

## APPENDIX F

### DOD Directive 1010.9 DoD Civilian Employee Drug Abuse Testing Program

#### 6.2. Personnel Actions

6.2.1. Drug Use Determination. The determination that an applicant or employee has used illegal drugs may be made on the basis of direct observation, a criminal conviction, confirmed positive results of a test conducted under the DoD Component's drug testing program, the employee's own admission, or other applicable evidence. Actions taken against an employee, on a finding of illegal drug use under 5 U.S.C. 75, must be supported by the evidence.

#### 6.2.2. Applicants.

6.2.2.1. Applicants who are not current employees and who refuse to be tested must be refused that employment.

6.2.2.2. All applicants with verified positive test results shall be refused employment. Applications from such individuals shall not be considered for employment for a period of 6 months from the date of the test results.

6.2.3. DoD Components, in addition to any applicable personnel actions, shall refer any employee found to have used illegal drugs to an EAP for assessment, counseling, and, if applicable, referral for treatment or rehabilitation. Employee participation in treatment or rehabilitation programs through the EAP does not prevent the DoD Component from initiating any disciplinary action authorized on a finding of illegal drug use, including removal from Federal service.

6.2.4. DoD Components shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs before successful completion of rehabilitation through an EAP. As part of a rehabilitation or counseling program, the Secretary of Defense, or the head of each DoD Component, may allow an employee to return to duty in a sensitive position if it is determined that this action should no longer pose a danger to public health or safety or to U.S. national security.

6.2.5. DoD Components shall initiate action to discipline any employee found using illegal drugs provided that such action is not required for an employee who does the following:

6.2.5.1. Voluntarily identifies himself or herself as a user of illegal drugs or who volunteers for drug testing under paragraph 5.5.3., above, before being identified through other means.

6.2.5.2. Obtains counseling or rehabilitation through an EAP.

6.2.5.3. Thereafter, refrains from using illegal drugs.

6.2.6. Discretionary Disciplinary Actions. Upon the first findings that an

employee has used illegal drugs, a range of disciplinary actions are available to a DoD Component from a written reprimand to removal. Except for employees who voluntarily identify themselves as users of illegal drugs, obtain applicable counseling and rehabilitation, and, thereafter, refrain from illegal drug use, DoD Components are required to begin disciplinary action against employees who are found to use illegal drugs. DoD Components have discretion in deciding what disciplinary measures to initiate, consistent with the requirements of the "Civil Service Reform Act" (Public Law 95-454, October 13, 1978) and other applicable factors. Among the disciplinary measures available to the DoD Components are the following:

6.2.6.1. Reprimanding the employee in writing.

6.2.6.2. Suspending the employee for 14 days or less consistent with the procedural requirements in 5 CFR 752.203.

6.2.6.3. Suspending the employee for 15 days or more consistent with the procedural requirements in 5 CFR 752.404.

6.2.6.4. Suspending the employee, consistent with the procedural requirements in 5 CFR 752.404, until such time as he or she successfully completes counseling or rehabilitation or until the DoD Component determines that action other than suspension is more applicable to the individual situation.

6.2.6.5. Removing the employee from Federal service, consistent with the procedural requirements of 5 CFR 752.404, for confirmed illicit use of an illegal drug; refusal to take a drug test authorized by E.O. 12564; refusal to obtain or successfully complete counseling or rehabilitation as required by E.O. 12564; or once having completed counseling or rehabilitation, failing to refrain from illegal drug use.

6.2.7. Mandatory Disciplinary Action. Initiation of removal from Federal service is required after a second finding that the employee has used illegal drugs.

6.2.8. Verified positive test results and information developed by the DoD Component in the course of the drug testing of the employee, subject to the limitations of 5 U.S.C. 552a ("Privacy Act"), may be considered in processing any adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in an administrative proceeding.

6.2.9. Drug testing shall not be conducted under this Directive for gathering evidence for use in criminal proceedings. DoD Components are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence of violations of any provision of 21 U.S.C. 13 received as a result of drug testing conducted under this Directive.

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