U.S. DEPARTMENT OF COMMERCE

DRUG-FREE WORKPLACE PLAN

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Preface

The Department of Commerce's Drug-Free Workplace Plan was established to set forth the objectives, policies, procedures, and implementation guidelines consistent with Executive Order 12564. The policies contained within cover the positions regulated by the Department of Health and Human Services and should not be confused with, or used in conjunction with, drug and alcohol testing guidance established for positions covered by the Department of Transportation.

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TABLE OF CONTENTS

SECTION I.	INTRODUCTION	1
	A. Background	1
	B. Statement of Policy	1
	C. Nature, Frequency, and Type of Drug Testing to be Instituted	3
	D. Drugs for Which Individuals Are Tested	4
	E. Scope	4
	F. Union Cooperation	4
	G. References	5
SECTION II.	DEFINITIONS	6
SECTION III.	EMPLOYEE ASSISTANCE PROGRAMS	8
	A. Function	8
	B. Referral and Availability	8
	C. Leave Allowance	9
	D. Records and Confidentiality	9
	E. Structure	9
SECTION IV.	SUPERVISORY TRAINING	10
	A. Objectives	10
	B. Implementation	10
	C. Training Package	10
SECTION V.	EMPLOYEE EDUCATION	12
	A. Objectives	12
	B. Means of Education	12
SECTION VI.	SPECIAL DUTIES AND RESPONSIBILITIES	13
	A. Drug Program Manager	13
	B. Employee Assistance Program Administrator	13
	C. Employee Assistance Program Coordinator	13
	D. Employee Assistance Counselor	14
	E. Medical Review Officer	15
	F. Supervisors	15
	G. Implementation	16
	H. General Program/Structural Provisions	16
	I. Government Contractors	16

SECTION VII. NOTICE 17
A. General Notice 17
B. Individual Notice 18
C. Signed Acknowledgment 18
D. Administrative Relief 18

SECTION VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES 19
A. Determination 19
B. Mandatory Administrative Actions 19
C. Range of Consequences 19
D. Initiation of Mandatory Removal From Service 20
E. Refusal to Take Drug Test When Required 20
F. Safe Harbor 20

SECTION IX. RANDOM TESTING 22
A. Positions Designated for Random Drug Testing 22
B. Employees in Testing Designated Positions 22
C. Determining the Testing Designated Positions 22
D. Implementing Random Testing 23
E. Notification of Selection 23
F. Deferral of Testing 23

SECTION X. REASONABLE SUSPICION TESTING 25
A. Grounds 25
B. Procedures 25
C. Obtaining the Sample 25
D. Supervisory Training 26

SECTION XI. APPLICANT TESTING 27
A. Objectives 27
B. Extent of Testing 27
C. Vacancy Announcements 28
D. Procedures 28
E. Human Resources Officials 28
F. Consequences 28

SECTION XII. ADDITIONAL TYPES OF DRUG TESTING 29
A. Accident or Unsafe Practice Testing 29
B. Voluntary Testing 29
C. Follow-Up Testing 29

SECTION XIII. TEST PROCEDURES IN GENERAL 30
A. Technical Guidelines for Drug Testing 30
B. Privacy Assured 30
C. Failure to Appear for Testing 30
D. Opportunity to Justify a Positive Test Result 31
E. Employee Counseling and Assistance 31
F. Saving Clause 31

SECTION XIV. RECORDS AND REPORTS 32
A. Confidentiality of Test Results 32
B. Employee Access to Records 32
C. Confidentiality of Records in General 33
D. Employment Assistance Program Records 33
E. Maintenance of Records 33
F. Records Maintained by Government Contractors 33
G. Statistical Information 33

APPENDIX A POSITION COVERAGE AND RANDOM TESTING FREQUENCY

SECTION I. INTRODUCTION

A. Background

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

As the largest employer in the Nation, the Federal Government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The Department of Commerce (Department) is concerned with the well being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity. The intent of the policy is to offer a helping hand to employees who need it, while sending a clear message that illegal drug use is incompatible with Federal service.

On July 11, 1987, Congress passed legislation affecting implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at Title 5 U.S.C. 7301 note (1987), (hereafter, the "Act"). The Act establishes uniformity among Federal agencies' drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program.

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

B. Statement of Policy

The Department fosters, serves, and promotes the Nation's economic development, and technological advancement. The Department fulfills this mission by:

- participating with other Federal Government agencies in the creation of national policy, through the President's Cabinet and its subdivisions;
- promoting and assisting international trade;
- strengthening the international economic position of the United States;
- promoting progressive domestic business policies and growth;

- improving comprehension and uses of the physical environment and its oceanic life;

- ensuring effective use and growth of the Nation's scientific and technical resources; and

- acquiring, analyzing, and disseminating information regarding the Nation and the economy to help achieve increased social and economic benefits.

As a result of these important public service responsibilities, as well as the sensitive nature of its work, the Department has a compelling obligation to eliminate illegal drug use from its workplace. The use of illegal drugs by any Commerce employee is totally incompatible with the conduct and performance that the American people expect from employees of the Department. In addition, the Department, as an employer, is legitimately concerned with maintaining a healthy and productive workforce as well as a safe and secure workplace.

The use of drugs would be particularly detrimental given the sensitive nature of much of the Department's work and its custody of substantial national security information related to trade. Although the Department's work is very diverse, much of it involves custody of sensitive information or safeguarding of the public health and safety. Compromise of the workforce by drug use could readily result in damage to the national security, financial and trade systems, or the public safety. Examples include, but are not limited to, the following:

- The Department develops and releases a variety of statistical economic indicators, including gross national product, market indices, balances of payments, and investment forecasts. Misuse or premature release of this data could adversely impact the Nation's economy or give unfair advantage to individual investors.

- The Department issues export licenses, holds vital trade information, safeguards the release of advanced technologies with potential military application to adversarial countries, and enforces export trade laws. Employees impaired by drug use, or subject to compromise due to drug use, could cause significant damage to national security and America's trade and military position in the world.

- The Department compiles and maintains a storehouse of information on the American population, which is the basis for vital business decisions, allocation of public funds, and determinations of representation in government. Error or misuse regarding this database could have significant impact on the lives of the American people.

- The Department tracks weather systems, including severe storms, hurricanes, tsunamis, and tornadoes and provides warning to the general public, the military defense system, and transportation systems. It also tracks rainfall and water levels in the Nation's waterways and provides flood warnings. Failure to act promptly and prudently on accurate information in any of these situations, due to drug use, could have tragic consequences involving loss of lives and destruction of property.

- The Department operates and maintains a nuclear reactor facility to support its research work. Negligence or error in the operation of the reactor or in the handling of materials could result in serious injury and property damage.

As a result, the Department has undertaken to develop this Plan in accordance with the Executive Order. The purpose of this Plan is to identify those positions where the use of illegal drugs could have the most serious impact on public health, national security, and the ability of the Department to carry out its most important functions, and to provide a means of ensuring that the performance of these functions is not impaired by the use of illegal drugs.

The thrust of the Plan is to provide information and assistance to Commerce employees and, where feasible, to their families. The drug-testing component is designed to act as a deterrent to employees considering using illegal drugs and to identify employees in sensitive positions who are using illegal drugs.

This Plan contains important safeguards for the rights of employees, including advance notice of circumstances under which testing is permissible, the scope of testing, privacy during collection, stringent laboratory standards, and provisions for employees to justify positive results. All aspects of this Plan are aimed at the establishment and maintenance of a drug-free workplace while providing the maximum safeguards possible for employee rights and privacy.

The mark of a successful drug-free workplace program depends on how well the Department can administer the program, including how well it informs its employees of the hazards of drug use. Equally important is the assurance to employees that personal dignity and privacy will be respected in reaching the Department's goal of a drug-free workplace. Therefore, this Plan includes policies and procedures for: 1) employee assistance; 2) supervisory training; 3) employee education; and 4) identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

It is the Department's policy that its workplace be free from the illegal use, possession, or distribution of controlled substances, as specified in Sections I through V, as defined in Title 21 U.S.C. 802(6), Part B, Subchapter 13, by the officers and employees of the Department of Commerce. The possession and distribution of controlled substances will be dealt with promptly in accordance with legal and administrative disciplinary procedures. However, the policy's primary goal is to ensure that illegal drug use is eliminated and that the Department of Commerce workplace is safe, healthful, productive and secure.

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

Section 503 of the Act requires the Department's Plan to specify the nature, frequency, and type of drug testing to be instituted. The Plan includes the following types of drug testing:

1. Applicant testing;

2. Random testing of those employees in sensitive positions that have been identified as testing designated positions;

3. Reasonable suspicion testing;

4. Accident or unsafe practice testing;

5. Voluntary testing; and

6. Testing as part of or as follow-up to counseling or rehabilitation.

The frequency of testing for random testing, voluntary testing, and follow-up testing is specified at Appendix A, Section XII.B. (page 29), and Section XII.C. (page 29), respectively. The Secretary reserves the right to increase or decrease the frequency of testing based on the Department's mission, need, availability of resources, and experience in the program, consistent with the duty to achieve a drug-free workplace under the Executive Order.

D. Drugs for which Individuals are Tested

Section 503 of the Act requires the Department's Plan to specify the drugs for which individuals shall be tested. These drugs are:

1. Marijuana
2. Opiates
3. Cocaine
4. Amphetamines
5. Phencyclidine (PCP)

E. Scope

The Department is covered under Section 503 of the Supplemental Appropriations Act of 1987. This Plan covers all component organizations of the Department of Commerce.

F. Union Cooperation

The active participation and support of labor organizations can contribute to the success of this program. Management will seek ways in which recognized bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe agreements already reached, will include union representatives in general orientation programs, and will continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978.

G. References

1. Executive Order 12564;

2. Executive Order 10450;

3. Executive Order 12356;

4. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at Title 5 U.S.C. 7301 note (1987);

5. Mandatory Guidelines for Federal Workplace Drug Testing Programs, which includes Scientific and Technical Requirements and Certification of Laboratories Engaged in Urine Drug Testing, 53 FR11970 (1988), as revised (1994);

6. Civil Service Reform Act of 1978, Pub. L. 95-454;

7. Section 523 and 527 of the Public Health Service Act and implementing regulation at Title 42 CFR Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Records;

8. The Privacy Act of 1974 (5 U.S.C. Section 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain;

9. Title 15 CFR Part 4, implementing the Privacy Act of 1974 within the Department of Commerce;

10. Federal Employees Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570;

11. Department of Commerce Administrative Order 202-751, "Discipline."

SECTION II. DEFINITIONS

Applicant - Any individual tentatively selected for employment or any individual who has been tentatively identified for placement in a testing designated position (i.e., directed reassignment for the "good of the service") and who has not, immediately prior to the placement, been subject to random testing.

Employee Assistance Program (EAP) - The Department of Commerce based counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the process of employees while in treatment.

Employee Assistance Program Administrator - The individual responsible for ensuring the development, implementation and review of the agency EAP.

Employee Assistance Program Coordinator - The individual responsible for implementing and operating the EAP within an operating unit.

Employee Assistance Program Counselor - The individual responsible for providing counseling, treatment, and education services to employees and supervisors regarding the operating unit's EAP.

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

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

Management Official - An employee required or authorized by the Department to formulate, determine, or influence the policies of the Department. 5 U.S.C. 7103(a)(11).

Random Testing - A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform, unannounced testing of testing designated employees occupying a specified area, element or position; or may be a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

Employees in Sensitive Positions:

1. Employees in positions designated by the Secretary of Commerce or his/her designee as Special Sensitive, Critical Sensitive, or Noncritical Sensitive under Department issuance; or employees in positions designated by the Secretary or his/her designee as sensitive in accordance with Executive Order 10450, as amended, and related Department issuances;

2. Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the Secretary of Commerce under Section 4 of Executive Order 12356, and related Department issuances;

3. Individuals serving under Presidential appointments;

4. Law enforcement officers as defined in Title 5 U.S.C. 8331(20) and 8401(17) or;

5. Other positions that the Secretary of Commerce determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

Supervisor - An employee having authority to hire, fire, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees; to adjust their grievances; or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment. 5 U.S.C. 7103(a)(10).

Testing Designated Positions - Employment positions within the Department, which have been designated for random testing under Section IX.B. (page 22) of this Plan.

Verified Position Test Results - A test result that has been screened positive by an FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by the Department of Health and Human Services), reviewed and verified by the Medical Review Officer and determined by him to be unjustified under Section XIII (page 30)of this Plan.

SECTION III. EMPLOYEE ASSISTANCE PROGRAMS

A. Function

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

1. Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been confirmed positive, and monitor the employees' progress through treatment and rehabilitation;

2. Provide needed education and training to all employees on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues; and

3. Ensure that confidentiality of test results and related medical treatment and rehabilitation records are maintained in accordance with Section XIV.

B. Referral and Availability

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

In the event the employee is not satisfied with the program of treatment or rehabilitation, the employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to completion of the program. The decision of the EAP Administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor failed to consider one or more of the factors in Section VI.D. (page 14) in making a referral shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

C. Leave Allowance

Employees shall be granted absence without loss of pay or charge to leave to participate in counseling, including necessary travel time, during the assessment/referral phase of rehabilitation. Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

D. Records and Confidentiality

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

E. Structure

The operating units and regional workforce management offices shall be responsible for local oversight and implementation of the Department's EAP, and will provide, with the support of the Secretary of Commerce, high level direction and promotion of the EAP.

SECTION IV. SUPERVISORY TRAINING

A. Objectives

Because supervisors have a key role in establishing and monitoring a drug-free workplace, the Department and its operating units shall provide training to assist supervisors and managers in recognizing and addressing illegal drug use by agency employees. The purpose of supervisory training is to help supervisors understand:

1. Department policies relevant to work performance problems, drug use, and the Department's EAP;

2. The responsibility to offer EAP services to employees;

3. How employee performance and behavioral changes should be recognized and documented;

4. The roles of the medical staff, supervisors, personnel, and EAP personnel;

5. The ways to use the Department's EAP;

6. How the EAP is linked to the performance appraisal and the disciplinary process; and

7. The process of integrating employees into the workforce.

B. Implementation

The Office of Human Resources Management shall be responsible for implementing supervisory training, and shall ensure that all employees and supervisors are fully informed of the Department's Drug-Free Workplace Plan.

C. Training Package

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

1. Overall Department policy;

2. The prevalence of various employee problems with respect to drugs and alcohol;

3. The EAP approach to handling problems;

4. How to recognize employees with possible problems;

5. How to prepare documentation in support of a recommendation to test an employee on grounds of "reasonable suspicion";

6. Documentation of employee performance or behavior;

7. How to approach the employee about illegal drug use;

8. How to use the EAP;

9. Disciplinary action, and removals from sensitive positions, as required by Section 5(c) of the Executive Order;

10. Reintegration of employees into the workforce; and

11. Written materials about illegal drug use, which the supervisor can use at the work site.

SECTION V. EMPLOYEE EDUCATION

A. Objectives

EAP Counselors shall offer drug education to all Commerce employees. Drug education should include the following:

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

B. Means of Education

Drug education activities may include:

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

SECTION VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. Drug Program Manager

The Drug Program Manager (DPM) shall implement, direct, administer, and manage the drug program for the Department. The DPM shall serve as the principal contact with the laboratory in assuring the effective operation of the testing portion of the program. In carrying out this responsibility, the DPM shall among other duties:

1. Assure all testing is conducted as authorized under this Plan;

2. Ensure that all employees subject to random testing receive individual notice as described in Section VII.B. (page 17) of this Plan;

3. In coordination with the EAP Counselor, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation;

4. Coordinate all DPM duties in field offices wherever possible to conserve resources and to efficiently and speedily accomplish reliable and accurate testing objectives; and

5. Upon receipt of a verified positive test result from the Medical Review Officer, transmit the test result to the appropriate management official empowered to initiate disciplinary action.

B. Employee Assistance Program Administrator

The Employee Assistance Program Administrator shall:

1. Assume the lead role in the development, implementation, and evaluation of the EAP;

2. Supervise and designate the headquarters EAP Coordinator and counselor, and assist them in establishing field office EAP's; and

3. Advise operating units on the submission of annual statistical reports, and prepare consolidation reports on the Department's EAP activity.

C. Employee Assistance Program Coordinator

The Employee Assistance Program Coordinator shall:

1. Implement and operate the EAP with the Department component assigned to the coordinator;

2. Coordinate with the DPM, the MRO, and supervisors, as appropriate;

3. Work with the DPM to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace;

4. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;

5. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;

6. Maintain a list of rehabilitation or treatment organizations, which provide counseling and rehabilitative programs, and include the following information on each organization:

   a. Name, address, and phone number;

   b. Types of services provided;

   c. Hours of operation, including emergency hours;

   d. The contact person's name and phone number;

   e. Fee structure, including insurance coverage;

   f. Client specialization; and

   g. Other pertinent information.

7. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience, certification and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.

D. Employee Assistance Counselors

The Employee Assistance Counselors shall:

1. Serve as the initial point of contact for employees who ask or are referred for counseling;

2. Be familiar with all applicable laws and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits Program;

3. Be qualified and trained in counseling employees in the occupational setting, and identifying drug use;

4. Provide counseling and treatment services to all employees referred to the EAP by their supervisor or on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;

5. Monitor the progress of referred employees during and after the rehabilitation period;

6. Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and

7. In making referrals, consider the:

   a. Nature and severity of the problem;

   b. Location of the treatment;

   c. Cost of the treatment;

   d. Intensity of the treatment environment;

   e. Availability of inpatient/outpatient care;

   f. Other special needs, such as transportation and child care; and

   g. The preferences of the employee.

E. Medical Review Officer

The Department of Commerce shall contract for the services of a Medical Review Officer (MRO) to carry out the purposes of this Plan. The MRO shall, among other duties:

1. Receive all laboratory test results;

2. Assure that an individual who has tested positive has been afforded an opportunity to justify the test results in accordance with Section XIII.D. (page 31) of this Plan;

3. Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to DPM, including the positive drug test results form indicating that the positive results are "unjustified," together with all relevant documentation and a summary of findings;

4. Report to the appropriate personnel official any individual who has been tentatively selected for employment with the Department and has verified positive test result(s); and

5. Coordinate with and report to the DPM on all activities and findings on a regular basis.

F. Supervisors

Supervisors will be trained to recognize and address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. (See Section IV.C. for list of detailed training topics.) Except as modified by the Secretary of Commerce to suit specific program responsibilities, first-line supervisors shall:

1. Attend training sessions on illegal drug-use in the workplace;

2. Initiate a reasonable suspicion test, after first making appropriate factual observations, documenting those observations, and obtaining any higher-level supervisory approvals required in Section X (page 25);

3. Refer employees to the EAP for assistance in obtaining counseling and rehabilitation upon a finding of illegal drug use;

4. Initiate appropriate disciplinary action upon a finding of illegal drug use; and

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

G. Implementation

At the direction of the Assistant Secretary for Administration, Commerce must implement a Drug-Free Workplace Plan that is efficiently and effectively implemented for all operating units and administrative support centers in accordance with the Executive Order and all other applicable regulations.

H. General Program/Structural Provisions

The Assistant Secretary for Administration shall initially set up a centralized operating structure with a Drug Program Manager (DPM) and a budget to carry out the Plan. The DPM shall coordinate the implementation of all aspects of the program in both headquarters and the field. This will conserve resources and more efficiently implement the Plan.

I. Government Contractors

Wherever existing facilities are inadequate to implement this Plan, the Drug Program Manager shall:

1. Contract with other Federal agencies on a reimbursable basis to perform drug-screening tests;

2. Ensure that contractors chosen to perform the drug screening tests are duly certified pursuant to the HHS guidelines and that all contracts conform to the technical specifications of the HHS guidelines (see Appendix B); and

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

SECTION VII. NOTICE

A. General Notice

A general notice from the Secretary of Commerce announcing the testing program, as required by Executive Order 12564 Section 4 (a), will be provided to all employees no later than sixty (60) calendar days prior to the implementation date of the plan. The notice shall be provided immediately upon completion of the Congressional certification procedures pursuant to Sections 503 of the Act, and explain the following:.

1. The purpose of the Drug-Free Workplace Plan;

2. That the Plan will include both voluntary and mandatory testing;

3. That those who hold positions selected for random testing will also receive individual notice prior to commencement of testing, indicating that their position has been designated a testing designated position;

4. The availability and procedures necessary to obtain counseling and rehabilitation through the EAP;

5. The circumstances under which testing may occur;

6. That employees will be afforded the opportunity to submit medical documentation of lawful use of an otherwise illegal drug;

7. That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the MRO;

8. That positive test results verified by the MRO may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal in any adverse personnel action; and

9. That all medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without prior written consent of the patient.

B. Individual Notice

In addition to the general notice, an individual notice will be distributed to all employees in testing designated positions explaining, in addition to the information provided above:

1. That the employee's position has been designated as a testing designated position (TDP);

2. That an employee who participates in a supervised rehabilitation program for drug use but has not engaged in the illegal use of drugs recently enough so that continuing use is a real and ongoing problem (i.e., the employee is not currently engaging in illegal drug use as defined under applicable law), will not be subjected to disciplinary action if rehabilitation program is successfully completed and the employee is not found to be using illegal drugs during follow-up testing; and

3. That the employee's position will be subject to random testing no sooner than thirty (30) calendar days after the date of the notice. This does not preclude disciplinary action for misconduct when the admission of drug use is provided by the employee as an affirmative defense for the misconduct.

C. Signed Acknowledgment

Each employee in a testing designated position shall be asked to acknowledge in writing that the employee has received and read the notice which states that the employee's position has been designated for random drug testing; and that refusal to submit to testing will result in initiation of disciplinary action, up to and including, removal from Federal service. If the employee refuses to sign the acknowledgment, the employee's supervisor shall note on the acknowledgment form that the employee received the notice. This acknowledgment shall be centrally collected for easy retrieval by the head of the operating unit, and is advisory only. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this Plan since the general sixty (60) day notice will previously have notified all agency employees of the requirement to be drug-free.

D. Administrative Relief

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

SECTION VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

A. Determination

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

1. Direct observation;

2. Evidence obtained from an arrest or criminal conviction;

3. A verified positive test result; or

4. An employee's voluntary admission.

B. Mandatory Administration Actions

An employee who is found to use illegal drugs shall be referred to the EAP. If the employee occupies a sensitive position, he or she shall be immediately removed from performance in that position without regard to whether it is a testing designated position. At the discretion of the Secretary of Commerce, or his/her designee however, and as part of an EAP treatment program, an employee may be returned to duty in a sensitive position if the employee's return would not endanger public health or safety or national security.

C. Range of Consequences

The severity of the disciplinary action taken against an employee found to use illegal drugs will depend on the circumstances of each case, and will be consistent with the Executive Order, and includes the full range of disciplinary actions, including removal from Federal service. The Department shall initiate disciplinary action against any employee found to use illegal drugs.

Such disciplinary action, consistent with the requirements of the Department Administrative Order 202-751 and the Civil Service Reform Act, other statutes, and regulations, may include any of the following measures but some type of disciplinary action must be initiated:

1. Reprimanding the employee in writing;

2. Suspending the employee for a specified number of days;

3. Suspending the employee indefinitely until he or she successfully completes the EAP or until the Department determines that action other than suspension is more appropriate;

4. Removing the employee from Federal service; or

5. Reducing the employee in pay or grade.

D. Initiation of Mandatory Removal From Service

The Department shall initiate action to remove an employee from Federal service for:

1. Refusing to obtain counseling or rehabilitation through an Employee Assistance Program as required by the Executive Order after having been found to use illegal drugs; or

2. Having been found not to have refrained from illegal drug use after a first finding of illegal drug use.

Proposals and decisions on removal actions must be coordinated with the servicing human resources office and in consultation with the Office of General Counsel.

E. Refusal to Take Drug Test When Required

1. An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal.

2. No applicant who refuses to be tested shall be extended an offer of employment.

3. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required, and will be subject to the same disciplinary action.

F. Safe Harbor

Pursuant to Title 42 U.S.C. 12114 of the American with Disabilities Act of 1990, as authorized by Title 29 U.S.C. 794 of the Rehabilitation Act of 1973, as amended, an individual who is not currently engaging in the illegal use of drugs may, in limited circumstances, be a qualified individual with a disability. Accordingly, no disciplinary action will be taken against:

1. An individual who has successfully completed a supervised drug rehabilitation program and is no longer engaged in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaged in such use; or

2. An individual who is erroneously regarded as engaging in illegal drug use, but is not engaging in such use.

In the event that an individual is participating in a supervised rehabilitation program for drug use but has not engaged in the illegal use of drugs recently enough so that continuing use is a real and ongoing problem (i.e., the individual is not currently engaging in illegal drug use as defined under applicable law), no disciplinary action will be taken. The employee must successfully complete the rehabilitation program and may be required to participate in follow-up testing, as

appropriate. Failure to complete rehabilitation or a positive test result during follow-up testing may result in disciplinary action up to and including removal from Federal service without an additional opportunity for participation in a rehabilitation program.

SECTION IX. RANDOM TESTING

A. Positions Designated for Random Drug Testing

The positions designated for random drug testing are listed in Appendix A.

B. Employees in Testing Designated Positions

The Executive Order requires random testing for employees in sensitive positions that have been designated as testing designated positions. As further specified in Appendix A, the Secretary has determined that these positions are testing designated positions that will be randomly tested. Accompanying the list of testing designated positions are the criteria and procedures used in designating such positions, pursuant to the Act, including the justification for such criteria and procedures.

C. Determining the Testing Designated Positions

Among the factors the Secretary has considered in determining a testing designated position are the extent to which the Department:

1. Considers its mission to be inconsistent with illegal drug use;
2. Is engaged in law enforcement;
3. Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;
4. Has national security responsibilities; and
5. Has drug interdiction responsibilities.

In addition, consideration is given to the extent to which each position:

1. Authorizes employees to carry firearms;
2. Gives employees access to sensitive information;
3. Authorizes employees to engage in law enforcement;
4. Requires employees, as a condition of employment, to obtain a security clearance; and
5. Requires employees to engage in activities affecting public health or safety.

These positions are characterized by critical safety or security responsibilities as related to the mission of the Department. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions are identified for random testing because they require the highest degree of trust and confidence. The Secretary reserves the right to add or delete positions determined to be testing designated positions pursuant to the criteria established in the Executive Order and this Plan. Moreover, pursuant to Title 42 U.S.C. 290dd(b)(2)(E), the Secretary has determined that all positions which have been or will be designated as testing designated positions under this Plan are "sensitive positions" and are therefore exempted from coverage under Title 42 U.S.C. 290dd(b)(1) which provides that no person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the basis of prior drug abuse.

D. Implementing Random Testing

In implementing the program of random testing, the Drug Program Manager (DPM) shall:

1. Ensure that the means of random selection remains confidential; and

2. Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the Department's duty to achieve a drug-free workforce, and meet the testing requirements prescribed by the Department of Health and Human Services regulations.

The number of sensitive employees occupying testing designated positions and the frequency with which random tests will be administered are specified in Appendix A.

E. Notification of Selection

An individual selected for random testing, and the individual's first-line supervisor, shall be notified the same day the test is scheduled, preferably within two hours of the scheduled testing by the principal human resources office (PHRO)/servicing human resources office (SHRO). The PHRO/SHRO shall explain to the employee that he or she is under no suspicion of taking drugs and that his or her name was selected randomly. The PHRO/SHRO will also explain that the employee is required to report for testing and failure to do so may result in disciplinary action.

F. Deferral of Testing

An employee selected for random drug testing may obtain a deferral of testing if the employee's first-line and second-line supervisors concur that a compelling need necessitates a deferral on the grounds that the employee is:

1. In an approved leave status (sick, annual, administrative or leave without pay); or

2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

An employee whose random drug test is deferred will be subject to an unannounced test within the following sixty (60) calendar days.

SECTION X. REASONABLE SUSPICION TESTING

A. Grounds

Reasonable suspicion testing may be required of any employee in a TDP position when there is a reasonable suspicion that the employee uses illegal drugs, whether on or off duty. Reasonable suspicion testing may also be required of any employee in any non-TDP position when there is a reasonable suspicion of on-duty use or on-duty impairment.

Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug or possession and/or the physical symptoms of being under the influence of a drug;

2. A pattern of abnormal conduct or erratic behavior;

3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking (including distribution) of controlled substances;

4. Information provided either by reliable and credible sources or independently corroborated; or

5. Newly discovered evidence that the employee has tampered with a previous drug test.

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

B. Procedures

If an employee is suspected of using illegal drugs, the appropriate supervisor will gather and document all information, facts, and circumstances leading to and supporting this suspicion. This documentation and the recommendation for testing on grounds of reasonable suspicion is submitted to the PHRO/SHRO. The PHRO/SHRO must obtain advance concurrence of the Office of General Counsel and the DPM on the decision to test or not to test.

C. Obtaining the Sample

The employee may be asked to provide the urine sample under observation in accordance with the criteria in Section XIII.B. (page 30).

D. Supervisory Training

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

SECTION XI. APPLICANT TESTING

A. Objectives

To maintain the high professional standards of the Department's workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment screening process before they are placed on the employment rolls. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within the Department and will provide for a safe work environment.

B. Extent of Testing

Except as prohibited by law, drug testing shall be required of all individuals tentatively selected for employment with the Department in the following positions:

1. Positions requiring Top Secret clearances;
2. Positions designated Special Sensitive as described in the Department of Commerce Security Manual;
3. General Senior Executive Service (SES) positions filled by noncareer SES appointments;
4. Positions filled under Schedule C;
5. NOAA Corps Officer positions;
6. In NOAA, all wage marine positions and General Schedule "rotating" electronic technician positions;
7. Certain meteorologist positions involved in reporting: 1) for Federal Aviation Administration air traffic control and 2) severe storms and hurricane warning centers;
8. Certain positions involved in the management or operation of nuclear reactor facilities;
9. Positions in the Aircraft Pilot Series, GS-2181;
10. Positions in the Aircraft Mechanic Series, WG-8852;
11. Positions in the Sheet Metal Mechanic Series, WG-3806 in NOAA/Aircraft Operations;
12. Positions in the Firefighter Series, GS-0081;
13. Positions with predominant duties which involve direct drug interdiction operations or activities; and
14. Positions requiring the carrying of firearms.

C. Vacancy Announcements

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

"Except as prohibited by law, all applicants tentatively selected for this position will be required to submit to a urinalysis to screen for illegal drug use prior to appointment, and if appointed the incumbent will be subjected to random drug testing procedures."

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

D. Procedures

The servicing human resources officer shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours of notice to the applicant. Where appropriate, applicants who are current Commerce employees may be reimbursed for reasonable travel expenses.

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

E. Human Resources Officials

Upon notification that an individual has been tentatively selected for employment, the servicing human resources office shall assure that a drug test is conducted on that individual, and that a negative test result is received prior to making an offer of employment.

F. Consequences

The Department will decline to extend a final offer of employment to any applicant with a verified positive test result, and such applicant may not reapply to the Department for a period of six months. The servicing human resources office (SHRO) working on the applicant's certification must file an objection to the applicant on the basis of failure to pass the physical, a lack of personal characteristics necessary to relate to public employment, or failure to support the goals of the Department. The SHRO shall inform the applicant that a confirmed presence of an illegal drug in the applicant's urine precludes the Department from hiring the applicant.

SECTION XII. ADDITIONAL TYPES OF DRUG TESTING

A. Injury, Illness, Unsafe or Unhealthful Practice Testing

The Department of Commerce is committed to providing a safe and secure work environment. It also has a legitimate interest in determining the cause of serious accidents so that it can undertake appropriate corrective measures. Post-accident drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based upon the circumstances of the accident, their actions are reasonably suspected of having caused or contributed to an accident that meets the following criteria:

1. The accident results in a death or personal injury requiring immediate hospitalization; or

2. The accident results in damage to government or private property in excess of $10,000.

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

B. Voluntary Testing

In order to demonstrate their commitment to the Department's goal of a drug-free workplace and to set an example for other Federal employees, employees not in testing designated positions may volunteer for unannounced random testing by notifying the DPM. These employees will then be included in the pool of testing designated positions (TDP) subject to random testing and be subject to the same conditions and procedures, including the provisions of Section VIII.F. (page 20). Volunteers shall remain in the TDP pool for the duration of the position which the employee holds, or until the employee withdraws from participation by notifying the SHRO of such intent at least 48 hours prior to a scheduled test.

C. Follow-up Testing

All employees referred through administration channels that undergo a counseling or rehabilitation program for illegal drug use through the EAP will be subject to unannounced testing following program completion for one year. Such employees shall be tested at the frequency stipulated in the abeyance contract, or, in the alternative, at an increased frequency through placement in a separate random pool. This testing may occur up to 4 times during the first 6 months following program completion and up to 2 times during the second 6 months. Such testing is distinct from testing which may be imposed as a component of the EAP.

SECTION XIII. TEST PROCEDURES IN GENERAL

A. Technical Guidelines for Drug Testing

The Department shall adhere to all scientific and technical guidelines for drug testing programs promulgated by the Department of Health and Human Services (HHS) consistent with the authority granted by Executive Order 12564, and to the requirements of Section 503 of the Act. The Department's drug testing program shall have professionally trained collection personnel, a laboratory certification program, rigorous analytical standards and quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

B. Privacy Assured

Any individual subject to testing under this Plan shall be permitted to provide urine specimens in private and in a rest room stall or similar enclosure. Collection site personnel of the same gender as the individual tested, however, may observe the individual providing the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen or when the testing is conducted under reasonable suspicion criteria. Collection site personnel may have reason to believe that an individual may alter or substitute the specimen when the individual:

1. Is being tested under reasonable suspicion testing;
2. Has previously tampered with a sample;
3. Is under the influence of drugs at the time of the test;
4. Has previously been confirmed by the agency to be an illegal drug user;
5. Is seen to have equipment or implements used to tamper with urine specimens'
6. The temperature of original specimen was out of range; or
7. The specimen appeared to have been tampered with.

C. Failure to Appear for Testing

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

D. Opportunity to Justify a Positive Test Result

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

1. A valid prescription; or

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

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO shall immediately contact the DPM, who then contacts the SHRO, upon obtaining a verified positive test result.

E. Employee Counseling and Assistance

While participating in a supervised counseling or rehabilitation program, and at the request of the program, the employee may be exempt from the random testing designated position pool for a period not to exceed sixty (60) calendar days, or for a time period specified in an abeyance contract or rehabilitation plan approved by the authorized official of the operating unit. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to Section XII.C. (page 29).

F. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Scientific and Technical Guidelines promulgated by HHS, or any subsequent amendment thereto, such HHS Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

SECTION XIV. RECORDS AND REPORTS

A. Confidentiality of Test Results

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

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

1. To the MRO;

2. To the EAP Administrator in which the employee is receiving counseling or treatment or is otherwise participating;

3. To any supervisory or management official within the Department having authority to take adverse personnel action against such employee; or

4. Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

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

B. Employee Access to Records

Any employee who is the subject of a drug test shall, upon written request, have access to any records relating to:

1. Such employee's drug test; and

2. The results of any relevant certification, review, or revocation of proceedings, as referred to in Section 503 (a)(1)(A)(ii)(III) of the Act.

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

C. Confidentiality of Records in General

Records will be collected and maintained in a Privacy Act system of records and disclosed only in accordance with the Privacy Act.

D. Employee Assistance Program Records

Records will be collected and maintained in a Privacy Act system of records and disclosed only in accordance with the Privacy Act.

E. Maintenance of Records

The Department shall establish or amend a recordkeeping system to maintain the records of the Drug-Free Workplace Program consistent with its Privacy Act system of records and with all applicable Federal laws, rules and regulations regarding confidentiality of records including the Privacy Act, Title 5 U.S.C. 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Secretary of Commerce. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of this Plan, and include:

1. Notices of verified positive test results referred by the MRO;

2. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;

3. Anonymous statistical reports; and

4. Other documents the DPM, MRO, or EAP Administrator deems necessary for efficient compliance with this Plan.

F. Records Maintained By Government Contractors

Any contractor hired to satisfy any part of this Plan shall comply with the confidentiality requirements of this Plan and all applicable Federal laws, rules, regulations and guidelines.

G. Statistical Information

The DPM shall collect and compile anonymous statistical data for reporting the number of:

1. Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered;

2. Verified positive test results;

3. Voluntary drug counseling referrals;

4. Involuntary drug counseling referrals;

5. Terminations or denial of employment offers resulting from refusal to submit to testing;

6. Terminations or denial of employment offers resulting from alteration of specimen;

7. Terminations or denial of employment offers resulting from failure to complete a drug abuse counseling program; and

8. Employees who successfully complete EAP.

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

APPENDIX A

Position Coverage and Random Testing Frequency

This appendix lists approximately 2,161 positions that have been identified as testing designated positions (TDP's). This represents 6 percent of the Department's workforce of approximately 35,000 employees.

A random sample of at least 10 percent of the total number of TDP's will be selected each year for unannounced testing. Selection will be by individual position; however, there may be occasions when all TDP's in a particular location, organization unit or occupation will be selected for testing at a given date or time. In any event, the total number selected in a one-year period will equal at least 10 percent of all TDP's.

In determining which positions to identify as TDP's, the following steps were taken. First, positions were identified as to whether they fell within the pool identified by Section 7 (d) of the Executive Order. Second, positions were identified as to the degree of risk involved in harm to the public, adverse impact on the agency, or harm to fellow employees arising from misconduct or errors on the part of incumbents of these positions.

Included are drug impact statements for positions or categories of positions, which describe what the specific degrees of risk are for the various positions. These statements identify each TDP by job title and series; describe the characteristics and duties of the position that justify its identification as a TDP; and specify the adverse consequences that might arise if the incumbent were to use illegal drugs.

Random testing for incumbents of these positions, except as prohibited by law, will be conducted in accordance with Section IX of this Plan.

The Assistant Secretary for Administration will periodically review and appropriately modify these lists to assure their currency and consistency among positions throughout the Department.

Title

Secretary of Commerce
Deputy Secretary of Commerce
Under Secretary of Commerce for Oceans
and Atmosphere and NOAA Administrator
Under Secretary for Economic Affairs
Under Secretary for International Trade
Under Secretary for Industry and Security
Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office
Inspector General
General Counsel
Chief Financial Officer and Assistant Secretary for Administration
Assistant Secretary for Export Administration
Assistant Secretary for Export Enforcement
Assistant Secretary of Commerce for Economic Development
Assistant Secretary for Import Administration
Assistant Secretary for Market Access and Compliance
Assistant Secretary for Manufacturing and Services
Assistant Secretary and Director General of the U.S.
and Foreign Commercial Service
Assistant Secretary for Oceans and Atmosphere
Chief Scientist, NOAA
Assistant Secretary for Communication and Information
Assistant Secretary for Technology Policy
Director, National Institute of Standards and Technology
Director, Bureau of the Census
Assistant Secretary for Legislative and Intergovernmental Affairs

Incumbents are responsible for administering and enforcing specific Federal statutes that affect the commerce of the United States. They are entrusted with funds appropriated by Congress for specific programs and are charged with developing and executing policies consistent with Congressional intent. They must set priorities in order to allocate resources among desirable goals. Incumbents manage and direct a complement of Federal employees and are directly responsible for the conduct of these employees to ensure efficient operations and delivery of services while guarding against fraud or abuse of authority. Incumbents are under constant scrutiny by the public, the press, employer organizations, unions, and other government officials and must be above reproach to ensure the necessary trust and confidence to be able to carry out their responsibilities.

Drug usage could result in a significant loss of public rights and benefits as a result of gross mismanagement of Federal funds and programs. Policy influenced or impaired by the use of illegal drugs could endanger the livelihood, safety and welfare of American workers or have serious adverse impact on the American economy and commerce. Moreover, a loss of public trust in officials who use drugs would undermine efforts in all areas entrusted to the Department's care.

Title	Location
Special Sensitive Positions (see attached list)	Department-wide

Incumbents of positions in this category have potential to cause inestimable damage to national security or for inestimable adverse impact to the efficiency of the service. Included are positions that involve one or more of the following:

a) the need for access to special, compartmented information (SCI) or other compartmented information deemed "special sensitive" by the Office of Security. Included are senior executive, managerial, and staff positions engaged in intelligence analysis, investigations, scientific research projects, and overseas representation; or

b) duties that exceed the Critical-Sensitive level defined in the Department of Commerce Security Manual.

Use of drugs among the incumbents of these positions increases the risk of disclosure of extremely sensitive information and irreparable damage to national security, inadvertently through errors in judgment or intentionally in situations involving blackmail, bribery, and other activities for personal gain or benefit. Also, use of drugs among incumbents could result in errors of judgment or inappropriate actions in the leadership and management of major Government programs at potentially enormous costs to the American public in terms of public spending and the health of the Nation's economy and its major components. Loss of public trust and confidence in the incumbents of these positions due to illicit drug use would also endanger their effectiveness and seriously undermine the integrity of the critical programs they manage.

Positions Requiring Top Secret Clearances (see attached list)	Department-wide

Incumbents of these positions have access to national security information classified at the Top Secret level in accordance with the Department of Commerce Security Manual implementing Executive Order No. 12564. This includes such sensitive information as intelligence on technological developments, international banking, and marketing; intelligence on developments in other countries, particularly our competitors in world trade; information on defense systems or on joint projects with the Department of Defense; raw data from U.S. and foreign central intelligence agencies; or inventions involving patented secrecy.

Drug usage could be detrimental to national security since it could result in disclosure of information necessary for the protection and preservation of the military, economic and productive strength of the United States.

Title	Location
Chief of Science & Engineering Division, GS-0801 Head of the Data & Development Branch, GS-0801	National Oceanic and Atmospheric Administration Aircraft Operations Center Science and Engineering Division

The position requires the incumbent to engage in flight into severe storms and perform his/her duties during these flights. Physical demands involve the lifting and handling of equipment in excess of 50 pounds in a cramped environment and a considerable amount of walking, stooping, crawling, and climbing. The incumbent is required to meet and maintain the requirements of an FAA third class medical certificate. The position requires strict adherence to safety procedures due to the potentially hazardous environment into which flights are made, and systems involving explosive and incendiary devices.

Drug usage could result in loss of life or injury and damage to or destruction of property. Impairment due to the use of illegal drugs could lead to improper aircraft operation or serious malfunctions endangering the lives of crewmembers aboard the craft, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

The positions listed on pages 7 through 16 and page 20 are excluded from random drug testing by the Department of Commerce in accordance with the permanent injunction issued by the U.S. District Court for the Northern District of California in *John D. Quadros, et. al. v. Ronald Reagan, et. al.*, November 22, 1988.

Title	Location
General Engineer, GS-0801	National Oceanic and Atmospheric Administration Aircraft Operations Center Science and Engineering Division

The work will occasionally involve engaging in flights that are deemed hazardous, such as for severe weather research (i.e., hurricanes, thunderstorms, etc.) and for aircraft flight testing, such as for structure proof tests. Physical demands include the lifting and handling of equipment in excess of 50 pounds in a cramped environment. The position also involves the periodic inspection of installations and work under way on board an aircraft that involves walking, stooping, crawling, and climbing. The incumbent is required to meet and maintain the Air Crewmember Certification physical requirements of AOC Aircraft Operations Manual, Chapter VIII Aeromedical Policy.

Drug usage could result in loss of life or injury and damage to or destruction of property. Impairment due to the use of illegal drugs could lead to improper aircraft operation or serious malfunctions endangering the lives of crewmembers aboard the craft, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
Electronics Engineer, GS-0855 Aircraft Operations Center Science and Engineering Division	National Oceanic and Atmospheric Administration

The position requires the incumbent to engage in flight into severe storms and perform assigned duties during these flights. Physical demands involve the lifting and handling of equipment in excess of 50 pounds in a cramped environment and a considerable amount of walking, stooping, crawling, and climbing. The incumbent is required to meet and maintain the requirements of an FAA third class medical certificate.

Drug usage could result in loss of life or injury and damage to or destruction of property. Impairment due to the use of illegal drugs could lead to improper aircraft operation or serious malfunctions endangering the lives of crewmembers aboard the craft, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
Flight Director (Meteorologist), GS-1340	National Oceanic and Atmospheric Administration Aircraft Operations Center Science and Engineering Division

The incumbent serves as the flight director on research and reconnaissance flights with full authority for the direction and execution of the mission. The incumbent is responsible for the validation and quality of airborne research data collected on assigned missions, which are ultimately supplied to the research community. The incumbent is also responsible for the development of techniques for the calibration and standardization of meteorological measurements aboard both G-IV and WP-3D aircraft and develop computer algorithms to improve the quality of airborne measurements. The position requires that the incumbent engage in flights into severe storms and performs his/her duties during these flights. The position requires strict adherence to safety procedures due to the potentially hazardous environment into which flights are made.

Drug usage could result in loss of life or injury and damage to or destruction of property. Impairment due to the use of illegal drugs could lead to improper aircraft operation or serious malfunctions endangering the lives of crewmembers aboard the craft, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
Engineering Technician, GS-0802	National Oceanic and Atmospheric Administration Aircraft Operations Center Science and Engineering Division

The position requires that the incumbent engage in flights into severe storms and perform his duties during these flights. Physical demands involve the lifting and handling of equipment in excess of 50 pounds in a cramped environment and a considerable amount of walking, stooping, crawling, and climbing. The incumbent is required to meet the NOAA aircrew medical standards or possess a valid FAA third class medical certificate.

Drug usage could result in loss of life or injury and damage to or destruction of property. Impairment due to the use of illegal drugs could lead to improper aircraft operation or serious malfunctions endangering the lives of crewmembers aboard the craft, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
Engineering Technician, GS-0802	National Oceanic and Atmospheric Administration Aircraft Operations Center Science and Engineering Division

Physical demands involve the lifting and handling of equipment in excess of 50 pounds in a cramped environment and a considerable amount of walking, stooping, crawling, and climbing. The incumbent is required to possess a valid FAA Airframe license. The position requires extensive knowledge of accepted aircraft maintenance and repair procedures, and AOC equipment installation procedures. The position requires strict adherence to safety procedures due to the potentially hazardous environment of a sheet metal fabrication shop and due to the use of hazardous materials.

Impairment of incumbents through the use of illegal drugs could result in an adverse effect on the serviceability of aircraft and increase the potential of carelessness, accidents, and shoddy performance. Improper aircraft repair and maintenance could result in serious malfunctions endangering the lives of flight crews, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
Electronics Engineering Technician, GS-0856 Electronics Engineer, GS-0855	National Oceanic and Atmospheric Administration Aircraft Operations Center Science and Engineering Division

The position requires the incumbent to engage in mission flights, which may include flights into severe storms, and perform the duties of this position and NOAA Air Crewmember duties during these flights. The incumbent is required to meet and maintain the Air Crewmember medical requirements in Chapter 8 of the AOC Aircraft Operations Manual. The position requires strict adherence to safety procedures due to the potentially hazardous environment into which flights are made, and systems involving explosive and incendiary devices.

Drug usage could result in loss of life or injury and damage to or destruction of property. Impairment due to the use of illegal drugs could lead to improper aircraft operation or serious malfunctions endangering the lives of crewmembers aboard the craft, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
Electronics Engineer, GS-0856	National Oceanic and Atmospheric Administration Aircraft Operations Center Science and Engineering Division

The position requires that the incumbent engage in flights into severe storms and perform his duties during these flights. Physical demands involve the lifting and handling of equipment in excess of 50 pounds in a cramped environment and a considerable amount of walking, stooping, crawling, and climbing. The incumbent is required to meet the NOAA aircrew medical standards or possess a valid FAA third class medical certificate.

Drug usage could result in loss of life or injury and damage to or destruction of property. Impairment due to the use of illegal drugs could lead to improper aircraft operation or serious malfunctions endangering the lives of crewmembers aboard the craft, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
Production Controller, GS-1152	National Oceanic and Atmospheric Administration Aircraft Operations Center Operations Division

The incumbent is required to hold a current FAA Airframe and Powerplants mechanics license. If not an aircrew member, the incumbent must hold a current FAA Third Class Medical Certificate or pass a NOAA physical. Worldwide travel will be required for indefinite periods as dictated by the needs of the Aircraft Maintenance Branch.

Impairment through the use of illegal drugs could result in an adverse effect on the serviceability of aircraft and increase the potential of carelessness, accidents, and shoddy performance. Improper aircraft repair and maintenance could result in serious malfunctions endangering the lives of flight crews, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
Equipment Specialist (Aircraft), GS-1670	National Oceanic and Atmospheric Administration Aircraft Operations Center Operations Division

The incumbent must hold a current FAA Airframe and Powerplants rating. Must hold a current FAA Flight Engineering Certificate. Worldwide travel is required for indefinite periods as dictated by the needs of the Aircraft Maintenance Branch. Incumbents are required to be available during periods of severe storm activity on a stand-by basis to depart on a mission for extended periods and to work as needed to accomplish aircraft flight duties and maintenance requirements.

Impairment through the use of illegal drugs could result in an adverse effect on the serviceability of aircraft and increase the potential of carelessness, accidents, and shoddy performance. Improper aircraft repair and maintenance could result in serious malfunctions endangering the lives of flight crews, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
Engineering Technician, GS-0802	National Oceanic and Atmospheric Administration Aircraft Operations Center Operations Division

The incumbent maintains, overhauls, repairs and inspects highly modified and instrumented aircraft. The incumbent must also hold a current FAA Airframe and Powerplants rating; be ready for worldwide travel for indefinite periods as dictated by the needs of the Aircraft Maintenance Branch; acquire and hold an FAA Class III Medical Certificate or NOAA flight physical.

Impairment through the use of illegal drugs could result in an adverse effect on the serviceability of aircraft and increase the potential of carelessness, accidents, and shoddy performance. Improper aircraft repair and maintenance could result in serious malfunctions endangering the lives of flight crews, crews and passengers of other aircraft, and property and populations on the ground where aircraft crashes could occur.

Title	Location
NOAA Corps Officers	National Oceanic and Atmospheric Administration

NOAA Corps Officers are members of a uniformed service of the United States. They are Presidential, Senate-confirmed appointees, with military ranks similar to the U.S. Navy. Ranks are those of commissioned officers, ranging from Ensign to Rear Admiral. In the event of a national mobilization emergency, the NOAA Corps Officers may be transferred to a military department by Presidential directive.

Members of the Corps are appointed to serve anywhere in the world, in responsible executive, managerial, and scientific positions. Because of the variety of assignments which may be served in during a career all officers are subject to security clearance at the Secret level and above. Rigorous standards of conduct and physical fitness apply both to selection for appointment and for continuation in the service. Officers are subject to assignments as the needs of the service dictate.

Officers are required to maintain themselves in readiness for assignment at any time to a(n) command, executive, or managerial position for which they are qualified. These include duties equivalent to the civilian Senior Executive Service; command positions on board ships of the NOAA fleet; aircraft pilot or copilot on aircraft doing highly technical and hazardous scientific research in hurricanes and other severe storms; and other managerial positions in which there are significant responsibilities for the safe and prudent use of property and other resources of the Department.

Impairments of judgment, errors in actions or the use of authority, or the compromise of sensitive information, which may result from the use of illegal drugs could result in loss of life, injury or damage to, or destruction of, property in these assignments. Command positions aboard ships or in aircraft require the highest degree of attention and unimpaired mental and physical functioning in order to avoid disastrous consequences.

Title	Location
Chief Boatman, WM-9927 Chief Boatswain, WM-9920 Boatswain Group Leader, WM-9923 Seaman Surveyor, WM-9924 Able Seaman, WM-9924 Deck Utilityman, WM-9925 Ordinary Seaman, WM-9928 Chief Boatman Fisherman, WM-9927 Lead Fisherman, WM-9927 Skilled Fisherman (Watch), WM-9927 Fisherman (Watch), WM-9927 Ordinary Fisherman, WM-9927 Skilled Fisherman, WM-9927	Deck Department Vessels of the National Oceanic and Atmospheric Administration

Incumbents of these positions perform a variety of deck operation functions including mooring and anchoring of NOAA vessels; operation and maintenance of launches and small boats; and operation of heavy equipment such as windlasses, winches, and lift equipment.

Use of illegal drugs could lead to errors in judgment, failure to remain alert to safety threats, and impaired physical abilities. Errors due to impairment directly affect the safety of vessel operation and could result in irreversible and calamitous consequences such as loss of life or damage to the structural integrity of the vessel. Impairment could adversely affect judgment and ability to deal with crisis situations at sea and could result in failure to be aware of shipboard and external forces directly affecting vessel operation and navigation and to discern extreme dangers to crew and passengers.

Being under the influence of illegal drugs seriously jeopardizes an incumbent's ability to perform in threatening adverse weather conditions, vessel emergencies and distress situations such as search and rescue operations, and to respond to orders the completion of which are critical to vessel and crew safety. Errors made and failures to recognize situations requiring action as a result of impairment could cause severe damage to multimillion dollar vessels, the grounding or sinking of the ship and cargo, as well as crew death or injury. Additionally, improper boat operation could result in injury or loss of life and destruction of other vessels and property both at sea and at harbor facilities.

Title	Location
Master (Day), WM-9916 Master (Watch), WM-9916 First Officer (Watch), WM-9916 Third Officer (Watch), WM-9916 Third Officer Master Watch, WM-9916	Vessels of the National Oceanic and Atmospheric Administration

Incumbents of these positions serve as licensed deck officers with command responsibility for the safe operation and navigation of the ship. They are in charge of deck operations when underway, docking, or anchoring, and in emergency situations they determine procedures to ensure the safety of the ship, her crew and passengers, and cargo.

Use of illegal drugs could lead to errors in judgment, failure to remain alert to safety threats, and impaired physical abilities. Impairment could adversely affect judgment and ability to deal with crisis situations at sea and could result in failure to be aware of shipboard and external forces directly affecting vessel operation and navigation and to discern extreme dangers to crew and passengers.

Being under the influence of illegal drugs seriously jeopardizes incumbent's ability to perform in threatening adverse weather conditions, vessel emergencies and distress situations such as search and rescue operations, and to issue and respond to orders the completion of which are critical to vessel and crew safety. Errors made and failures to recognize situations requiring vessel action as a result of impairment could cause severe damage to multimillion-dollar vessels, the grounding or sinking of the ship and cargo, as well as crew death or injury. Additionally, improper ship operation could result in injury or loss of life and destruction of other vessels and property both at sea and at harbor facilities.

Title	Location
Electronics Technician, GS-0856	Vessels of the National Oceanic and Atmospheric Administration

Incumbents of this position maintain and operate electronic navigation systems having a direct effect on the safety of vessel navigation. They install, operate, maintain, calibrate, and repair all navigational equipment, including long-range navigational systems, precise electronic position systems, radar and sonar systems, and complex computer systems. They perform preventive and corrective maintenance to identify malfunctions and troubleshoot defective units.

Impairment could adversely affect judgment and dexterity needed to perform complex tasks, the successful completion of which directly effects the safety of the vessel's navigation. Due to the complete reliance on electronic navigation equipment systems by command officers, failure to properly perform assigned duties could result in severe damage to multimillion-dollar vessels, the grounding or sinking of the ship and cargo, as well as crew death or injury.

Title	Location
Chief Engineer (Day), WM-9931 Chief Engineer (Watch), WM-9931 First Assistant Engineer (Day), WM-9932 First Assistant Engineer (Watch), WM-9932 Second Assistant Engineer, WM-9933 Third Assistant Engineer, WM-9934 Assistant Engineer, WM-9934 Electrician, WM-9940 Unlicensed Engineer/Junior Engineer, WM-9954 Engine Utilityman, WM-9957 Oiler, WM-9960 Wiper, WM-9965 Engine Midshipman, WM-9936	Vessels of the National Oceanic and Atmospheric Administration

Incumbents of these positions maintain and operate engineering systems for ship propulsion and control. They stand engine room watch while the vessel is underway, observing and monitoring systems conditions affecting the safe operation and navigation of the vessel. Incumbents also perform high risk fueling operations in port.

Use of illegal drugs could lead to errors in judgment, failure to remain alert to safety threats, and impaired physical abilities. Impairment could adversely affect judgment and ability to deal with crisis situations during fueling operations in port or ship operations at sea and could result in severe damage to multimillion-dollar vessels, the grounding or sinking of the ship and cargo, as well as crew death or injury.

Title	Location
Chief Survey Technician, WM-9901 Senior Survey Technician, WM-9901 Hydro Chief Survey Technician, WM-9901 Hydro Senior Survey Technician, WM-9901 Hydro Survey Technician, WM-9901 Hydro Assistant Survey Technician, WM-9901 General Vessel Assistant, WM-9901	Vessels of the National Oceanic and Atmospheric Administration

Incumbents operate and maintain launches and small boats and operate heavy deck equipment used for over-the-side survey operations.

Use of illegal drugs could lead to errors in judgment, failure to remain alert to safety threats, and impaired physical abilities. Errors due to impairment directly affect the safety of survey operations and could result in irreversible and calamitous consequences such as loss of life or damage to the structural integrity of the vessel. Impairment could adversely affect judgment and ability to deal with crisis situations at sea and could result in failure to be aware of shipboard and external forces directly affecting vessel operation and navigation and to discern extreme dangers to crew and passengers.

Being under the influence of illegal drugs seriously jeopardizes incumbents' abilities to perform in threatening adverse weather conditions, vessel emergencies and distress situations such as search and rescue operations, and to respond to orders the completion of which are critical to vessel and crew safety. Errors made and failures to recognize situations requiring action as a result of impairment could cause severe damage to multimillion-dollar vessels, the grounding or sinking of the ship and cargo, as well as crew death or injury. Additionally, improper boat operation could result in injury or loss of life and destruction of other vessels and property both at sea and at harbor facilities.

Title	Location
Firefighter, GS-0081	National Institute of Standards and Technology

Incumbents control and extinguish fires; rescue persons endangered by fire; prevent fire by reducing or eliminating potential fire hazards. Incumbents may operate fire communications equipment and develop and implement fire protection and prevention plans, procedures and standards. Firefighters must be prepared to function under hazardous conditions involving dangers of burns and other effects of heat, smoke inhalation, falling materials, explosions, and exposure to toxic materials. They must be prepared to deal with fire victims in varying states of fright and panic.

Drug usage could result in loss of life or injury and damage to or destruction of property. Use of illegal drugs by a firefighter could endanger fire victims, the general public in the fire vicinity, other firefighters, and all property threatened by the fire.

Title	Location
Positions Involved in Nuclear Reactor Operations (see attached list)	National Institute of Standards and Technology

Incumbents of these positions work in and around facilities for nuclear research, including nuclear reactors, and have access to, and potential for exposure to, radioactive materials. These positions have authority for operation of the nuclear research reactor, authority to participate in fuel management, and direct management oversight of the facility.

Impairment due to the use of drugs could result in errors of judgment or improper behavior resulting in accidents of disastrous proportions and in the compromise of highly sensitive projects and information. Failure to properly perform these responsibilities increases the risk of untoward incidents, unnecessary costs, and unsafe work environments. This could lead to danger to the public, destruction of property, mission degradation, and major security problems. Drug abuse by personnel in these jobs poses a serious threat to the individual, fellow workers, and the surrounding community. In addition, any internally produced incident involving the Department's nuclear facilities could cause irreparable damage to the Department's credibility as a provider of a safe and secure environment for nuclear research.

U.S. Department of Commerce
Positions Involved in Nuclear
Reactor Operation
as of January 29, 1990

Title	Series	Position Number
Director, Institute for Materials and Science Engineering	ES-1301	ES0214
Deputy Director, Institute for Materials and Science Engineering	ES-1301	ES1271
Division Chief, Rector Radiation Division	ES-1301	ES0217
Supvy Nuclear Engineer	ES-0840	ES3272
Supvy Nuclear Engineer	ZP-0840	893037
Supvy Mechanical Engineer	ZP-0830	70123
Mechanical Engineer	ZP-0830	881804
Supvy Engineering Tech	ZT-0802	893021
Engineering Technician	ZT-0802	893091
Engineering Technician	ZT-0802	71214
Engineering Technician	ZT-0802	71204
Engineering Technician	ZT-0802	893031
Engineering Technician	ZT-0802	871283

Title	Location
Positions Involved in Carrying Firearms (See attached list)	Office of the Secretary National Oceanic and Atmospheric Administration National Institute of Standards and Technology Bureau of Industry and Science

Incumbents serve in positions as guards, special agents for enforcement of fisheries laws, criminal investigators for enforcement of export laws, and physical security specialists. Such positions involve carrying and using firearms in the performance of official functions.

Employees in these positions are expected to remain calm under pressure, think rationally and respond intelligently despite adverse circumstances, and deal effectively in interpersonal confrontations. They are armed and often work alone in isolated areas.

Impaired perception, judgment, and dexterity due to drug use by these incumbents creates risks to themselves and the citizenry because of the instant life or death decisions inherent to the potential use of deadly force.

Title	Location
Special Agent (Fish), GS-1812	National Oceanic and Atmospheric Administration

Incumbents of these positions are assigned substantial responsibilities for working within the Department and with other agencies in drug interdiction, both nationally and internationally.

One position at the GS-14 level serves as a representative to the Office of the Vice President, National Narcotics Border Interdiction System (NNBIS) and primary assistant to the Director, Office of Enforcement, National Marine Fisheries Service (NMFS), for the coordination of enforcement activities with NNBIS. The incumbent is the focal point on matters relating to narcotics intelligence developed by field special agents, the processing and dissemination of such intelligence to NNBIS regions nationwide, the preparation and dissemination of guidelines to NMFS special agents for the development and reporting of narcotics intelligence, and the maintenance and preparation of special reports.

The other position at the GS-13 level supports the NNBIS through its New York Center, providing background on fishing, fishing vessels, and fishing businesses to NNBIS and agencies investigating suspected narcotics smugglers under the NNBIS umbrella.

Drug use by incumbents of these positions would cast substantial doubt on their ability to discharge their frontline drug interdiction responsibilities honestly and vigorously, undermining public confidence and impairing the Department's efforts in preventing the use of fishing vessels for drug trafficking. Drug use by incumbents impairs their physical and mental capacities to perform these functions and creates risks of bribery and blackmail against which the Department must guard.