Drug Testing Information Documents

Memorandum of Understanding
Between
US Forest Service and the NFFE-Forest Service Council, IAMAW

This Memorandum of Understanding (MOU), made by and between the National Federation of Federal Employees (NFFE), Forest Service Council (Union) and the US Forest Service (Management) collectively "the Parties," pertains to the documents provided to employees as part of the Drug and Alcohol Testing Programs negotiated by the Parties in Article 43 of the Master Agreement.

The Parties have jointly reviewed and discussed the information to be shared with employees. These documents are attached to this MOU and available on the Drug Testing Website. The attachments include:

- Drug Free Workplace Employee Information Sheet
- Drug Free Workplace Random Drug Testing Checklist for Employees
- FAQs regarding Opioid testing

This MOU is a Supplemental Agreement under Article 11 of the Master Agreement between the Forest Service and the Forest Service Council of the National Federation of Federal Employees and must comply with all applicable statutes, regulations, and the Master Agreement between NFFE and the FS.

A copy of this MOU will be posted to the FS intranet.

This MOU becomes effective on the date of final approval by the Agency Head or that date on which the thirty (30) day time limit for agency head review expires, whichever is earlier. Either Party may request to extend or modify the agreement utilizing the procedures in Article 11 of the Master Agreement.

Agreed to on: 08/30/2019

For the USDA, Forest Service:

MARY BETH STEWART
Digitally signed by MARY BETH STEWART
Date: 2019.08.30 15:24:42 -04'00'

Mary Beth L. Stewart, Chief Negotiator
Senior Manager, Business Operations

For NFFE-Forest Service Council:

MELISSA BAUMANN
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Date: 2019.08.30 13:40:30 -05'00'

Melissa Baumann, Chief Negotiator
NFFE-FSC President

EMPLOYEE INFORMATION SHEET

FOREST SERVICE DRUG TESTING PROGRAM

Testing Designated Position (TDP)

- A position whose duties require that the employee be subject to random and, in most instances, applicant drug testing under the requirements of Executive Order 12564, Department Regulation 4430-792-2 or the regulations of the Department of Transportation, Title 49, Code of Federal Regulations, 382.101-.605.

Employee Categories

- **Non-TDP – Employees Who Do Not Occupy Test Designated Positions** (Drug Testing Designator "N") – **All employees, including non-TDP positions**, are subject to Post Accident drug testing and Reasonable Suspicion drug testing. Reasonable Suspicion testing is based on a reasonable suspicion of using or being under the influence of drugs while **in a duty status**.

- **Executive Order (EO) TDP** (Drug Testing Designator "A") – Employees who occupy certain designated positions requiring applicant and random testing. The most commonly covered positions include aircraft operators, aircraft mechanics, boat operators, criminal investigators (Series 1801 and 1811), perform drug interdiction duties, and employees who carry firearms. Positions whose predominant duty includes the operation of vehicles used to transport personnel may also be included. In addition, Wildland Firefighters in Series 462 are included. Executive Order TDP employees are subject to applicant, random, Post Accident and Reasonable Suspicion testing. These employees are subject to Reasonable Suspicion testing based on a reasonable suspicion of illegal drug use either on or off duty. The agency is required to randomly test 10 percent of the EO TDP's each year.

- Department of Transportation (DOT) TDP (Drug Testing Designator "C") – Employees whose positions are required to operate a commercial vehicle and have a commercial driver's license (CDL). Forest Service heavier fire engines and crew carriers qualify as commercial vehicles. No employee may operate a commercial vehicle for the Forest Service, even incidentally or occasionally, unless they are included in this testing pool. Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property. Commercial vehicles include:
    - any vehicle weighing 26,001 or more pounds (Manufacturers loaded weight rating) either as a single unit or as a vehicle with trailer with a loaded weight rating of more than 10,000 pounds

- any vehicle weighing 26,001 or more pounds (Manufacturers loaded weight rating)
- any vehicle designed to carry 16 or more passengers, including the driver
- any vehicle that carries hazardous materials, such as explosives/

Employees in these positions are subject to applicant testing for drugs, random testing for drugs and alcohol, Post Accident testing for drugs and alcohol and Reasonable Suspicion testing if there is a reasonable suspicion that the employee is under the influence of drugs or alcohol **just before, during or just following operation of a commercial vehicle.**

- Annually the agency is required to randomly test 50 percent of these TDP's for drugs. Additionally, 10 percent of those positions to be tested for drugs will also be tested for alcohol.

- These categories may overlap, and as a result, the same employee might be subject to random testing under DOT rules and Reasonable Suspicion or Post Accident testing under either Executive Order or DOT rules, depending on the circumstances. Those employees whose positions qualify under both DOT and EO testing are recorded in the system as DOT testable because the DOT testing category requires the higher random testing requirement.

- **Executive Order (EO) TDP (Random Only) (Drug Testing Designator A)** - Employees falling under this designation are subject to random testing but not applicant testing. These are very specialized jobs, such as employees with Top Secret clearances. These employees are also subject to Post Accident and Reasonable Suspicion testing.

Types of Tests

- **Applicant Testing** – An applicant test is required before an employee may be appointed to a TDP position or reassigned to TDP duties, if employee is not currently subject to random testing. The applicant test is only for drugs and not for drugs and alcohol.

- **Random Testing** – Each year certain percentages of EO and DOT TDP positions are tested for drugs based on a random computer sampling:
  - 10 percent of EO TDP positions are tested for drugs
  - 50 percent of DOT TDP positions are tested for drugs and 10 percent of that sample is also tested for alcohol

- **Reasonable Suspicion Testing**

- **Executive Order (EO) Reasonable Suspicion Testing**
  - **Basis for Testing:**
    - **EO TDP Employees:** Employees in this category may be tested when there is a reasonable suspicion of illegal drug **use on or off duty.**
    - **Employees not in EO TDPs**– Employees in this category may be tested when there is a reasonable suspicion of **on duty use or impairment**.

- **Criteria for EO Reasonable Suspicion Testing**:
  - Observable phenomena, such as observation of drug use, possession or physical symptoms.
  - Pattern of erratic conduct or abnormal behavior.
  - Arrest or conviction for drug related offense.
  - Information provided by reliable source or independently corroborated.
  - Newly discovered evidence that previous drug test was tampered with.

- **Procedures:**
  - Trained supervisor or manager gathers information and prepares written record of recommendation
  - Approval by Director of Human Resource Management or designee
  - Test normally done within 32 hours, or at most within 72 hours
  - Test for drugs only
  - Employee informed of reason and provided a copy of record of determination

- **DOT Reasonable Suspicion Testing**
  - **Basis for Testing:**
    - Employees in this category may be tested when there is a reasonable suspicion that the employee is under the influence of an illegal drug or intoxicant just before, during, or just after performance of DOT safety sensitive duties (i.e., operation of a commercial vehicle). "Just before" and "just after" means at the work site.

  - **Criteria for DOT Reasonable Suspicion Testing**
    - Reasonable belief the employee is under the influence of an intoxicant

  - **Procedures**
    - Observation by two trained supervisors or agency officials

        - Signed documentation of observations
        - Approval by Director of HRM or designee
        - Employee informed of reasons and given copy of record of determination

Testing for alcohol and drugs Post-Accident Testing

- **Executive Order (EO) Post Accident Testing**
    - **Application:** All Employees

- **Criteria for Post-Accident Testing**
    - The employee is reasonably suspected of having caused or contributed to the accident.
    - Accident occurs
        - while engaged in TDP safety sensitive duties; OR
        - within the scope of employment or while in official duty status.
    - Accident results in:
        - Death or injury resulting in immediate hospitalization or
        - Damage to government or private property in excess of $10,000.

- **Procedures**
    - Testing is recommended by trained supervisor or management official who prepares a report
    - Approval granted by Director of Human Resources Management or designee
    - Testing for drugs within 32 hours of accident
    - Testing will be conducted by Urinalysis only

- **Department of Transportation (DOT) Post Accident Testing:**
    - **Application:** Driver involved in accident while operating Commercial Vehicle.

    - **Criteria for Post-Accident Testing**
        - Loss of human life, or
        - Citation for moving vehicle accident and accident results in:
            - Injury requiring medical treatment away from scene of accident, or
            - One of the vehicles has to be towed.

- **Procedures**
    - Recommended by trained supervisor or management official who prepares a report and submits to the designated Drug Testing Specialist.
    - Approval granted by Director of Human Resources Management or designee

- Testing for alcohol within 8 hours and drugs within 32 hours.

Return to Duty and Follow-up Testing

- Employees with confirmed positive tests or who seek safe harbor must be removed from safety sensitive duties until after their completion of an appropriate program of treatment has been certified by a substance abuse professional. Then, they must undergo a return-to-duty test. Following successful completion of the return to duty test, the employee may be returned to safety sensitive duties. The employee, however, still must undergo a series of follow-up tests. The exact number of follow-up tests will depend on the recommendation of the substance abuse professional but six is normally the minimum.

Drug Testing Procedures

- **All testing will be conducted in accordance with the Health and Human Service (HHS) Mandatory Guidelines.**

- **Sample Collection**
  - The employee reports to the clinic where the sample will be given, at the clinic, the employee will be asked to provide identification and complete the chain of custody form.
  - Once the form is completed, the employee will be given a cup into which the employee will provide a urine sample.
  - The employee gives the sample to the technician who checks the specimen for color, presence of foreign objects, odor, and appearance, and checks the temperature to insure that it is consistent with that expected of humans.
  - The technician then empties the contents into two separate bottles, seals the bottles, and places them into a sealed bag with a chain of custody form.
  - The employee retains the employee copy of the chain of custody form. The employee should retain the copy for at least three months.
  - Second Sample: In addition to the split sample above, NFFE bargaining unit employees may also request to provide a second sample for testing to a HHS accredited laboratory of their choice at their own expense. This election must be made at the time of the original sample collection.

- **Laboratory Procedures**
  - The sample bottles are shipped to the testing laboratory. There, one of the bottles is opened. (The second is retained in case the employee later requests testing of a split sample.)
  - The sample is then subjected to an initial screening using an immunoassay test. If the immunoassay test fails to detect the presence of

any of the drugs tested for in adequate amounts, the test is considered negative and no further evaluation is performed.
    - If, however, the immunoassay test is positive, a second, more specific, chromatographic/mass spectrometric test is performed. Only if this test also results in a positive finding does the laboratory report a positive finding to the Medical Review Officer.

- **Medical Review Officer (MRO) Procedures**
    - When the MRO, who has no financial relationship with the laboratory, receives the laboratory report, the MRO will contact the employee, explain the findings, and afford the employee an opportunity to explain the findings and provide appropriate documentation, e.g., a copy of a medical prescription, to justify the finding. **Prescriptions for medical marijuana will not be accepted as justification for a positive test for marijuana.**

- **Testing of Split Samples**
    - If the results of the test sample are positive, the employee may request that the split test sample be tested by an accredited Health and Human Services laboratory of the employee's choice. The request must be made to the MRO within 72 hours of learning that the first sample tested positive.

Drugs for Which Individuals Are Tested

- **Marijuana (dope, herb, pot, hashish, hash, grass, weed, smoke)**
    - A frequent user of marijuana will remain positive for 3-4 weeks after the last use of the drug.
- **Cocaine (coke, crack)**
    - Cocaine use generally can be detected within 24-48 hours of use.

- **Phencyclidine (PCP, angel dust)**

- **Opiates (heroin, morphine - "designer drugs)**

- **Amphetamines (speed, bennies, uppers, methamphetamine)**

- **Alcohol (testing only under DOT regulations)**
    - Blood alcohol content, above 0.04 as determined by breath testing, shall be deemed a positive test.

Disciplinary Consequences of a Positive Drug or Alcohol Test

- Agency officials must refer employees to the Employee Assistance Program (EAP) and also initiate disciplinary or adverse action upon the first finding of illegal drug use and/or intoxication. The severity of the disciplinary or adverse action is dependent on the circumstances of each case and is consistent with the EO, DOT regulations, Department Personnel Manual Chapter 751, and the Civil Service Reform Act of 1978. Penalties for illegal drug use or intoxication on duty are serious.

- **Unauthorized use of intoxicants while on duty, on Government property, or Government-controlled premises where official duties are performed**
    - First Offense: reprimand to 14-day suspension
    - Second offense: 30-Day suspension to removal

- **Reporting to or being on duty while under the influence of intoxicants**
    - First offense: reprimand to 30 day suspension
    - Second offense: 30-day suspension to removal.

- Operating Government owned or government leased vehicle, or privately owned vehicle while on official business while under the influence of intoxicants
    - First offense: removal.

- Agency officials must initiate action to remove employees from the Federal Service when employees:
    - Refuse to obtain counseling or rehabilitation through EAP;
    - Fail to refrain from illegal drug use and/or intoxication after a first finding;
    - Refuse testing when required;
    - Attempt to alter or substitute specimens; or
    - Distribute or sell illegal drugs.

- For career employees (not serving a trial or probationary period) who have a positive random test, consideration may be given for allowing the employee to volunteer for an appropriate program of treatment with a subsequent regime of return-to-duty and follow-up tests, in lieu of removal. Such consideration would not be given to employees who have tested positive in the past or have previously gone through a program of treatment through Safe Harbor.

- Temporary employees and employees serving under probationary and trial periods who test positive may expect to be terminated for even one instance of the offenses listed above.

Other Consequences of a Post-Accident Positive Drug or Alcohol Test

- It is important to remember that other benefits (e.g. OWCP, Life Insurance, Public Safety Officer's benefits) may be adversely affected for accidents involving a Positive Drug or Alcohol test. These impacts may have significant financial consequences for you and/or your family.

- **Union Representation**
  - A bargaining unit employee who is required to give a urine sample under direct observation may ask for a union representative.
  - The observed collection shall be delayed a reasonable amount of time to permit a union representative to travel to the collection site, provided that the collection of the sample will occur on the designated test day to preserve the integrity of the sample.
  - Bargaining unit employees are also entitled to union representation in any dispute related to the drug testing program.
  - Bargaining unit employees may exercise their right to grieve application of the DOT test designation criteria under the negotiated grievance process. For employees covered by the Master Agreement between the Forest Service and the National Federation of Federal Employees Forest Service Council (NFFE-FSC), the negotiated grievance process is contained in Article 9 of the Master Agreement.
  - An employee may contest their Executive Order TDP status through the grievance/arbitration procedures. An employee who has filed a grievance prior to being called for a random drug or alcohol test may receive a testing deferral until a final grievance/arbitration decision is made

- **Safe Harbor**
  - An employee suffering from an alcohol or drug abuse problem who is willing to undergo an appropriate program of treatment may come forward to admit that problem, before being identified by other means, without fear of having disciplinary action taken based on that admission.
  - Such employees may have to be removed from safety sensitive duties until the treatment program is completed and a return-to-duty test is passed. Such employees would then be subject to a regime of at least six follow-up tests.
  - Safe Harbor only protects the employee from action being taken based on the admission of substance abuse. It is not a shield from disciplinary action based on misconduct. It would not shield the employee from corrective action based on drug use determined by other means or other substance abuse related misconduct or poor performance.

- **Under Executive Order rules an employee must:**

1. Invoke Safe Harbor before being identified by other means, such as direct observation, use or possession of illegal drugs, evidence obtained from an arrest or criminal observation or verified test result. Safe harbor does not apply after an accident or after the employee is notified that he or she is to be tested based on reasonable suspicion. Verified positive result means that the MRO has made contact with the employee or left a message for the employee to ascertain an explanation for the result but before the MRO concludes that the test is positive.
2. Obtain and complete and acceptable counseling program.
3. Thereafter, refrain from illegal drug use.

- **Employee Assistance Program**
  - Alcoholism and other drug dependencies are recognized as illnesses. The Employee Assistance Program is available to provide employees with assistance in evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances.
  - If you would like to take advantage of EAP services, consult the information posted in your office or visit the Forest Service EAP Website (http://fsweb.wo.fs.fed.us/ecenter/).
  - The Employee Assistance Program primarily provides intake and referral counseling free of charge. Depending on the situation, that may include up to six free sessions. Any treatment costs beyond that would be the employee's responsibility. The employee's health insurance may cover some or all of such costs.

Questions regarding this information may be directed to the Human Resources Management Drug Testing Staff at (877) 372-7248, select menu option 2.

References

- Article 43- Master Agreement Between NFFE and FS
- Departmental Regulation 4430-792-2
- 49 Code of Federal Regulations 382.101 – 605
- Executive Order 12564

Agency Drug Test Coordinator Contact Information

- **John Freeman, Branch Supervisor**
  Phone: (505) 563-9302 or (505) 697-1441
  Email: johnfreeman@fs.fed.us

- **Freda Griggs, Lead Drug Test Coordinator**
  (404) 796-0845
  fgriggs@fs.fed.us

- **Alex Murga –Regions 1, 2, 3, Job Corps**
  Phone: (505) 563-9349
  Email: amurga@fs.fed.us
  To report Post Accident/Reasonable Suspicion call (505) 681-0339

- **Estrella Gomez-Solis – Regions 4, 5, 6**
  Phone: (505) 563-9310
  Email: egomezsolis@fs.fed.us
  To report Post Accident/Reasonable Suspicion call (505) 414-5077

- **Brenda Rodriguez – Regions 8, 9, 10, LEI**
  Phone: (505) 563-9396
  Email: brendarodriguez@fs.fed.us
  To report Post Accident/Reasonable Suspicion call (505) 681-3800

Drug Testing Website
(http://fsweb.asc.fs.fed.us/HRM/Drug_Testing_Program/)

RANDOM DRUG TESTING

CHECKLIST FOR EMPLOYEES

Based on safety-sensitive duties and responsibilities, you have been identified through a process of random selection for drug testing by urinalysis. Please be assured that your selection and the selection of other employees in the United States Department of Agriculture (USDA) testing program does not reflect that there is any specific cause to suspect the usage of prohibited controlled substance and/or alcohol use. Please review the following information regarding your role in the collection process.

- ☐ You must arrive at the collection site on time; failure to meet your appointment will be considered a refusal to test. You are entitled to official time and travel necessary to complete the testing.

- ☐ Collection site personnel will ask you to verify your social security number and provide photo identification such as a driver's license or agency badge. Collection site personnel are required to contact the Albuquerque Service Center-Human Resources Management (HRM) Drug Testing Program Coordinator for guidance if proper identification is not obtained. You will be asked to verify your social security number and provide your initials/signature at several steps throughout the collection process. These precautions are for your protection and will help ensure that the specimens are labeled correctly.

- ☐ Employees covered by the FS/NFFE Master Agreement, in accordance with Master Agreement Article 43.11, may request that a second sample be collected at the time of the test. It is the responsibility of the employee to coordinate with the collection facility regarding at which laboratory he/she would like this sample tested. This is in addition to the split sample that will automatically be collected, and the second sample will be tested at the employee's own expense.

- ☐ A technician will explain collection site procedures. Personnel will also be available to answer questions you might have, or they will refer you to the HRM Drug Testing Program Coordinator.

- ☐ You will be asked to remove outer garments such as overcoats and suit jackets. You may not take a carrying bag into the collection room, but you may take your wallet with you.

- ☐ Your technician will provide you with a sample collection container and instructions.

- ☐ You must wash and dry your hands before entering the collection room. You must not wash your hands again until after delivering the specimen to the collector.

- [ ] Unless otherwise directed by the agency, 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 45 milliliters.

- [ ] **Do not** flush the toilet at any time while you are in the collection process.

- [ ] If you are unable to provide a sufficient specimen quantity, the original insufficient specimen will be discarded and you will be instructed to drink a reasonable amount of fluid. You will be given up to three hours to provide a complete sample using a fresh collection container.

    - [ ] **At no time during this process should you leave the waiting room area of the facility (e.g., area in clear view of the collection site personnel). Failure to remain in the collection facility will be presumed to be a refusal to test, and will result in disciplinary action.**

    - [ ] If you are unable to provide the required specimen quantity, the testing will be discontinued and the clinic will notify the Medical Review Officer (MRO) and the HRM Drug Testing Coordinator. You will be contacted by the MRO, who will request satisfactory medical documentation or arrange for a medical evaluation to determine whether there is a genuine reason for your inability to provide a specimen, or a refusal to test.

- [ ] Give the collection container to the technician who, after checking the temperature (within four minutes of collection) and general appearance of the sample, will transfer the sample to a sealable shipping bottle. The technician will tighten the bottle cap and place the prepared evidence tape over the cap and down the sides of the bottle. You will then initial the seal and the label confirming that it is your sample in the bottle and that the social security number and other information are correct. You must observe this process continuously.

- [ ] If the collector has reason to believe the urine specimen has been altered or substituted he/she will notify a higher-level supervisor. Should you tamper, adulterate or in any other manner attempt to alter the specimen, the collector will request authorization from the HRM Drug Testing Program Coordinator to collect a second specimen under direct observation by a same gender collection site individual. Both specimens will be sent to the laboratory for analysis. You may ask for a union representative to be present during an observed collection if you are a bargaining unit member, provided the sample collection will occur within prescribed testing time limits and on the designated test day. If you anticipate needing a union representative, you should advise your representative as soon as possible.

- [ ] An employee has the right (commonly known as the Weingarten Right) to be represented by the Union during any examination of the employee by a representative of the agency in connection to an investigation if he or she

reasonably believes that the examination may result in disciplinary action against him or her and he or she requests representation.
Bargaining unit employees may invoke their Weingarten Right to Union representation as appropriate. The Weingarten right is set out under 5 USC Chapter 71 and the criteria is established through FLRA case law.

☐ If the MRO informs you that your test is verified as positive, you have 72 hours to request that the split sample be tested at a different Department of Health and Human Services certified laboratory. The MRO will select the laboratory that will be used for testing the split sample.

☐ A verified positive test result will require your removal from safety-sensitive duties and referral to a Substance Abuse Professional (SAP) for appropriate treatment and follow-up. You will not be permitted to return to your safety-sensitive duties until the SAP re-evaluates you **and** you complete a return to duty test with a verified negative result.

☐ Please be advised that failure to appear for testing without a deferral from your supervisor and the USDA Drug Free Workplace Program (DFWP) Manager, or failure to cooperate with collection procedures, will be considered a refusal test, and will result in disciplinary action.

☐ Contact your HRM Drug Testing Program Coordinator or your supervisors if you have any questions or concerns.

Frequently Asked Questions for the Public

The Revised Mandatory Guidelines for Federal Workplace Drug Testing using

Urine Drugs to be tested

Question #1

What is the difference between opiates and opioids?

Answer

The term "opiates" is used to describe naturally occurring substances known as alkaloids derived from the opium poppy plant (e.g., codeine; morphine; and heroin, which is produced by the acetylation of morphine) that bind to specific receptors in the central nervous system and have analgesic as well as narcotic effects.

The term "opioids" has expanded in scope over time and is used broadly to describe various compounds that bind to specific receptors in the central nervous system and have analgesic as well as narcotic effects. The broadly used term "opioids" includes naturally occurring alkaloid compounds known as opiates (e.g., codeine, morphine, and heroin); semi-synthetic compounds (e.g., oxycodone, oxymorphone, hydrocodone, and hydromorphone); and synthetic compounds (e.g., fentanyl). Opioids may or may not have structural similarity to the opium alkaloids.

Source

Medical Review Officer Guidance Manual for Federal Workplace Drug Testing Programs, Appendix A: Glossary

Question #2

Why were these four opioids chosen?

Answer

The inclusion of additional Schedule II prescription medications (i.e., oxycodone, oxymorphone, hydrocodone and hydromorphone) in the list of authorized drug tests was recommended by the Drug Testing Advisory Board (DTAB), reviewed by the Department's Prescription Drug Subcommittee of the Behavioral Health Coordinating Committee, and received by the SAMHSA Administrator in January 2012. The inclusion of oxycodone, oxymorphone, hydrocodone and hydromorphone in the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG or Mandatory Guidelines) is supported by various data and seen in private sector experience with current drug abuse trends. HHS is continuing its efforts to prevent opioid addiction in support of President Trump's commitment to combat the opioid crisis. The long-term impact of implementing these revised guidelines will help ensure safety in the workplace, especially in national security, public health, and public safety occupations that interact directly with the public

Question #3

Will this detect heroin?

Answer

Yes. Currently, the drug test panel tests for the metabolite of heroin (6-acetylmorphine). The current revisions to the Mandatory Guidelines do not require changes to the testing for 6-acetylmorphine that is currently being performed.

Source

Mandatory Guidelines for Federal Workplace Drug Testing, Section 3.4

Question #4

Will this detect fentanyl?

Answer

No, testing for the synthetic opioid, fentanyl, is not included in the revised urine Mandatory Guidelines, effective on October 1, 2017. Fentanyl can be tested on a case-by-case basis under the Mandatory Guidelines, and the Division of Workplace Programs (DWP) is proposing to study the prevalence rate of fentanyl in regulated specimens in the next 2 months.

Question #5

Are the laboratories prepared for the changes required under the Mandatory Guidelines?

Answer

Yes. Certified laboratories in the National Certification Laboratory Program (NLCP) have been challenged with performance tests (PT) in the past year. The laboratories received 1 Practice Sample Set in March 2017, and 3 Qualifying PT Sets in May, mid-June, and late July. A post-implementation PT set will be sent to the laboratories after October 1, 2017. In addition, the reliability of the laboratories to meet Guideline requirements will be assessed every 3 months through maintenance PT sets. We do not anticipate any significant delays in test results for current federal employees or for individuals applying for federal employment.

Impacts to employees and/or potential employees

Question #6

How many federal employees are in testing designated positions? Which occupations?

Answer

The Drug Free Workplace Program covers all civilian employees in the Executive Branch agencies. However, only Testing Designated Positions (TDPs) are subject to random testing and these include any positions where a momentary lapse in judgment could result in a catastrophic event that could not be remediated by the administrative process. These are positions with public health, public safety and

national security responsibilities. Due to differences in agency missions, structure and budget, TDPs differ among agencies. Generally speaking, there are approximately 400,000 employees in testing designated positions. See 2013 Guidance for the Selection of Tested Designated Positions for more information.

Source
2013 Guidance for the Selection of Tested Designated Positions
(https://www.samhsa.gov/workplace/workplace-programs)

Question #7

How do I find out if this affects me or my agency?

Answer

The revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine cover all civilian employees in the Executive Branch agencies. Employees should contact their federal agency (employer) for this information or refer to their employer's Drug Free Workplace Program plan. Or contact: Drug Free Workplace Program (DFWP) Helpline 1-800-967-5752.

Source
2013 Guidance for the Selection of Tested Designated positions
(https://www.samhsa.gov/workplace/workplace-programs)

Question #8

If my doctor prescribed my opioid medication and I tested positive for opioids, will the results of my positive drug test be reported to my federal employer?

Answer

Positive drug testing results that are explained by a legitimate medical explanation, such as a valid prescription, will not be reported to a federal agency.

Source
Medical Review Officer Guidance Manual for Federal Workplace Drug Testing Programs

Question #9

What if I test positive for a prescription opioid but do not have a valid prescription?

Answer

If a positive drug test result is not supported by a legitimate medical explanation, such as a valid prescription, the positive drug test result should be reported to the employee's federal agency in accordance with the Mandatory Guidelines.

Question #10

Do drug test results under the Mandatory Guidelines determine an employee's fitness for duty?

Answer

No, the Mandatory Guidelines are designed to detect an employee's illicit drug use while on or off duty.

Impact on public safety

Question #11

How will these guidelines affect public safety?

Answer

The Drug Free Workplace Program covers all civilian employees in the Executive Branch agencies. In general, Testing Designated Positions (TDPs) are positions where a momentary lapse in judgment could result in significant harm. Due to differences in agency missions, structure and budget, TDPs differ among agencies. See 2013 Guidance for the Selection of Tested Designated Positions. Currently most TDPs are in Top Secret or above clearance. The revisions to the Mandatory Guidelines are intended to enhance public safety.

Impact to non-federal employees

Answer

The Mandatory Guidelines address federal employees.

Privacy issues

Question #12

Do HHS Certified Laboratories keep records regarding who tests positive and who is using what drugs?

Answer

Personal identifiable drug testing information is maintained by HHS-certified laboratories for a period of time in accordance with Mandatory Guidelines requirements. Thereafter, total laboratory confirmed positive results (without personal identifiable information) for each drug will be recorded in aggregate form.

Source
DWP Staff, 240-276-2600 (Workplace Helpline)

Question #13

What is the authority for the federal drug-free workplace program?

Answer

Executive Order 12564 and Title V, Section 503 of Public Law 100-71 authorize the Substance Abuse and Mental Health Services Administration to conduct the following activities:

- Promulgate scientific and technical guidelines for drug testing programs under Executive

Order 12564;

- Establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order 12564;

- Specify the drugs for which Federal employees may be tested; and

- Establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order 12564.

Source
E.O. 12564 and P.L. 100-71

Other Topics

Question #14

How will these guidelines help the federal government address the opioid crisis?

Answer

Misuse and abuse of psychotherapeutic prescription drugs, including opioid pain relievers, are issues of concern for all populations regardless of age, gender, ethnicity, race, or community. Recent data show that opioid-related overdose deaths in the United States now outnumber overdose deaths involving all illicit drugs such as heroin and cocaine combined. In addition to overdose deaths, emergency department visits, substance treatment admissions and economic costs associated with opioid abuse have all increased in recent years. These guidelines will help deter the illicit use of opioid drugs and can incentivize federal employees to seek opioid use disorder treatment. In this way, the Guidelines will further the Department activities in continuing to work with partners at the federal, state, and local levels to implement policies and programs to reduce prescription drug use and improve public health. Specifically, the Guidelines will screen for illicit opioid use among federal employees in safety sensitive positions with multiple agencies.

Frequently Asked Questions for Industry

Question #15

If an applicant or employee is unable to provide 45 mL of urine for a drug test, can they submit to and provide an oral fluid specimen?

Answer

At this time, oral fluid is not approved as a federal drug testing specimen. Oral Fluid Mandatory Guidelines have been proposed (May 15, 2015; 80 FR 28101), but final Guidelines have not been published. The UrMG do not authorize oral fluid as an alternative specimen: references to the use of an alternate specimen type (e.g., oral fluid) are not applicable until final Guidelines have been implemented for the use of the alternate specimen type (see UrMG Section 8.7). UrMG Sections 8.5 and 8.6 include the steps to be taken when 45 mL urine is not collected.

Source
UrMG Sections 8.5 and 8.6

Question #16

What is the difference between an "Observer," who observes the collection, and "Monitor," who monitors the collection?

Answer

An Observer is the person assigned to observe the collection of the specimen for a 'direct observed' collection according to UrMG Section 8.10. The observer's gender must be the same as the donor's (which is based on the donor's gender identity). The observer is not required to be a trained collector, but must be trained as an observer. An observed collection is described in UrMG Section 8.9. It is the same as a routine collection except the observer is in the restroom or stall and watches the urine pass from the body of the donor to the collection container. The observer maintains visual contact with the specimen until the donor hands the container to the collector. The collection container cannot be handled by the observer unless the observer is also serving as the collector.

A Monitor is the person assigned to monitor collection of the specimen for a 'monitored' collection according to UrMG section 8.12. The monitor's gender must be the same as the donor's (which is based on the donor's gender identity), unless the monitor is a medical professional. The monitor is not required to be a trained collector. A monitored collection is described in UrMG Section 8.11. It is the same as a routine collection except the monitor provides visual privacy while being alert for signs of tampering.
The monitor must not touch or handle the collection container, unless the monitor is also serving as the collector, and must not watch the donor urinate into the collection container.

Source
UrMG Sections 8.9-8.12; Medical Review Officer Guidance Manual for Federal Workplace Drug Testing Programs, Appendix A: Glossary

Question #17

What is the rationale for why the definition of opiates vs. opioids changed? Earlier, "opiates" was the umbrella category, and now "opioids" is the umbrella category that refers to both opiates and opioids.

Answer

The term "opiates" is used to describe naturally occurring substances known as alkaloids derived from the opium poppy plant (e.g., codeine; morphine; and heroin, which is produced by the acetylation of morphine) that bind to specific receptors in the central nervous system and have analgesic as well as narcotic effects.

The term "opioids" has expanded in scope over time and is used broadly to describe various compounds that bind to specific receptors in the central nervous system and have analgesic as well as narcotic effects. The broadly used term "opioids" includes naturally occurring alkaloid compounds known as opiates (e.g., codeine, morphine, and heroin); semi-synthetic compounds (e.g., oxycodone, oxymorphone, hydrocodone, and hydromorphone); and synthetic compounds (e.g., fentanyl). Opioids may or may not have structural similarity to the opium alkaloids.

Source

Medical Review Officer Guidance Manual for Federal Workplace Drug Testing Programs, Appendix A: Glossary

Question #18

If notification is not received from the federal agencies of when they will expand their drug testing panel to include the four semi-synthetic opioids (oxycodone, oxymorphone, hydrocodone, hydromorphone), are federal specimens to be tested as currently stated on or after October 1, 2017, with the exception of removal of MDEA?

Answer

SAMHSA provided guidance to HHS-certified laboratories to clarify testing of federal agency specimens as of October 1, 2017:
1. Implement the revised pH cutoff for federal agency specimens.
2. Discontinue testing federal specimens for MDEA.
3. If a federal agency client has NOT notified the laboratory of its decision on when to begin testing the added opioids, the laboratory should contact the federal agency or Medical Review Officer.

HHS-certified laboratories, applicant laboratories, Responsible Persons, and Medical Review Officers were sent NLCP Notices on August 18, 2017, September 8, 2017, and September 27, 2017 to clarify testing for federal agency specimens.

Source
August 18, 2017 and September 8, 2017, and September 27, 2017 NLCP Notices to HHS-Certified and Applicant Laboratories and NLCP Inspectors

Question #19

Will the pH decision point change be required on October 1, 2017, or at a date after October 1, 2017 specified by notice from each federal agency?

Answer

The revised pH cutoff must be implemented on October 1, 2017. On August 18, 2017 NLCP Notices were sent to HHS-certified and applicant laboratories and NLCP Inspectors.

Source
August 18 2017 NLCP Notice to HHS-Certified and Applicant Laboratories and NLCP Inspectors

Question #20

What are the privacy requirements when a urine specimen is collected?

Answer

The following privacy requirements apply when a donor is providing a urine specimen:
(a) Only authorized personnel and the donor may be present in the restricted access area where the collection takes place. (b) The collector is not required to be the same gender as the donor. The gender of the observer for purposes of a direct observed collection (i.e., as described in Section 8.10) must be the same as the donor's gender, which is determined by the donor's gender identity. The gender of the monitor for a monitored collection (i.e., as described in Section 8.12) must be the same as the donor's gender, unless the monitor is a medical professional (e.g., nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place).

The collector for an observed collection asks the donor to identify the donor's gender on the Federal Custody and Control Form (CCF) and initial it. The collector will then select an observer whose gender matches the donor's gender recorded on the Federal CCF. The collector documents the observer's name and gender on the Federal CCF. The same procedure is used to select the monitor for a monitored collection unless the monitor is a medical professional.

Source
UrMG Sections 8.1, 8.10, and 8.12

Question #21

What is considered a valid prescription when dealing with testing for the four semi-synthetic opioids (oxycodone, oxymorphone, hydrocodone, hydromorphone)?

Answer

Valid Prescription: When reviewing the positive test result, the MRO will take all reasonable and necessary steps to verify the authenticity of all medical records and other medical information provided by the donor that may be relevant to the medication being prescribed. The MRO should use reasonable medical judgment to make the decision that the provided prescription was generated in response to the donor's current medical condition. Contact with the prescribing physician may be helpful for the MRO in coming to this decision if the donor has provided any consent that may be required. There are many critical components on how a prescription may be verified. This can be accomplished by the combination of the following: photos sent by text, e-mail, or fax showing enough angled shots of the bottle label that the MRO can verify the name of the donor on the label, prescription number, name of the drug, prescribing physician, date filled, number of pills in the prescription, number of refills, and the pharmacy name, address, and contact information. Equally effective is a verification call to the pharmacy (after the MRO has verbally obtained the information in the item above from the donor and documented it on the MRO record). Additionally, a copy of a pharmacy printout showing the medication dispensing history and/or a signed statement from, or phone discussion with, the prescribing physician. In all cases, the MRO should verify that the contact was with the prescribing physician. As an example, the MRO may request the physician's state license number or DEA number. For additional security, the MRO may obtain the physician's telephone number from another source (e.g., online search) and call the individual to verify identity.

Question #22

What is considered a legitimate medical explanation when dealing with testing for the four semi-synthetic opioids (oxycodone, oxymorphone, hydrocodone, hydromorphone)?

Answer

Legitimate Medical Explanation: When determining whether a legitimate medical explanation exists for a
positive test, the MRO may consider whether a medication was used during the time period for which it was legitimately prescribed. If a donor's use was not medically authorized, the specimen will be reported as positive. With respect to Schedule II medications, Schedule II includes drugs or other substances that have high potential for abuse, abuse of which may lead to severe psychological or physical dependence, and that have a currently accepted medical use in treatment in the United States (with or without severe restrictions). An MRO's decision to contact a donor's employer under these circumstances is not required or authorized by the Mandatory Guidelines. Rather, an MRO's decision to contact an employer regarding safety issues related to a donor's valid prescription is subject to the MRO's voluntary choice and any obligations the MRO may have with the donor's employing agency.

Source
Medical Review Officer Guidance Manual for Federal Workplace Drug Testing; Section 4.5

Question #23

Are agencies authorized to use oral fluids as an alternate drug testing specimen after Oct. 1, 2017?

Answer

At this time, oral fluid is not approved as a federal drug testing specimen. Oral Fluid Mandatory Guidelines have been proposed (May 15, 2015; 80 FR 28101), but final Guidelines have not been published. The UrMG do not authorize oral fluid as an alternative specimen: references to the use of an alternate specimen type (e.g., oral fluid) are not applicable until final Guidelines have been implemented for the use of the alternate specimen type (see UrMG "Background" section of the Preamble and Section 8.7).

Source
UrMG, "Background" section of the Preamble and Section 8.7

Frequently Asked Questions for Policy/Program

Question #24

Is it within discretion of the federal agencies to decide if and when to expand the list of drugs routinely tested to include the four semi-synthetic opioids (oxycodone, oxymorphone, hydrocodone, hydromorphone)?

Answer

Yes. UrMG Section 3.1 requires federal agencies to test each specimen for marijuana and cocaine, and authorizes federal agencies to test each specimen for opioids, amphetamines, and phencyclidine, as provided under Section 3.4. SAMHSA has strongly recommended the addition of the four semi-synthetic opioids (oxycodone, oxymorphone, hydrocodone, hydromorphone) and asked that agencies notify their service providers of their decision and, as appropriate, the implementation data, by

September 15, 2017.

Source

UrMG Sections 3.1 and 3.4; August 18 2017 NLCP Notice to HHS-Certified and Applicant Laboratories and NLCP Inspectors

Question #25

Is it the responsibility of the federal agency to contact their service provider or laboratory to request the expanded testing (to include oxycodone, oxymorphone, hydrocodone, hydromorphone)? Must the recommended template titled "Decision Notification for the Addition of Semi-Synthetic Opioids to the Drugs Routinely Tested" provided in the August 16, 2017 letter sent to federal agencies and all HHS- certified laboratories be used?

Answer

Yes, agencies are responsible for advising their service providers.

No, the template is not required and may be used or not used at the agency's discretion. Since some agencies may not be prepared to add the additional analytes by October 1, SAMHSA instructed the agencies to notify their service providers of the date they will begin testing their workplace specimens for these drugs, and provided the template for the agency's use. Subsequently, in a September 8, 2017 Notice, SAMHSA instructed laboratories to contact federal agency clients who had not yet notified the laboratory of their decision.

Source
UrMG Sections 3.1 and 3.4; SAMHSA letter emailed to Drug Program Coordinators on August 16, 2017; September 8, 2017 NLCP Notice to HHS-Certified and Applicant Laboratories and NLCP Inspectors

Question #26

When will the MRO Manual be revised and how is it to be obtained?

Answer

The revised MRO Guidance Manual has been posted on DWP's website at https://www.samhsa.gov/workplace.

Source
DWP Staff, 240-276-2600 (Workplace Helpline)

Question #27

What MRO certifications are required for the revised Mandatory Guidelines effective October 1, 2017?

Answer

To continue serving as an MRO for federal agency specimens, certified MROs must complete training on the UrMG prior to the October 1, 2017 effective date.

Source
UrMG Section 13.3

Question #28

Will federal agencies be required to report drug testing results of the four newly added semi-synthetic opioids (oxycodone, oxymorphone, hydrocodone, hydromorphone)? If so, will the Annual Survey Report be revised to reflect this?

Answer

Yes. The Annual Survey Report has been revised to capture results of the added semi-synthetic opioids.

Source
DWP Staff, 240-276-2600 (Workplace Helpline)

Question #29
Do federal agencies have to submit their updated/revised Drug Free Workplace Program (DFWP) plans on or before 10/1/2017? Can they be submitted at a later date? Can agencies implement drug testing of oxycodone, oxymorphone, hydrocodone, hydromorphone before their revised plan receives HHS concurrence?

Answer

There is no deadline for agencies to submit updated/revised Drug Free Workplace Program plans, but HHS requests that such plans be submitted as soon as practicable following any substantive changes made to an agency's plan. Review by the Interagency Coordinating Group Executive Committee (ICGEC) is not needed in order for an agency to begin testing for the four semi-synthetic opioids (oxycodone, oxymorphone, hydrocodone, hydromorphone).

Source
DWP Staff, 240-276-2600 (Workplace Helpline)

Question #30

Is the addition of the four semi-synthetic opioids (oxycodone, oxymorphone, hydrocodone, hydromorphone) to the drug testing panel considered a "substantive change" to an agency plan? Define "substantive change".

Answer

A 'substantive change' is any alteration to a federal agency's drug testing plan that affects the substance of the plan's policy and/or procedures. It does not usually refer to purely editorial or other non-substantive updates. The addition of the four semi-synthetic opioids to an agency's drug testing plan may constitute a substantive change. Federal agencies should contact DWP staff in order to receive tailored guidance that is specific to each agency's plan.

Question #31

Should federal agency employees be notified of the additional drugs to be tested?

Answer

Federal agencies should consider, in consultation with their legal counsel, providing notice to federal agency employees of the panel of drugs that they will be tested for. Notably, Executive Order 12564, Section 4(b) states that, "before conducting a drug test, the agency shall inform the employee to be tested for the opportunity to submit medical documentation that may support a legitimate use of a specific drug."

Source
Executive Order 12564, Section 4(b)

SAMHSA Note: These frequently asked questions (FAQs) and answers apply to federal agency drug testing programs that come under Executive Order 12564 dated September 15, 1986, section 503 of Public Law 100-71, 5 U.S.C. section 7301 note dated July 11, 1987, and the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (82 FR 7920) dated January 23, 2017 (effective October 1, 2017).

This document does not apply to specimens submitted for testing under U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40).

These FAQs are intended to assist Drug Program Coordinators, Collectors, Laboratory Responsible Persons, Medical Review Officers, and Federal Drug Testing Third Party Administrators in carrying out their responsibilities under the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (82 FR 7920). This guidance does not establish legally enforceable responsibilities, but may reference actions or responsibilities that are required under statutory or regulatory authorities. The use of the word "should" in this guidance means that something is suggested or recommended, but not necessarily required by law.