

**DEPARTMENT OF THE NAVY**  
**NAVAL AIR STATION, WHIDBEY ISLAND**  
**OAK HARBOR, WASHINGTON 98278-5000**

NASWHIDBEYINST 12792.1  
SE:St  
29 Nov 1993

NASWHIDBEY INSTRUCTION 12792.1

Subj: DRUG-FREE WORKPLACE PROGRAM

Ref: (a) SECNAVINST 12972.3  
(b) OPNAVINST 5355.4  
(c) OCPMINST 12792.3  
(d) Executive Order 12564  
(e) Public Law 100-71  
(f) CPI 752

1. Purpose. To provide procedures for implementing the Naval Air Station (NAS), Whidbey Island Drug-Free Workplace Program (DFWP) per references (a) through (f). The employer agrees that the establishment and administration of its drug testing program will be done in strict compliance with the U.S. Constitution and all applicable laws and regulations. For purposes of this instruction, the term "regulation" shall mean those regulations of authorities outside the agency such as the Office of Personnel Management, the Department of Health and Human Services (DHHS), and other government-wide regulations. The employer agrees to provide safeguards to assure the urinalysis testing for affected employees is not performed by unqualified or uncertified operators, or test personnel as provided for in the DHHS guidelines.

2. Coverage. Applies to all appropriated fund civilian employees and applicants tentatively selected for appropriated fund positions per reference (d) definition. Per law and regulation, employees will not be subject to drug testing urinalysis, unless:

a. There is a reasonable articulable suspicion to believe that the employee is under the influence of illegal drugs; or

b. It is part of an authorized department investigation of a serious accident or unsafe practice that could reasonably be attributed to the employee; or

c. It is part of a follow-up to counseling or rehabilitation through an employee assistance program; or

d. The employee is in a position designated as "sensitive" (random pool); or

e. The employee voluntarily submits to testing; or

f. The employee is selected for a position in the random pool.

3. Policy. It is Department of the Navy (DON) policy to eliminate the illegal use of drugs by civilian employees following the requirements established per references (e) and (f). The policy is contained in reference (a).

#### 4. Responsibilities

##### a. Drug Program Coordinator (DPC) will:

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

(2) Receive all drug test results from the Medical Review Officer (MRO) on behalf of the activity head/commander and forward a copy for inclusion in the employee's medical file.

(3) Recommend appropriate disciplinary action to the supervisor or manager of each employee with a verified positive test result.

(4) Manage the issuance of all 30-day individual notices to occupants of Testing Designated Positions (TDP's) and retain documentation verifying receipt of each notice. In conjunction with the Human Resources Office (HRO), establish and maintain a list identifying each position/occupant in the TDP pool.

(5) Arrange each specimen collection from the pool of employees in TDP's and volunteers per random selection collection procedures and coordinate all other types of testing; i.e., reasonable suspicion, accident/unsafe practice, applicant, and follow-up, including the chain of custody and control of the urine specimens.

(6) Coordinate/present/schedule employee training on drug abuse and supervisory training. Ensure that all activity/command collection team members are fully trained in their functional requirements following the guidance contained in reference (c).

(7) Inform HRO of verified positive test results of tentative selectees for TDP's and actively maintain these results so that an applicant with a verified positive test result is not considered for selection for a period of 6 months.

(8) Ensure that an employee is notified of his/her negative drug test result.

(9) Notify the Civilian Employee Assistance Program (CEAP) Administrator and the appropriate supervisor or manager having the authority to initiate or approve an adverse action against the employee in the event of a verified positive drug test result.

(10) Notify Navy Drug Screening Laboratory if positive specimens are to be retained beyond the normal period of 1 year.

(11) Prepare and maintain all documentation and reports on the DFWP following reference (c) and DHHS guidelines.

b. Collection Site Coordinator (CSC). The CSC may conduct all collection activities at the collection site for the DPC. These services may be provided by a DON military member or civilian employee, or obtained through a contract.

c. CEAP Administrator will implement and operate the CEAP per reference (f).

d. Medical Review Official (MRO) will:

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

(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, reference (c) 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 time frames 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.

e. 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 as provided in reference (c).

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

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

(a) Refer employee(s) to the CEAP Administrator for assistance in obtaining counseling and rehabilitation.

(b) Initiate appropriate administrative and disciplinary actions.

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

(6) Grant employees reasonable official time for the initial drug test, CEAP administration, and visiting the MRO at his discretion, and/or union representative during adverse action cases.

f. 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.

g. Human Resources Office will:

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

(2) Ensure that vacancy announcements 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) Prior to making a final offer of employment or processing another type of position placement action, ensure 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 in the Naval Civilian Personnel Data System (NCPDS) elements.

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

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

(7) Maintain records and information relating to personnel actions taken against employees following the requirements of reference (c) and reference (f).

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

5. 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 per reference (d). This course may be incorporated into the ongoing supervisory training program required of individuals within the first 6 months of assuming supervisory duties.

b. Employee Education. The activity/command will offer drug education to all personnel. This will include information on types and effects of drugs, symptoms of drug use and 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 drug education process may be accomplished through such means as the distribution of written materials, videotapes, lunchtime employee forums or employee drug awareness days.

c. Drug Program Coordinator. DPC's training includes but is not limited to:

- (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. Training includes but is not limited to:

- (1) Collection procedures and responsibilities. CSC's must also be trained in chain of custody procedures.
- (2) Confidentiality and Privacy Act requirements.

e. Civilian Employee Assistance Program Personnel. CEAP personnel must be trained in CEAP requirements regarding the DFWP.

## 6. General Program Provisions

### a. Notices

(1) General Notice. A general notice signed by SECNAV announcing the drug testing program was issued on 1 September 1988 to all covered employees. A copy of this notice 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.

b. Types of Testing. The DON program includes the following types of drug testing:

(1) Random testing of employees in sensitive positions identified as TDP's;

(2) Reasonable suspicion testing;

(3) Voluntary testing;

(4) Testing as part of or as a follow-up to counseling or rehabilitation; and

(5) Applicant testing.

c. Types of Drugs. DON will test employees and applicants for cocaine, cannabis (marijuana), amphetamines, opiates, phencyclidine (PCP) and/or the metabolites of these drugs. DON will also test for any other drug(s) or classes of drugs

subsequently approved by DHHS for testing on an agency-wide basis. Per DHHS guidelines, DON 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, Part 1308).

d. Technical Guidelines for Drug Testing. Reference (d) granted the authority to issue mandatory scientific and technical guidelines for federal civilian employee drug testing programs to DHHS. The Navy Drug Screening Laboratory will be testing all civilian samples following the provisions of the guidelines.

e. Voluntary Self-Referral for "Safe Harbor"

(1) Reference (d) 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. DON will offer such a "safe harbor" for any employee who meets all of the following conditions:

(a) Voluntarily identifies himself/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 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 sensitive position subject to random testing, he or she must be immediately removed from the sensitive position. (See paragraph 16a(2) of reference (c).)

f. Privacy During Urine Collection

(1) Unobserved. An individual subject to testing will be permitted to provide a urine specimen privately in a rest room stall or similar enclosure so that the employee is not visually observed while providing the same, except as provided below. Collection site personnel (DPC, CSC or observer) of the same gender, will escort the employee or applicant to the rest room 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, with same gender observer. Examples of situations calling for direct visual observation include when:

(a) The individual is being tested based on reasonable suspicion.

(b) Facts and circumstances suggest that the individual is under the influence of drugs at the time of the test.

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

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

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

(3) Tests will be given in a sanitary, secluded area, which also provides the employee with reasonable privacy. The test site will be fully accessible for the employees being tested.

(4) If the employee desires a split sample, the urine specimen will immediately be divided into two portions with the Navy getting the first 60 milliliters and the remainder being placed in freezer storage with full chain of custody by the DPC. Upon a positive confirmation of the first portion of the urine sample, the employee shall have the option of having a test performed on the retained sample by a Navy Health and Human Services-certified laboratory at his/her own expense. The American Federation of Government Employees, Local 1513, will provide the freezer, which will be under control of the DPC.

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 12e of reference (c) will be subject to the same range of discipline as a verified positive test result for illegal drug use. The employee and management will bear equal responsibility for ensuring the employee reports to the collection site. See Chapter 752 of NASWHIDBEYINST 12000.1 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, and followup), 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. The union will be notified in this event.

(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:

(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 D to reference (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 will 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 of reference (c).

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 12e of reference (c); 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 results with the MRO. This discussion will not necessarily be in person, but may be by telephone. The MRO review is described in paragraph 14 of reference (c). The employee is entitled to union representation, if desired.

#### l. 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 reference (e). 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 DON 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 U.S. 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 reference (e) or DON requirements. This form of disclosure may not include personal identifying information on any employee.

(3) Other information on records is contained in paragraph 16 of reference (c).

## 7. Random Testing

### a. Department of the Navy Testing Designated Positions

(1) Identifying Positions. SECNAV has identified certain sensitive positions within DON that may be subject to random drug testing.

(a) The list of DON TDP's is provided in Appendix B along with the description, justification, and rationale for, including the positions on the list.

(b) Position titles not on the DON TDP list will not be included in a random drug testing program except for employees holding Top Secret clearances with access; employees in the Nuclear Weapon Personnel Reliability Program (PRP); Military Sealift Command Civilian Mariners, presidential appointees; employees in the Navy Drug Screening Laboratory; and, as provided in paragraph 10 of reference (c), voluntary testing. See Appendix B for a full explanation.

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

### b. Activity/Command Testing Designated Positions

(1) No random testing will be conducted except by law. Once management identifies a position as "sensitive", all employees will become part of the random pool and subject to periodic testing.

(2) Activities/commands will review individual positions to determine whether the series, title, and actual duties

assigned meet the criteria, description, and justification set forth in Appendix B.

(3) Once the review is complete, 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.

(4) 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 HRO when:

(a) Positions are established or abolished.

(b) Significant changes are made to the duties of any position. The position should then be reviewed following the provisions of Appendix B to determine if it meets the criteria for a TDP.

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

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

(5) The Security Manager will notify HRO when an employee is either granted a Top Secret clearance with access or when there is a change in the status of an incumbent previously possessing a Top Secret clearance. As appropriate, HRO will change the Naval Civilian Personnel Data Systems element "Drug Test Required" and notify the DPC.

(6) 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 E has been reviewed for legal sufficiency by Department of Justice and must be issued without change.

(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 Chapter 752 of NASWHIDBEYINST 12000.1.

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.

(c) 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. Seeking review of the TDP determination, whether or not the employee is covered by 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, 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 an individual 30-day notice contained in Appendix E 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 TDP's.

(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.

## 8. Random Testing Procedures

a. Frequency. The frequency of testing will be determined by Assistant for Administration, Office of the Under Secretary of the Navy (Policy), Chief of Naval Operations, Chief of Naval Research, and Commandant of the Marine Corps, 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. SECNAV reserves the right to increase or decrease the frequency of testing based on DON's mission needs, availability of resources, and experience in the program consistent with the duty to achieve a drug-free workplace per reference (d).

### b. Procedures Prior to Collection

(1) Authorization and Selection. The activity head/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, which will remain confidential. The selection may be generated by computer or other means which will ensure randomness, such as the method described in Appendix D of reference (c). All information will be strictly guarded to ensure that employees do not know in advance that random testing will be conducted.

(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 in Appendix D.

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

#### (d) Employee Notification:

1. 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.

2. 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. The employee will be provided with a checklist found in Appendix D.

3. The employee will be instructed to take an appropriate photo identification to the test site.

4. 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, or continuation of pay.

(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 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 reference (c).

e. Standard Collection Procedures. Appendix D of reference (c) contains the procedures to be followed to ensure a strict chain of custody of the specimen.

## 9. Voluntary Testing

a. To demonstrate a commitment to the DON 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 TDP's and will be subject to the same conditions and procedures for random testing.

b. Employees wishing to volunteer will provide a written statement to the DPC stating their name, social security number, position title, series, and grade, and their desire to voluntarily submit to the random testing program. Employees may withdraw from the random program at any time, even after being notified of an impending random drug test.

c. Employees will not be coerced or required to participate in voluntary programs established under Section 3(b) of reference (d). Participation or non-participation in these programs will neither advantage or disadvantage employees.

## 10. Reasonable Suspicion Testing

### a. Determination of Reasonable Suspicion

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

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

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

(b) A pattern of abnormal conduct or erratic behavior.

(c) 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.

(d) Information provided either by reliable and credible sources or independently corroborated.

(e) Newly discovered evidence that the employee has tampered with a previous drug test.

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

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

(4) The supervisor or management official must provide a separate statement describing all relevant circumstances which formed the basis for the decision to conduct reasonable suspicion drug testing.

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. Appendices H and I of reference (c) will be forwarded to the DPC. 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 shown at Appendix G of reference (c). The activity/command must specify the drug or drugs for which the employee is being tested on the Urine Sample Custody Document provided in Appendix D of reference (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. 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 following paragraph 7j(1) of reference (c).

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.

(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) The employee will provide the urine sample under direct observation. Observers will be of the same gender.

(2) Direct observation collection procedures must be followed to ensure strict chain of custody and specimen control as provided in Appendix D of reference (c). Observers will be of the same gender.

11. Follow-Up Testing

a. Description. All DON 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, the 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 completion of any initial or inpatient 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 of reference (c).

f. Collection Procedures

(1) The employee will be directed to provide the urine sample under direct observation.

(2) Direct observation collection procedures must be followed to ensure strict chain of custody and specimen control as provided in Appendix D of reference (c).

## 12. 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 or the individual currently occupies a DON TDP. These selections may include those made under merit promotion procedures and any other personnel action resulting in the permanent placement of an individual in a TDP; i.e., reassignment, promotion, or change to lower grade action. Activities and commands are not authorized to test other than TDP applicants.

### b. Vacancy Announcements

(1) All vacancy announcements for TDP's will contain the following statement:

"Any applicant tentatively selected for this position will be required to submit to urinalysis for illegal use of drugs prior to a final selection. 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 DON employees may be subject to drug testing under certain circumstances such as reasonable suspicion and after an accident. All individuals will have an opportunity to submit medical documentation that may support the legitimate use of a specific drug to an MRO. An applicant's test results will be provided to the selecting official and servicing Human Resources Office before a final selection is made. A verified positive drug test result of a current DON 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. HRO will notify the DPC as soon as possible when a drug test needs to be scheduled for a tentative selectee. 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 HRO, who 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 HRO of the date, time, and place of the test. 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 Federal 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 of reference (c).

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 in Appendix D of reference (c).

f. Test Results. The MRO will notify the DPC of the test results and the DPC will inform HRO. 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) DON Employee Applicant

(a) The DPC will notify CP 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 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) 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 DON 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, HRO will be notified and will object to hiring the applicant on the basis of failure to meet a condition of employment and lack of personal characteristics necessary for employment in this TDP.

(2) Other Applicants

(a) The DPC will notify 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 by the activity/command or any other activity/command serviced by the same personnel office for a period 6 months from the date the positive test was verified by the MRO.

(c) If the applicant was tentatively selected from an OPM certificate, HRO will be notified and will object to hiring the applicant on the basis of failure to meet a condition of

employment and lack of personal characteristics necessary for employment in the DON.

(3) Under 42 U.S.C. 290ee-1(b)(1), "no 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." DON 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.

### 13. Review of Drug Test Results

a. Equipment and Methods. It is imperative that methods and equipment used to test for abuse of drugs yield the best results when the most reliable are used. Therefore, with consideration for efficient testing, expense of equipment, budget constraints, and other relevant matters, the employer agrees to use the most reliable methods and equipment available, but at a minimum, an approved screening lab, per DHHS guidelines.

b. Receipt of Results. The Navy Drug Screening Laboratory 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.

#### c. 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 time frame agreed upon by the activity/command. The purpose of the review is to determine if the positive result is evidence of illegal drug use. It will not address issues of innocent ingestion, as this is a matter to be considered by the appropriate management/supervisory official.

(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 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. See Appendix C of reference (c).

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

d. Notification

(1) Negative Drug Test Results. Per reference (c), the MRO will forward all negative drug test results to the DPC who will ensure that employees are informed of their results. See reference (c) for information on applicant test results. A copy of the MRO report will be provided.

(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 time frame 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 reference (c) for information on notification procedures regarding applicant test results.

14. 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.

(a) Positive Actions

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

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

(2) Disciplinary/Adverse Action

(a) The results of a confirmed positive drug test considered to be adverse to the employee may result in a number of management decisions or options. These may include temporarily assigning such employee(s) to other duties, placing

employee(s) on administrative leave, or placing employee(s) in some other appropriate status.

(b) Activities/commands will initiate disciplinary action against any employee for the first instance of illegal drug use, except under the circumstances in reference (c). The activity/command will initiate action to remove an employee:

1. Who refuses to obtain counseling or rehabilitation through CEAP as required by reference (d) after having been found to use illegal drugs.

2. For a second finding of illegal drug use.

(c) An employee who fails to report to the designated collection site for testing will be subject to the same range of discipline as a verified positive test result for illegal drug use. See reference (c).

(d) An employee who refuses to be tested when it's required will be subject to the same range of discipline as a verified positive test result. See reference (c).

(e) Disciplinary action must be taken consistent with the provisions of reference (f) and the requirements of any applicable collective bargaining agreement.

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

b. Reasonable Accommodation Requirements. An employee found to use illegal drugs will be referred to the CEAP Administrator. 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. To be entitled to reasonable accommodation, the employee must establish that he or she suffers from a handicapping condition. Further, even if the employee establishes that he or she is handicapped by a legitimate drug addiction, reasonable accommodation is only required if the employee is an "otherwise qualified" handicapped individual.

## 15. 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 3 years unless otherwise covered by another record-keeping system such as the Employee Medical File.

(1) DPC. In order to efficiently implement this instruction 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 actions records resulting from employee verified positive test results will be maintained in that system of records by 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 instruction. After an employee referral, the CEAP Administrator 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. DON will maintain the records of its DFWP consistent with the 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 certification, review or revocation of certification proceedings, as referred to in Section 503 of reference (e). In the event of a proposed adverse action, the union may be furnished copies of pertinent documents upon written release by the affected employee.

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

(1) Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered.

(2) Employees tested.

(3) Employees with verified positive test results.

(4) Applicants tested.

(5) Applicants with verified positive test results.

(6) Voluntary drug counseling referrals.

(7) Involuntary drug counseling referrals.

(8) Disciplinary actions, terminations, employee applicant non-selection, or denials of employment offers from a verified positive drug test result.

(9) Disciplinary actions, terminations, or denials of employment offers resulting from refusal to submit to testing.

(10) Disciplinary actions, terminations, or denials of employment offers resulting from alteration of specimens.

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

(12) Employees who successfully complete rehabilitation under CEAP.

This data, along with other pertinent information, will be compiled for inclusion in the DON annual report to the Congress required by Section 503(f). The union will be furnished with a copy of this report.

/s/  
R. R. PENFOLD

Distribution:  
NASWHIDBEYINST 5215.2BB  
Lists A (less 13,14),  
B (less 7,10), D,  
E3,8,21-23, F1 Case II

APPENDIX A

DEFINITIONS

1. Access. As defined in OPNAVINST 5510.1H, "the ability and opportunity to obtain knowledge or possession of classified information. An individual may have access to classified information merely by being in a place where such information is kept, if the security measures which are in effect do not prevent him or her from gaining knowledge or possession of classified information.

2. Applicant. Any individual who applies for or is otherwise being considered for placement in a Testing Designated Position (TDP).

3. Blind Performance Test Specimens. An audit of the accuracy of the screening process and check on the chain of custody of urine specimens. This is accomplished by submitting prepared urine samples (blind samples) to the Navy Drug Screening Laboratory (NDSL) along with employee urine samples collected by the activity. These blind samples must meet the specifications of the Department of Health and Human Services (DHHS) guidelines and requirements.

4. Chain of Custody. Procedures to ensure the integrity of each urine sample by tracking its handling and storage from point of collection to final disposition.

5. Collection Site Coordinator. An individual assigned by the Drug Program Coordinator to a collection site who has full responsibility for coordinating all collection activities at that site including instructing and assisting individuals being tested, determining the temperature of the urine specimen, etc.

6. Confirmatory Test. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

7. Drugs Tested. These are cocaine, cannabis (marijuana), opiates, amphetamines and phencyclidine (PCP). When conducting reasonable suspicion, accident or unsafe practice testing, the urine may be tested for any drug listed in Schedule I or II of the Controlled Substances Act (CSA).

8. Employee in a Sensitive Position. For purposes of this instruction, this term means:

a. An employee in a position designated by SECNAV as Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual; or an employee in a position designated by SECNAV as sensitive, per Executive Order 10450, as amended.

b. An employee granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by SECNAV under Section 4 of Executive Order 12356.

c. Individuals serving under Presidential appointments.

d. Law enforcement officers as defined in 5 U.S.C. 8331-(20).

e. Employees in other positions that SECNAV determines 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.

To meet this definition, the sensitive position must be a TDP.

9. Illegal Drugs. Controlled substances included in Schedule I or II of the CSA, as defined by 21 U.S.C. 802 (6), the possession of which is unlawful under 21 U.S.C., Chapter 13, or any others subsequently approved by DHHS for testing.

10. Illegal Use of Drugs/Illegal Drug Use. These two terms are used interchangeably in this chapter to refer to the use of an illegal drug or a drug for which the individual does not have a valid prescription, or other use not authorized by law.

11. Initial Test (also known as Screening Test. An immunoassay screen to eliminate "negative" urine specimens from further consideration.

12. Medical Review Officer. A licensed physician responsible for receiving laboratory results generated by the Drug-Free Workplace Program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history, and any other relevant biomedical information.

13. Observer. An individual assigned responsibility for accompanying the person being tested while he or she is providing the specimen.

14. Permanent Record Book. A permanently bound record book which must be maintained by the DPC to record data on each specimen provided.

15. Random Testing. A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform unannounced testing of testing designated employees working in a specific geographic area, organizational unit, or position; or randomly selected employees based on a neutral criterion, such as social security number.

16. Safe Harbor. A provision of the DFWP which gives an employee a one-time opportunity to voluntarily identify himself or herself as a user of illegal drugs, willing to undertake counseling and, as necessary, rehabilitation. "Safe harbor" insulates the employee from discipline for these admitted but

otherwise unknown past acts of illegal drug use. It does not protect the employee from discipline for admitting to drug trafficking or other drug-related offenses.

17. Testing Designated Positions. Positions within the Department of the Navy which have been determined to meet the criteria for random drug testing.

18. Urine Sample/Urine Specimen. The employer and the employee agree that the testing referred to by the term "drug test" usually means urinalysis. The employer agrees that it is not referring to blood analysis at this time. These two terms are used interchangeably in this chapter to refer to the urine collected from an individual which will be tested for evidence of illegal drug use.

19. Verified Positive Test Result. A test result that has been screened positive by a Food and Drug Administration-approved immunoassay test, confirmed by a gas chromatography/mass spectrometry assay (or other confirmatory tests approved by DHHS), and determined by the MRO to have no legitimate medical reason for the drug's presence in the employee's system.

APPENDIX B

PROCEDURES FOR CHANGING THE

DEPARTMENT OF THE NAVY TESTING DESIGNATED POSITION LIST

1. Activities/commands may request additions to or deletions from the Department of the Navy Testing Designated Position (TDP) list via their Echelon I command (Assistant for Administration, Office of the Under Secretary of the Navy, Chief of Naval Operations, Commandant of the Marine Corps, and Chief of Naval Research).

2. These requests must have the endorsement of the Echelon I command and be forwarded to the Director, Office of Civilian Personnel Management, (ATTN: OCPM 312), 900 N. Quincy Street, Arlington, VA 22203-1998. A request must contain:

a. The exact title, pay plan, and series of each position;

b. The job description and justification which warrant including the position on the Department of the Navy TDP list (Appendix E provides the type of information required); or

c. The reasons why an activity/command wants the position deleted from the Department of the Navy TDP list, in sufficient detail to support the activity/command request.

3. If the Director, OCPM determines the requested addition meets the criteria and justification for inclusion on the TDP list, the request will be forwarded to the Department of Justice (DOJ) for approval/denial.

a. If approved by DOJ, the position will be added to the list and all Echelon I commands will be notified. Positions with the same title and series may be added to an activity/command TDP list as soon as the activity/command completes the position evaluation process required in Appendix E and issues the incumbent of the position a 30-day individual notice of the impending random testing.

b. If rejected by DOJ, the position cannot be added to the list and all Echelon I commands will be notified.

4. If the Director, OCPM determines that the requested addition does not meet the criteria and justification, the request will not be forwarded to DOJ and all Echelon I commands will be notified.

5. The Director, OCPM will evaluate requests for deletions and notify all Echelon I commands of the decision. Where a deletion is approved, positions with the same title and series must be removed from every activity/command TDP and thereafter, incumbents of positions cannot be tested.

6. AFGE Local 1513 will be notified of all changes in the TDP. This bargaining unit notification will include name of employee, title, series, grade, location, and organizational code. The list will include vacant positions.

CHAPTER 1

GENERAL INFORMATION

SECTION 1. Determining the Department of the Navy Testing Designated Positions:

a. In determining which positions to identify as TDPs subject to random drug testing, DON used a two-step approach. First, certain positions were determined to meet the criteria under Executive Order 12564 for designation as TDPs without regard to the specific title and duties of the position. This category includes positions requiring a top secret clearance with access, positions in the Nuclear Weapons Personnel Reliability Program, Military Sealift Command Nuclear Weapon Personnel Reliability Program, Military Sealift Command Civilian Mariners, law enforcement officers as defined in 5 U.S.C. 8331 (20), positions in the Navy Drug Screening Laboratories, and all Presidential appointees.

b. A review was conducted of the job functions commonly associated with each classification series occupied by DON employees to determine whether these series met the criteria for testing under Executive Order 12564. DON has a wide range of missions in support of national defense, including the repair and overhaul of ships, airplanes, and weapons systems. Therefore, employees occupying positions with the same title and classification series perform varying duties in widely different work environments. This fact, coupled with the large DON civilian workforce, dictated that the decision to include or exclude a position from the TDP list must be made at the activity/command level. Therefore, rather than identify each individual position which would meet the criteria for designation as a TDP, DON reviewed the typical duties of all positions and identified positions which would involve functions related to public health and safety, protection of life and property, national security and other functions requiring a high degree of trust and confidence. These positions were placed on DON's TDP list.

SECTION 2. Testing Designated Position Changes. The identification of positions as TDP's is viewed as an ongoing process for DON, with the initial list first compiled for DON plan which was approved and certified to the U.S. Congress on 27 April 1988. Appendix B provides the procedures for requesting additions or deletions of the TDP list.

CHAPTER 2

TESTING DESIGNATED POSITION (TDP) LIST

SECTION 1. Automatic Testing Designated Positions. These positions are automatically included as a TDP without regard to the series, title, or functions because of special program requirements, characteristics, or position location. These TDP's may be included under more than one requirement or characteristic; i.e., a position requires a Top Secret Clearance with Access and is also in the Nuclear Weapon Personnel Reliability Program. The automatic TDP's are:

<u>CATEGORY</u>	<u>POSITION TITLE</u>	<u>SERIES</u>
Presidential Appointees	Various	EX-301
Top Secret Clearance with Access	Various	Various
Nuclear Weapon Personnel Reliability Program	Various	Various
Military Sealift Command Nuclear Weapon Personnel Reliability Program	Various	Various
Military Sealift Command Civilian Mariners	Various	Various
Navy Drug Screening Laboratory Employees	Various	Various

SECTION 2. Position or Job Function Testing Designated Positions. These positions are included on the TDP list because of the functions of the positions. These TDPs are:

<u>CATEGORY</u>	<u>POSITION TITLE</u>	<u>SERIES</u>
Protection of Life Property	Firefighter	GS-0081
	Firefighter (Structural)	GS-0081
	Firefighter (Airfield)	GS-0081
	Air Traffic Control Specialist	GS-2152
	Air Traffic Control Specialist (Station)	GS-2152
	Air Traffic Control Specialist (Terminal)	GS-2152
	Law Enforcement	Detective
	Police Officer	GS-0083
	Security Guard	GS-0085
	Criminal Investigator	GS-1811

If incumbent carries a weapon

Operation of Transportation Equip.	Airplane Pilot	GS-2181
	Supervisory Airplane Pilot	GS-2181
	Flight Instructor (Helo)	GS-2181

NASWHIDBEYINST 12792.1  
29 Nov 1993

Flight Test Pilot	GS-2181
Test Pilot	GS-2181
Flight Instructor (Pilot/ Navigator/Flight Engineer)	GS-2181
Motor Vehicle Operator	WG-5703
Small Craft Operator	WG-5723
Locomotive Engineer	WG-5737
Pilot/Chief Ship Pilot	WM-9904 (9896)

CHAPTER 3

STEPS TO FORMULATING THE  
ACTIVITY/COMMAND TESTING DESIGNATED POSITION (TDP) POOL

SECTION 1. Purpose. This section provides a step-by-step approach for use in identifying TDPs at the activity/command level. There are two general bases for including a position in the activity pool of TDP's. The first is "automatic" inclusion for a wide variety of positions based upon certain position requirements; e.g., a Top Secret Clearance with Access. The second basis for designation requires an evaluation of the actual duties of the position to determine whether or not it meets the criteria specified.

SECTION 2. Automatic Designation Due to Position Requirements or Characteristics.

a. Positions which have certain characteristics or are covered by certain special programs are automatically included in the activity/command pool of TDP's regardless of their specific title or series. The description and justification for each of the automatic categories is provided in reference (c).

b. To determine the automatically covered TDPs, follow these steps:

(1) Identify any presidential appointees employed or serviced by the activity/command.

(2) Determine which positions in the activity/command or serviced activity/command require a Top Secret Clearance with access.

(3) Determine if the activity/command or serviced activity/command has any position covered by the Nuclear Weapons Personnel Reliability Program as described in OPNAVINST 5510.162, for the Department of the Navy, or Marine Corps Order 5510.7F.

(4) Determine if the activity employs or services any shipboard Civilian Mariners or Personnel Reliability Program positions working for the Military Sealift Command.

(5) All positions located in one of the Navy Drug Screening Laboratories will be designated as TDP's.

c. Include positions covered under more than one of the above basis, e.g., a position requiring a Top Secret Clearance with access and covered by the Personnel Reliability Program.

d. All of these positions will form the activity/command TDP pool.

e. Because any position identified by the activity/command under this automatic coverage is included in the TDP pool regardless of title, etc., no titles have been listed under the descriptions and justifications provided on pages 1 through 6 in Attachment 1 to reference (c). This portion of DON TDP list will be maintained through the Naval Civilian Personnel Data System.

SECTION 3. Designation Based on Position Duties

a. The second phase in the process of TDP designation is to identify those positions which are selected based upon specific duties and functions.

b. To determine these TDP's, follow these steps:

(1) First, identify all activity/command positions which have the same title and series as listed in Section 2 of Chapter 2. Eliminate all positions which do not match the title and series. The position title must match exactly (e.g., an Intelligence Clerk (Typing), GS-134, will not become a TDP because the authorized position title appearing for that series is Intelligence Clerk, GS-134).

(2) Next, compare job descriptions and justification for those positions matching the title and series in step 1, above. The description and justification are provided on pages 7 through 46 in Attachment 1 to Appendix E, reference (c), which includes an index to assist in locating the descriptions.

c. If the duties of the position meet the job functions described and the justification criteria for designation as a TDP, these positions must be included in the activity/command TDP pool.

d. If the duties of the position do not match the functional description and justification, the position cannot be included in the activity TDP. See Appendix B for the procedures to request additions and deletions of the DON TDP list.

APPENDIX C  
SAMPLE NOTICE TO EMPLOYEE SUBJECT TO  
REASONABLE SUSPICION DRUG TESTING

MEMORANDUM

From: (Supervisor or Management Official)  
To:

Subj: NOTICE OF REASONABLE SUSPICION TESTING FOR ILLEGAL DRUG  
USE

1. The Department of the Navy has initiated a comprehensive program to achieve the goal of a drug-free workplace. This program is set forth in SECNAVINST 12792.3, OCPMINST 12792.3 and NASWHIDBEYINST 12000.1, Chapter 792.3.

2. It has been determined that sufficient grounds exist to authorize collection of a urine sample from you on the basis of reasonable suspicion. This drug test is required since management has formed a reasonable suspicion that you are using illegal drugs. Collection procedures under reasonable suspicion testing will require you to provide a specimen under direct observation.

(NOTE: The supervisor or management official must provide a separate statement describing all relevant circumstances which formed the basis for the decision to conduct reasonable suspicion drug testing.)

3. Drug testing for DON civilian employees is performed through urinalysis done by a Navy Drug Screening Laboratory (NDSL). The testing methodology complies with guidelines issued by the Department of Health and Human Services and reflects the scientific and technical procedures necessary to assure that the results are highly reliable and accurate. These procedures will include an initial screening of the urine sample you provide for the presence of illegal drugs and, if appropriate, a confirmation test by gas chromatography/mass spectrometry.

4. To assure that the sample collected from you is not accidentally confused with any other sample, strict procedures will be used when collecting and transferring the sample. These procedures are known as the chain of custody. The test results from your sample will be handled with maximum respect for individual confidentiality consistent with safety and security. A confirmed positive test result reported by the laboratory will be reviewed by a Medical Review Officer (MRO) before a determination is made that you have used illegal drugs. MRO's are licensed physicians with experience in substance abuse disorders. You will be given an opportunity to submit medical documentation to the MRO to establish your legitimate use of the specific drug(s) detected by testing before any administrative action is taken.

5. If it is determined that you are using illegal drugs by means of this drug test or any other means, you will be referred to the NAS Whidbey Island Civilian Employee Assistance Program (CEAP).

Through this program, you will receive counseling and learn about the availability of sources of treatment and rehabilitation assistance. Information concerning the CEAP may be obtained from your immediate supervisor or by contacting the CEAP Administrator, Human Resources Office, Building 12, 257-3366.

6. If you are employed in a sensitive position, as defined in reference (c), and illegal drug use is detected, you will be immediately taken out of your position by detail, reassignment, or other personnel action. You may be returned to your sensitive position by (activity head/commander) as part of your successful participation in a rehabilitation or counseling program. In addition, disciplinary action up to and including removal from the federal service will be initiated. A disciplinary action will be initiated if you refuse to submit to this drug test. A removal action will be initiated if you refuse to obtain counseling or rehabilitation through the CEAP after being found to use illegal drugs or for a second finding of illegal use.

7. If you have other questions after providing a urine sample, please contact the Drug Program Coordinator at 257-2406.

APPENDIX D

DRUG TESTING PROGRAM

CHECKLIST FOR SUPERVISORS

On the actual date that random drug testing is scheduled to be conducted, your Drug Program Coordinator (DPC) or Collection Site Coordinator (CSC) will notify you which of your employees have been selected for drug testing and the proposed schedule. This information is confidential. The following procedures should be followed in notifying employees of the collection process.

\_\_\_\_\_ Approximately 15-30 minutes prior to the actual collection, inform the employee verbally and privately that he or she has been identified through a random selection process for drug testing by urinalysis. Clearly inform the employee of the time and exact location to report for testing and instruct him or her to take photo identification.

\_\_\_\_\_ Employees normally will be scheduled to report to the collection site at 15-minute intervals. Coordinate any scheduling changes necessary to maintain work operations closely with your supervisor and the DPC/CSC. Do not make any unilateral changes.

\_\_\_\_\_ Advise employees to be prepared to provide a urine specimen at the scheduled collection time.

\_\_\_\_\_ You will provide the Checklist for Employees, which offers helpful information about the collection process, to scheduled employees.

\_\_\_\_\_ When an employee selected for random testing is unavailable for legitimate reasons (e.g., working a different shift, travel, leave), you must inform the DPC/CSC. Once an employee has been notified of testing, any leave requests submitted for the same time as the test should be carefully scrutinized.

\_\_\_\_\_ Employee must be notified of his/her right to union representation and all requests must be in writing. This right includes, but is not limited to, any meetings (or preparation for meetings) before, during, or after the test is conducted, subject to limitations imposed by law, rule, or regulation. This representation will be on reasonable official time.

\_\_\_\_\_ Immediately report any problems encountered during employee notification to the DPC/CSC. Employees who fail to cooperate with the collection procedures will be subject to disciplinary action consistent with Department of the Navy regulations. (You may obtain guidance from your servicing Labor and Employee Relations Officer at 257-8756.)

\_\_\_\_\_ If you have any questions or concerns, you should share them with your DPC.

DRUG TESTING PROGRAM CHECKLIST FOR EMPLOYEES

Please take a few minutes to read the following information, which describes your responsibilities in the collection process. You will not be required to sign a consent form. You will be required to verify your social security number and specimen only.

- \_\_\_\_\_ Present required photo identification to the collector.
- \_\_\_\_\_ When instructed by the collector, provide the information required in the Permanent Record Book.
- \_\_\_\_\_ Remove any unnecessary outer garments (e.g., coat, jacket, coveralls). All personal belongings (e.g., purse, briefcase) must remain with your outer garment(s). You may retain your wallet.
- \_\_\_\_\_ When instructed by the collector, wash and dry your hands.
- \_\_\_\_\_ You may provide the specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. It will be necessary for you to provide a specimen of at least 60 milliliters. If you are unable to provide a sufficient quantity of urine, you will be asked to drink sufficient fluids to facilitate urination. You will be required to remain at the collection site in the presence of the Drug Program Coordinator (DPC)/Collection Site Coordinator (CSC) until the sample is provided.
- \_\_\_\_\_ Should your urinalysis test be on the basis of reasonable suspicion or a follow-up, an observer of the same gender will be present.
- \_\_\_\_\_ You should provide information on any prescription and over-the-counter drugs you are presently taking.
- \_\_\_\_\_ You should observe the entire collection procedure.
- \_\_\_\_\_ You have the right to union representation at any stage concerning the drug test, including but not limited to, any meetings (or preparation for meetings) before, during, or after the test is conducted, subject to limitations imposed by law, rule, or regulation. This representation will be on reasonable official time.
- \_\_\_\_\_ When instructed, read and sign the statement in the Permanent Record Book that certifies that this is your urine specimen.
- \_\_\_\_\_ If you have any questions or concerns, share them with your supervisor, the DPC or CSC.

APPENDIX E

SAMPLE LETTER OF DRUG TESTING

12792  
Ser

From: Commanding Officer, Naval Air Station Whidbey Island  
To:

Subj: NOTICE OF RANDOM DRUG TESTING UNDER THE DEPARTMENT OF THE  
NAVY DRUG-FREE WORKPLACE PROGRAM

1. You were advised by a General Notice from the Secretary of the Navy, dated 6 August 1988, that the Department of the Navy was implementing drug testing as part of the Drug-Free Workplace Program. I have determined that your position meets the criteria for random drug testing under the Department of the Navy Drug-Free Workplace Program. Performance of the duties of your position is sufficiently critical to this activity that screening to detect the presence of drugs is warranted as a requirement of your position. For your continued employment in this position, it is mandatory that you refrain from the use of illegal drugs and, when directed, submit to drug testing.

2. No sooner than 30 days from receipt of this notice, you may be subject to random drug testing on an unannounced basis for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). You will receive specific instructions concerning when and where the test will be conducted immediately prior to the test. You will be allowed individual privacy while providing the urine specimen unless there is reason to believe the specimen will be altered. To ensure the accuracy of the test result, the collection, handling, and testing of the urine specimen will be conducted under strict chain of custody procedures established by the Department of Health and Human Services Guidelines for Federal Workplace Drug Testing Programs and described in the Office of Civilian Personnel Instruction 12792.3, Department of the Navy Drug-Free Workplace Program. The procedures used to test the urine specimens are very accurate and tightly monitored to ensure reliable results. The test results will be handled with maximum respect for individual confidentiality. In the event your specimen tests positive, you will be given an opportunity to submit medical documentation to a designated Medical Review Officer to establish your legitimate use of the specific drug(s) before any administrative action will be taken.

3. If you refuse to furnish a urine specimen or fail to report for testing as directed, you will be subject to the same range of discipline as a verified positive test result for illegal drug use as failure to meet a condition of employment. If, by any means, illegal drug use is detected, you will be subject to the following two administrative actions mandated by Executive Order 12564.

a. You will immediately be taken out of your sensitive position through reassignment, detail, or other personnel action to ensure that you do not occupy a sensitive position. You may

be restored to your sensitive position as part of your successful participation in a rehabilitation or counseling program.

b. You will also be referred to the Civilian Employee Assistance Program (CEAP) as required by the Executive Order.

In addition, disciplinary action up to and including removal from the federal service will be initiated. As required in the Executive Order, a removal action will be initiated if you refuse to obtain counseling or rehabilitation through the CEAP after being found to use illegal drugs or for a second finding of illegal drug use.

4. If you believe you have a drug problem, you are encouraged to seek counseling and/or referral services by contacting the CEAP, Marjorie Holsather, building 12, 257-3366. If you voluntarily identify yourself to your supervisor or other higher level as a user of illegal drugs prior to being so identified through other means, such as drug testing, seek counselling and/or rehabilitation assistance, and thereafter refrain from using illegal drugs, you will not be subject to discipline for your prior drug use. This immunity from discipline under these circumstances is referred to as "safe harbor." It is important to note that once you are informed of an impending drug test, you are no longer eligible for "safe harbor." Further, if you are arrested or convicted of a drug-related offense, you will not be eligible for "safe harbor" from discipline for those actions.

5. If you believe your position has been wrongly designated as a Testing Designated Position (TDP), you may request a review of the determination. Such a request must be submitted in writing to Commanding Officer, Naval Air Station, Whidbey Island, Oak Harbor, WA 98278-5000 within 15 days of receipt of this notice. It should state the reasons why you believe your position should not be TDP and include all other relevant information. Final decision is not subject to further review, nor is it grievable under the administrative grievance procedure. If you are a member of a bargaining unit, you must seek review of your position designation through your negotiated grievance procedure, unless the agreement specifically excludes such decision from the negotiated procedure.

6. As stated in the General Notice announcing the Program, you, as well as all Department of the Navy employees, may also be subject to testing due to reasonable suspicion and as part of or follow-up to a rehabilitation and/or counseling program from illegal drug use. When conducting reasonable suspicion, the Department of the Navy may test for any drug listed in Schedule I or II of the Controlled Substances Act, not just the five previously identified in paragraph 2.

(Signature of Commanding Officer)