug use;
 - (2) Is engaged in law enforcement;
 - (3) Has national security responsibilities;
 - (4) Has drug interdiction responsibilities; or
 - (5) The extent to which the position considered:
 - (a) Authorizes employees to carry firearms;
 - (b) Gives employees access to sensitive information;
 - (c) Authorizes employees to engage in law enforcement;
 - (d) Requires employees, as a condition of employment, to obtain a security clearance; and/or
 - (e) Requires employees to engage in activities affecting public health or safety.
 - b.** These positions are characterized by critical safety or security responsibilities as related to the mission of VA. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions are identified for random testing because they require the highest degree of trust and confidence.
 - c.** The Secretary reserves the right to add or delete positions determined to be TDPs pursuant to the criteria established by Executive Order 12564, VA Directive 5383 and this Handbook. Requests for modification to the TDP list must be routed through the OCHCO Employee Relations and Performance Management Service (051). Moreover, pursuant to Executive Order 12564 and 42 U.S.C. 290dd, the Secretary has determined all positions which have been or will be designated as TDPs under this program are "sensitive positions," and are

therefore exempted from coverage under 42 U.S.C. 290dd which provides no person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the basis of prior drug abuse.

- 3. Hardship Exemption.** Under Secretaries, Assistant Secretaries, other Key Officials, and the CHCO may exempt certain positions from the drug testing program based on hardship due to remote location of duty station and lack of an appropriate site for test administration. Reasonable means, however, should be used to overcome such hardships. Officials exercising this delegated authority will provide a report as to the reasons and facts underlying the hardship exemption through the CHCO to the Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness (HRA/OSP) on April 1st of every year.
- 4. Administrative Relief.** If an employee believes their position has been wrongly designated as a TDP, they may file an administrative appeal through supervisory channels to the CHCO for HRA/OSP. The appeal must be submitted by the employee, in writing, within 15 calendar days of receipt of the 30-day specific notice, setting forth all relevant information. After reviewing the appeal, the CHCO for HRA/OSP may request that the Assistant Secretary for HRA/OSP, reconsider the designation of the position as a TDP. The appeal will be reviewed by all officials based upon the criteria applied in designating that employee's position as a TDP. The Assistant Secretary for HRA/OSP's decision is final and is not subject to further administrative review.
- 5. TDPs.** A list of VA TDPs is maintained on the [OCHCO Employee Relations and Performance Management Service SharePoint](#).