

## Department of Energy

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other substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result, together with that person's medical history and any other relevant biomedical information. For purposes of this part a physician from the site occupational medical department may be the MRO.

*Occurrence* means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any Department of Energy or Department of Energy-controlled operation, if the deviation has environmental, public health and safety, or national security protection significance. Incidents having such significance include the following, or incidents of a similar nature:

(1) Injury or fatality to any person involving actions of a Department of Energy contractor employee.

(2) Involvement of nuclear explosives under Department of Energy jurisdiction which results in an explosion, fire, the spread of radioactive material, personal injury or death, or significant damage to property.

(3) Accidental release of pollutants which results or could result in a significant effect on the public or environment.

(4) Accidental release of radioactive material above regulatory limits.

*Random Testing* means the unscheduled, unannounced urine drug testing of randomly selected individuals in testing designated positions, by a process designed to ensure that selections are made in a non-discriminatory manner.

*Reasonable Suspicion* means a suspicion based on an articulable belief that an employee uses illegal drugs, drawn from particularized facts and reasonable inferences from those facts, as detailed further in § 707.10.

*Referral* means the direction of an individual toward an employee assistance program or to an outside treatment facility by the employee assistance program professional, for assistance with prevention of illegal drug use, treatment, or rehabilitation from illegal drug use or other problems. Referrals to an employee assistance program can be made by the individual (self-refer-

ral), by contractor supervisors or managers, or by a bargaining unit representative.

*Rehabilitation* means a formal treatment process aimed at the resolution of behavioral-medical problems, including illegal drug use, and resulting in such resolution.

*Special Nuclear Material* has the same meaning as in section 11aa of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

*Specimen Chain of Custody Form* is a form used to document the security of the specimen from time of collection until receipt by the laboratory. This form, at a minimum, shall include specimen identifying information, date and location of collection, name and signature of collector, name of testing laboratory, and the names and signatures of all individuals who had custody of the specimen from time of collection until the specimen was prepared for shipment to the laboratory.

*Testing Designated Position* names a position whose incumbents are subject to drug testing under this part.

### Subpart B—Procedures

#### § 707.5 Submission, approval, and implementation of a baseline workplace substance abuse program.

(a) Each contractor subject to this part shall develop a written program consistent with the requirements of this part and the guidelines of the Department of Health and Human Services and subsequent amendments to those guidelines (“Mandatory Guidelines for Federal Workplace Drug Testing Programs,” 53 FR 11970, April 11, 1988; hereinafter “HHS Mandatory Guidelines”), and applicable to appropriate DOE sites. Such a program shall be submitted to DOE for review and approval, and shall include at least the following baseline elements:

(1) Prohibition of the use; possession, sale, distribution, or manufacture of illegal drugs at sites owned or controlled by DOE;

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(2) Plans for instruction of supervisors and employees concerning problems of substance abuse, including illegal drug use, and the availability of assistance through the employee assistance program and referrals to other resources, and the penalties that may be imposed upon employees for drug-related violations occurring on the DOE owned or controlled site;

(3) Provision for distribution to all employees engaged in performance of the contract on the DOE owned or controlled site of a statement which sets forth the contractor's policies prohibiting the possession, sale, distribution, or manufacture of illegal drugs at the DOE owned or controlled site. The statement shall include notification to all employees that as a condition of employment under the contract, the employee will:

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring on the DOE owned or controlled site no later than 10 calendar days after such conviction;

(4) Provision for written notification to the DOE contracting officer within 10 calendar days after receiving notice under paragraph (a)(3)(ii) of this section, from an employee or otherwise receiving actual notice of an employee's conviction of a drug-related offense;

(5) Provision for imposing one of the following actions, with respect to any employee who is convicted of a drug-related violation occurring in the workplace, within 30 calendar days after receiving such notice of conviction under paragraph (a)(4) of this section;

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Offering such employee, consistent with the contractor's policies, an opportunity to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency. If the employee does not participate in such a rehabilitation program, the contractor must take appropriate personnel action, up to and

including termination, in accordance with the contractor's policies.

(6) Commitment to make a good faith effort to maintain a workplace free of substance abuse through implementation of paragraphs (a)(1) through (a)(5) of this section.

(b) In addition, the following baseline elements must be included in programs developed by contractors that have identified testing designated positions (see § 707.7(b));

(1) Notification to DOE of the positions subject to drug testing;

(2) Prohibition of individuals in testing designated positions who are not free from the use of illegal drugs from working in those positions;

(3) Sanctions for individuals in testing designated positions who violate the prohibitions of paragraphs (a)(1) or (b)(2) of this section;

(4) Provision for:

(i) Notification, at least 60 days in advance of initiating testing, to those individuals subject to drug testing, unless the contractor is currently conducting a testing program.

(ii) Urine drug analysis of applicants for testing designated positions before final selection for employment or assignment;

(iii) Random urine drug analysis for employees in testing designated positions;

(iv) Urine drug analysis for employees in testing designated positions on the basis of reasonable suspicion, as a result of an occurrence, or as a follow-up to rehabilitation; and

(v) Random urine drug analysis and urine drug analysis on the basis of reasonable suspicion or as the result of an occurrence, for any individual with unescorted access to the control areas of certain DOE reactors (see § 707.7(c)).

(vi) Written notice to the contractor by an employee in a testing designated position of a drug-related arrest or conviction, or receipt of a positive drug test result regarding that employee, as soon as possible but within 10 calendar days of such arrest, conviction, or receipt; and

(vii) Appropriate action, if any, to be taken regarding an employee who:

(A) is arrested for or convicted of a drug-related offense; or

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(B) has a positive drug test result (consistent with § 707.14).

(5) Provision to employees of the opportunity for rehabilitation, consistent with the contractor's policies, under circumstances as provided in this part (see § 707.14(b));

(6) Immediate notification to DOE security officials whenever the circumstances in connection with procedures under this part raise a security concern as provided in DOE Orders, rules and regulations; such circumstances including, but are not necessarily limited to, a determination that an individual holding a DOE access authorization has used an illegal drug.

(c) Each contractor's written policy and procedures under this part shall comply with the requirements of 10 CFR part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material."

(d) Contractors are required to submit all subcontracts they believe to be within the scope of this part to DOE for a determination as to whether the subcontract falls within the scope of this part. Subcontractors so determined to be within the scope of this part shall be required to agree to comply with its requirements, as a condition of eligibility for performing the subcontract work. Each subcontractor subject to this part shall submit its plan to the appropriate prime contractor for approval; the contractor shall be responsible for periodically monitoring the implementation of the subcontractor's program for effectiveness and compliance with this part.

(e) In reviewing each proposed workplace substance abuse plan, DOE shall decide whether the program meets the applicable baseline requirements established by this part. The responsible DOE official will reject proposed workplace substance abuse plans that are deemed not to meet the baseline requirements. DOE shall provide the contractor with a written notification regarding the decision as to the acceptability of the plan. Nothing in this rule is intended to prohibit any contractor subject to this part from implementing workplace substance abuse require-

ments additional to those of the baseline, including drug testing employees and applicants for employment in any position and testing for any illegal drugs. However, the contractor shall inform DOE of such additional requirements at least 30 days prior to implementation.

(f) DOE shall periodically review and evaluate each contractor's program, including the contractor's oversight of the covered subcontractors, to assure effectiveness and compliance with this part.

(g) Contractors or proposers will submit their program to DOE for review within 30 days of notification by DOE that the contract or proposed contract falls within the scope of this part. Workplace substance abuse programs, as provided in this part, shall be implemented within 30 days of approval by DOE. DOE may grant an extension to the notification or implementation period, as warranted by local conditions. Implementation may require changes to collective bargaining agreements as discussed in § 707.15 of this part.

(h) To assure consistency of application, DOE shall periodically review designated contracts and testing designated positions included in the workplace substance abuse plans approved by DOE. DOE will also periodically review implementation of programs conducted by prime contractors, to assure consistency of application among prime contracts (and subcontracts where appropriate) throughout DOE.

(i) This part preempts any State or local law, rule, regulation, order, or standard to the extent that:

(1) compliance with both the State or local requirement and any requirements in this part is not possible; or

(2) compliance with the State or local requirement is an obstacle to the accomplishments and execution of any requirement in this part.

### **§ 707.6 Employee assistance, education, and training.**

Contractor programs shall include the following or appropriate alternatives:

(a) Employee assistance programs emphasizing preventive services, education, short-term counseling, coordination and referral to outside agencies,