Washington, D.C. 20535

June 3, 1986

MEMORANDUM TO ALL EMPLOYEES

RE: FBI/DEA DRUG DETERRENCE PROGRAM

As we are all aware, drug abuse is the Nation's Number One crime problem. The FBI and DEA, as the investigative agencies responsible for enforcing Federal narcotics violations, can be in the forefront in meeting this challenge head-on. I am sure each of you will agree that we have consistently shown the American public that we are responsible for our actions and that we are steadfast in our commitment to eliminate the drug problem. We have set high standards for our employees, and your commitment to meeting these standards has earned us respect and admiration throughout the law enforcement community.

The FBI and DEA have formed a working group to consider ways in which we can reaffirm this commitment and communicate it in a positive way so that it will capture the attention and support of others. Together we have initiated a Drug Deterrence Program, to include implementation of urinalysis for all new employees. A similar future program is being developed for on-board employees. Special care has been taken to preserve the privacy and rights of all employees, and I know each of you will provide the support and cooperation necessary to ensure that the program is met with a positive attitude.

The following policy statement sets forth the details of the FBI and DEA Drug Deterrence Program:

(1) Prior to or immediately after coming on board, all employees of the FBI and DEA will be required to have urine tests performed for drugs of abuse.

(2) All FBI and DEA Special Agents, DEA Diversion Investigators and DEA chemists will be required to submit to a urinalysis for drugs of abuse prior to the end of their probationary period.

DRUG ENFORCEMENT ADMINISTRATION - Craig Richardson, General Counsel - 633-1141

The Drug Enforcement Administration has implemented a drug testing program for their new agents. The Basic Training program that started the first week of June, 1986, was the first time the program had been implemented. They are in the process of developing a program for current employees and have not decided how the testing for that will be as of yet.

Drug Enforcement Administration and Federal Bureau of Investigation have a joint program. A copy of the FBI/DEA Deterrence program is attached.

FEDERAL BUREAU OF INVESTIGATION - Dave Rarity, Personnel Officer 324-4981

Effective June 3, 1986, William Webster, Director, Federal Bureau of Investigation, has implemented a drug deterrence program and has put all employees of the FBI on notice. FBI/DEA has initiated a drug urine analysis program for all new employees. This is phase one of their program that is in progress now for pre-employment with the FBI/DEA. Everyone has been put on notice about the drug testing program. They are presently still implementing the procedures they will use for testing employees presently on board. Attached is a copy of the FBI/DEA Deterrence program.

U.S. CUSTOMS SERVICE - John Helm, General Counsel Office 566-6245

Implemented a plan for drug testing effective June 30, 1986. This is the first phase of their program. It is presently designed for non-employee applicants. Subsequent testing for employees presently working for Customs will be given to those who seek to be considered for promotions and/or change in position. Particular emphasis will be placed on the following positions:

1. Criminal enforcement
2. Employees who carry weapons
3. Employees working in General Intelligence/National Security positions.

If applicants test positive they will loose consideration for possible employment with Customs. Employees who test positive that are presently employed with Customs, face the possibility of loosing their jobs.

INTERNAL REVENUE SERVICE - Bill Long, General Counsel, 566-3588

No program.

IMMIGRATION AND NATURALIZATION SERVICE _ Paul Virtue, Associate, General Counsel - 633-2656

For approximately one year, drug testing has been part of the requirement for border patrol agents. The drug testing is given as part of their medical examination when they are being considered for employment. If an applicant test positive the first time, he is given another test. If the applicant test positive a second time, it is required that a full background investigation be done on the applicant. Positive testing/background investigation, will render individual ineligible for hire. At present, only border patrol agents are being tested. They are presently looking into testing for detention officers, but this has not been implemented as of yet. Review of program for new hires is under consideration.

BUREAU OF PRISONS - John Flynn - Personnel Office - 724-3177

The Federal Bureau of Prisons test all new applicants that work in the institutions in a law enforcement position. The urine analysis testing is part of their rountine examination. They do not have a plan to test current employees, but maintain the right to test any current employee who may be suspected of drug abuse that work in law enforcement positions. There are currently no plans to test employees who work in the regional offices or in other positions other than law enforcement.

(3) The FBI and DEA will require any employee to submit to a urinalysis for drugs of abuse where a reasonable suspicion exists that an employee may be abusing controlled substances. An employee will only be required to submit to a urinalysis when two supervisory personnel (one of whom must be at least at the Assistant Director (AD), Assistant Administrator or Special Agent in Charge (SAC) level, or in their absence a Deputy AD, Deputy Assistant Administrator, Assistant SAC (ASAC) or Country Attache) concur that a reasonable basis exists to suspect that the employee has illegally used a controlled substance. Failure to comply will be considered insubordination and will result in administrative action up to and including dismissal.

(4) A program for a computer generated random selection process for aperiodic drug testing of all FBI and DEA employees is under development.

As this policy is implemented, you will be advised of additional details. I trust you appreciate the importance of this policy and will give it the support necessary to make implementation as smooth as possible.

William H. Webster
Director

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

DRUG TESTING AND URINALYSIS IN THE WORKPLACE: LEGAL ASPECTS

M. Maureen Murphy
Vincent E. Treacy
Legislative Attorneys
American Law Division
April 16, 1986

Outline of Contents* Page

* Prepared by Select Committee Staff

DRUG TESTING AND URINALYSIS IN THE WORKPLACE: LEGAL ASPECTS

I. INTRODUCTION

The sudden, increased attention to the problems of drug abuse in the workplace has given rise to numerous questions concerning the legality of employer screening programs for drug use among employees. The legal questions affect both public and private sector employees, and the applicable laws and court decisions have arisen at both the federal and state level. Because of the novelty and complexity of the legal issues involved, there has yet to emerge a consensus on the proper approach to be taken by employers, employees, and governmental officials. This report presents a brief overview of the general legal principles most likely to be applied in this developing area of the law.

II. PUBLIC SECTOR EMPLOYEES

1. Constitutional Rights

Because the federal constitution applies to governmental action, rather than purely private action, its protections are implicated in any urinalysis testing program of government employees, both federal and state.

a. Fourth Amendment

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. The courts have ruled that extraction of bodily fluids involves a search within the meaning of this amendment.

Schmerber v. California, 384 U.S. 757 (1966) (blood); McDonnell v. Hunter, 612 F. Supp. 1122 (S.D. Io. 1985) (urine). Generally, when the government seeks to conduct a search, a warrant is required. There are, however, unusual circumstances that permit warrantless searches. One such situation involves consent; but for the search to be valid there must be a showing that the consent was voluntarily given and that the subject of the search was aware of the possible choices. Johnson v. United States, 333 U.S. 10 (1943); Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

One court has held that a consent form signed by government employees authorizing urinalysis testing was inadequate to meet this standard. McDonnell v. Hunter, 612 F. Supp. 1122. Another exception permits warrantless searches of heavily regulated industries. Although one court has applied this test to uphold state mandated urinalysis testing of jockeys, Shoemaker v. Handel 608 F. Supp. 1151 (D.N.J. 1985), it is possible the Supreme Court would be unwilling to extend the heavily regulated industry exception to the warrant clause much beyond the industries already included in this exception; guns (United States v. Biswell, 406 U.S. 311 (1972) and liquor (Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970)).

There are, however, two lines of cases suggesting that requiring government employees to submit to urinalysis tests at the risk of disciplinary action might be upheld as comporting with the Constitution: the first line of cases upholding state laws that require drivers to submit to blood alcohol or breathalyser tests if they are suspected of driving while under the influence of alcohol (see Mackey v. Montrym, 443 U.S. 1 (1979)) and the second line of cases permitting the government as employer to conduct searches of employee lockers and other personal areas for purposes related to job per-

formance. United States v. Collins, 349 F. 2d 863 (2d Cir. 1965), cert. denied, 383 U.S. 960 (1966) (custom officer's locker on suspicion of pilfering). One requirement of these cases is that the evidence sought must not be related to a suspicion of criminal activity or an intent to bring a criminal prosecution. United States v. Hagarty, 388 F. 2d 713 (7th Cir. 1968) (wiretap used in a perjury trial). If either of these two rationales are used, it is possible that the courts will require, as they have in these lines of cases, some measure of suspicion or cause focusing on an individual in order to justify the urinalysis requirement.

While there are presently too few cases from which to generalize, one might say that some justification amounting to reasonableness or reasonable suspicion seems to be the standard that the courts have used in validating urinalysis testing of government employees. In Allen v. City of Marietta, 601 F. Supp. 482 (N.D. Ga. 1985), the court upheld a city's requiring sewer and electrical workers (whose jobs involved safety concerns) suspected of using drugs on the job to submit to testing under pain of dismissal. The decision was based on the line of cases permitting government to conduct warrantless searches of its employees for performance related investigations. In Division 241 Amalgamated Transit Union (AFL-CIO) v. Suscy, 538 F. 2d 1264 (7th Cir. 1976), cert. denied, 429 U.S. 1029 (1976), the court upheld a transit company rule requiring bus drivers to submit to blood and urine tests after being involved in an accident or being suspected of being intoxicated or under the influence of drugs. According to the court, the test under the Fourth Amendment is reasonableness, and the city's "paramount" interest in protecting public

safety overrides whatever expectation of privacy employees in that situation have. Division 241 Amalgamated Transit Union (AFL-CIO) v. Suscy, 538 F. 2d 1264, 1267. Although the court in McDonnell v. Hunter, 612 F. Supp. 1122, ruled against the state prison's program of requiring prison employees to sign consent forms permitting various kinds of warrantless searches including urinalysis screening for drugs, its reasoning would permit testing of employees upon whom reasonable suspicion drawn from specific facts focused. This case also rejected the state's argument resting on the consent forms signed by its employees, generally prior to being hired, finding that such a procedure was not sufficiently voluntary to waive a constitutional right.

Not only are there too few of these cases from which to draw meaningful generalizations concerning what tests the courts will require of government urinalysis testing programs of employees, none of the cases actually involved wide-scale random urinalysis testing [1/] as seems to be contemplated by the recommendations of the President's Commission on Organized Crime Final Report. The one instance of a government-mandated random drug testing program that has been upheld by the courts is that conducted by the Defense Department among the uniformed services as mandated by Pub. L. 92-129, 85 Stat. 348 (1971). The statute had required the Secretary of Defense to begin a program for drug dependent members of the Armed Forces. The program established under the law identified drug abusers, prescribed medical treatment and follow-up supervision, permitted discharge of those failing the rehabilitative program, and developed

---

1/ Although McDonnell v. Hunter, 612 F. Supp. 1122 (S.D. Ia. 1985), involved regulations that permitted random testing, there was evidence that random tests were not conducted and that as a practical matter tests were conducted only upon articulable suspicion of drug or alcohol impairment.

evidence that could be used in court martials. Nonetheless, the court upheld the program and its intrusion into Fourth Amendment areas on the basis of a reasonableness standard, drawing an analogy with administrative searches of closely regulated industries as approved by the Supreme Court in Camara v. Municipal Court, 387 U.S. 528 U.S. 523 (1976).

Whether a government-wide urinalysis program could meet this standard is problematic. There are considerable distinctions between the military and the civil service. Readiness and obedience are the canons of the military profession, as is the prospect of being called to duty anytime. Civilian employees are not subject to such rigors, nor are all of their tasks equally vital to the nation's security. On the other hand, the possibility that drug use is so great in the United States that drastic measures must be undertaken may provide weighty arguments toward eliminating any users from the government employ as inconsistent with the massive efforts against the drug epidemic. Congressional findings of this nature attached to a statute requiring drug testing might sway the courts into considering such random testing reasonable under the circumstances.

The cases involving the extraction of bodily fluids require that the tests be administered in a manner that comports with due process, or in a manner that does not excessively intrude upon the subject. Thus, in Schmerber v. California, 384 U.S. 757 (1966), the Court upheld a blood test administered to an unconscious suspect, by medical personnel in a hospital, at the request of the police. In Rochin v. California, 342 U.S. 165 (1952), evidence obtained by forcibly administering an emetic was held inadmissible as a process offending human dignity. In Winston v. Lee, 105 S. Ct. 1611 (1985), the Court found that extraction of a bullet under general anesthesia was in the nature of an intrusion so substantial to be impermissible as unreasonable under the Fourth

Amendment even if there were the likelihood that it would reveal evidence of a crime. Factors to be considered in authorizing surgical procedures are threat to safety of the individual and extent of intrusion on personal privacy and bodily integrity. It is, thus, possible that in addition to the question of whether the urinalysis test has been justified by some measure of suspicion focusing on an individual, the courts will scrutinize the testing itself. Some questions that may arise include: whether there need be an observer and who that observer must be, how situations in which no urine can be produced immediately be handled, and whether the tests be conducted by agency medical personnel, non-medical personnel, or medical personnel from outside the agency.

b. Fifth Amendment

The Fifth Amendment is concerned with the process by which the government proceeds against an individual. The cases have not sufficiently addressed the due process concerns that might arise in drug testing cases. Among those sure to arise if government-wide testing is begun involve:

1. Whether positive tests will be retested.

2. Whether persons will be allowed some kind of hearing to offer evidence to dispute the results of tests.

3. Whether persons may be dismissed on the basis of the tests alone (without corroborating evidence of malperformance of duties).

4. What measures will be instituted to protect the specimens as to chemical requirements and as to linking them with the identity of those being tested, i.e., to protect the chain of custody.

5. Confidentiality.

6. Relationship with rehabilitation program.

2. Protections under the Rehabilitation Act of 1973.

The Rehabilitation Act of 1973 affords protection to handicapped individuals working for employers receiving federal financial assistance. Under section 504 of the Act, no otherwise handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program receiving federal financial assistance. 29 U.S.C. § 794. The term "handicapped individual" is defined by section 7(6) of the Act as any individual who (i) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (ii) can reasonably be expected to benefit in terms of employability from vocational services provided under the Act. 29 U.S.C. § 706(7)(A). The definition, however, expressly excludes from the anti-discrimination provisions of the Act "any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. 29 U.S.C. § 706(7)(B). The Act therefore limits the extent to which individuals who are alcohol or drug abusers may argue that their conditions constitute handicaps which may be protected against discrimination.

It has been observed that the exclusion of alcoholics and drug abusers was added to the Act by Congress in 1978 in order to make it clear that employers are not to be required to employ them if they cannot perform their jobs properly or if there is a present threat to property or safety: "Thus, the catch-22 for employees is that they must simultaneously prove that they are handicapped by their chemical dependency, but not so handicapped as to be unqualified to perform their job." Geidt, "Drug and Alcohol Abuse in the Work-

place: Balancing Employer and Employee Rights," 11 Employee Relations Law Journal 181, 184.

III. GENERAL LEGAL CONSIDERATIONS

1. Reasonableness of Policy

For governmental employers, the Fourth Amendment mandates reasonableness criteria in the administration of the tests, both in singling out employees for tests and in the actual testing process, itself. See supra, I, 1, (a). While the Fourth Amendment may not dictate reasonableness in testing to non-government employers, tailoring a testing program to reasonableness criteria may help to avoid subsequent legal problems. Thus, testing only those employees for whom a cause exists, setting standards for when such tests would be conducted, requiring double tests for positive results on the first test, informing employees fully in advance of the motives and the possible consequences of the tests, securing the privacy of the results of the tests, testing the specimens only for drugs, and not for other conditions such as diabetes, pregnancy, and setting up safeguards to assure the confidentiality of the test results may all help to eliminate legal challenges to such program or to their results. Most helpful, would be providing time for rehabilitation before instituting disciplinary action. Attorneys advising management on these substance abuse testing programs advise them to

> simultaneously engage in three difficult and delicate balancing acts. First, they must select investigative techniques that will be effective and reliable, yet will avoid the creation of a police-state atmosphere alienating to the work force or in violation of employees' privacy rights. Second, in deciding how to deal with identified abusers, they must walk the fine line between rehabilitation and discipline.

> Finally, they must weigh the need for discipline against the risks of costly litigation or arbitration. 2/

2. Privacy

a. Public Employees.

The mention of urinalysis testing in the workplace arouses cries of "invasion of privacy," and provokes people to conjur up images of an Orwellian state. Legal protection of privacy interests is, however, very limited.

The federal constitution protects privacy basically under the Fourth Amendment, as discussed supra, section I (1). The courts have never recognized a general right to privacy or implied such a right under the federal constitution except in certain narrow circumstances, none of which directly apply to drug testing programs. The leading case is Griswold v. Connecticut, 381 U.S. 479 (1965), in which the court held a state statute prohibiting the sale of contraceptives to be void as violative of a right to privacy emanating from the Bill of Rights but not tied to any specific right. That right to privacy has been confined to certain very basic human situations. Griswold involved marital privacy. Stanley v. Georgia, 394 U.S. 557 (1969), contains dictum speaking of a fundamental right

---

2/ Geidt, Thomas E., "Drug and Alcohol Abuse in the Work Place: Balancing Employer and Employee Rights," 11 Employee Relations Law Journal 181, 182 (1985). Robert T. Angarola, in an undated paper entitled "Substance Abuse in the Workplace -- Legal Implications for Corporate Action," at 14 advises: To be most effective, urinalysis should be used as part of a comprehensive health and safety program aimed at detecting and preventing substance abuse . . . .

> The testing and sampling procedures set out in the manufacturer's instructions must be closely followed . . . .
>
> . . . I would support using outside advisors in setting up the urinalysis testing program . . . .

to privacy that might encompass freedom from governmental intrusion upon the films one watches in the privacy of one's home. None of the cases, however, suggests that a reasonable intrusion into one's privacy by a governmental employer seeking to investigate fitness for duty runs afoul of any constitutional right to privacy.

Another way privacy may be protected is by statute. The federal Right to Privacy Act, 5 U.S.C. § 552(a), is a limited statute that applies to systems of records, not to actions, by the federal government. Under it, nondisclosure is mandated for certain records maintained by the federal government or maintained at the behest of the federal government. Under its provisions, therefore, although there would be no protection for employees against urinalysis testing itself, there would be protection against indiscriminate dissemination of the results of such tests.

b. Private Employees.

Private employees may have legal protection for privacy interests in one of three ways: (A) state constitutional or statutory privacy provisions; (B) common law protection against the tort of invasion of privacy; and (C) common law protection against libel and slander.

A. State constitutional or statutory protection of privacy interests.

At least nine states -- Alaska (Alas. Const. Art. I, sec. 22), Arizona (Ariz. Const., Art. II, sec. 8), California (Cal. Const. Art. I, sec. 1) Hawaii (Ha. Const. Art. I, sec. 5), Illinois (Ill. Const., Art. I, sec. 12); Louisiana (La. Const., Art. 1, sec. 5); Montana (Mont. Const. Art. II, sec. 9); South Carolina (S.C. Const. Art. I, sec. 10), and Washington (Wash. Const. Art. I sec. 7) -- have specific constitutional provisions that mention a right to privacy in addition to that protected by their constitutional clauses against unreasonable searches and seizures.

Most of these provisions are worded broadly: "The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest." Ha. Const. Art. I sec. 6. They are, thus, subject to judicial interpretation. Since we could find no reported case discussing an employment urinalysis testing program vis a vis a state privacy statute it would be difficult to predict whether such clauses will in future the be held to provide greater individual protection for employees against such testing than search and seizure clauses provide. The same is true for state privacy statutes.

In the area of worker privacy, the general trend for the states has been to enact specific statutes protecting employees against particular practices of employers that are deemed intrusive. Types of procedures that have been the subject of such laws include employer use of polygraph tests. Cal. Labor Code. § 432.2(a); Conn. Gen. Stat. Ann. § 31-51g; Del. Code tit. 19 § 704; D.C. Code Ann. § 36-802(a); Ga. Code Ann. § 43-36-1; Ha. Rev. Stat. § 377-6 (10); Id. Code § 44-903; Io. Code Ann. § 730.4; Me. Rev. Stat. Ann. § 1320; Md. Code Ann. Art. 100 § 95(b); Ma. Stat. Ann. § c 149 § 19B; Mi. Laws Ann § 37.203; Minn. Stat. Ann. § 181.76; Mo. Code Ann. § 39-2-3-4; Neb. Rev. Stat. § 81-1932; N.J. Stat. Ann. § 2C:40A-1; N.Y. Labor Law § 737; Or. Rev. Stat. § 659.225(1); Pa. Sta. Ann. tit. 19 § 7507; R.I. Gen. Stat. § 28-6. 1-1; Utah Code Ann § 34-37-2(5), 34-37-16; Vt. Stat. Ann. § 494a(b); Wa. Rev. Code § 49.44.120; W.Va. Code § 21-5-5b; Wisc. Stat. Ann. § 111.37.

There are also state laws that limit the right of employers to gain information about the nonemployment activities of employees; some require advance approval by the employee. Ill. Rev. Stat. c 48 § 2009, for example,

prohibits employers from gathering information about employees' nonemployment activities without written authorization. It exempts, however, activities occurring on employer's premises or during working hours interfering with performance of duties and activities that constitute criminal conduct that may be expected to harm employer's property, business, or that could cause employer financial liability.

B. Common law protection against the tort of invasion of privacy.

Although individuals facing employment drug screening may initially recoil from the idea and invoke the protection of an abstract right of privacy, the law provides little protection in this situation for an invasion of privacy. If the employer tests an employee and makes public use of the test results, there may be a right of action in court for the tort of invasion of privacy by publicly disclosing private facts. There are strict limits to this action; the disclosure must be public, i.e., there must be publicity given to the private fact. Telling it to a few coworkers may not satisfy the publicity requirement. Eddy v. Brown, No. 62,086, Feb. 25, 1986 (Sup. Ct. Okla.) held that an employer's telling a limited number of coworkers that an employee was undergoing psychiatric treatment was insufficient to permit recovery on the basis of invasion of privacy.

On the other hand, in Bratt v. I.B.M., No. 85-1545 (1st Cir. March 6, 1986), under Massachusetts law, it was seen as possible to hold an employer-compensated private doctor liable for invasion of privacy for revealing the psychiatric diagnosis of a patient to various management officials of the employer. It is unclear whether publicizing urinalysis results could be successfully pursued as an invasion of privacy, but the

possibility should make employers careful about the dissemination of the records of such tests.

C. Libel and Slander. "Defamation is . . . that which tends to injure 'reputation' in the popular sense: to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him."[3/] Labeling an employee a drug addict or user may raise the question of whether one form of libel per se, i.e., libel for which no special damages need be proven to recover, may be held to apply to the situation in which a person is accused of drug addiction: as an accusation that calls into question one's ability to conduct oneself in one's business or calling or profession. Since it is actionable to accuse a chauffeur of habitually drinking, Louisville Taxicab & Transfer Co. v. Ingle, 229 Ky. 518; 17 S.W. 2d 709 (Ky. 1929), accusing a bus driver or airline pilot of drug use might equally be actionable, forcing the employer to prove the truth of the accusation or pay damages.

3. ACCURACY OF THE TESTS

While there is some dispute about the accuracy of the tests,[4/] any of the tests is only as accurate as the procedures used in administering it.[5/] If some-

---

3/ Prosser, W., "Handbook of the Law of Torts," 756 (1964) (footnote omitted).

4/ Dr. David Greenblatt, chief of clinical pharmacology at Tufts New England Medical Center, is quoted as saying that "'False positives can range up to 25 percent or higher,'" and calling the test "'essentially worthless,'" New York Times, p. 17, col. 1, sec. 3 (Feb. 24, 1985). The manufacturer of the test being discussed, SYVA Corporation of Palo Alto, California, claimed a 95 percent accuracy rate. Id.

5/ In 1983, the United States Navy discovered that an Oakland laboratory was permitting a lax procedure in administration of the drug testing program. As a result of the discovery over 1800 disciplinary actions were reversed. In 1984, it was reported that the Army was reviewing tests conducted at Fort Meade, Maryland, because "'inadequate, sloppy and poorly documemted' records, an 'inadequate' attitude toward security in the test areas, and 'inadequate staffing' in the labs," resulted in 97 percent of the tests being found to be "'not scientifically and legally sup-

(continued)

one were to lose a job or fail to be hired for a position solely on the basis of test findings, there is a possibility that he or she could successfully bring a negligence action against the employer and the testing concern provided that he or she could convince a court that the test was inaccurate or the people conducting it were neglectful. If the government is called upon to prove that it had reasonable cause to dismiss an employee because of positive test results, it might have to convince a court of the accuracy of the test itself and the correlation between the test and the person's ability to perform the work in question.

Currently courts have accepted blood alcohol and breathalyzer tests for purposes of showing impairment or intoxication both by crediting expert testimony and by accepting state implied consent laws.[6/] To date there has not been the generalized acceptance of urinalysis testing for drugs that has been accorded to breathalyzer and blood testing for alcohol. There is also some indication that because of the magnitude of the testing, the possibility of error is much greater in testing urine for drugs than

---

(continued): portable' in proving marijuana or hashish use." Atkinson, Ric., "Federal Report," the Washington Post, A 21 (April 27, 1984), quoting panel of experts ordered to review testing procedures.

6/ These are laws that require motorists to submit to blood alcohol tests or breathalyzer tests to determine intoxication and that usually stipulate the amount of alcohol in the blood or breath sample that will be rebuttable proof of intoxication. See Cleary, E., McCormick on Evidence § 205 (1984).

testing breath for alcohol.[7] A recent article[8] discusses some of these problems as follows:

> Toxicologists say confirmation testing has been refined -- in particular through technology called gas chromotography/mass spectometry -- to a point where error rates can be brought close to zero.
>
> 'The real room for error is not with the technology but with administrative error,' says Metpath's Dr. Bates. 'A human being has to pick up the sample and put it into the machine.' It may sound trivial but it's not. When the volume of work goes up, the error rate goes up. That's the scary part.
>
> 'My company makes millions of dollars doing drug testing, but I wouldn't want somebody taking my urine, he adds.' 'I think it's an invasion of privacy. I would always be afraid that somebody might . . . mix up samples. It may only happen in one out of 100,000 cases. But I always have that fear.'

The possibility of low error rates may not be as reassuring as it first seems. Since most of these tests, especially in pre-employment situations, are uncorroborated, a low error rate translates into possibly acceptable numbers of false accusations:

> Laboratories largely are unregulated, and the level of quality varies enormously. In various studies, error rates have generally fluctuated between 3 and 20 percent.
>
> 'With 4 million to 5 million people being tested a year, a 1 percent rate of inaccuracy means that 40,000 to 50,000 would be falsely accused,' says NORML's Mr. Zeese. [9]

---

[7] Generally, police test motorists one at a time and after having some cause, e.g., wavering auto, for testing. What is being considered in terms of drug testing seems to be wholesale testing on a random basis.

[8] Stille, A., "Drug Testing:" The scene is set for a dramatic legal collision between the rights of employers and workers, "National Law Journal" 1, 24 (April 7, 1986).

[9] Id.

4. UNIONIZED EMPLOYERS

Under the National Labor Relations Act, 29 U.S.C. §§ 151-69, it is an unfair labor practice for an employer to refuse to bargain collectively with the representative of its employees. 29 U.S.C. 158(a)(5). The Act defines the obligation to bargain collectively as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." 29 U.S.C. 158(d).

As a term or condition of employment, a drug screening program would be subject to the employer's obligation to bargain with the union under the Act. Moreover, it is a refusal to bargain for an employer to impose a change of working conditions unilaterally without bargaining with the union. A unionized employer would therefore violate the Act by requiring drug screening without notice to the union, and without bargaining over the scope and extent of the program.

Although the subject is relatively new to collective bargaining, some unions and employers have already negotiated comprehensive drug screening and rehabilitation arrangements. Professional basketball players, for example, have negotiated such a program under a collective bargaining agreement.

5. NON-UNION EMPLOYERS

It is difficult to generalize about the employment policies of non-union employers, since employee relations in such workplaces are completely subject to employer control, restricted only by the federal labor standards laws, concerning matters such as minimum wage, overtime, child labor, safety and health, and pensions and benefits. The non-union employer is also subject to state laws, which vary substantially throughout the fifty states.

Department of Defense
DIRECTIVE

April 8, 1985
NUMBER 1010.9

ASD(HA)

SUBJECT: DoD Civilian Employees Drug Abuse Testing Program

References: (a) DoD Directive 1010.1, "Drug Abuse Testing Program," December 28, 1984
(b) Public Law 91-513, "Controlled Substances Act," Section 202, October 27, 1970 (21 U.S.C. § 812)
(c) Federal Personnel Manual Supplement 792-2, February 29, 1980
(d) Assistant Secretary of Defense Memorandum, "Drug Abuse Control Policy," November 25, 1983

A. PURPOSE

This Directive:

1. Authorizes the establishment of the DoD Civilian Employees Drug Abuse Testing Program.

2. Provides policy, prescribes procedures, and assigns responsibilities for drug abuse urinalysis testing for DoD Civilian Employees (hereafter referred to as "employees").

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments (including their reserve components), the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

C. DEFINITIONS

1. Confirmed Positive. Urine sample that has been tested positive under procedures required by this Directive and that has been reported as positive because it meets both initial and confirmatory test levels established under sections E. and F., enclosure 3, of reference (a).

2. Controlled Substances. Substances listed in the schedules published under reference (b).

3. Critical Jobs. Those jobs or classes of jobs sufficiently critical to the DoD mission or protection of public safety that screening to detect the presence of drugs is warranted as a job-related requirement.

4. DoD Civilian Employee. An employee of the Department of Defense who is paid from appropriated or nonappropriated funds.

D. POLICY

It is DoD policy that DoD Components may establish a drug abuse testing program for civilian employees in critical jobs to:

1. Assist in determining fitness for appointment or assignment to, or retention in, a critical job.

2. Identify drug abusers and notify them of the availability of appropriate counseling, referral, rehabilitation, or other medical treatment.

3. Assist in maintaining the national security and the internal security of the Department of Defense by identifying persons whose drug abuse could cause disruption of operations, destruction of property, threats to the safety of themselves and others, or the potential for unwarranted disclosure of classified information through drug-related blackmail.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) is responsible for the administration of this program.

2. The Assistant Secretary of Defense (Manpower, Installations, and Logistics) (ASD(MI&L)) is responsible for the concurrence in the designation of jobs or classes of jobs identified as "critical jobs."

3. Heads of DoD Components that intend to institute civilian employee drug abuse testing, an optional program, shall issue implementing documents incorporating the guidelines and procedures set forth in this Directive before requesting designation of jobs or classes of jobs as "critical jobs."

F. PROCEDURES

1. Designation of Critical Jobs

a. DoD Components shall submit 5 copies of requests for designation of jobs or classes of jobs as "critical jobs" to the ASD(HA). The ASD(HA) shall obtain the concurrence of the ASD(MI&L).

b. The request from the DoD Component shall specify the job or classes of jobs, the justification for drug abuse testing of the specific job or class of jobs, the locations in which drug abuse testing is likely to be conducted, and the approximate number of persons within the job or class of jobs.

c. Critical jobs come within one or more of the following categories:

(1) Law enforcement.

(2) Positions involving the national security or the internal security of the Department of Defense in which drug abuse could cause disruption of operations, destruction of property, threats to the safety of personnel, or the potential for unwarranted disclosure of classified information.

(3) Jobs involving protection of property or persons from harm.

2. Guidelines for Use of Urinalysis

a. Employees in or applicants for positions that have been designated in paragraph F.1.a., above, as critical jobs may be required to participate in urinalysis testing in the following circumstances:

(1) Before appointment or selection.

(2) Periodically after appointment or selection on the basis of neutral criteria.

(3) When there is probable cause to believe that an employee is under the influence of a controlled substance while on duty.

(4) In an examination authorized by the Department of Defense or the DoD Component regarding a mishap or safety investigation undertaken for the purpose of accident analysis and the development of countermeasures.

b. When a DoD Component establishes a urinalysis testing program, it shall inform, in writing, each employee in a critical job before the initial urinalysis test, of:

(1) The reasons for the urinalysis test.

(2) The consequences of a positive result or refusal to cooperate, including adverse action.

(3) The opportunity to submit supplemental medical documentation that may support a legitimate use for a specific drug.

(4) The availability of drug abuse counseling and referral services, including the name and phone number of the local employee assistance program counselor.

c. The information in paragraph F.2.b.(1), (2), (3), above, shall be given to each applicant who is required to undergo urinalysis testing. The information in paragraph F.2.b., above, shall be given to each employee who enters a critical job that is subject to urinalysis testing after the program is established.

d. An employee whose urinalysis has been confirmed as positive shall be offered counseling or treatment, or both, through the local employee assistance program in accordance with the Federal Personnel Manual Supplement (reference (c)), if qualified. Nothing in this provision precludes the use of a confirmed positive urinalysis result in an authorized adverse action proceeding or for other appropriate purposes, except as otherwise limited by rules issued by the DoD Component concerned.

e. The results of field tests may not be used in administrative or disciplinary proceedings except as permitted in subsection F.4., below.

3. Urinalysis Testing Procedures

a. Urine samples shall be processed under chain of custody procedures set forth in the DoD Component's implementing document. The ASD(HA) shall ensure that such procedures apply the principles set forth in enclosure 2 of DoD Directive 1010.1 (reference (a)), so far as the ASD(HA) deems practicable.

b. Urine samples shall be tested at a laboratory certified under enclosure 4 of reference (a), using procedures set forth in enclosure 3 of reference (a). The DoD Component's implementing document shall contain:

(1) Procedures for timely submission of requests for retention of records and specimens under sections H. and I., enclosure 3, of reference (a).

(2) Procedures for retesting. The ASD(HA) shall ensure that such procedures apply the principles set forth in section J., enclosure 3, of reference (a), so far as the ASD(HA) deems practicable.

4. Field Testing of Urine Samples

a. Field tests of urine samples may be conducted only if approved by the ASD(HA) for the DoD Component concerned under the principles in enclosure 5 of reference (a).

b. All urine specimens identified as positive by a field test shall be sent immediately to a laboratory certified under enclosure 4 of reference (a) for testing under enclosure 3 of reference (a).

(1) Positive test results from field tests are preliminary results until confirmed as positive (by both initial and confirmatory testing) or by an admission of the employee.

(2) Before receipt of the report of tests results under enclosure 3 of reference (a) or an admission by the employee, positive results of field tests may be used for temporary referral to a civilian employee assistance program, temporary detail to other duties or administrative leave, or temporary suspension of access to classified information.

c. If a positive field test result is not reported as positive by a certified laboratory or an admission of an employee:

(1) The result may not be used to take further action against the employee.

(2) Any temporary action based upon the field test shall be rescinded.

d. To the extent that an action is based upon evidence other than the field test result, nothing in this Directive prohibits continuation of a temporary action or other appropriate action.

G. EFFECTIVE DATE AND IMPLEMENTATION

1. This Directive is effective immediately for the purpose of preparing implementing documents. The ASD(HA) memorandum of November 25, 1983 (reference (d)) is canceled, effective June 1, 1985. This Directive applies to drug abuse testing of DoD civilian employees conducted on or after June 1, 1985, except that a DoD Component, with the approval of the ASD(HA), may implement this Directive before June 1, 1985.

2. Nothing in this Directive shall be construed to render invalid any test conducted before June 1, 1985, under a DoD Component's drug abuse testing program.

3. DoD Components that propose to conduct civilian employee drug abuse testing on or after June 1, 1985, shall forward two copies of proposed implementing documents to the Assistant Secretary of Defense (Health Affairs) at least 45 days before the date on which the Component plans to initiate such a program. Implementing documents are not required from other DoD Components.

William H. Taft, IV
Deputy Secretary of Defense

March 16, 1983
NUMBER 1010.1

ASD(HA)

Department of Defense Directive

SUBJECT: Drug Abuse Testing Program

REFERENCES: (a) DoD Instruction 1010.1, "Department of Defense Drug Abuse Testing Program," April 4, 1974 (hereby canceled)
(b) DoD Directive 1010.4, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980
(c) through (ee) see enclosure 1

A. PURPOSE

1. This Directive replaces reference (a) and, consistent with reference (b), establishes policy for drug abuse urinalysis programs for military personnel; provides guidelines for the use of urinalysis results; outlines testing methodologies, laboratory operation, and quality control; establishes the DoD Biochemical Testing Advisory Committee; assigns responsibilities, and prescribes procedures.

2. This Directive cancels references (c) through (z).

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense and the Military Departments. The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

C. POLICY

It is DoD policy to use the drug abuse testing program to:

1. Preserve the health of members of the Military Services by identifying drug abusers in order to provide appropriate counseling, rehabilitation, or other medical treatment.

2. Permit commanders to assess the security, military fitness, and good order and discipline of their commands, and to take appropriate action based upon such an assessment.

D. RESPONSIBILITIES

1. The Secretaries of the Military Departments shall:

a. Operate or contract for the operation of drug testing laboratories with enough capacity to meet their drug testing requirements.

b. Arrange for interservice regional use of testing facilities to the maximum extent feasible.

2. The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) shall oversee testing methodology and quality control of the drug abuse screening laboratories.

3. The Secretary of the Army shall coordinate the quality control functions of each laboratory, through the Armed Forces Institute of Pathology (AFIP).

E. PROCEDURES

1. Guidelines for Use of Urinalysis

a. Mandatory urinalysis testing for controlled substances may be conducted in the following circumstances:

(1) Inspection. During inspections performed under Military Rule of Evidence 313 (reference (bb)).

(2) Search or Seizure. During a search or seizure action under Military Rules of Evidence 311-317.

(3) As part of one of the following examinations:

(a) A command-directed examination or referral of a specific servicemember to determine the servicemember's competency for duty and the need for counseling, rehabilitation, or other medical treatment when there is a reasonable suspicion of drug abuse. Such examinations are permissible under Military Rule of Evidence 312(f).

(b) An examination in conjuction with a servicemember's participation in a DoD drug treatment and rehabilitation program. Such examinations are permissible under Military Rules of Evidence 312(f) and 313.

(c) An examination authorized by a rule of the Department of Defense or a Military Department regarding a mishap or safety investigation undertaken for the purpose of accident analysis and the development of countermeasures. Such examinations are permissible under Military Rules of Evidence 312(f) and 313.

(4) Any other examination ordered by medical personnel for a valid medical purpose under Military Rules of Evidence 312(f) including emergency medical treatment, periodic physical examinations, and such other medical examinations as are necessary for diagnostic or treatment purposes.

b. Although the DoD drug testing program is designed for specific administrative purposes, the use of urinalysis results in disciplinary or administrative proceedings is permitted except as otherwise limited in the Military Rules of Evidence, this Directive, or rules issued by the Department of Defense or the Military Departments.

2. Limitations on Use of Urinalysis Results

a. Results obtained from urinalysis performed under subparagraph E.1.a.(3), above, may not be used against the servicemember in actions under the UCMJ (reference (aa)) or on the issue of characterization of service in separation proceedings.

b. A servicemember's voluntary submission to a DoD treatment and rehabilitation program, and voluntarily disclosed evidence of prior personal drug use by the member as part of a course of treatment in such a program, may not be used against the member in an action under reference (aa) or on the issue of characterization of service in a separation proceeding.

c. Records of the identity, diagnosis, prognosis, or treatment of any rehabilitee that are maintained in connection with the performance of any drug abuse rehabilitation program conducted, regulated, or directly or indirectly assisted by any department or agency of the United States may not be introduced against the rehabilitee in a court-martial except as authorized by a court order issued under the standards set forth in 21 U.S.C. 1175(b)(2)(c) (reference (ee)).

d. The limitations in paragraphs 2.a., b., and c., above, do not apply to:

(1) The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which the evidence of drug abuse (or lack thereof) has been first introduced by the servicemember.

(2) Disciplinary or other action based on independently derived evidence, including evidence of continued drug abuse after initial entry into a treatment and rehabilitation program.

3. Collection and Transportation of Urine Specimens. All urinalysis specimens shall be collected and transported under the chain of custody procedures outlined in enclosure 2.

4. Portable Urinalysis Equipment. All positive drug screening results from portable urine testing equipment shall be considered preliminary until confirmed by gas liquid chromatography or gas chromatography/mass spectrometry at a drug testing laboratory or by admission of the servicemember. Preliminary results that are not confirmed as positive may not be used against a servicemember in disciplinary proceedings or as the basis for administrative separation.

5. Laboratory Procedures. The policy pertaining to the operation of drug urinalysis laboratories is described in enclosure 3.

6. Laboratory Certification. Certification of an individual laboratory is dependent on maintaining AFIP quality control standards and on submitting required reports in a timely manner. Failure to meet either of these two requirements may result in decertification.

7. Contract Laboratories. Contractual arrangements with civilian drug testing laboratories are permitted, providing such laboratories become incorporated into the AFIP quality control program, meet and maintain DoD certification and quality control standards, and conform to the chain of custody requirements for all specimens analyzed (see enclosure 2).

F. DoD BIOCHEMICAL TESTING ADVISORY COMMITTEE

1. Organization and Management

a. The DoD Biochemical Testing Advisory Committee is hereby established to advise the Deputy Assistant Secretary of Defense (Drug and Alcohol Abuse Prevention) (DASD(DAAP)) on technical matters pertaining to the DoD biochemical testing program for drug and alcohol abuse.

b. The Committee shall be composed of one member each from the Army, Navy, and Air Force, preferably from the staffs of the Surgeons General, one member from the DoD Office of Drug and Alcohol Abuse Prevention who shall serve as committee chairman, one member from the AFIP, and any other members as designated by the DASD(DAAP).

2. Functions. The Committee shall make recommendations to the DASD(DAAP) on the following:

a. Standardized laboratory methodology for screening and confirmation testing.

b. New technology for the identification of drug and alcohol abusers.

c. Appropriate quality control procedures for drug testing laboratories.

d. Procedures and standards for the certification, decertification, and recertification of laboratories.

e. Applied research projects to improve the effectiveness of the DoD drug and alcohol abuse biochemical testing program.

G. EFFECTIVE DATE AND IMPLEMENTATION

1. This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Health Affairs) within 120 days.

Paul Thayer
PAUL THAYER
Deputy Secretary of Defense

Enclosures - 3
1. References
2. Chain of Custody Procedures for Collecting, Handling, and Testing Urine Samples for Drug Detection Urinalysis
3. Laboratory Procedures

REFERENCES, continued

(c) Assistant Secretary of Defense (Health and Environment)(ASD(H&E)) Memorandum, "Forensic Use of DoD Drug Testing Laboratories," February 5, 1973 (hereby canceled)
(d) ASD(H&E) Memorandum, "Statistical Comparability of Drug Testing Laboratory Results," May 10, 1974 (hereby canceled)
(e) Deputy Assistant Secretary of Defense (Drug and Alcohol Abuse) Memorandum, "Drug Testing Laboratories Cutoff Levels," May 30, 1974 (hereby canceled)
(f) ASD(H&E) Memorandum, "Authority to Direct Urinalysis for Drug Abuse Detection," November 18, 1975 (hereby canceled)
(g) Assistant Secretary of Defense (Health Affairs)(ASD(HA)) Memorandum, "Forensic Use of the Department of Defense Drug Testing Laboratories," June 16, 1976 (hereby canceled)
(h) ASD(HA) Memorandum, "Department of Defense Drug Abuse Testing Program," August 30, 1976 (hereby canceled)
(i) ASD(HA) Memorandum, "Radioimmunoassay Cutoff Levels for Urinalyses Conducted in Drug Testing Laboratories," May 2, 1977 (hereby canceled)
(j) ASD(HA) Memorandum, "Radioimmunoassay Cutoff Levels for Urinalyses Conducted in Drug Testing Laboratories," June 14, 1978 (hereby canceled)
(k) ASD(HA) Memorandum, "Discontinuance of Urine Test Screening of Officer Accessions," December 20, 1978 (one version to Army and Navy, and one version to Air Force) (both hereby canceled)
(l) ASD(HA) Memorandum, "Drug Detection Urinalysis Laboratory Points of Contact," January 10, 1979 (hereby canceled)
(m) ASD(HA) Memorandum, "Radioimmunoassay Cutoff levels for Urinalyses Conducted in Drug Testing Laboratories," September 21, 1979 (hereby canceled)
(n) Deputy Secretary of Defense (DEPSECDEF) Memorandum, "DoD Policy Regarding Cannabis Use," November 5, 1979 (hereby canceled)
(o) ASD(HA) Memorandum, "Confirmation of Drug Abuse," December 28, 1979 (hereby canceled)
(p) ASD(HA) Memorandum, "Urinalysis for Drug Abuse Detection," January 7, 1980 (hereby canceled)
(q) ASD(HA) Memorandum, "Exempting Commissioned Officers Assigned to Alcohol and Drug Abuse Treatment Staffs from Mandatory Urine Testing," April 1, 1980 (hereby canceled)
(r) ASD(HA) Memorandum, "Cocaine Abuse," April 21, 1980 (hereby canceled)
(s) ASD(HA) Memorandum, "Entry on Active Duty (EAD) Urinalysis," July 11, 1980 (hereby canceled)
(t) ASD(HA) Memorandum, "Entry on Active Duty (EAD) Urinalysis," July 31, 1980 (hereby canceled)
(u) ASD(HA) Memorandum, "Drug Testing for Cocaine," April 9, 1981 (hereby canceled)
(v) ASD(HA) Memorandum, "Urine Testing for Cannabis in the Department of Defense," August 28, 1981 (hereby canceled)
(w) DEPSECDEF Memorandum, "Alcohol and Drug Abuse," December 28, 1981 (hereby canceled)
(x) ASD(HA) Memorandum, "Chain of Custody Procedures," April 19, 1982 (hereby canceled)
(y) DEPSECDEF Memorandum, "Drug Testing in the Department of Defense," August 6, 1982 (hereby canceled)
(z) ASD(HA) Memorandum, "Department of Defense Laboratory Committee for Drug Abuse Testing," August 11, 1982 (hereby canceled)

(aa) Title 10, United States Code, Chapter 47 (Uniform Code of Military Justice)
(bb) Manual for Courts-Martial, Military Rules of Evidence, 311-317
(cc) DoD Directive 1332.14, "Enlisted Administrative Separations," January 28, 1982
(dd) DoD Directive 1332.30, "Separation of Regular Commissioned Officers for Cause," October 15, 1981
(ee) Title 21, United States Code, 1175(b)(2)(c)

CHAIN OF CUSTODY PROCEDURES FOR COLLECTING, HANDLING, AND TESTING URINE SAMPLES FOR DRUG DETECTION URINALYSIS

A. GENERAL

1. Chain of custody procedures are designed to ensure accuracy in referral of servicemembers for counseling and rehabilitation programs, and to ensure that commanders are provided with an accurate assessment of the military fitness of the command. Such procedures also ensure that any incidental use of urinalysis results in other proceedings will be based upon reliable procedures.

2. The individual directing that a urine test be conducted shall identify, as appropriate, the servicemember, work group, unit (or part thereof) to be tested. A responsible individual, such as the alcohol and drug coordinator or the base or unit urine test program monitor, shall be assigned to coordinate urine collection.

B. PREPARATION OF SPECIMEN BOTTLES

1. The urinalysis program coordinator shall:

a. Ensure that appropriate specimen bottles are used and that each is properly prepared.

b. Ensure that each bottle has a gummed label affixed to it on which the coordinator shall record the date, specimen number, and any additional identifying information required by each Military Service.

c. Maintain a ledger documenting the above identifying information and the servicemember's name and social security number, and the name of the designated observer (subsection C.2., below).

2. The servicemember submitting the specimen shall verify all identifying information by signing the ledger and initialing the label on the bottle.

C. COLLECTION OF SPECIMENS

1. The urinalysis program coordinator shall:

a. Ensure that each specimen is collected under the direct observation of a designated individual of the same sex as the servicemember providing the specimen.

b. Ensure that a minimum volume of 60 milliliters is collected.

c. Initial the label on the bottle as verification of receipt and shall annotate appropriate chain of custody documents.

2. The observer shall ensure that the specimen is not contaminated or altered in any way.

D. TRANSPORTATION OF SPECIMENS

1. The urinalysis coordinator shall:

a. Ensure that specimens are shipped in appropriate specimen boxes or padded mailers.

b. Ensure that each container is securely sealed.

c. Sign and date each container across the tape sealing the top and bottom.

d. Ensure that chain of custody documentation is attached to each sealed container.

e. Ensure that an outer mailing wrapper is placed around each sealed container.

2. Containers shall be shipped expeditiously by registered mail, Military Airlift Command transportation system, commercial air freight or air express. Specimens also may be handcarried.

E. LABORATORY HANDLING

1. Each Military Department shall ensure that each of its drug testing laboratories establishes internal laboratory chain of custody procedures.

2. Testing results shall be annotated on appropriate forms. Completed laboratory results forms, chain of custody documents, intralaboratory chain of custody documents, and the gas chromatograph tracings of all reported positive specimens, or copies of the above, shall remain on file in the drug testing laboratory for a minimum of 1 year.

3. Military Service regulations may provide for the prompt forwarding of the completed original (or certified copy of) chain of custody and laboratory results documents, intralaboratory chain of custody documents, or alternatively, retention of this documentation by the drug testing laboratory for a period of at least 1 year, to be promptly forwarded to the originating command or other proper authority, upon request, when required for administrative or disciplinary action.

LABORATORY PROCEDURES

A. GENERAL

1. Standardized drug testing methodologies, procedures, and criteria shall be maintained in all drug testing laboratories operated by or for the Department of Defense.

2. In all cases two independent methodologies are required to confirm the presence of a drug, or its metabolite, in a urine specimen before a report of a positive finding is released to the originating unit.

B. DRUGS TESTED

The determination of which drugs shall be tested by each laboratory shall be made on the basis of drug use patterns. Since this will change periodically, requirements shall be established by ASD(HA) memoranda.

C. CHAIN OF CUSTODY

All urine specimens shall be processed under chain of custody procedures. Each laboratory shall establish specific internal laboratory procedures which shall be subject to ASD(HA) approval as specified in enclosure 2.

D. SCREENING

All urine specimens shall be screened by either a radioimmunoassay or an enzyme immunoassay process. Screening sensitivity levels shall be established by ASD(HA) memoranda.

E. CONFIRMATION

All specimens screened positive by an immunoassay process shall be tested by gas liquid chromatography for confirmation. Either flame ionization, nitrogen phosphate, or mass spectrometer detection systems may be used.

F. REPORTING

Confirmed positive results shall be reported either by message or telephone to the originating unit within 5 working days of receipt of a batch of specimens. This report shall state that the balance of the specimens in the batch were negative. Service regulations may require written followup reporting.

G. DISPOSITION OF SPECIMENS

1. Urine specimens which test negative shall be discarded.

2. Urine specimens that are not consumed in the testing proces and that are confirmed positive shall be retained in a frozen state for a period of 60 days following the report required in section F., above. If the urinalysis result is used in a court-martial or administrative proceeding, the unit shall request that the specimen be retained at least until the trial or hearing is

complete. This does not require retention during review proceedings, but such additional retention requirements may be established by the the Military Departments.

H. QUALITY CONTROL

1. At intervals set by the Secretary of the Army, acting as executive agent for quality control, the Director, AFIP, shall provide laboratory quality control reports for the use of the Military Departments and the Office of the DASD(DAAP) in determining laboratory proficiency.

2. Each of the other Military Departments shall support, as necessary, the Army's function of quality control agent for the Military Departments' testing programs.