

**NATIONAL AGREEMENT
Between
Department of Veterans Affairs
and
American Federation of Government Employees Council**

Subject: VA Drug-Free Workplace Program

Section 1 - General

The employer agrees that the establishment and administration of its Drug-Free Workplace Program will be done in accordance with Executive Order (E.O.) 12564, the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Testing Programs, and any subsequent changes thereto, other laws, rules and Governmentwide regulations. For the purposes of this agreement, the terms "rules and regulations" shall mean those rules and regulations of authorities outside the Department, such as, the Office of Personnel Management and HHS. The parties agree that the testing referred to by the term "drug test" means "urinalysis." The parties agree that any subsequent proposed changes to these procedures that impact bargaining unit employees will be implemented subject to the procedures contained in applicable law and the parties existing negotiated agreement. By entering into this agreement, the parties recognize that the Union is not authorized to waive and does not waive any legal challenge, or Constitutional or legal rights employees may have regarding any facet of drug testing.

Section 2 - Employees Subject To Testing

Testing will be conducted in accordance with applicable laws, rules and regulations. E.O. 12564 provides for the following types of drug testing:

Random testing for the use of illegal drugs by employees in sensitive positions (see Appendix A);

Voluntary employee drug testing;

Reasonable suspicion testing;

Injury, Illness, Unsafe, or Unhealthful Practice Testing;

Follow-up to counseling or rehabilitation for illegal drug use through the EAP;

Applicant testing.

Section 3 - Positions Designated as Sensitive.

- A. The designation of sensitive positions will be done in accordance with applicable laws, rules and regulations. Executive Order 12564 states "the head of each Executive Agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. The extent to which such employees are tested and the criteria for such testing shall be determined by the head of each agency, based upon the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to public health and safety or

national security that could result from the failure of an employee to adequately discharge his or her position.”

- B. VA will provide the appropriate local AFGE Union President with a copy of the list of Testing Designated Positions (Appendix A to this agreement).

Section 4 - Reasonable Suspicion Testing.

- A. Reasonable suspicion testing may be required of any employee in a position which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment. A reasonable suspicion of drug use or impairment may be based upon, among other things:
 - 1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
 - 2. A pattern of abnormal conduct or erratic behavior in the workplace setting indicative of illegal drug use;
 - 3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
 - 4. Information provided either by reliable and credible sources or independently corroborated; or
 - 5. Newly discovered evidence that the employee has tampered with a previous drug test.

Section 5 - Injury, Illness, Unsafe, or Unhealthful Practice Testing.

- A. 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 that it can undertake appropriate corrective measures. Post-accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based upon the circumstances of the accident, their actions are reasonably suspected of having caused or contributed to an accident that meets the following criteria:
 - 1. The accident results in a death or personal injury requiring immediate hospitalization; or
 - 2. The accident results in damage to government or private property estimated to be in excess of \$10,000.

- B. If an employee is suspected of having caused or contributed to an accident meeting the above criteria, the appropriate supervisor will present the facts leading to this suspicion to the field facility Director for approval. Once approval has been obtained and arrangements made for testing, the supervisor will prepare a written report detailing the facts and circumstances that warranted the testing.

Section 6 - Volunteer Testing.

VA will not coerce or require employees to participate in voluntary testing established under section 3(b) of E.O. 12564. Participation or non-participation in voluntary testing will neither advantage or disadvantage employees in any respect of their employment. To the extent that random testing may be conducted on volunteers, it must be conducted in accordance with applicable laws, rules and regulations.

Section 7 - Notification to Employees.

- A. VA agrees to make every effort to fully inform employees about the goals, objectives, policies and procedures of any drug testing plan.
- B. Sixty (60) calendar days prior to the implementation of VA's drug testing plan, VA will notify all employees that testing for the use of illegal drugs will be conducted.
- C. The Department will give all employees an opportunity to attend briefings on the Drug-Free Workplace Program prior to the implementation of the testing component of the program at each facility. At the training, employees shall have the opportunity to ask questions and get answers. Educational packages and any subsequent notices shall include the name and number of a contact person who will answer employees questions. Training classes and educational materials shall include, but are not limited to the following:
 - 1. Participation in the program does not necessarily imply suspicion of drug use;
 - 2. Information about the Medical Review Officer (MRO) process as set forth in the HHS guidelines, including the procedures for submitting documentation that may support a justification for a positive test result;
 - 3. The consequences of a positive test result;
 - 4. The reasons for the urinalysis test, and the circumstances under which testing may occur;
 - 5. Notice of the opportunity for and the consequences of an employee voluntarily identifying himself/herself as a user of illegal drugs and willingness to undertake counseling and rehabilitation;
 - 6. Information about the testing procedures and the HHS guidelines regarding quality assurance and control, and confidentiality;

7. The availability of drug abuse counseling and referral services, including the name and telephone number of the local EAP Counselor(s);
 8. The fact that the employees have a right to union representation as provided in the Master Agreement; and
 9. The consequences should they refuse counseling or rehabilitation.
- D. On the day of drug testing, the employee to be tested shall receive in writing the information set forth below. If the testing is to take place at a location other than the employee's duty station, the information shall be provided to the employee prior to leaving the duty station. Otherwise, the information shall be given to the employee prior to the scheduled collection time. Inadvertent failure to provide this information will not invalidate the results of an employee's drug test.
1. Whether the test is voluntary or mandatory;
 2. The reasons for ordering the drug test;
 3. How the employee was selected for the test;
 4. The consequences of a positive result or refusal to cooperate, including adverse actions;
 5. What drugs or class of drugs they are being tested for;
 6. The MRO process as set forth by HHS guidelines, including the procedures relating to the submission of information to justify a positive result caused by prescription medication, non-prescription medication or other substance;
 7. The location of drug abuse counseling and referral services available through the Employee Assistance Program to which he/she can submit prior to testing. (However, the test will not be delayed to allow the employee to seek assistance);
 8. The fact that the employee has a right to Union representation only as provided in the Master Agreement or the Labor Relations Statute;
 9. The right to a split sample and a secondary laboratory test;
 10. That employees may contact their Health Plan Representative to obtain information about possible reimbursement associated with a second laboratory test; and;
 11. The consequences should they refuse counseling or rehabilitation.

Section 8 - Methods and Procedures for Testing.

- A. The parties agree that methods and equipment used to test for abuse of drugs yield the best results when the most reliable laboratories are used. Therefore, VA

agrees to review the Federal Register to ensure that its contractor remains an HHS-certified laboratory. In the event that the contractor is decertified in accordance with HHS guidelines, VA shall order the cessation of any further testing at the decertified laboratory. VA agrees to cease further collections until an HHS-certified laboratory is available to accept agency specimens.

B. VA agrees that the following procedures will be utilized subject to law, rules and regulations, to assure drug testing is reliable and employees concerns are recognized:

1. The collection, handling, and transportation of all specimens will be conducted strictly in accordance with HHS Chain of Custody Procedures, other HHS requirements, and any other pertinent laboratory requirements.
2. The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy in accordance with HHS guidelines. VA will make every reasonable effort to ensure that the specimen will be provided in a sanitary area.
3. At the employee's request, the urine sample will be split at the time of collection and will be transmitted to an Agency contractor with the primary specimen for storage in accordance with Chain of Custody procedures. The split sample will be retained in an appropriate, refrigerated, and secure storage facility in accordance with HHS Guidelines for a period of no longer than fifteen days. The cost of conducting the split sample, the materials, postage, and storage costs are the responsibility of the Department.

Upon notification of a positive confirmatory test from the Agency contractor, the MRO will notify the employee and he/she will have the opportunity to provide any/all relevant information that will assist the MRO in determining whether the positive test result is justified. At the employee's request, the MRO will request the split specimen be tested at an HHS-certified laboratory for the presence of drug(s) for which a positive was obtained in the test of the primary specimen. The employee shall select a laboratory from a list of three HHS-certified laboratories. The Department will make the list available to the employee.

This confirmatory test will be conducted in accordance with HHS Guidelines regarding "Retesting of Specimens" and will not utilize cutoff levels. The cost of the confirmatory test will be billed to the employee by the agency if the results do not refute the results of the original test. The MRO shall honor such a request if it is made within 72 hours of the employee's having received notice that he or she tested positive.

Should the employee-requested confirmatory test conducted by the second HHS-certified laboratory (utilizing the split sample) refute the original test, the original test result will be negated and the Department will assume the cost of the laboratory test in addition to the other aforementioned costs.

4. If sufficient volume of urine is not able to be provided within a reasonable period of time in accordance with HHS Guidelines, the collection site person will contact an appropriate authority within VA. Normally, "a reasonable period of

time" should not extend beyond the employee's scheduled work day. Consideration will be given to re-scheduling the employee for testing at a later date.

5. VA will conduct in-house collection of all urine specimens. VA agrees to monitor the collection process to assure compliance with applicable HHS Guidelines.
6. Employees will not be required to reveal legitimate use of legal or prescription drugs at the time of collection. Employees may, however, provide this information if they so desire. This information is confidential and will only be released to the MRO.
7. Any employee who tests positive will be afforded an opportunity to justify the test results in accordance with HHS guidelines, including the opportunity to present evidence of the legitimate use of prescription medication, non-prescription medication, or other substance.
8. If the test is positive and the employee provides evidence that Management concludes demonstrates a disabling drug dependency, Management will provide any appropriate reasonable accommodations in accordance with applicable laws, rules and regulations. Follow-up testing conducted on employees who successfully complete a rehabilitation program will comply with applicable laws, rules and regulations.
9. Upon receipt of a positive test result resulting from the GC/MS (confirmatory test) conducted by the HHS-certified laboratory, the MRO, in accordance with HHS guidelines, will examine alternate medical explanations for the test results. If the MRO concludes that the employee's medical documentation does not provide a legitimate medical explanation for the positive test result, the MRO must explain the basis for his/her rejection of the documentation in writing for the benefit of the employee. If the MRO determines there is a legitimate medical explanation for the positive test result, he/she shall determine that the result is consistent with legal drug use and will take no further action. The test result reported back to the agency would be "negative."
10. When requesting that collection times be scheduled for drug testing under Reasonable Suspicion testing and Injury, Illness, Unsafe, or Unhealthful Practice Testing, where appropriate, the Authorizing Management Official will take into consideration leave and travel plans which have been scheduled and approved by the employee's supervisor. Management retains the right to cancel leave or travel orders as the circumstances warrant.

Section 9 - Confidentiality and Safeguarding of Information.

The parties recognize the responsibility to protect the confidentiality of employees under any drug testing plan. The Department will use identification numbers of employees to identify the specimen that is sent to the Agency Contractor for testing. This process shall include the following:

- A. The collection, handling, and transportation of all specimens will be strictly in accordance with HHS Chain of Custody Procedures, and other HHS requirements. Confidentiality and safeguarding of information will be handled in accordance with Section 8.B.1
- B. Employees will be assured confidentiality in all matters relating to drug testing. Information will only be released in accordance with law, rule, or regulation.
- C. The agency shall destroy all agency records concerning non-confirmed or justified test results as required by laws, rules, or regulations.
- D. In accordance with all applicable laws, rules, regulations, guidelines, and subsequent changes thereto, the employee who was subject to a drug test will receive copies of all records relating to his or her drug test within the control of the Department.

*Employee can
Receive
Copies*

Section 10 - Counseling and Rehabilitation.

- A. Employees whose tests have been confirmed positive will be referred to an Employee Assistance Program Counselor for counseling and/or referral assistance for appropriate treatment and rehabilitation.
- B. Counseling and referral to rehabilitation services will be offered to employees and their family members with substance abuse problems, and also to employees who have family members with substance abuse problems.
- C. After successful completion of rehabilitation, Management will seriously consider returning the employee to the same or similar position as the one occupied before the drug problem was identified.

Section 11 - Acknowledgment Forms.

No employee shall be required to sign any document stating that he or she agrees with a drug testing program. Employees' signatures on any acknowledgment documents will merely signify notice of the terms of the document.

Section 12 - Employee Rights.

- A. Employees may appeal disputes or conflicts in any appropriate forum.
- B. Any travel and/or per diem required in connection with drug testing will be provided by the Department in accordance with Federal Travel Regulations and VA's current travel policy.
- C. Employees subject to drug testing will not be charged leave for the time necessary to provide the required sample or to meet with the MRO, if necessary.

Section 13 - Union Rights.

- A. Local Human Resources Managers will, upon receipt, provide a copy of this agreement to the local union president. Prior to local implementation, local management will fulfill its labor obligation.
- B. Upon request, Management shall timely provide the Union copies of all statistical data pertaining to drug testing, sanitized copies of reasonable suspicion determination notices to employees, and pertinent parts of its semi-annual report to HHS/Congress which pertains to the Drug-Free Workplace Program. The reasonable suspicion notice to the employee will be sanitized to guarantee total anonymity of the employee.
- C. If the Local AFGE President has a concern regarding the designation of the MRO or any aspect of the VA Drug-Free Workplace Program, he or she may bring these concerns to the attention of the facility Director.
- D. Union representatives will be granted official time as appropriate when representing employees pursuant to the VA Drug-Free Workplace Program.

Walter Glockler
Walter Glockler
NVAC - AFGE

6/17/96
Date

Melvin Weinstein
Melvin Weinstein
Deputy Director, Labor
Management Relations Service

6/11/96
Date

APPENDIX A. TESTING DESIGNATED POSITIONS

In accordance with criteria contained in Executive Order 12564, positions listed in this Appendix have been determined as "sensitive" for drug testing purposes. VA employees in these positions will be designated as subject to random testing.

Section 1 lists positions which the Secretary has determined involve law enforcement, national security, the protection of life and property public health or safety, or other functions requiring a high degree of trust and confidence. All positions in the occupations listed are covered by the random drug testing program.

Section 2 lists Presidential Appointees in VA, which, according to Executive Order 12564, will be designated as sensitive.

Section 3 lists additional positions which have been identified as being subject to random testing because they have been designated as Special Sensitive or Critical Sensitive under Executive order 10950, as amended; or have been granted access to classified information under Section 4 of Executive Order 12355. Only those positions which have the sensitivity level shown are included for random testing.

NOTE: Only position titles have been listed for general distribution. The position statements which outline the reasons that the positions are designated for testing are available for review in local VA Personnel offices.

Section. 1 The following lists positions which are subject to random testing because they involve law enforcement, national security, the protection of life and property, public health or safety or other functions requiring a high degree of trust and confidence.

For ease of reference, the listing has been divided into parts as follows:

- 1a. VHA positions authorized under Title 38, U.S.C., Chapters 73 and 74.
- 1b. General Schedule occupations (also includes positions in Title 38, U.S.C., Sec. 7401(3)).
- 1c. Federal Wage System occupations.
- 1d. Key management positions located at VA field facilities.
- 1e. Key management positions in VA Central Office.

Section Ia. VHA Positions Authorized Under Title 38 U.S.C., Chapters 73 and 74.

<u>Series</u>	<u>Title(s)</u>
601	Expanded-Function Dental Auxiliary (EFDA) (Dental Assistant or Dental Hygienist)
602	Physician (includes residents, osteopaths, clinical investigators, medical investigators, and research associates)
603	Physician Assistant
605	Nurse Anesthetist
610	Registered Nurse
668	Podiatrist
680	Dentist (includes residents and medical

Section Ib. General Schedule Occupations

This section includes positions listed in Title 38 U.S.C., Sec. 7401(3).

<u>Series</u>	<u>Title(s)</u>
GS-081	Firefighter/Fire Protector
GS-083	Police Officer/Detective
GS-085	Guard
GS-101	Coordinator, Alcohol/Drug Treatment Program
GS-101/102	Readjustment Counseling Manager/Specialist/Technician/Assistant/Addiction Specialist
GS-180	Psychologist
GS-401	Hematologist, Histologist, Biologist, Research Biologist
GS-403	Microbiologist/Research Microbiologist
GS-405	Pharmacologist/Toxicologist
GS-601	Histotechnologist, Cytotechnologist
GS-601	Nuclear Medicine Technologist
GS-601	Registered Respiratory Therapist
GS-610	Occupational Health Nurse
GS-620	Licensed Practical Nurse
GS-621	Nursing Assistant
GS-622	Medical Supply Technician/Aid
GS-633	Physical Therapist
GS-640	Certified Respiratory Therapy Technician

<u>Series</u>	<u>Title(s)</u>
GS-640	Health Technician
GS-642	Nuclear Medicine Technician
GS-644	Medical Technologist
GS-645	Medical Technician
GS-646	Histopathology/Cytology/Pathology Technician
GS-647	Diagnostic Radiologic Technologist/Technician
GS-648	Therapeutic Radiologic Technologist/Technician
GS-649	Medical Machine Technician Cardiac Catheterization Technician Electrocardiograph Technician Electroencephalograph Technician Heart-Lung Machine Technician Hemodialysis Technician Hyberbaric Chamber Technician Medical Machine Aid Pulmonary Function Technician
GS-651	Respiratory Therapist
GS-660	Pharmacist
GS-661	Pharmacy Technician
GS-681	Dental Assistant
GS-682	Dental Hygienist
GS-802	Biomedical Engineering Technician
GS-858	Clinical/Biomedical Engineer
GS-1306	Health Physicist
GS-1320	Chemist

Section Ic. Federal Wage System Occupations

<u>Series</u>	<u>Title(s)</u>
WG-4805	Medical Equipment Repairer
WG-5703	Motor Vehicle Operator
WG-5823	Automotive Mechanic

Section Id. Key Management Positions at VA Field Facilities

Directors, Associate Directors, and Assistant Directors of all VA field facilities (medical centers, regional offices, records center, data processing centers, marketing center, supply depots, prosthetic distribution center, and cemeteries), VHA Service Chiefs, VBA Division Chiefs, District Counsels or GM-15 positions in Central Office will only be included as a testing designated position if the incumbent requires a top secret or secret security clearance.

Section 2. Presidential Appointees

Presidential Appointees in VA are as follows:

Secretary

Deputy Secretary

Inspector General

General Counsel

Under Secretary for Health

Under Secretary for Benefits

Director, National Cemetery System

Chairman, Board of Veterans Appeals

Assistant Secretary for Finance and Information Resources Management

Assistant Secretary for Policy and Planning

Assistant Secretary for Human Resources and Administration

Assistant Secretary for Public and Intergovernmental Affairs

Assistant Secretary for Acquisition and Facilities

Assistant Secretary for Congressional Affairs

In accordance with Executive Order 12564, these are drug testing-designated positions.

Section 3. Personnel having access to national security material that is reasonable to assume may damage national interests if compromised.

Contained herein are positions which will be subject to employee drug testing because of the position designation as sensitive based on national security information. Sensitive position as enumerated herein refers to:

An employee who has been granted access to classified national security information or may be granted access to classified national security information pursuant to determination of trustworthiness by an agency head under Section 4 of Executive Order 12356;

Other positions that the agency head determines involve national security.

Positions identified herein are categorized according to the job Title, Series, and Level. Levels refer to the following:

Special Sensitive

Name, job title or series cannot be provided for these positions due to national security requirements.

Critical Sensitive

Positions may be designated as Critical Sensitive based on access to national security information, ADP security responsibilities, fiduciary responsibilities or access to other sensitive information. Regardless of position title or series, only those positions which are designated as Critical Sensitive due to access to national security information are testing designated positions.

The following lists provides a sample of some positions which may be included under this section. This list is not all-inclusive.

<u>Series</u>	<u>Titles</u>
GS-1811	Criminal Investigator
GS-080	Security Assistant, Specialist, Officer
GS-301	Confidential Assistant, Staff Assistant, Executive Assistant
GS-343	Management Analyst
GS-345	Program Analyst
GS-393	Communications Specialist
GS-511	Auditor