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**OPTIONAL FORM 41 (Rev. 7-76)**  
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## U.S. House of Representatives

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

SUBCOMMITTEE ON CIVIL SERVICE

122 CANNON HOUSE OFFICE BUILDING

Washington, DC 20515

TELEPHONE (202) 225-4025

December 8, 1986

Honorable Lee M. Thomas  
Administrator  
Environmental Protection Agency  
Washington, DC 20460

Dear Mr. Administrator:

The Office of Personnel Management (OPM) promulgated guidelines entitled "Establishing a Drug-Free Federal Workplace," on December 1, 1986. I urge you to ignore these guidelines. They are contrary to the provisions of the Executive order on drug testing. There is no authority in law or regulation for the random program described in the guidelines. No funds have been authorized or appropriated for this purpose. On several key issues -- randomness, consent, and penalties -- the guidelines are an open invitation to litigation. Your agency could better perform its mission and save the taxpayers money by ignoring the OPM issuance.

1. Random Testing. Executive Order 12564 [51 Fed.Reg. 32,889 (1986)], does not authorize random testing. The order requires agency heads to establish drug testing programs, but the nature and extent of such testing is left to the discretion of the agency head. Indeed, the word "random" does not appear in the order.

Yet, random testing is at the crux of the OPM guidelines. Sections 3(a)(4) and 3(a)(5) of the guidelines spell out how to conduct tests in a random manner to avoid charges of arbitrary and capricious agency action. The guidelines emphasize that the alternative to random testing is comprehensive testing of everyone eligible, a far more expensive proposition for the agency.

OPM simply ignores the constitutional issues raised by a random testing program. Agency heads contemplating such a program cannot afford to do so. Almost every court which has considered a random testing program has struck it down as violating the Fourth Amendment's prohibition against unreasonable search and seizure. Most recently, the U.S. District Court for the Eastern District of Louisiana decided that the random testing program of the U.S. Customs Service was unconstitutional, and issued a permanent injunction prohibiting the Customs Service from conducting random tests of its employees. (National Treasury Employees Union v. von Raab, USDC E.La, Nos. 86-3522 and 86-4088, November 12, 1986). A

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suit by three federal employee organizations challenging the constitutionality of the Executive order is pending before the same court.

2. Consent. The guidelines raise the issue of consent in two areas. The first is consent to the test itself as a condition of employment; second, consent to the release of the results of a urinalysis test to agency management.

Under the guidelines, if an employee or applicant does not give consent, he or she cannot hold the job. Section 4(d) states that an agency must take disciplinary action, including removal, against an employee who refuses to take a urinalysis test. A refusal to consent to release of drug test results to management is to be considered a refusal to take the test for disciplinary purposes.

The Executive order does not discuss consent, nor penalties for refusal to take a drug test. The order does require that drug testing programs "protect the confidentiality of test results" (Sec. 4(c)). Yet the OPM guidelines, under which an employee's test results will be disclosed to a minimum of three agency management officials, destroy confidentiality.

Further, agencies cannot simply require drug testing as a condition of employment. An individual cannot be forced to give up constitutional rights for the opportunity to work for the Federal government. And, an employee's consent to drug testing (waiving a Fourth Amendment right) or consent to release of test results (waiving confidentiality of patient records under 42 U.S.C. 290ee-3) would surely be held involuntary when withholding consent could lead to loss of a job. If an agency lacks an employee's voluntary consent, requiring the employee to submit to drug testing would make the results of such test unuseable and could well make both the agency and agency officials liable for violating the employee's rights.

3. Penalties. The Executive order stresses employee assistance, counseling, and rehabilitation. Even if an employee is temporarily removed from his or her job pending successful completion of a drug rehabilitation program, under the Executive order, that employee would be allowed to return to the job.

Under the guidelines, an employee could be fired and must be punished after one positive test or refusal to take the test and must be fired after two. Mandatory penalties of this sort are rare in Federal personnel law because mandatory penalties are frequently counterproductive and bad management.

Mandatory removal is particularly inappropriate when it is based on a technological process with a documented error rate of at

least 5% and severe quality control problems. A 1985 report on drug testing laboratories by the Centers for Disease Control found false positive error rates of up to 66 percent.

The guidelines mandate penalties after one positive test. Yet, they fail to mention the requirements of the nexus test and the Rehabilitation Act. The guidelines conveniently ignore the substantial job-relationship and reasonable accommodation hurdles which an agency must clear before it can impose any penalty. Taking an action against an employee who tests positive is a major legal undertaking for an agency. Whether this is the best use of your agency's limited resources is a decision for you to make, not OPM.

4. Cost. The White House has said that the drug testing program would cost \$56 million to implement. Office of Management and Budget officials subsequently admitted that this figure was pulled out of the air. I estimate the cost at closer to \$300 million. Congress has not authorized any funds for drug testing programs. Therefore, agencies must divert funds from authorized programs into any drug program.

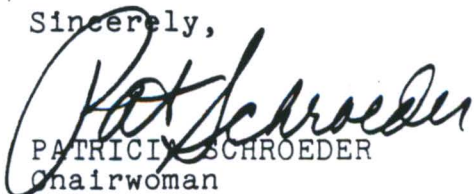
Regardless of whether a government-wide drug testing program costs \$56 million or \$300 million, implementation of the guidelines will reduce the resources otherwise available for achieving the mission of your agency.

5. Human Dignity. Individuals are hired to perform work for the people of the United States. They are not hired to be escorted into a rest room, guarded while they urinate, and have the urine they produce checked for "color, temperature, or other evidence that tampering may have occurred." Management officials were not hired to act as rest room guards.

I find this entire process demeaning to human dignity and improper for the government. The drug testing fad is a politically motivated response to a serious social problem. As the head of a Federal agency, you can prevent this degradation from taking place. I urge you to do so.

With kind regards,

Sincerely,



PATRICIA SCHROEDER  
Chairwoman

EXECUTIVE ORDER

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WHITE HOUSE CONFERENCE FOR A DRUG FREE AMERICA

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Public Law 99-570, the Anti-Drug Abuse Act of 1986, Subtitle S, Sections 1931 through 1937, and in order to clarify the performance of the White House Conference for a Drug Free America, it is hereby ordered as follows:

Section 1. Establishment and Purpose. (a) There is established the White House Conference for a Drug Free America within the Executive Office of the President. The Conference will bring together knowledgeable individuals from the public and private sector who are concerned with issues relating to drug abuse education, prevention, and treatment, and the production, trafficking, and distribution of illicit drugs.

(b) The purpose of the Conference is to:

(1) share information and experiences in order to vigorously and directly attack drug abuse at all levels -- local, State, Federal and international;

(2) bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free;

(3) highlight the dimensions of the drug abuse crisis, to examine the progress made in dealing with such crisis, and to assist in formulating a national strategy to thwart sale and solicitation of illicit drugs and to prevent and treat drug abuse;

(4) examine the essential role of parents and family members in preventing the basic causes of drug abuse and in successful treatment efforts; and

(5) to focus public attention on the importance of fostering a widespread attitude of intolerance for illegal drugs and their use throughout all segments of our society.

(c) The members of the Conference shall be appointed by the President who shall:

(1) designate the heads of appropriate executive and military departments and agencies to participate. Such members will include, but not be limited to, the Attorney General, the Secretary of Health and Human Services, the Secretary of Transportation, and the Director of ACTION;

(2) invite and provide for the involvement in the Conference of other appropriate public officials, including Members of Congress, Governors, and Mayors; private entities, including concerned parents' organizations, foundations, businesses, and corporations; individuals distinguished in medicine, law, drug abuse treatment and prevention, primary, secondary, and post-secondary education, and law enforcement.

(d) An Executive Director of the Conference will be appointed by the President and is delegated the authority to appoint other directors and personnel for the Conference and to make determinations, under Section 1936, P.L. 99-570, regarding the number of and compensation of such employees as may be required for the purposes of meeting the responsibilities of the conference and within the limitations of the budget authority available to the Conference.

(e) A Managing Director of the Conference will be designated to organize and manage the operation of the Conference and to perform such functions as the Executive Director may assign or delegate, and shall act as Executive Director during the absence or disability of the Executive Director or in the event of a vacancy in the office of Executive Director.

(f) Compensation of Executive Director and Managing Director.

(1) The Executive Director of the Conference shall be compensated at a rate not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5 [5 U.S.C. 5314].

(2) The Managing Director of the Conference shall be compensated at a rate not to exceed the maximum rate of pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5 [5 U.S.C. 5332].

Sec. 2. Functions. (a) The Conference shall specifically review;

(1) the effectiveness of law enforcement at the local, State, and federal levels to prevent the sale and solicitation of illicit drugs and the need to provide

greater coordination of such programs;

(2) the impact of drug abuse upon American education;

(3) the extent to which Federal, State, and local programs of drug abuse education, prevention and treatment require reorganization or reform in order to better use the available resources and to ensure greater coordination among such programs;

(4) the impact of current laws on efforts to control international and domestic trafficking of illicit drugs;

(5) the extent to which the sanctions in Section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291) have been, or should be, used in encouraging foreign states to comply with their international responsibilities respecting controlled substances;

(6) the circumstances contributing to the initiation of illicit drug usage, with particular emphasis on the onset of drug use by youth; and

(7) the potential approaches and available opportunities for contributing to specific drug-free segments of society, such as public transportation, public housing, media, business, workplace, and other areas identified by the Conference.

(b) The Conference shall prepare and transmit a report to the President and Congress. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement such recommendations. The Conference staff shall assist the President in preparing the necessary report to the Congress annually, during the three year period following the submission of the final report of the Conference, on the status and implementation of the findings and recommendations of the Conference.

Sec. 3. Administration. (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Conference such information with respect to drug abuse law enforcement, interdiction, and health-related drug abuse matters, including research, as it may require for the purpose of carrying out its functions. Information supplied to the Conference shall, to the extent permitted by law, be kept confidential.

(b) All Federal departments, agencies, and instrumentalities are authorized to provide such support and assistance as may be



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necessary to facilitate the planning and administration of the Conference.

(c) Upon request by the Executive Director, the heads of the executive and military departments are authorized to detail employees to work with the Executive Director in planning and administering the Conference without regard to the provisions of Section 3341 of title 5, U.S.C.

(d) Members designated by the President to participate in the Conference shall be responsible for the expenses of their participation.

(e) Individuals invited to become involved in the Conference or invited to provide assistance or advice shall be entitled to travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(f) Any expenses of the Conference shall be paid from funds available for necessary expenses of the White House Conference for a Drug Free America.

Sec. 4. General. (a) The Executive Director is authorized to procure contractual services as necessary to support the objectives and responsibilities of the Conference and other services as authorized by 5 U.S.C. 3109.

(b) Notwithstanding any other Executive order, the Administrator of General Services and the Office of Administration shall, on a reimbursable basis, provide such administrative services as may be required.

(c) The Conference shall terminate no later than September 30, 1989, unless sooner extended.

RONALD REAGAN

THE WHITE HOUSE,  
December xx, 1986.

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NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

8079

MEMORANDUM FOR ALFRED H. KINGON

FROM: JOHN M. POINDEXTER

SUBJECT: Andean Presidential Summit on Narcotics

Bolivian President Victor Paz Estenssoro wants to continue the momentum generated by Operation Blast Furnace by hosting a Presidential Summit on narcotics with the Andean Country Presidents (Bolivia, Peru, Colombia, Ecuador, Venezuela) and possibly Brazil and President Reagan. These are all democratically elected Latin American Presidents. The purpose of the meeting would be the signing of a joint agreement or declaration on narcotics control activities. The NSC, the Department of State and Carlton Turner believe this idea has considerable merit. It would provide the President with an international forum to highlight and foster the cooperation and coordination among the major cocaine producing and smuggling countries and U.S. narcotics initiatives to curtail supply. It would also serve to demonstrate to the U.S. Congress the success of our international efforts on narcotics. While the Bolivians have suggested Santa Cruz, Bolivia as the summit site, they have indicated their willingness to be flexible to accommodate the President's schedule and would consider a site in the U.S.

## EXECUTIVE SUMMARY

Illicit narcotics trafficking is a greater threat to US national security, economic well being, and social order than the threat posed by international terrorism or any armed conflict short of war with a major power.

US national security is being undermined as friendly foreign governments are threatened from within by drug-related corruption, intimidation, and economic destabilization, and from without by insurgents who receive arms and financial support from the drug trafficker. Within the military, the drug problem is degrading military discipline and combat readiness of both the US and Allied armed forces. These negative political, economic, and military factors are adversely affecting US security interests and will increase if drug abuse and drug trafficking continue to grow.

Within the United States, drug abuse and drug trafficking are affecting all economic groups and social classes. Besides the almost \$200 billion lost annually from the US economy and significant damage to the social fabric of American life, drug abuse is exacting an incalculable toll in human misery. (Cocaine and heroin overdoses resulted in 1,663 documented deaths in 1984.) Drug money is corrupting government officials, criminalizing reputable business establishments, and stimulating street crime.

The three principal drugs of abuse (marijuana, cocaine, and heroin) originate, in large part, within Latin America and are routed to the United States through the Caribbean region or through Central America and Mexico. The producing countries involved and those countries whose territory provides transshipment stations are all highly dependent on the United States in an economic sense and enjoy close political and national security relationships with the United States. Countries of particular concern include Colombia, Bolivia, Peru, Jamaica, Panama, Belize, Mexico and the Bahama Islands.

International agreements and cooperation on narcotics matters, though laudable in numerous instances, have not been sufficiently comprehensive to cause decisive damage to the drug producers. Suitable substitutions are needed for the narcotics producing crops which are now the main cash producers for peasants of several Western Hemisphere nations. The viability of some national economies are now linked to the presence of narcodollars.

Drug traffickers have developed highly sophisticated smuggling operations which include their own transportation, communications, intelligence, and defense capabilities.

While the National Strategy for Prevention of Drug Abuse and Drug Trafficking is an excellent theoretical approach to solving the drug problem, its implementation is not achieving the desired results.

Current law enforcement and drug abuse prevention efforts are inadequate to halt the flow of illicit drugs and often are fragmented and uncoordinated.

Without a central command authority, there is no way to insure effective coordination and cooperation.

The current mood of the Administration, Congress, and the public at large is to take more aggressive action against the drug trafficker. NSDD 221 illustrates Presidential concern and will be seized upon by various antidrug factions as a tool to leverage greater military involvement. This mounting pressure will eventually dictate greater military involvement in drug traffic interdiction. Yet it will be the attitude of the Army leadership toward antidrug involvement that will shape the character of Army participation and consequently the amount of benefits or costs to the Army which result from those operations.

Military involvement on a much larger scale than present is necessary to make any lasting impact on drug trafficking. Since the US Navy and Air Force are the services best designed to support antidrug operations in the insular Caribbean and the Gulf of Mexico, the most likely and sensible area for domestic employment of Army forces is along the US/Mexican border. For combined operations in Central or South America, the Army is the primary military service best suited for assisting foreign police and military antidrug forces.

The Congress has clearly indicated that the Posse Comitatus Act should not interfere with using US military forces to support drug traffic interdiction activities being conducted outside of US territory. NSDD 221 specifies conditions which permit the use of military forces against illegal drug trafficking whenever national security is at risk therefrom.

While the Posse Comitatus Act, as clarified in 1981 by Public Law 97-86, prohibits the domestic use of Army personnel from direct assistance in search, seizure, arrest and interdiction activities within the United States, it does permit a number of supporting activities and the loan of military equipment and facilities.

Use of Army personnel and equipment in antidrug operations entails both risk and opportunity. Risk in foreign operations includes the possibility of casualties and equipment loss plus potential embarrassment if the mission fails. However, the more likely political risk results from using the US Army to enforce the laws of another nation, to enter in regions traditionally suspicious of US interventionism, and to suppress the cultivation and marketing of the money-making narcotics crops. Similar though less risk is involved in supporting domestic operations. Political costs in this case could result from criticism by those who see any use of the military in civil law enforcement as a threat to civil liberties. Nevertheless, opportunities exist for protecting US security interests, practicing joint and combined operations, providing training and expert advice, gaining support for increased funding for antidrug activities (with a colateral benefit of more equipment available for wartime missions), and improving wartime readiness.

The amount of current US Army involvement in drug trafficking interdiction operations is small. The Army has responded well to requests for assistance to civil authority, but relatively few requests have been made. The number of Active Army personnel supporting US law enforcement efforts is miniscule, the dollars actually spent for the antidrug trafficking effort are insignificant (AY86 unprogrammed personnel costs under \$1 million; AY87, none programmed for support of interagency illegal drug interdiction). The equipment loaned to other government agencies--while vital to the gaining organization--is causing no noticeable degradation of Army combat readiness.

The Army can and should provide needed assistance to the antidrug effort by increasing its contribution in training assistance; equipment loans; maintenance, personnel, and communications support; intelligence sharing, and direct participation in joint and combined operations. This can be done without degrading combat readiness and, in fact, will benefit the overall readiness of the Total Army force. Costs attributed to antidrug efforts should not exceed \$20 million annually.

As a component of the Total Army force, the Army National Guard could be utilized within existing law and policy as a potent antidrug weapon. Special drug war directed appropriations could provide more equipment and training time for the ARNG, lessen the demand for Active Army assets, and contribute to Total Force readiness.

Recommendations are designed to (1) provide needed assistance to US civil authorities in the drug interdiction campaign; (2) enhance the combat readiness of the Total Army force through the impact of "real world" missions; and (3) assist in preserving US national security interests in the Western Hemisphere by supporting the antidrug efforts of governments friendly to the United States. The US Army leadership should:

a. In terms of policy actions, adopt a more assertive posture in offering assistance to US civil authority in antidrug activities and should suggest greater OCONUS actions against the sources of supply and the suppliers. The Army should recommend the establishment of a centralized command and control apparatus with authority to utilize specific forces allocated for coordinated and sustained antidrug trafficking campaigns. Also, combined operations with forces of friendly governments involved in antidrug operations should be encouraged.

b. Offer to increase the number of Army personnel at the National Narcotics Border Interdiction System (NNBIS) facilities and at the El Paso Intelligence Center (EPIC). Individuals skilled in planning combined and joint operations, as cryptographic specialists, photo interpreters, tactical intelligence analysts, communications experts, and foreign area specialists could be of substantial value to these operations.

c. Provide greater assistance to civil authorities by increasing availability of Army equipment; providing greater lift capability to law enforcement agencies during tactical operations; expand use of ground surveillance radars and sensors; expand use of mobile training teams and opportunities to

attend Army service schools; provide training in command, control and communications techniques; offer use of Army real estate and facilities; and support greater use of Army National Guard assets in antidrug operations. (All of these are explained in greater detail in the study text.)

d. Seek congressional support for additional funds that would be appropriated specifically to support antidrug activities of the US Army. The current mood of Congress is such that approval is likely if the Army can show a planned commitment to meet the drug threat.

e. Conduct a follow-on study to determine and evaluate in greater depth the potential impact of illicit drug trafficking on US national security interests; on the policies of foreign governments in their relations with the United States; and on the roles and missions of the US Army.

Members of the US Army are sworn to protect and defend the United States against all enemies, foreign and domestic. The drug trafficker and the drug abuse he promotes pose dangerous threats to the social, economic, and national security interests of the American people. It is time to acknowledge the magnitude of the damage being caused by the illicit drug trade and to bring it under control. Current antidrug tactics are failing to meet that objective. While interdiction of drug traffic is an important element of an effective strategy, it alone can never solve the problem. Only by reducing the demand and attacking the drug trade at its points of origin can the US Government hope to succeed. By attaching a social stigma to both the addict and the trafficker and by broad educational and medical programs, the demand for illegal drugs can be reduced. International cooperation in attacking the production sources and the drug overlords in their home countries can substantially reduce the supply. It is this international cooperation which must be achieved and it is this area in which the Army can be of the most assistance. The Army can utilize the military-to-military relationship developed within the Inter-American security system to assist the Department of State in its efforts for international cooperative agreements. The Army can encourage the US national leadership to use all persuasive means available to induce those nations afflicted by drug traffic to launch an all-out antidrug war which includes combined military operations with US forces as necessary. Likewise, the Army can seek and suggest ways to assist US civilian law enforcement agencies in the campaigns against domestic drug trafficking. While granting that such activities are not the traditional role of the Army and that many will oppose such missions on charges varying from illegality, to interventionism, to degradation of wartime readiness, the Army should not be deterred. Although the Army should not promise victory in a war on drugs because there is no exact yardstick for success and drug abuse can never be totally eliminated, the Army also should not be reluctant to participate or reticent to speak out. Minimizing the drug trade has become a vital national interest. While the US Army is not charged with an antidrug responsibility and is but one service with limited voice in the bureaucracy, it should express deep concern over the drug threat to national security and indicate willingness to become more involved. To do less would be to ignore the menace which illicit drug trafficking now poses to the United States.

## POSSIBLE HOTLINE QUESTIONS POSED BY OPA

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1. Q: Can I be fired for admitting to drug use?

A: No, not based upon that admission alone. However, that admission coupled with other evidence of illegal drug use, such as a confirmed positive test result, may be used to support a disciplinary action for illegal drug use.

2. Q: Will I be fired if I test positive and don't agree to rehabilitation?

A: Both the Executive Order and OPM's guidelines require agencies to initiate disciplinary action based upon an initial confirmed positive test result. The full gamut of disciplinary actions from reprimand to removal would be available. Thus, it is possible that an action to remove an employee from Federal service could be initiated upon an initial confirmed positive test result. However, the intent of the Executive Order is that removal action will be taken only after a second confirmed positive test result or in rare circumstances where agencies have no nonsensitive positions to which the employee can be transferred. In addition, on the basis of an initial confirmed positive test result, the employee must be referred to an EAP counselor - it is up to the employee to participate in the program. The failure of an employee to refrain from illegal drug use after that initial opportunity for treatment or rehabilitation, as demonstrated by a subsequent confirmed positive test result, becomes part of the basis for later disciplinary action to remove the employee from Federal service. It is not the failure of the employee to participate in treatment or rehabilitation, but continued illegal drug use as evidenced by a second confirmed positive test result that would be the basis for removal.

3. Q: If I seek help at my EAP before being tested, will my supervisor be told?

A: Not if you request confidentiality.

4. Q: If I test positive, will my supervisor be told?

A: Your supervisor will only be told of a confirmed positive test result. (See consent to release drug test results.)

5. Q: What happens if I refuse to be tested?

A: You will be subject to disciplinary action as set forth in the OPM guidelines.

6. Q: If I test positive and I know I am innocent, what recourse do I have?

A: In response to a request from the Medical Review Official for additional medical information, you may provide the Medical Review Official, under the HHS guidelines, with evidence of other explanations that could have led to the confirmed positive test result. If he or she determines that the positive drug test result was based on illegal drug use and not some other factor, and some disciplinary action is taken against you, you may contest that action and present your explanation to a third party adjudicator (MSPB or arbitrator).

7. Q: If I test positive and seek rehabilitation, what type of leave can I use during this time? How much time will I be allowed?

A: All types of leave are available (A/L, S/L, LWOP). The amount of time on leave will be up to the agency.

8. Q: If my agency determines I am in the type of position that requires testing, how often can they test me?

A: The agency determines when drug tests are administered. However, you must be given the general agency-wide notice of a drug testing program at least 60 days before testing commences. In addition, if you are in a testing designated position, you must be given specific notice of the test at least 30 days before testing commences. If you are not in a testing designated position, testing may be based on reasonable suspicion that you are using illegal drugs, on the basis that you are the subject of an investigation of an unsafe practice or accident, or as part of follow-up testing after treatment or rehabilitation. In those circumstances, you would also be entitled to specific notice of the test, but not thirty days in advance of the test.

9. Q: Will I know in advance of the testing, or will testing be done randomly?

A: Once the program begins, testing may be random but it is anticipated that it will always be unannounced.

10. Q: I am taking prescription medication which might affect the drug test. How can I be certain that a positive test result caused by my medicine will not be misinterpreted as illegal drug use?

A: The best way to be certain that your prescription medication will not be misinterpreted as illegal drug use is to disclose your prescription at the earliest possible time. An opportunity for that disclosure will be provided at the time of the collection of the specimen on a form that will accompany the specimen to the laboratory. Specific guidance on this procedure (and on laboratory procedures to be used when prescription medication information is provided with the specimen) will be set out in the guidelines to be issued by the Department of Health and Human Services. In addition, the information you provide concerning prescription medication will be kept strictly confidential.

11. Q: I have heard that certain foods and certain over-the-counter drugs will cause positive test results. Can you tell me what food and drugs can do so? What protection do I have against this?

A: You should contact your agency, which will consult with HHS, with regard to the foods and drugs that may pose difficulties, if there are any. If you have concerns in this regard, you should disclose a list of possible ingested substances that may affect the test result at the time of the test on the form to be provided for that purpose in accordance with the HHS guidelines.



12. Q: What records are being kept on the testing? Will test results be part of my OPF?
- A: OPM will be issuing amended government-wide systems of records notices in the Federal Register in the near future. Test results will not become a part of your OPF.
13. Q: I have heard that urine samples will be taken in front of a witness, which I would refuse to do. I would consent to testing otherwise. Now what?
- A: You will be made aware that you have the right to request privacy while providing the specimen. If you request privacy, the collection technician will not directly observe the provision of the specimen. The technician will, however, monitor the test site to guard against the tampering or adulteration of the specimen. If those privacy protections do not allay your concerns and you refuse to be tested, you may be subject to disciplinary action.
14. Q: I have heard that testing might be conducted if there is reason to suspect drug use. Can someone just say I am taking drugs and I will be tested? What proof must be given?
- A: The standard for reasonable suspicion of illegal drug use that is provided in the guidelines requires that the source of any information on illegal drug use be reliable and credible.
15. Q: I have a recent test from a reputable lab which shows I am drug free. Can I submit this in place of being tested again?
- A: No, only results of agency-administered drug test may be used for this program. This guarantees uniformity of testing procedure, control over the test site and reliability of the laboratory doing the analysis.
16. Q: What effect does alcohol have on drug testing?
- A: None. This testing addresses specific illegal drugs only.
17. Q: Will my past record of drug abuse be considered when testing? In other words, will agencies review OPFs and 171s to see if there had been any problems with drugs in the past and then target those people for testing?
- A: Your past record will not be used on a routine basis for drug testing. That information could only be used if it gives rise to a reasonable suspicion of illegal drug use.
18. Q: I have reason to believe my supervisor wants to punish me and will insist that I submit to a drug test. Can I refuse on those grounds?
- A: The decision to test an employee for illegal drug use is within the sole discretion of the employee's supervisor if the decision is based on a reasonable suspicion that you use illegal drugs, if you are the subject of an unsafe practice or accident investigation, or as a part of the follow-up to treatment or rehabilitation. If you refuse to take the test, believing that there is no proper basis under the guidelines for it, the guidelines call for

discipline. Even before the agency makes its decision to take disciplinary action against you, you will be afforded the opportunity to respond to the proposal that you be disciplined. You may provide your explanation for your refusal to take the test at that time. You can, of course, challenge the disciplinary action through the usual procedures for contesting those actions. During that process, the adjudicator will have to be shown whether there was a proper basis under the guidelines for the test.

19. Q: Who can I complain to about my agency EAP program? They are not helping me with my problems.
- A: The personnel officer of your agency should be assigned key program development, implementation, and review responsibilities for the agency EAP. You should contact your agency's personnel director about your concerns so that he or she can make appropriate changes or improvements to the services provided.
20. Q: Will testing for illegal drugs reveal any other medical conditions like pregnancy or epilepsy?
- A: Only if you are taking a controlled substance (normally illegal, if taken without prescription) for treatment of a medical condition, could the test reveal that condition. It should be noted again that any medical information uncovered in the testing process that is unrelated to illegal drug use will be kept strictly confidential. Information about prescription medication that may be related to a medical condition will be considered by the medical review officer in determining whether the drug use was illegal and will not be further disseminated.