

1/29/96

Post-meeting

I. INTRODUCTION

A. Background

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all federal employees to refrain from using illegal drugs on or off-duty. In a letter to all executive branch employees dated October 4, 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all federal workers.

The Executive Order recognized that illegal drug use is seriously impairing a portion of the national work force, resulting in the loss of billions of dollars each year. As the largest employer in the nation, the federal government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The Assassination Records Review Board ("ARRB") is concerned with the well-being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity. The intent of the policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is, quite simply, incompatible with federal service.

On July 11, 1987, Congress passed legislation affecting

implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301 note (1987), (hereafter, the "Act"), in an attempt to establish uniformity among federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program.

The purpose of the ARRB Drug-Free Workplace Plan is to set forth objectives, policies, procedures, and implementation guidelines, to achieve a drug-free Federal workplace, consistent with the Executive Order and Section 503 of the Act.

B. Statement of Policy

The ARRB, as a result of its records processing responsibilities, as well as the sensitive nature of its work, has a compelling obligation to eliminate illegal drug use from its workplace.

The Assassination Records Review Board is an independent federal agency created to oversee the identification and release of records related to the assassination of President John F. Kennedy. The ARRB board members and staff hold national security classification clearances which facilitate the review of records included in the designation "national security information." Drug use among members of the Board or staff would tend to compromise the integrity of ARRB, its ability to maintain the necessary secure environment and would undermine the ARRB's contribution to engendering the public trust.

The mark of a successful drug-free workplace program also depends on how well the ARRB can inform its employees of the hazards of drug use, and on how much assistance it can provide drug

users. Equally important is the assurance to employees that personal dignity and privacy will be respected in reaching the ARRB goal of a drug-free workplace. Therefore, this plan includes policies and procedures for: (1) employee assistance; (2) supervisory training; (3) employee education; and (4) identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

C. Nature, Frequency, and Type of Drug Testing to be Instituted

Section 503 of the Act requires the ARRB Plan to specify the nature, frequency, and type of drug testing to be instituted. The ARRB Plan includes the following types of drug testing: (1) Applicant testing; (2) Random testing of those employees in sensitive positions that have been designated as testing designated positions; (3) Reasonable suspicion testing; (4) Accident or unsafe practice testing; (5) Voluntary testing, and (6) Testing as part of or as a follow-up to counseling or rehabilitation.

The frequency of testing for random testing, voluntary testing, and follow-up testing is specified at Appendix A, Section XII(B), and Section XII(C), respectively. The Secretary reserves the right to increase or decrease the frequency of testing based on the Agency's mission, need, availability of resources, and experience in the program, consistent with the duty to achieve a drug-free workplace under the Executive Order.

D. Drugs for Which Individuals Are Tested

Section 503 of the Act requires the ARRB to specify the drugs for which individuals shall be tested. The ARRB will test for the following drugs: Marijuana, Cocaine, Amphetamines, Opiates and Phencyclidine (PCP).

E. Scope

Upon certification by the Department of Health and Human Services in accordance with Section 503 of the Act, this order shall be effective immediately for the entire ARRB staff.

F. Authorities

1. Executive Order 12564;
2. Executive Order 10450;
3. Executive Order 12356;
4. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. {7301 note (1987)};
5. Mandatory Guidelines for Federal Drug Testing Programs, which includes Scientific and Technical

Requirements and Certification of Laboratories Engaged in Urine Drug Testing, 53 F. Reg. 11970 (1988) as revised (1994);

6. *Civil Service Reform Act of 1978, Pub. L. 95-454;*
7. *Sections 523 and 527 of the Public Health Service Act and implementing regulations at 42 CFR Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records;*
8. *The Privacy Act of 1974 (5 U.S.C. §552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain;*
9. *49 CFR Part 10, implementing the Privacy Act of 1974 within the ARRB;*
10. *Federal Employees Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570;*
11. *[Add any relevant Department orders, including appropriate personnel orders.]*

II. DEFINITIONS

- A. *Applicant* means any individual tentatively selected--
1. For employment with the ARRB; or
 2. For a TDP, and who has not, immediately prior to the selection, been subject to random testing.
- B. *Employee Assistance Program (EAP)* means the U.S. Public Health Service, Division of Federal Occupational Health-based counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.
- C. *Employee Assistance Program Administrator* means the individual responsible for ensuring the development, implementation and review of the agency EAP.
- D. *Employee Assistance Program Coordinator* means the individual designated by the EAP Administrator to be responsible for implementing and operating the EAP within the ARRB component assigned to the coordinator, by providing counseling, treatment, and education services to employees and supervisors regarding the EAP.
- E. *Medical Review Officer* means the individual responsible for

receiving laboratory results generated from the ARRB Drug-Free Workplace Program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

F. *Illegal Drugs* means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

G. *Random Testing* means a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs, and may either be:

1. Uniform-unannounced testing of testing designated employees occupying a specified area, element or position;
or

2. A statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

H. *Employees in Sensitive Positions* mean:

1. Employees in positions designated by the Executive Director as Special Sensitive, Critical Sensitive, or

Noncritical-Sensitive or employees in positions designated by the Executive Director as sensitive in accordance with Executive Order No. 10450, as amended;

2. *Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the Executive Director under Section 4 of Executive Order No. 12356;*
 3. *Individuals serving under Presidential appointments;*
 4. *Law enforcement officers as defined in 5 U.S.C. §§ 8331(20) and 8401(17); or*
 5. *Other positions that the Executive Director 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.*
- I. **Supervisor** means an employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgement. 5 U.S.C. §7103 (a)(10).
- J. **Testing Designated Positions (TDPs)** means employment positions

within the ARRB which have been designated for random testing under Section IX(B) of this plan.

- K. **Verified Positive Test Result** means a test result that was positive on an initial FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by HHS), and reviewed and verified by the Medical Review Officer in accordance with this Plan and the HHS Guidelines.

III. EMPLOYEE ASSISTANCE PROGRAMS

A. **Function**

The ARRB EAP plays an important role in preventing and resolving employee drug use by: demonstrating the ARRB's commitment to eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however, shall not be involved in the collection of urine samples or the initial reporting of test results. Specifically, the EAP shall--

1. Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been

confirmed positive, and monitor the employees' progress through treatment and rehabilitation;

2. Provide needed education and training to all levels of the ARRB on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues;
3. Ensure that confidentiality of test results and related medical treatment and rehabilitation records is maintained in accordance with Section XIV.

B. Referral and Availability

Any employee found to be using drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to ARRB employees, but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems.

In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to

completion of the program. The decision of the EAP Administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor failed to consider one or more of the factors in Section VI(D)(5) in making a referral shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

C. Leave Allowance

Employees shall be allowed up to one hour (or more as necessitated by travel time) of excused absence for each counseling session. Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

D. Records and Confidentiality

All EAP operations shall be confidential in accordance with Section XIV of the Plan relating to records and confidentiality.

E. Structure

The ARRB senior staff shall be responsible for oversight and implementation of the ARRB EAP, and will provide, with the support

of the Executive Director, high level direction and promotion of the EAP.

The ARRB's EAP will be administered under a contractual arrangement with the U.S. Public Health Service, Division of Federal Occupational Health, Employee Assistance Program.

IV. SUPERVISORY TRAINING

A. Objectives

As supervisors have a key role in establishing and monitoring a drug-free workplace, the ARRB shall provide training to assist supervisors and managers in recognizing and addressing illegal drug use by agency employees. The purpose of supervisory training is to understand--

1. Departmental policies relevant to work performance problems, drug use, and the ARRB EAP;
2. The responsibilities of offering EAP services;
3. How employee performance and behavioral changes should be recognized and documented;
4. The roles of the MRO, medical staff, supervisors, personnel, and EAP personnel;
5. The ways to use the ARRB EAP;

6. How the EAP is linked to the performance appraisal and the disciplinary process; and
7. The process of reintegrating employees into the workforce.

B. Implementation

The ARRB will contract with the Department of the Interior to provide testing services. The project coordinator, Department of the Interior shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the ARRB Drug-Free Workplace Plan.

C. Training Package

Supervisory training shall be required of all supervisors and may be presented as a separate course, or be included as part of an ongoing supervisory training program. Training shall be provided as soon as possible after a person assumes supervisory responsibility. Training courses should include--

1. Overall Departmental policy;
2. The prevalence of various employee problems with respect to drugs and alcohol;
3. The EAP approach to handling problems including the

supervisor's role and relationship to EAP;

4. *How to recognize employees with possible problems;*
5. *Documentation of employee performance or behavior;*
6. *Skills in confronting employees with possible problems;*
7. *Agency procedures for referring employees to EAP;*
8. *Disciplinary action, and removals from sensitive positions as required by Section 5(c) of the Executive Order;*
9. *Reintegration of employees into the workforce; and*
10. *Written materials which the supervisor can use at the work site.*

V. EMPLOYEE EDUCATION

A. Objectives

The EAP Administrator shall offer drug education to all ARRB employees. Drug education should include education and training to all levels of the ARRB on--

1. *Types and effects of drugs;*

2. *Symptoms of drug use, and the effects on performance and conduct;*
3. *The relationship of the EAP to the drug testing program; and*
4. *Other relevant treatment, rehabilitation, and confidentiality issues.*

B. Means of Education

Drug education activities may include:

1. *Distribution of written materials;*
2. *Videotapes;*
3. *Lunchtime employee forums; and*
4. *Employee drug awareness days.*

VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. Drug Program Coordinator

Each Agency shall have a Drug Program Coordinator (DPC)

assigned to carry out the purposes of this plan. The DPC shall be responsible for implementing, directing, administering, and managing the drug program within the Agency. The DPC shall serve as the principal contact with the laboratory and for collection activities in assuring the effective operation of the testing portion of the program. These functions will be provided by the Department of Interior under a contractual arrangement. In carrying out these responsibilities, the DPC shall, among other duties:

1. Arrange for all testing authorized under this order;
2. Insure that all employees subject to random testing receive individual notice as described in Section VII(B) of this Plan, prior to implementation of the program, and that such employees return a signed acknowledgment of receipt form;
3. Document, through written inspection reports, all results of laboratory inspections conducted;
4. Coordinate with and report to the Executive Director on DPC activities and findings that may affect the reliability or accuracy of laboratory results;
5. In coordination with the EAP Administrator, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation; and

6. *Coordinate all DPC duties in field offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.*

B. Employee Assistance Program Administrator

The EAP Administrator shall:

1. *Receive verified positive test results from the MRO.*
2. *Assume the lead role in the development, implementation, and evaluation of the EAP;*
3. *Supervise and designate the headquarters EAP Coordinator and counselors, and assist them in establishing field office EAPs; and*
4. *Advise ARRB components on the submission of annual statistical reports, and prepare consolidated reports on the ARRB's EAP activity.*

C. Employee Assistance Program Coordinator

The EAP Coordinator shall:

1. *Implement and operate the EAP within the ARRB component assigned to the coordinator;*

2. *Provide counseling and treatment services to all employees referred to the EAP by their supervisors or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;*
3. *Coordinate with the Executive Director, the MRO and supervisors, as appropriate;*
4. *Work with the DPC to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace;*
5. *Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;*
6. *Monitor the progress of referred employees during and after the rehabilitation period, and provide feedback to supervisors in accordance with 42 C.F.R. Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records;*
7. *Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;*
8. *Maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs, and include the following information on each such*

organization:

- a. Name, address, and phone number;
 - b. Types of services provided;
 - c. Hours of operation, including emergency hours;
 - d. The contact person's name and phone number;
 - e. Fee structure, including insurance coverage;
 - f. Client specialization; and
 - g. Other pertinent information; and
9. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience, certification and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.

D. Employee Assistance Counselors

The Employee Assistance Counselors shall--

1. *Serve as the initial point of contact for employees who ask or are referred for counseling;*
2. *Be familiar with all applicable law and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program;*
3. *Meet the qualifications as determined by the EAP Administrator and be trained in counseling employees in the occupational setting, and in identifying drug use;*
4. *Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and*
5. *In making referrals, consider the--*
 - a. *Nature and severity of the problem;*
 - b. *Location of the treatment;*
 - c. *Cost of the treatment;*
 - d. *Intensity of the treatment environment;*
 - e. *Availability of inpatient/outpatient care;*

- f. *Other special needs, such as transportation and child care; and*
- g. *The preferences of the employee.*

E. **Medical Review Officer** *Each agency shall have an MRO assigned to carry out the purposes of this Order. The MRO shall, among other duties:*

1. *Receive all laboratory test results;*
2. *Assure that an individual who has tested positive has been afforded an opportunity to discuss the test result in accordance with Section XIII(D) of this Plan;*
3. *Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the EAP Administrator, and the [appropriate official], including a positive drug test result form indicating that the positive result has been verified, together with all relevant documentation and a summary of findings;*
4. *Confirm with the appropriate personnel official whether an individual who has been tentatively selected for employment with the ARRB has obtained a verified positive test result;*
5. *Coordinate with and report to the Executive Director on all activities and findings on a regular basis;*

6. *Coordinate all DPC duties in field offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives.*

F. Supervisors

Supervisors will be trained to recognize and address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. Except as modified by the Executive Director to suit specific program responsibilities, first-line supervisors shall:

1. *Attend training sessions on illegal drug-use in the workplace;*
2. *Initiate a drug test based on reasonable suspicion as described in Section X;*
3. *Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use;*
4. *Initiate appropriate disciplinary action upon a finding of illegal drug use; and*

5. *In conjunction with personnel specialists, assist higher-level supervisors and the EAP Administrator in evaluating employee performance and or personnel problems that may be related to illegal drug use.*

A higher-level supervisor shall review and concur, in advance, with all tests ordered on the basis of a reasonable suspicion in accordance with Section X.

G. Implementation

At the direction of the Executive Director each Senior Staffperson shall implement the Drug-Free Workplace Plan within the agency and ensure that the Plan is efficiently and effectively accomplished in accordance with this order and all other applicable regulations.

H. Government Contractors

Wherever existing facilities are inadequate to implement this order, the Drug Program Coordinator, Department of the Interior shall:

1. *Act as Contracting Officer for the administration of all related contracts;*
2. *Ensure that contract laboratories chosen to perform the*

drug screening tests are duly certified according to sub-part C of the HHS Guidelines and that any other contracts to implement this Order conform to the technical specifications of the HHS Guidelines; and

3. Establish, by contract or with ARRB employees as deemed appropriate, the positions and specific responsibilities of the DPC and the MRO as required by the HHS Guidelines.

VII. NOTICE

A. General Notice

A general notice from the Executive Director announcing the testing program, as required by the Executive Order Section 4(a), will be provided to all employees no later than sixty (60) days prior to the implementation date of the plan. The notices shall be provided immediately upon completion of the congressional certification procedures pursuant to Section 503 of the Act, and shall explain:

1. The purpose of the Drug-Free Workplace Plan;
2. That the plan will include both voluntary and mandatory testing;
3. That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that their position

has been designated a TDP;

- 4. The availability and procedures necessary to obtain counseling and rehabilitation through the EAP;*
- 5. The circumstances under which testing may occur;*
- 6. That opportunity will be afforded to submit medical documentation of lawful use of an otherwise illegal drug;*
- 7. That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the MRO;*
- 8. That positive test results verified by the MRO may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal in any adverse personnel action;*
- 9. That all medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient.*

B. Individual Notice

In addition to the information provided in the general notice, an individual notice will be distributed to all employees in TDPs explaining:

1. That the employee's position has been designated a "testing designated position;"
2. That the employee will have the opportunity to voluntarily admit to being a user of illegal drugs and to receive counseling or rehabilitation,;
3. That the employee's position will be subject to random testing no sooner than thirty days following the notice.

C. Signed Acknowledgement

Each employee in a TDP shall be asked to acknowledge in writing that the employee has received and read the notice which states that the employee's position has been designated for random drug testing, and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal. If the employee refuses to sign the acknowledgement, the employee's supervisor shall note on the acknowledgement form that the employee received the notice. This acknowledgement, which is advisory only, shall be centrally collected for easy retrieval by the Agency Administrator. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise

affect the implementation of this order since the general sixty-day notice will previously have notified all agency employees of the requirement to be drug-free.

D. Administrative Relief

If an employee believes his or her position has been wrongly designated a TDP, that employee may file an administrative appeal to the Executive Director who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing, to Executive Director within 15 days of notification, setting forth all relevant information. The Executive Director shall review the appeal based upon the criteria applied in designating that employee's position as a TDP. The Executive Director's decision is final and is not subject to further administrative review.

VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

A. Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

1. Direct observation;
2. Evidence obtained from an arrest or criminal conviction;
3. A verified positive test result; or
4. An employee's voluntary admission.

B. Mandatory Administrative Actions

The ARRB shall refer an employee found to use illegal drugs to the EAP, and, if the employee occupies a sensitive position, immediately remove the employee from that position without regard to whether it is a TDP. At the discretion of the Executive Director, however, and as part of an EAP, an employee may return to duty in a sensitive position if the employee's return would not endanger public health or safety or national security.

C. Range of Consequences

Disciplinary action taken against an employee found to use illegal drugs may include the full range of disciplinary actions, including removal. The severity of the action chosen will depend on the circumstances of each case, and will be consistent with the Executive Order. The ARRB shall initiate disciplinary action against any employee found to use illegal drugs provided that such action is not required for an employee who voluntarily admits to illegal drug use, and obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.

Such disciplinary action, consistent with the requirements of any governing collective bargaining agreement and the Civil Service Reform Act and other statutes, ARRB orders, and regulations, may include any of the following measures but some disciplinary action must be initiated:

1. Reprimanding the employee in writing;
2. Placing the employee in an enforced leave status;
3. Suspending the employee for 14 days or less;
4. Suspending the employee for 15 days or more;
5. Suspending the employee until the employee successfully completes the EAP or until the ARRB determines that action other than suspension is more appropriate;
6. Removing the employee from service.
7. Reducing the employee in pay or grade.

D. Initiation of Mandatory Removal From Service

The ARRB shall initiate action to remove an employee for:

1. Refusing to obtain counseling or rehabilitation through an EAP as required by the Executive Order after having been found to use illegal drugs;
2. Not refraining from illegal drug use after a first finding of such use.

All letters to propose and decide on a separation action should be

worked out in consultation with the Agency Administrator.

E. Refusal to Take Drug Test When Required

An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal. No applicant who refuses to be tested shall be extended an offer of employment. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral

Under Executive Order 12564, the ARRB is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except that such discipline "is not required for an employee who (1) voluntarily admits his or her drug use; (2) completes counseling or an EAP; and (3) thereafter refrains from drug use.

The decision whether to discipline a voluntary referral will be made by the agency head on a case by case basis depending upon the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the ARRB, in determining whether to discipline, shall consider that the employee has come forward voluntarily. In coming forward voluntarily, and consistent with Section XII(B), an employee may volunteer for a drug test as a means of identification. The results of this test, however, shall not constitute a second finding of illegal drug use under subsection (D).

IX. TESTING

A. Sensitive Positions Designated for Testing

The Executive Order requires random testing for employees in sensitive positions, subject to agency criteria. As specified in Appendix A of this plan, the Executive Director has determined that some of these sensitive positions are TDPs subject to random testing. The position titles designated for random drug testing are listed in Appendix A, along with the criteria and procedures applied in designating such positions for drug testing, including the justification for such criteria and procedures. [Appendix A must list those positions designated for random testing and contain "drug impact statements" describing the duties of each TDP and the risks of harm arising from illegal drug use by an employee occupying that position.]

B. Determining The Testing Designated Position

Among the factors the Executive Director has considered in designating a Testing Designated Position, are the extent to which the ARRB--

1. Considers its mission inconsistent with illegal drug use;
2. Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;

3. Has national security responsibilities; or
4. Has positions which--
 - a. Give employees access to sensitive information; or
 - b. Require employees, as a condition of employment, to obtain a security clearance.

These positions are characterized by critical safety or security responsibilities as related to the mission of the ARRB. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law, enforcement, or national security. These positions are identified for random testing because they require the highest degree of trust and confidence. The Executive Director reserves the right to add or delete positions determined to be TDPs pursuant to the criteria established in the Executive Order and this plan. Moreover, the Executive Director has determined, pursuant to 42 U.S.C. 290ee-1(c)(2), that all positions which have been or will be designated as TDPs under this plan are "sensitive positions" and are therefore exempted from coverage under 42 U.S.C. 290ee-1(c)(1).

C. Deferral of Testing

An employee may obtain a deferral of testing if the employee's first-line and higher-level supervisors concur that a compelling need

necessitates a deferral on the grounds that the employee is:

1. In a leave status (sick, annual, administrative or leave without pay); or
2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

An employee deferred will be subject to an unannounced test within the following 60 days.

X. REASONABLE SUSPICION TESTING

A. Grounds

Reasonable suspicion testing may be required of any employee in a position which is designated for 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.

Reasonable suspicion testing 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;*
- 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.*

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

B. Procedures

If an employee is suspected of using illegal drugs, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. [Agencies should insert a higher-level approval requirement that is consistent with their organizational structure. In some agencies, this may be the next level supervisor or a higher-level individual above the supervisor making the finding that a reasonable suspicion of illegal drug use exists.]

When higher-level concurrence of a reasonable suspicion

determination has been made, the appropriate supervisor will promptly prepare a written report detailing the circumstances which formed the basis to warrant the testing. This report should include the appropriate dates and times of reported drug related incidents, reliable/credible sources of information, rationale leading to the test, and the action taken.

C. Obtaining the Sample

The employee may be asked to provide the urine sample under observation in accordance with the criteria in Section XIII(B).

D. Supervisory Training

In accordance with Section IV, supervisors will be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training, however, shall not invalidate otherwise proper reasonable suspicion testing.

XI. APPLICANT TESTING

A. Objectives

To maintain the high professional standards of the ARRB's workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are

placed on the employment rolls of the ARRB. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within the ARRB, and will provide for a safer work environment. For these reasons, drug testing shall be required of all applicants as defined in Section II.

B. Vacancy Announcements

Every vacancy announcement for positions designated for applicant testing shall state:

"All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment."

In addition, each applicant will be notified that appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement notice will not preclude applicant testing if advance written notice is provided applicants in some other manner.

C. Procedures

The DPC shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for reasonable travel

expenses.

Applicants shall be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be reviewed only by the MRO to determine whether the individual is licitly using an otherwise illegal drug.

D. Personnel Officials

Upon notification that an individual has been tentatively selected for employment with the ARRB, the Agency Administrator shall assure, after consultation with the MRO, that a drug test has been conducted on that individual and determine whether the test result is a verified positive result.

E. Consequences

The ARRB will decline to extend a final offer of employment to any applicant with a verified positive test result, and such applicant may not reapply to the ARRB for a period of six months. The Personnel Officer working on the applicant's certificate shall be directed to object to the applicant on the basis of failure to pass the physical, a lack of personal characteristics necessary to relate to public employment or failure to support the goals of the ARRB. The ARRB shall inform such applicant that a confirmed presence of an illegal drug

in the applicant's urine precludes the ARRB from hiring the applicant.

XII. ADDITIONAL TYPES OF DRUG TESTING

A. Injury, Illness, Unsafe or Unhealthful Practice Testing

The ARRB is committed to providing a safe and secure working 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 excess of \$10,000.*

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

B. Follow-up Testing

All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through the EAP will be subject to unannounced testing following completion of such a program for a period of one year. Such employees shall be tested at the frequency stipulated in the abeyance contract, or, in the alternative, at an increased frequency of once per month. Such testing is distinct from testing which may be imposed as a component of the EAP.

XIII. TEST PROCEDURES IN GENERAL

A. Mandatory Guidelines for Federal Drug Testing

The ARRB shall adhere to the Mandatory Guidelines for Federal Drug Testing Programs promulgated by HHS consistent with the authority granted by Executive Order 12564, and to the requirements of Section 503 of the Act. The ARRB's drug testing program shall have professionally trained collection personnel, quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

B. Privacy Assured

Any individual subject to testing under this Plan, shall be permitted to provide urine specimens in private, and in a rest room stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided when --

1. The individual--
 - a. Has previously been found by the ARRB to be an illegal drug user; or
 - b. Has previously tampered with a sample; or
2. Facts and circumstances suggest that the individual--
 - a. Is an illegal drug user;
 - b. Is under the influence of drugs at the time of the test; or
 - c. Has equipment or implements capable of tampering with or altering urine samples; or

3. The specimen--
 - a. Has a temperature outside the range of 32.5-37.7 degrees C / 90.5-99.8 degrees F; or
 - b. Shows signs of contaminants.

C. Failure to Appear for Testing

Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the DPC to obtain guidance on action to be taken.

D. Opportunity to Justify a Positive Test Result

When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the HHS Guidelines. For example, the MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include, but is not limited to:

1. A valid prescription; or

2. A verification from the individual's physician verifying a valid prescription.

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary. If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO shall immediately contact the EAP Administrator upon obtaining a verified positive test result.

E. Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, and at the request of the program, the employee may be exempted from the random TDP pool for a period not to exceed sixty days, or for a time period specified in an abeyance contract or rehabilitation plan approved by the Agency head. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to Section XII(C).

F. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Mandatory Guidelines promulgated by the Department of Health and Human Services, or any subsequent amendment thereto, such HHS Guidelines

or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

XIV. RECORDS AND REPORTS

A. Confidentiality of Test Results

The laboratory may disclose laboratory test results only to the MRO or the staff of the MRO. Any positive result which the MRO justifies by acceptable and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. §552a, *et seq.*, and Section 503(e) of the Act, and may not be released in violation of either Act. The MRO may maintain only those records necessary for compliance with this order. 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, except that the disclosure of the results of any audit may not include personal identifying information on any employee.

In order to comply with Section 503(e) of the Act, the results of a drug test of a ARRB employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be--

1. To the MRO;

2. To the EAP Administrator in which the employee is receiving counseling or treatment or is otherwise participating;
3. To any supervisory or management official within the ARRB having authority to take adverse personnel action against such employee; or
4. Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

For purposes of this Section, "management official" includes any management, government, security or personnel official whose duties necessitate review of the test results in order to process adverse personnel action against the employee. In addition, test results with all identifying information removed shall also be made available to ARRB personnel, including the DPC, for data collection and other activities necessary to comply with Section 503(f) of the Act.

B. Employee Access to Records

Any employee who is the subject of a drug test shall, upon written request, 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 proceedings, as referred to in Section 503(a)(1)(A)(ii)(III) of the Act.

Except as authorized by law, an applicant who is the subject of a drug test, however, shall not be entitled to this information.

C. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential and should be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this order and to make information readily retrievable, the DPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering with evidence, and any other authorized documentation necessary to implement this order.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the [Servicing Personnel Office.] Such shall remain confidential, locked in a combination safe, with only authorized individuals who have a "need-to-know" having access to them.

D. Employee Assistance Program Records

The EAP Administrator shall maintain only those records necessary to comply with this order. After a supervisor refers an employee to an EAP, the EAP will maintain all records necessary to

carry out its duties. All medical and or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 C.F.R. Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress. (42 C.F.R. §2.1 et seq. (1986), revised regulations promulgated at 52 F.R. 21796, June 9, 1987).

E. Maintenance of Records

The ARRB shall establish or amend a recordkeeping system to maintain the records of the ARRB's Drug-Free Workplace Program consistent with the ARRB's 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. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Executive Director. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of this order, and include:

1. Notices of verified positive test results referred by the MRO;
2. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;

3. *Anonymous statistical reports; and*
4. *Other documents the DPC, MRO, or EAP Administrator deems necessary for efficient compliance with this order.*

F. Statistical Information

The DPC shall 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. *Verified positive test results;*
3. *Voluntary drug counseling referrals;*
4. *Involuntary drug counseling referrals;*
5. *Terminations or denial of employment offers resulting from refusal to submit to testing;*
6. *Terminations or denial of employment offers resulting from alteration of specimens;*
7. *Terminations or denial of employment offers resulting from*

failure to complete a drug abuse counseling program; and

- 8. Employees who successfully complete EAP.*

This data, along with other pertinent information, shall be compiled for inclusion in the ARRB's annual report to Congress required by Section 503(f) of the Act. This data shall also be provided to HHS semi-annually to assist in overall program evaluation and to determine whether changes to the HHS Guidelines may be required.