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FILE BEHIND FEDERAL PERSONNEL MANUAL (FPM) CHAPTER 792

DEPARTMENT OF THE NAVY DRUG-FREE WORKPLACE PROGRAM (DFWP)

1. Purpose. To provide Department of the Navy procedures for implementing the DFWP.
2. Policy. The Department of the Navy policy is to eliminate the illegal use of drugs by civilian employees following the requirements established by Executive Order 12564 (E.O. 12564) and Public Law 100-71 (P.L. 100-71). The policy is contained in the SECNAVINST 12792.3 dated 8 December 1988.
3. Applicability. This instruction applies to all Department of the Navy appropriated fund civilian employees and applicants tentatively selected for appropriated fund positions per E.O. 12564. Testing of foreign national employees stationed outside the United States may be conducted only as authorized by and consistent with intergovernmental and labor agreements negotiated on a country-by-country basis.
4. Definitions. Definitions are provided at Appendix A.
5. Responsibilities
 - a. Director, Office of Civilian Personnel Management (OCPM). The Director, OCPM, will:
 - (1) Establish and issue the Department of the Navy procedures, guidance, and training programs on the DFWP.
 - (2) Approve additions to and deletions from the Department of the Navy Testing Designated Position (TDP) list with final approval by the Interagency Coordinating Group (Chaired by the Office of National Drug Control Policy). Procedures are provided at Appendix B.
 - (3) Appoint, in writing, a Department of the Navy Drug Program Coordinator (DPC) to administer the DFWP.
 - b. Department of the Navy DPC will:
 - (1) Assume the lead role in the development, implementation, and evaluation of the DFWP and the preparation of consolidated reports on the DFWP.

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(2) Provide guidance and assistance, as required, to the Assistant for Administration, Office of the Under Secretary of the Navy (AA/USN); the Chief of Naval Operations (CNO); the Commandant of the Marine Corps (CMC); and the Office of Naval Research (ONR) on the implementation of this CPI and the submission of any DFWP reports.

(3) Serve as the primary Department of the Navy liaison with the Department of Defense, Office of Personnel Management (OPM), or other external agencies on the DFWP.

(4) Maintain the Department of the Navy TDP list and process requests from AA/USN, CNO, CMC, and ONR for changes to that list as approved by the Director, OCPM.

c. Regional Directors, OCPM and the Commandant of the Marine Corps (MPC 30) for Marine Corps commands will provide guidance, assistance, and training, as necessary, to activities/commands on the implementation of this CPI.

d. The AA/USN, CNO, CMC, and ONR will:

(1) Ensure implementation of the DFWP per this CPI, E.O. 12564, P.L. 100-71, and the Department of Health and Human Services (DHHS) "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (Guidelines) published at 53 Federal Register 11970 (11 April 1988), or subsequent revisions.

(2) Provide guidance and assistance in their respective organizations.

(3) Ensure civilian and military supervisors and managers, activity/command DPCs, and collection staff are trained on DFWP policies and procedures.

(4) Establish procedures that activities and commands will follow to request the additions to or deletions from the list of Department of the Navy TDPs as provided at Appendix B.

(5) Forward to the Director, OCPM, via the Department of the Navy DPC, the changes submitted by activities and commands to the Department of the Navy TDP list, with recommended action (see Appendix B).

(6) Allot and notify subordinate activities and commands of specimen quotas, as required.

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e. CNO. In addition to the above, CNO will:

(1) Ensure that Navy Drug Screening Laboratories (NDSLs) test all civilian samples under forensic conditions and follow the requirements established by DHHS in the Guidelines.

(2) Notify the Department of the Navy DPC of any changes to the mailing address of the NDSLs or the designated laboratory for processing as required in Attachment 10 to Appendix C, Department of the Navy Civilian Urine Collection Guide.

(3) Ensure that Blind Performance Test Specimens are submitted following the requirements provided at Appendix C.

f. Activity Heads/Commanders. The activity head/commander will:

(1) Ensure that the DFWP policies and procedures are carried out at the activity/command level.

(2) Appoint a responsible civilian employee or military member to serve as the activity/command DPC to direct, administer, and manage the DFWP and receive all test results on behalf of the activity/command. Every activity/command must appoint a DPC regardless of whether it has any TDPs. This function may not be obtained through a contract; however, it is permissible to appoint another activity/command's DPC through mutual written agreement to perform these functions on behalf of the activity/command.

(3) Ensure that Collection Observers and Collection Site Coordinators (CSCs) are appointed, if necessary. These services may be provided by a Department of the Navy military member or civilian employee or obtained through a contract.

(4) Ensure that the services of a qualified Medical Review Officer (MRO) are available to the activity/command. This physician may be a Department of the Navy military member or civilian employee or the services may be obtained by contract or servicing-type agreement with another federal agency.

(5) Ensure that mandatory training is provided to all supervisors and managers. Ensure that prior to implementation of the activity/command DFWP, the DPC and collection team personnel are sufficiently trained to perform the functions of

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their positions with regard to the requirements of the DFWP and collection procedures established by DHHS. In addition, ensure that the MRO is knowledgeable of his or her role and responsibilities in the DFWP.

(6) Ensure that a copy of the "General Notice" is distributed to all new hires.

(7) Ensure that the provisions of the DFWP are publicized to all employees including drug awareness, the hazards of illegal drug use, the Civilian Employee Assistance Program (CEAP), and "safe harbor" provision.

(8) Ensure that activity/command positions are reviewed and a determination made that the positions match the series and titles on the Department of the Navy-wide TDP list provided at Appendix E. These positions will then form the activity/command TDPs unless the series and title is annotated with an "*". In this case, only those positions which meet the criteria annotated with the "*" are included as TDPs.

(9) Sign (or use facsimile) and ensure distribution of an individual notice to each employee whose position has been determined to meet the criteria of a TDP at least 30 days before the individual is subject to unannounced random testing. This notice is provided at Appendix D and must be issued without revision.

(10) Request, via the appropriate chain of command, that the Director, OCPM, make additions and/or deletions to the Department of the Navy-wide TDP list (see Appendix B).

(11) Review the TDP determination for non-bargaining unit employees and make a final decision on the issue, if requested (see paragraph 8d).

(12) Ensure that all specimen collections are conducted following the provisions of this CPI and the DHHS guidelines.

(13) Authorize each random sampling conducted by the activity/command. This authority may be redelegated to the DPC.

(14) Ensure that a procedure is established for employees to volunteer for the random testing program as described in paragraph 10.

(15) Identify the approval level for either accident/unsafe practice or reasonable suspicion testing which may be redelegated to no lower than one level above the supervisor or manager requesting the test.

(16) Ensure that an employee found to use illegal drugs is immediately taken out of his or her TDP. The employee may be returned to his or her position as part of a counseling or rehabilitation program if the activity head/commander determines that such action will not endanger public safety or national security. This authority to reinstate the employee to the TDP may not be redelegated.

(17) Ensure that necessary disciplinary action is taken following the provisions of this instruction and CPI 752.

(18) Notify the activity head or commander of other activities/commands that his or her employee had a verified positive drug test as determined under applicant testing.

(19) Ensure that the activity/command's bargaining obligations with exclusively recognized labor organizations as required by 5 U.S.C., Chapter 71, are satisfied.

(20) Review medical disqualifications based on a verified positive drug test for nonpreference eligibles referred on OPM certificates, if requested by the applicant. (See paragraph 14f(1)(e)).

g. The DPC will:

(1) Direct, administer, and manage the DFWP within the activity/command.

(2) Receive all drug test results from the MRO on behalf of the activity head/commander and maintain them per paragraph 18 of this instruction.

(3) Manage the issuance of all 30-day individual notices to occupants of TDPs and retain documentation verifying receipt of each notice. Establish and maintain a list identifying each position/occupant in the TDP pool.

(4) Arrange each specimen collection from the pool of employees in TDPs and volunteers per random selection

j. CEAP Counselors will meet all program responsibilities as detailed in CPI 792.1.

k. The MRO will:

(1) Receive all drug testing results from the NDSLs.

(2) Assure that an individual who has tested positive is afforded an opportunity to offer alternate medical justification for the test result per the DHHS Guidelines, this CPI, and the MRO Manual "A Guide to Evaluating Urine Drug Analysis" published by DHHS.

(3) Immediately report all verified drug test results to the DPC following timeframes agreed upon by the activity/command.

(4) Coordinate with and report to the DPC and activity head/commander on all drug testing functions and findings on a regular basis.

1. Supervisors. Supervisors will:

(1) Notify individual employees of a scheduled drug test.

(2) Defer an employee's random or follow-up drug test and notify the DPC of the deferral per paragraphs 9c and 13e.

(3) Initiate a reasonable suspicion test, after first making appropriate factual observations and obtaining approval as provided in paragraph 11b.

(4) Initiate an accident test as provided in paragraph 12b.

(5) Upon a finding of the illegal use of drugs:

(a) Refer employees to the CEAP for assistance in obtaining counseling and rehabilitation.

(b) Initiate appropriate administrative and disciplinary actions.

(6) Not select an applicant who has a verified positive test result.

m. Employees. Employees will:

(1) Refrain from the illegal use of drugs on or off-duty at all times.

(2) Provide a urine sample when required.

(3) Be responsible for successful completion of any rehabilitation or treatment required as the result of illegal use of drugs.

(4) Cooperate with the MRO, as requested, to provide additional information regarding a drug test.

n. The HRO will:

(1) Provide advice, guidance, and training to employees, supervisors, and managers on the DFWP and this CPI.

(2) Ensure that vacancy announcements, if used, include notice, if applicable, that the position is subject to random drug testing. Other forms of notice are proper if a vacancy announcement is not used.

(3) Ensure, prior to making a final offer of employment or processing another type of position placement action, that a required drug test has been conducted and that the results are negative. Ensure that any applicant who receives a verified positive test result is not considered for employment or other employee-requested placement action for a period of 6 months following the date the positive test was verified by the MRO.

(4) Enter the appropriate DFWP data into the Defense Civilian Personnel Data System (DCPDS) using Central Tables 425, 256, and 490.

(5) Issue a copy of the General Notice signed by the Secretary of the Navy to all new employees.

(6) Maintain records required by the merit promotion procedures and other placement actions on applicants.

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(7) Maintain records and information relating to personnel actions taken against employees following the requirements in this instruction and CPIs 752 and 792.

(8) Notify the DPC if positive specimens need to be retained by the NDSL longer than the normal 1-year period, e.g., because of an adverse action appeal or enforcement of a rehabilitation plan or agreement.

6. Training and Education

a. Supervisory Training. Prior to implementing the DFWP, the activity/command will provide training to assist supervisors and managers in recognizing and addressing the illegal use of drugs by agency employees. This training is required for all supervisors and managers by E.O. 12564. This course may be incorporated into the ongoing supervisory training program required of individuals within the first 6 months of assuming supervisory duties. The training should include information on:

(1) Department of the Navy policy on the illegal use of drugs.

(2) The supervisor's role in the DFWP.

(3) How to recognize, document, and deal with employee performance and conduct problems due to the illegal use of drugs.

(4) The role of the DPC, CEAP Administrator, and medical and personnel staffs.

(5) The supervisor's responsibilities to offer CEAP services and take required administrative and disciplinary actions.

b. Employee Education

(1) The activity/command will offer drug education to all personnel. This should include information on types and effects of drugs, symptoms of drug use, effects on performance/conduct, the relationship between the CEAP and the drug testing program, and other relevant treatment, rehabilitation, confidentiality, and "safe harbor" provisions of the DFWP. The

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drug education process may be accomplished through such means as the distribution of written materials, videotapes, lunchtime employee forums, or employee drug awareness days.

(2) In foreign areas, the activity/command will provide all employees with information on the use of over-the-counter medication which may produce positive drug test results. Employees in foreign areas should be advised to refrain from using locally-available medications unless they are certain that the medications will not produce a positive drug test result or unless they have a bona-fide prescription from a medical doctor. Employees should be cautioned, however, that the list may not be all-inclusive.

c. The DPC must be trained on:

(1) The DFWP.

(2) Collection and chain of custody procedures.

(3) General information on drug testing laboratory procedures.

(4) Required records and reports.

(5) Confidentiality and Privacy Act requirements.

d. Collection Personnel. These individuals must be trained in:

(1) Collection procedures and responsibilities. Collection Site Coordinators (CSCs) must also be trained in chain-of-custody procedures.

(2) Confidentiality and Privacy Act requirements.

e. CEAP Personnel. CEAP personnel must be trained on CEAP requirements regarding the DFWP.

7. General Program Provisions

a. Notices

(1) General Notice. A general notice signed by the Secretary of the Navy announcing the drug testing program was issued on or about 1 September 1988 to all covered employees.

A copy of this notice appears at Appendix D and should be issued to all new hires during the employee's orientation process.

(2) Individual Notice. A notice to an employee in a TDP that his or her position has been determined to meet the criteria and justification for random drug testing will be issued at least 30 days before the individual is subject to unannounced random testing. See paragraph 8c for procedural requirements and Appendix D for a copy of the notice.

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

c. Types of Drugs. The Department of the Navy will test employees and applicants for cocaine, cannabis (marijuana), amphetamines, opiates, phencyclidine (PCP) and/or the metabolites of these drugs. The Department of the Navy will also test for any other drug(s) or classes of drugs subsequently approved by DHHS for testing on an agency-wide basis. Per the DHHS Guidelines, the Department of the Navy is also authorized to test for any drug in Schedules I and II of the Controlled Substances Act (CSA) in cases of reasonable suspicion and after an accident or unsafe practice (21 U.S.C. § 812 as updated and republished under the provisions of that Act in 21 Code of Federal Regulations (CFR), Part 1308).

d. Technical Guidelines for Drug Testing. E.O. 12564 granted the authority to issue mandatory scientific and technical guidelines for federal civilian employee drug testing programs to DHHS. The NDSLs will be testing all civilian samples following the provisions of the DHHS Guidelines.

e. Voluntary Self-Referral For "Safe Harbor"

(1) E.O. 12564 allows agencies to provide an opportunity for assistance to those employees who voluntarily seek treatment for drug use. "Safe harbor" insulates the employee from discipline for admitted acts of using illegal drugs when the agency is unaware of such use. The Department of the Navy will offer such a "safe harbor" for any employee who meets all of the following conditions:

(a) Voluntarily identifies himself or herself as an illegal user of drugs to a supervisor or other higher level management official prior to being identified through other means.

(b) Obtains counseling and rehabilitation through the CEAP.

(c) Agrees to be tested by the activity/command as part of or as a follow-up to counseling and rehabilitation.

(d) Consents, in writing, to the release to appropriate management and CEAP officials of all counseling and rehabilitation records related to the illegal use of drugs.

(e) Subsequently refrains from illegal use of drugs.

All of these conditions must be documented in the agreement between the employee and the activity/command.

→ (2) An employee who admits to drug use after being notified that he or she is scheduled for a test or just after a sample is collected, or who is found to use drugs on the basis of other appropriate evidence (e.g., direct observation or evidence obtained from an arrest or criminal conviction) is not eligible for "safe harbor." For example, an employee arrested over the weekend on drug-related charges is released and reports to work as usual on Monday requesting "safe harbor." Since the activity/command is unaware of the arrest, it signs the agreement. A "safe harbor" agreement signed under these circumstances will be considered invalid and obtained by the employee under false pretenses. Further, "safe harbor" is for illegal users of drugs, not drug dealers or those involved in other drug-related misconduct.

(3) An employee who meets the "safe harbor" conditions will not be subject to discipline for the admitted acts of illegal use of drugs, including possession, incident to such personal use. However, if the employee occupies a TDP subject to random testing, he or she must immediately be removed from the TDP. (See paragraph 16a(2).)

(4) The activity head/commander will initiate removal action against an employee who invokes safe harbor, and

subsequently tests positive for illegal drug use. (The subsequent positive drug test is considered a second finding of illegal drug use.)

f. Privacy During Urine Collection

(1) Unobserved. Generally, an individual subject to testing will be permitted to provide a urine specimen privately in a restroom stall or similar enclosure so that the employee is not visually observed while providing the sample, except as provided below. Collection site personnel (DPC, CSC, or Observer) of the same gender will escort the employee or applicant to the restroom and remain outside the stall during the test.

(2) Observed. If an activity/command has reason to believe that the individual may alter or substitute the specimen, the individual may be required to provide the specimen under direct visual observation. Examples of situations calling for direct visual observation include when:

(a) The individual has previously been found by the Department of the Navy to be an illegal drug user and is undergoing follow-up testing, including employees with "safe harbor" agreements.

(b) Facts and circumstances suggest that the individual has equipment or materials capable of tampering with or adulterating a urine sample.

(c) The individual has previously tampered with a sample.

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

g. Failure to Report to the Designated Collection Site

(1) If an individual fails to appear at the collection site at the assigned time, the DPC will note the fact in the record and immediately notify the supervisor. If the collection is being managed by a CSC, that individual will immediately notify the DPC who will notify the supervisor.

(2) An employee who fails to appear for any type of testing (except for a deferral granted by a supervisor from random or follow-up testing under paragraphs 9c and 13e) will be subject to the same range of discipline as a verified positive test result for illegal drug use. See CPI 752 for procedural requirements.

(3) Due to the nature of this offense, there is no requirement for referral to the CEAP.

(4) An applicant's failure to appear for a test will result in the cancellation of any tentative offer of employment.

h. Refusal to be Tested

(1) If an employee refuses to be tested, regardless of the reason for the testing (random, reasonable suspicion, accident/unsafe practice, and follow-up), he or she will be informed that refusal will be considered failure to follow a direct order and will result in the same range of discipline as a verified positive test result. See CPI 752 for procedural requirements.

(2) If the refusal occurs at the work site, the supervisor will immediately notify the DPC. If the refusal occurs at the collection site, the DPC will immediately notify the supervisor.

(3) Due to the nature of this offense, there is no requirement for referral to the CEAP.

(4) Any applicant's refusal to be tested will result in the cancellation of any tentative offer of employment.

i. Failure to Provide a Sample

(1) Insufficient Sample. An employee should be given a reasonable amount of time to provide the sample. If an employee is unable to provide at least 60 milliliters of urine, the sample should be submitted, the temperature checked, and the partial specimen should be placed in a secure area. The following steps should then be taken:

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(a) The employee will be asked to drink sufficient fluids and will remain at the collection site within view of the DPC or CSC until he or she is able to provide a sufficient sample.

(b) When the employee is ready to provide the second specimen, he or she will void into a new bottle or catch container and the temperature of that sample will be checked. If it is within the acceptable temperature range, both the first and second samples will be combined in a single container. Appendix C provides procedures to be followed if the temperature is outside the range.

(2) Unable To Void. If the employee is unable to void, he or she should be asked to drink sufficient fluids to facilitate urination. The employee will be required to remain at the collection site within view of the DPC or CSC until ready to provide the sample.

Under either of these conditions, the activity/command may elect to release the employee. Such a release is not considered a deferral under paragraph 9c.

j. Collection Extending Beyond the Regular Shift. If the collection extends beyond the end of the employee's regular shift, the following options are available to the activity/command depending on an assessment of the situation by the DPC after a discussion with the employee's supervisor or higher level manager:

(1) The activity/command may require the employee to remain at the collection site and pay overtime or give compensatory time as the situation may warrant.

(2) The activity/command may release the employee, which will not be considered the same as a deferral as described in paragraphs 9c and 13e; no special test will be scheduled.

k. Opportunity to Justify a Positive Test Result. The NDSL will provide drug test results to the activity/command MRO. The MRO will give the subject of a positive test result an opportunity to justify the result by submitting medical records, a valid prescription, and/or other relevant biomedical information. The subject will be allowed to discuss the test

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results with the MRO. This discussion will not necessarily be in person, but may be by telephone. The MRO review is described in paragraph 15.

1. Release of Test Results

(1) The laboratory will disclose test results only to the MRO. Any positive result which the MRO determines to be justified by legitimate medical use will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results are governed by the provisions of the Privacy Act, 5 U.S.C. § 552a, et seq., as any record in a system of records and additionally restricted by Section 503(e) of P.L. 100-71. An employee's test results may not be disclosed without prior written consent of the employee, unless the disclosure would be:

(a) To the MRO.

(b) After MRO review, to the DPC.

(c) After MRO review, to the CEAP Administrator for purposes of counseling and rehabilitation.

(d) After MRO review, to any supervisor or management official within Department of the Navy having the authority to recommend, decide, or process an adverse personnel action against the employee or to an administrative tribunal in a review of an adverse personnel action.

(e) Under an order of a court of competent jurisdiction or required by the United States Government to defend against a challenge against an adverse personnel action.

(2) Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, for data collection or other purposes consistent with requirements to comply with Section 503(f) of P.L. 100-71 or Department of the Navy requirements. This form of disclosure may not include personal identifying information on any employee.

(3) Other information on records is contained in paragraph 18.

8. Random Testing

a. Department of the Navy TDPs

(1) Identifying Positions. The Secretary of the Navy has identified certain TDPs within the Department of the Navy that may be subject to random drug testing.

(a) The list of Department of the Navy TDPs is provided at Appendix E along with the descriptions and justifications for including the positions on the list.

(b) Position titles not on the Department of the Navy TDP list will not be included in a random drug testing program except for employees holding Top Secret clearances, employees holding Secret clearances with access to Special Access Programs, employees in the Nuclear Weapon Personnel Reliability Program (PRP), Military Sealift Command Civilian Mariners, Presidential appointees, employees in the NDSL, and, as provided in paragraph 10, voluntary testing. See Appendix E for a full explanation.

(2) Additions to and Deletions from the Department of the Navy TDP list. Requests for additions to and deletions from the TDP list will be processed following the procedures in Appendix B.

b. Activity/Command TDPs

(1) Activities/commands will review individual positions to determine whether the series and basic titles match the series and titles set forth in Appendix E. Some series are annotated with an asterisk "*" and a statement which describes the limitations of coverage as a TDP. If the position in question performs duties stated in the statement marked with an asterisk, then that position is a TDP. See appendix E, section 3.

(2) The DPC will compile the activity/command TDP list of positions. This forms the activity/command TDP pool for random testing. The list will contain at a minimum:

(a) The incumbent's name, social security number, and gender.

(b) The position title, pay plan, and series.

(c) Organizational code or other organizational information, such as duty location.

(3) This list of positions and incumbents must be maintained to ensure that it is current and accurate at all times. The DPC should be advised by the Human Resources Office (HRO) when:

(a) Positions are established or abolished.

(b) Significant changes are made to the duties of any position.

(c) A personnel action results in a change of the incumbent of a TDP.

(d) The organizational location of any TDP is changed.

(4) The security office will notify the HRO when an employee is granted a Top Secret clearance, a Secret clearance with access to a Special Access Program, or when there is a change in the status of an incumbent previously possessing either. As appropriate, the HRO will change the DCPDS element and notify the DPC.

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

c. Individual Notice

(1) Each employee in a TDP must be issued an individual notice at least 30 days before that employee is subject to unannounced random testing. In addition, each employee, upon entering a TDP, will receive an individual notice. For those employees not occupying a TDP immediately prior to this position change, the activity/command will not subject the employee to random testing for at least 30 days following issuance of the notice. The individual notice in Appendix D has been reviewed for legal sufficiency by the Department of Justice (DOJ) and must be issued without change.

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(2) Each employee in a TDP will be required to acknowledge in writing that:

(a) He or she has received and read the notice which states that the employee's position has been designated for random drug testing.

(b) He or she understands that refusal to submit to testing will result in administrative action and the initiation of disciplinary action, up to and including removal as specified in CPI 752.

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

(3) A copy of the signed acknowledgment or supervisor's note on the form must be retained by the activity/command DPC.

d. Review of TDP Designation

(1) Non-bargaining Unit Employee. An employee who believes his or her position has been wrongly designated as a position in the activity/command TDP pool may request that the activity head/commander review the determination. The request must be submitted by the employee in writing to the activity head/commander within 15 days of receipt of the individual notice or other form of notification of the TDP decision. It must set forth the reasons why the employee believes it should not be a TDP and include all other relevant information. The activity head/commander will review the request based upon the criteria applied in designating the employee's position as a TDP and issue a final written decision. This decision is not subject to further review nor is it grievable under the administrative grievance procedure.

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

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

e. Temporary Position Changes

(1) An employee who is detailed or temporarily promoted or reassigned to a TDP through a personnel action documented by an SF-50 or SF-52 will be subject to random drug testing during that period, provided that the assignment is expected to exceed 30 days.

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

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

9. Random Testing Procedures

a. Frequency. The frequency of testing will be determined by AA/USN, CNO, ONR, and CMC and may be delegated to subordinate activities and commands. The rate of random testing will optimize overall deterrence; it is not necessary to ensure each employee in a TDP is tested every year or to limit any employee to a specific number of tests. The Secretary of the Navy reserves the right to increase or decrease the frequency of testing based on Department of the Navy's mission needs, availability of resources, and experience in the program consistent with the duty to achieve a drug-free workplace under the E.O. 12564.

b. Procedures Prior to Collection

(1) Authorization and Selection. The activity head or commander will authorize the DPC to conduct random tests. The

DPC will randomly select employees to be tested from the TDP pool and document the method or means of selection. The selection may be generated by computer or other means which will ensure randomness, such as the method described in Appendix C. All information will be strictly guarded to ensure that employees do not know in advance that random testing will be conducted. The identities of individuals selected will remain confidential.

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

(3) Supervisor Notification

(a) The DPC will notify the selected employee's first-level supervisor approximately 2 hours prior to the actual time of collection. If the first level supervisor is unavailable, the next higher level of supervision will be contacted.

(b) The supervisor should review the checklist provided at Appendix G.

(c) The DPC should annotate the list with the date and time the supervisor has been contacted.

(4) Employee Notification

(a) Approximately 15 to 30 minutes prior to the scheduled collection, the supervisor will privately inform the employee with the exact time and location of the test. In the event the collection site is distant from the work site, appropriate adjustments will be made to the notification time so long as the advance notice is as brief a time as possible.

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

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

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

c. Deferral of Testing

(1) An employee selected for drug testing (random and follow-up) may be given a deferral from testing if the employee's first-line and a higher level supervisor concur that a compelling need necessitates a deferral on the grounds that the employee is:

(a) In a non-duty status such as annual leave, sick leave, suspension, absent without leave, continuation of pay, etc.

(b) In an official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

(c) Working a different shift.

(d) Performing a task or project that requires the employee's presence at the work site during the time the test is scheduled. The supervisor will inform the DPC of the deferral and attempt to reschedule for the same day at a different time.

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

d. Exemption during Treatment and Rehabilitation. While undergoing initial treatment or rehabilitation through the CEAP, and at the request of the CEAP Administrator, the employee may be exempted from random testing for a period not to exceed 60 days or for a time period specified in an abeyance agreement or rehabilitation plan. Upon completion of the stipulated exemption, the employee will be included in a separate testing pool at the activity/command as follow-up to counseling or treatment for illegal drug use for a period of 1 year, in addition to remaining in the regular random testing pool if occupying a TDP. See paragraph 13.

e. Standard Collection Procedures. These procedures must be followed to ensure strict chain of custody and specimen control. The specific procedures to be followed are provided at Appendix C.

10. Voluntary Testing

a. To demonstrate a commitment to the Department of the Navy goal of a drug-free workplace and to set an example for others, an employee not in a TDP may volunteer to be included in the random testing program. This employee will then be included in the pool of TDPs and will be subject to the same conditions and procedures for random testing.

b. Each activity/command will establish a procedure for employees to volunteer for the random testing program. This procedure must inform the employee that he or she may withdraw from the random program at any time, even after being notified of an impending random drug test.

11. Reasonable Suspicion Testing

a. Determination of Reasonable Suspicion

(1) Employees in TDPs

(a) A test may be authorized when management has a reasonable suspicion that any employee in a TDP is using drugs illegally. This belief must be based on specific objective facts and reasonable inferences drawn from these facts.

(b) Reasonable suspicion testing of employees in TDPs may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug.

2. Arrest or conviction for an on or off-duty drug-related offense or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.

3. Information provided either by reliable and credible sources or independently corroborated.

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4. Newly discovered evidence that the employee has tampered with a previous drug test.

5. The temperature or color of the urine sample, or other evidence, indicates probable adulteration, tampering, or substitution.

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

(2) Employees in non-TDPs. A test may only be authorized for an employee in a non-TDP when management has a reasonable suspicion that the employee is using drugs illegally on-duty or performing work while drug-impaired.

b. Authorization. If an employee is suspected of illegal use of drugs, the appropriate supervisor or management official will gather all information, facts, and circumstances leading to and supporting this suspicion. Approval for testing must be received from at least one level above the supervisor or manager requesting the test. Local instructions will provide specific procedures. If practicable, the decision to conduct a test will be made the same day the event or behavior occurred or as soon as management becomes aware of the event or behavior. The DPC will then be notified of the requirement to arrange for a test.

c. Types of Drugs. In addition to testing for cocaine, marijuana, amphetamines, opiates, and PCP, activities and commands performing a reasonable suspicion test are authorized to include any drug on Schedules I and II of the CSA. The activity/command must specify the drug or drugs for which the employee is being tested on the Urine Sample Custody Document, OCPM 12792/2 provided at Appendix C.

d. Documentation. As an immediate follow-up procedure to the test, the appropriate supervisor or manager will detail, in writing, the circumstances which warranted the test. At a minimum, the report will include the appropriate dates and times of reported drug-related incidents, reliable and/or credible sources of information, reasons leading to the test, the second-level concurrence, findings of the test, and any

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

e. Scheduling. The DPC will usually arrange for the collection to be conducted immediately, on the same day as the test was approved by management. This test may be conducted without regard to the employee's regular work shift, etc., and overtime pay or compensatory time will be provided as needed in accordance with paragraph 7j(1).

f. Notification

(1) Supervisor

(a) The supervisor, if not directly involved in the reasonable suspicion determination, will be notified by the DPC that an emergency collection procedure has been initiated. If the immediate supervisor is not available, a next higher level of supervision will be contacted.

(b) The DPC will provide the supervisor with the estimated time and location of the collection and any necessary information to be conveyed to the employee.

(2) Employee

(a) After the DPC confirms the time and location, the supervisor or management official will notify the employee of the test and issue the specific written notice that he or she is being tested for reasonable suspicion. A sample of that notice is included at Appendix F.

(b) The employee will be informed of the exact time and location of the test and directed to take an appropriate photo identification to the test site. The supervisor or other management official will escort the employee to the site.

g. Collection Procedures

(1) If there is specific reason to believe that an employee may alter or substitute the specimen, the employee will provide the urine sample under direct observation.

(2) If there is no specific reason to believe that an employee may alter or substitute the specimen, standard collection procedures must be followed to ensure strict chain of custody and specimen control as provided at Appendix C.

12. Accident or Unsafe Practice Testing

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

(1) The accident or unsafe practice results in a death or personal injury requiring hospitalization.

(2) The accident or unsafe practice results in damage to government or private property estimated to be in excess of \$10,000.

b. Authorization. If a supervisor or manager suspects that an employee has caused or contributed to an on-the-job accident or unsafe, on-duty, job-related activity that meets either of the criteria stated in paragraph 12a, he or she will gather all information, facts, and circumstances leading to and supporting this requirement. Approval for testing must be received from at least one level above the supervisor or manager requesting the test, as specified in the local activity instruction. If practicable, the decision to conduct a test will be made the same day the event or behavior occurs, or as soon as management becomes aware of the event or behavior. The DPC will then be notified of the requirement to arrange for a test.

c. Types of Drugs. In addition to testing for cocaine, marijuana, amphetamines, opiates, and PCP, activities and commands performing accident testing are authorized to include any drug on Schedules I and II of the CSA. The activity/

command must specify the drug or drugs for which the employee is being tested on the Urine Sample Custody Document, OCPM 12792/2 provided at Appendix C.

d. Documentation. Once approval has been obtained for testing, the supervisor will prepare written documentation which, at a minimum, will include the appropriate dates and times, circumstances surrounding the incident, the reasons leading to the test, the second-level concurrence, findings of the test, and any action taken.

e. Scheduling. The DPC will usually arrange for the collection on the same day as the incident giving rise to the test. The test may be conducted without regard to the employee's regular work shift, etc., and overtime pay or compensatory time will be provided as needed per paragraph 7j(1).

f. Notification

(1) Supervisor

(a) The supervisor, if unaware of the incident, will be notified by the DPC that an emergency collection procedure has been initiated. If the immediate supervisor is not available, the next higher level of supervision will be contacted.

(b) The DPC will provide the supervisor with the estimated time and location of the collection and any necessary information to be conveyed to the employee.

(2) Employee

(a) After the DPC confirms the time and location, the supervisor or management official will notify the employee of the test and issue the specific written notice that he or she is being tested because of the accident or unsafe practice. A sample of that notice is included in Appendix D.

(b) The employee will be informed of the exact time and location of the test, directed to take an appropriate photo identification, and escorted to the test site by the supervisor or other management official.

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g. Standard Collection Procedures. These procedures must be followed to ensure strict chain of custody and specimen control. The specific procedures to be followed are provided at Appendix C.

13. Follow-up Testing

a. Description. All Department of the Navy employees referred through administrative action to counseling or rehabilitation through CEAP for illegal drug use will be subject to unannounced drug testing as a follow-up to his or her program. This testing is separate from the regular random testing conducted by the activity/command. The employee will be tested for a period of 1 year or for such time as specified in an abeyance agreement, rehabilitation plan, or other form of written agreement. In addition, an activity/command may elect to impose testing as part of the rehabilitation or treatment program.

b. Documentation. The abeyance agreement, rehabilitation plan, or other form of written agreement will be retained and serve as evidence that the employee was aware of the requirement for follow-up testing.

c. Notification. The supervisor or manager will notify the DPC upon the employee's return to work so that follow-up testing can begin, if the employee was in a non-duty status. The CEAP Administrator or Counselor will notify the DPC upon the employee's completion of any initial or in-patient counseling or rehabilitation for illegal drug use or as part of the rehabilitation process in order for testing to be initiated.

d. Frequency. Such employees will be tested at a frequency determined by the local activity/command; the rate need not be specified in the agreement or rehabilitation plan.

e. Deferral of Testing. See paragraph 9c.

f. Collection Procedures

(1) The employee will be directed to provide the urine sample under direct observation to ensure strict chain of custody and specimen control as provided at Appendix C.

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CPI 792-3A14. Applicant Testing

a. Coverage. Drug testing will be required of all individuals tentatively selected for a TDP unless the selection involves only a temporary position change of 30 days or less, or the individual currently occupies a TDP within the Department of Defense. These selections may include those made under merit promotion procedures and any other personnel action resulting in the placement of an individual in a TDP (i.e., reassignment, promotion, and change to lower grade actions). Applicant testing is not applicable to management-directed actions. Activities and commands are not authorized to test other than TDP applicants.

b. Vacancy Announcements

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

An applicant tentatively selected for this position will be required to submit to urinalysis for illegal use of drugs prior to a final selection. (Exception: If the position change is for 30 days or less, or the applicant currently occupies a Department of Defense Testing Designated Position (TDP), no applicant test is authorized.) The selection is contingent upon a negative drug test result and, thereafter, the selectee will be subject to drug testing on a random basis as the incumbent of a TDP. Further, all Department of the Navy employees may be subject to drug testing under certain circumstances such as reasonable suspicion and after an accident or unsafe practice. All individuals will have an opportunity to submit medical documentation that may support the legitimate use of a specific drug to a Medical Review Officer. An applicant's test results will be provided to the selecting official and the servicing Human Resources Office before a final selection is made. A verified positive drug test result of a current Department of the Navy employee will also be provided to the employing activity/command.

(2) Failure of the vacancy announcement to contain such notice will not preclude testing if advance notice is provided to the applicant in some other manner, except orally. Other forms of notice are proper if a vacancy announcement is not used.

c. Notification. The HRO will notify the DPC as soon as possible when a drug test needs to be scheduled for a tentative selectee. The HRO will verify with the DPC that the selectee has not had a verified positive drug test result within the last 6 months. If the selectee has had a verified positive test within the last 6 months, the DPC will inform the HRO who, in turn, will notify the selecting official that the applicant cannot be selected. If the selectee has not had a verified positive test, the DPC will arrange for the test and inform the HRO of the date, time, and place of the test. The HRO will provide this information to the individual to be tested. The drug test must be undertaken as soon after notification of the applicant as possible and no later than 48 hours. Where appropriate, applicants may be reimbursed for reasonable travel expenses (see Joint Travel Regulations for specific information).

d. Opportunity to Justify a Positive Test Result. All applicants will have an opportunity to justify a positive test result per the Guidelines (see paragraphs 7k and 15).

e. Standard Collection Procedure. These procedures must be followed to ensure strict chain-of-custody and specimen control. The specific procedures to be followed are provided at Appendix C.

f. Test Results. The MRO will notify the DPC of the test results and the DPC will inform the HRO. The HRO will document the test result in the selection package so that the process can continue. If an applicant has a verified positive test result, the following procedures apply:

(1) Department of the Navy Employee Applicant

(a) The DPC will notify the HRO who will inform the selecting official so that another tentative selection can be made.

(b) The DPC will notify the applicant that the verified presence of a drug in his or her urine precludes the activity/command from hiring or placing the applicant in the position. Also, the DPC will advise the applicant that he or she will not be considered for any other vacancies (including other than TDPs) at the activity/command or any other

activity/command serviced by the same personnel office for a period of 6 months from the date the positive test was verified by the MRO.

(c) The DPC will notify the applicant's supervisor if the vacancy was at the employee's own activity/command.

(d) If the applicant is an employee from another Department of the Navy activity/command, the DPC will notify the activity head or commander who will notify the head of the employee's activity or command.

(e) If the applicant was tentatively selected from an OPM certificate, the following requirements apply:

1. Nonpreference Eligibles. Appointing Officers of local activities/commands are authorized to medically disqualify a nonpreference eligible for employment based on a verified positive drug test. A nonpreference eligible who is disqualified by an appointing officer has a right, upon request, to review by the head of the local activity/command. The applicant must be given written notice of the specific reasons for his or her medical disqualification for the position, and of the right to review by the activity/command head. (See FPM Chapter 339, Medical Qualifications Determinations, and FPM Bulletin No. 339-18, Medical Rejections of Preference Eligibles of 7 May 1991.)

2. Preference Eligibles. Objections to preference eligibles (TP, XP, CP, CPS), which are based on the results of a verified positive pre-employment drug screen, are to be considered as medical disqualifications or passovers and referred to OPM for adjudication. Situations in which applicants refuse or ignore the requirement to take a preemployment drug test are to be handled as declinations. (See FPM Letter 339-18 of 1 December 1992.)

(2) Other Applicants

(a) The DPC will notify the HRO who will inform the selecting official so that another tentative selection can be made.

(b) The DPC will then notify the applicant that the verified presence of a drug in his or her urine precludes the activity/command from hiring the applicant. Also, the DPC

will advise the applicant that he or she will not be considered for any other vacancies (including other than TDPs) by the activity/command or any other activity/command serviced by the same personnel office for a period of 6 months from the date the positive test was verified by the MRO.

(c) If the applicant was tentatively selected from an OPM certificate, see 14f(1)(e).

(3) Under 42 U.S.C. 290ee-1(b)(1), "[n]o person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior drug abuse." The Department of the Navy has determined that the term "prior drug abuse" excludes any individual who has obtained a verified positive test result within any preceding 6-month period.

15. Review of Drug Test Results

a. Receipt of Results. The NDSL will send or deliver all drug test results, positive and negative, to the MRO with a certified copy of the original Urine Sample Custody Document, OCPM 12792/2.

b. Procedures

(1) Negative Drug Test Results. The MRO will immediately forward all negative drug test results to the DPC.

(2) Positive Drug Test Results. The medical review of positive test results by the MRO will be initiated and completed within the timeframe agreed upon by the activity/command. The purpose of the review is to determine if the positive result is evidence of illegal drug use.

(a) The MRO will evaluate alternative medical explanations of a positive test result. This may include conducting a medical interview with the individual, review of the individual's medical history, or consideration of other relevant biomedical factors.

(b) Any requests for medical information will be made by the MRO directly to the individual to ensure maximum confidentiality. The MRO will obtain the information necessary to contact the employee from the DPC. The MRO will review all medical records, including valid prescriptions, made available

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by the tested individual when a positive test could have resulted from legally prescribed medications. The individual will have an opportunity to discuss the test results with the MRO, although a face-to-face interview is not required. Individuals are not entitled to present evidence to the MRO in a "hearing" or other similar administrative proceeding, although the MRO has the discretion to accept evidence in any manner deemed efficient or necessary.

(c) The MRO is authorized to order a reanalysis of the original sample should questions arise as to the accuracy or validity of a positive test result. Since some drug levels may deteriorate or are lost during freezing and/or storage, the retest must only show that the drug or its metabolite is present to reconfirm its presence during retesting.

(d) Detailed scientific guidance is contained in the "Medical Review Officer Guide" prepared by DHHS and provided to each MRO.

c. Notification

(1) Negative Drug Test Results. The MRO will forward all negative drug test results to the DPC who will ensure that employees are informed of their results. See paragraph 14f for information on applicant test results.

(2) Verified Positive Drug Test Results. If the MRO determines there is no medical justification for the positive result, such result will be considered a verified positive test result. Within the timeframe agreed upon by the activity/command, the MRO will forward the report of the verified positive test result to the DPC. The DPC will notify the CEAP Administrator and the supervisor or management official having authority to take a personnel action against the employee. See paragraph 14f for information on notification procedures regarding applicant test results.

16. Consequences of a Finding of Illegal Drug Use

a. Mandatory Administrative Actions

(1) CEAP Referral. An employee found to use illegal drugs must be referred to the CEAP.

(2) Position Actions

(a) If the employee occupies a TDP, as defined in Appendix A, the employee must immediately be removed from the position through appropriate personnel action. The employee will be assigned to a non-TDP, if available.

(b) The activity head/commander may return the employee to duty in a TDP as part of a rehabilitation and counseling program, if it would not endanger public safety or national security. This determination should consider information obtained from the activity/command DPC, the MRO, CEAP personnel and the employee's supervisors.

b. Disciplinary/Adverse Action

(1) Activities/commands will initiate disciplinary action against any employee for the first instance of illegal drug use, except under the circumstances set forth in paragraph 7e. The activity/command will initiate action to remove an employee:

(a) Who refuses to obtain counseling or rehabilitation through the CEAP as required by E.O. 12564 after having been found to use illegal drugs.

(b) For a second finding of illegal drug use.

(2) Failure to Report to the Designated Collection Site. An employee who fails to appear for testing will be subject to the same range of discipline as a verified positive test result for illegal drug use. See paragraph 7g.

(3) Refusal to be Tested When Required. An employee's refusal to be tested will be subject to the same range of discipline as a verified positive test result. See paragraph 7h.

(4) Disciplinary action must be taken consistent with the provisions of CPI 752 and the requirements of any applicable collective bargaining agreement.

(5) Advice and guidance on disciplinary or adverse actions will be provided by the HRO as necessary.

c. Reasonable Accommodation Requirements. A verified positive result does not equate to a requirement that the employee be afforded reasonable accommodation. A verified positive result indicates that the employee ingested a controlled substance at some recent time prior to providing the urine sample. The result will not show whether the employee was a first time drug abuser, a casual drug abuser, or a drug addict. Casual or occasional use of drugs is not a handicapping condition which invokes the requirements of the Rehabilitation Act, 29 U.S.C. § 791, et seq.

17. Action

a. Echelon 1 Commands. Echelon 1 commands must revise all instructions and notices implementing the DFWP to conform with this CPI.

b. Activity Heads/Commanders. Activity heads/commanders may commence urinalysis testing only after:

(1) The activity/command DPC, collection team personnel, and a MRO are appointed and trained on the requirements of the DFWP and testing collection procedures under the DHHS guidelines.

(2) Mandatory training for supervisors and managers has been conducted.

(3) The activity/command positions have been reviewed to confirm that the position series and titles match that of a TDP.

(4) An individual notice complying with the requirements of E.O. 12564 and P.L. 100-71 is given to each activity/command employee in a TDP no later than 30 days before the employee is subject to unannounced random testing.

(5) Bargaining obligations under 5 U.S.C., Chapter 71, have been satisfied.

(6) A local activity/command instruction is issued.

18. Records and Reports

a. Records. All drug testing information on specific individuals is confidential and should be treated as such by anyone authorized to review or compile DFWP records. Records

and information described in this paragraph will remain confidential, must be marked "For Official Use Only," and retained in a secure device with only authorized individuals who have a "need-to-know" having access. These records will be retained on board for 2 years unless otherwise covered by another record keeping system such as the Employee Medical File.

(1) DPC. To efficiently implement this CPI and to make information readily retrievable, the DPC will maintain all records relating to DFWP including drug testing and any other authorized documentation necessary to support the program.

(2) HRO. All records and information relating to the drug testing of selectees will be retained in the recruiting, examining, and placement records. Discipline and adverse action records resulting from employee verified positive test results will be maintained in that system of records by the HRO.

(3) MRO. All drug test results and other related records necessary to perform the functions of the position will be maintained by the MRO.

(4) Employee Medical File. Drug test results may be retained in the employee medical file.

(5) CEAP. If appropriate, drug test results may be retained in the employee counseling records maintained by the CEAP Administrator. The CEAP Administrator will maintain only those records necessary to comply with this CPI. After an employee referral, the CEAP will maintain all records necessary to carry out its duties. All medical and/or rehabilitation records concerning the employee's drug abuse, including CEAP records of the identity, diagnosis, prognosis, or treatment are confidential, must be marked "For Official Use Only," and may be disclosed only as authorized by 42 CFR Part 2, including the provision of written consent by the employee. By written consent, the patient may authorize the disclosure of these records to the patient's employer for verification of treatment or for a general evaluation of treatment progress. See 42 CFR § 2.1, et seq.

b. Maintenance of Records. The Department of the Navy will maintain the records of its DFWP consistent with its Privacy Act System of Records and with all applicable federal laws, rules, and regulations regarding confidentiality of records including the Privacy Act, 5 U.S.C. § 552a, et seq. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings or at the discretion of the Secretary of the Navy.

c. Employee Access to Records. Any employee (including any federal employee applicant) who is the subject of a drug test will, upon written request to the DPC, have access to any records relating to:

- (1) Such employee's drug test; and
- (2) The results of any relevant laboratory certification, review, or revocation of certification proceedings, as referred to in Section 503 of P.L. 100-71.

Except as authorized by law, an applicant who is not a federal employee will not be entitled to this information.

d. Statistical Report. The DPC will collect and compile anonymous statistical data for reporting the number of:

- (1) Random, reasonable suspicion, accident or unsafe practice, follow-up, voluntary, or applicant tests administered.
- (2) Verified positive test results, by type of test and drug.
- (3) Voluntary drug counseling referrals.
- (4) Involuntary drug counseling referrals.
- (5) Disciplinary actions, terminations, employee applicant non-selection, or denials of employment offers from a verified positive drug test result.
- (6) Disciplinary actions, terminations, or denials of employment offers resulting from refusal to submit to testing.
- (7) Disciplinary actions, terminations, or denials of employment offers resulting from alteration of specimens.

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(8) Disciplinary actions, terminations, or denials of employment offers resulting from failure to complete a drug abuse counseling program.

(9) Employees who successfully complete rehabilitation under CEAP.

This data, along with other pertinent information, will be compiled for inclusion in the Department of the Navy semiannual report to the Department of Defense and the DHHS. The DHHS will use the data to assist in overall program evaluation and to determine whether changes to the DHHS Guidelines may be required.