

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Policy Number 1042.1: ICE Drug-Free Workplace Program

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Superseded: This Directive is the originating and establishing document regarding the U.S. Immigration and Customs Enforcement (ICE) Drug-Free Workplace Program. This Directive supersedes all previous U.S. Customs Service and U.S. Immigration and Naturalization Service issuances. Additionally, this Directive supersedes all local guidance and procedures that are inconsistent with the policy, guidance, and procedures contained herein.

Federal Enterprise Architecture Number: 306-112-002a

- 1. Purpose/Background.** Executive Order 12564 requires all Federal employees to refrain from the use of illegal drugs on and off duty and directs agencies to establish a plan for implementing, promoting, and achieving a drug-free workplace. Use of illegal drugs diminishes employees' abilities to fulfill their professional responsibilities and has the potential to endanger lives and compromise national security and personal privacy. Illegal drug use by ICE's agents and officers inhibits their abilities in life threatening situations, putting fellow federal agents, the public, and themselves in danger. Illegal drug use also has the potential for placing employees in vulnerable and compromising situations which enhance the potential for disclosure of national security information and the personal information of citizens.

This Directive establishes U.S. Immigration and Customs Enforcement (ICE) policy, assigns responsibilities, and sets forth mandatory procedures and requirements for implementing and maintaining a drug-free workplace program. This Directive applies to both excepted service and competitive service employees and to political appointees.

- 2. Policy.** ICE is committed to providing its employees with a safe, healthy, productive, and secure work environment and will work proactively to eliminate illegal drug use by employees both in and out of the workplace. To attain this goal, ICE will conduct mandatory and voluntary drug testing consistent with all scientific and technical guidelines for drug testing programs promulgated by the U.S. Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA); provide counseling services for employees with drug abuse issues; provide training for supervisors to enable them to effectively identify and deal with drug abuse-related issues; and take prompt corrective action against employees who possess, use, or distribute illegal controlled substances in accordance with all applicable legal and

administrative disciplinary procedures. As a condition of employment, all applicants are tested for illegal drug use. All employees may be tested, when deemed necessary, under the conditions set forth in this Directive and its accompanying ICE Drug-Free Workplace Plan (ICE Plan).

3. **Definitions.** The following definitions apply to this Directive only:
 - 3.1. **Applicant.** Any external individual tentatively selected for a position with ICE, or an individual who is moving from a non-testing designated position (TDP) to a TDP who has not, immediately prior to the selection, been subject to random drug testing under Executive Order 12564.
 - 3.2. **Drug Program Coordinator.** An individual within the Office of Human Capital (OHC) who has overall responsibility for implementing, directing, administering, and managing the ICE Plan and who serves as the first point of contact for supervisors, the Medical Review Officer, and Employee Assistance Program (EAP) Coordinators in matters related to the ICE Plan.
 - 3.3. **Employee Assistance Program (EAP).** The ICE counseling program that offers assessments, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems.
 - 3.4. **EAP Coordinator.** An individual within OHC who has overall management responsibility for the EAP.
 - 3.5. **EAP Counselor.** The individual within OHC who is the employee's case worker for EAP services.
 - 3.6. **Employee.** An individual, as defined in Title 5, United States Code (U.S.C.) § 2105, who is engaged in the performance of a function for the Federal Government under authority of law or an Executive Act, excluding contract personnel.
 - 3.7. **Field Responsible Official.** The highest-ranking ICE official in any ICE field location. This includes Special Agents in Charge; Field Office Directors; ICE Attachés (where applicable); Resident Agents in Charge; Office of the Principal Legal Advisor (OPLA) Chief Counsels; Office of Professional Responsibility (OPR), Personnel Security Unit, Unit Chief; the Academy Chiefs of the ICE Academies; the Directors of the OHC Service Centers; the directors of other satellite operational and administrative facilities; as well as any other officials who have been designated, in writing, by the ICE Director.
 - 3.8. **Headquarters Responsible Officials.** Executive Associate Directors of Homeland Security Investigations (HSI), Enforcement and Removal Operations (ERO), and Management and Administration (M&A); and the Assistant Directors, officers, or equivalent positions who report directly to the Director, Deputy Director, Chief of Staff, or Executive Associate Director for M&A.
 - 3.9. **ICE Drug-Free Workplace Program.** The ICE Directive and its accompanying implementation document (ICE Plan), establishing the Agency's drug-free workplace policy and personnel responsibilities.

- 3.10. Illegal Drug.** A controlled substance included in Schedule I or II, as defined by Section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of Title 21, unless when use is pursuant to a valid prescription or other use authorized by federal law.
- 3.11. Management Official.** One who has the authority to take adverse personnel action against an employee.
- 3.12. Medical Review Officer.** A licensed physician within OHC who is responsible for receiving laboratory results generated from the drug testing program. The Medical Review Officer has knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results, together with the individual's medical history, and any other relevant biomedical information.
- 3.13. Notification of Selection Acknowledgement Form.** A form given to an employee who has been selected for routine random testing.
- 3.14. Random Drug Testing.** A system of drug testing, imposed without individualized suspicion that a particular individual is using illegal drugs. It may either be a uniform (i.e., unannounced testing of TDP employees occupying a specified area, element, or position) or a statistically random sample of such employees based on a neutral criterion, such as social security numbers, selected by a standard algorithm.
- 3.15. Sensitive Positions.** Positions as defined by C.F.R. Part 732 or successor thereto described as having critical safety or security responsibilities in the position description and coded as "sensitive."
- 3.16. Supervisor.** An employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to address 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).
- 3.17. Testing Designated Positions (TDPs).** Positions within ICE that, because of their nature, the agency has determined require random drug testing regardless of the grade level of the employee.
- 3.18. Verified Positive Test Result.** A test result that was positive on an initial approved Food and Drug Administration immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay (or other confirmatory tests approved by HHS), and reviewed and verified by the Medical Review Officer in accordance with this ICE Plan and the Mandatory Guidelines for Federal Workplace Drug Testing Programs issued by HHS, SAMSHA.
- 4. Responsibilities.**
- 4.1. The Director,** or his or her designee(s), has overall program responsibility for the ICE Drug-Free Workplace Program and is responsible for:

1. Determining, in coordination with program management, which positions are considered TDPs and authorizing the random collection of specimens for individuals in those positions;
 2. Increasing, when necessary, the percentage of TDPs to be randomly tested annually;
 3. Reviewing appeals from employees seeking removal of his/her position from the TDP list;
 4. Granting or denying an employee who has been found to use illegal drugs and who occupies a sensitive position a return to that position, provided that employee's return would not endanger public health, safety, or national security; and
 5. Approving an abeyance contract or rehabilitation plan for an employee.
- 4.2. Headquarters Responsible Officials and Field Responsible Officials, or their designees, are responsible for providing concurrence or non-concurrence on requests from subordinate supervisors recommending reasonable suspicion testing.**
- 4.3. Chiefs of Staff for HSI, ERO, and M&A, or their designees, are responsible for informing employees and employees' supervisors, via e-mail, when employees have been selected for testing and providing information on the procedures, date, and location of the testing.**
- 4.4. The Human Capital Officer, or his or her designee(s), is responsible for:**
1. Updating, in coordination with the Office of Policy, the ICE Plan, and ensuring the ICE Plan is implemented efficiently and effectively in accordance with all applicable regulations;
 2. Advising and assisting supervisors in taking appropriate actions related to verified positive, adulterated, substituted, diluted, or invalid results and refusal-to-test situations;
 3. Determining the method(s) (internal or contracted) through which the ICE Plan will be administered;
 4. Designating an official to serve as the Drug Program Coordinator;
 5. Meeting annual drug-free workplace reporting requirements established by DHS and other documentation requirements of the ICE Plan;
 6. Annotating certain position descriptions to include random drug testing requirement according to Section IX of the ICE Plan;
 7. Incorporating drug testing requirement language into vacancy announcements for positions designated as TDPs;

8. Establishing and maintaining an ICE-wide EAP and designating an EAP Manager; and
9. Advising the Office of Professional Responsibility (OPR) when applicant/employees who have previously failed drug tests are reapplying for a position with ICE.

4.5. The Drug Program Coordinator is responsible for:

1. Implementing, directing, administering, and managing the ICE Plan and working closely with contract service providers to ensure that service providers' functions (arranging for specimen collection, maintaining laboratory quality control, Medical Review Officer services, and assurance that any contractor-maintained employee information is handled in accordance with privacy and security standards) are performed appropriately;
2. Implementing the random testing program in which employees to be tested are selected by a standard algorithm;
3. Ensuring that employees' and applicants' drug tests have been completed and that the results have been reviewed;
4. Coordinating with and reporting to the Human Capital Officer on those Drug Program Coordinator activities and findings that may affect the reliability or accuracy of laboratory results;
5. Coordinating with the EAP Coordinator to publicize and disseminate ICE Drug-Free Workplace Program educational materials to employees;
6. Overseeing supervisor training and education sessions regarding drug use and rehabilitation;
7. Informing the Chiefs of Staff of HSI, ERO, and M&A of the names of their respective employees who have been selected for testing;
8. Coordinating with field offices, via the field offices' Drug-Free Workplace Program points of contact, to conduct on-site testing, whenever possible, to conserve resources and efficiently and quickly accomplish reliable and accurate testing objectives;
9. Receiving test results from the Medical Review Officer and transmitting these, using encrypted e-mail, to the appropriate management official authorized to recommend or initiate action and to OPR for continuous evaluation for eligibility to access classified information, retention in a National Security position, and retention in a Public Trust position;
10. Coordinating with Employee and Labor Relations (E&LR) to ensure that employees who have a verified positive, adulterated, or substituted test result are referred to the EAP for assessment;
11. Consulting with OPLA on all requests for reasonable suspicion testing;

12. Implementing and maintaining safeguards to protect sensitive PII data during the entire drug testing process in accordance with the *DHS Handbook for Safeguarding Sensitive Personally Identifiable Information*;
13. Maintaining records and disposing of records in accordance with the established records retention schedule;
14. Referring written determinations regarding verified positive, adulterated, or substituted results for ICE employees to management officials and E&LR;
15. Coordinating with the DHS Drug Program Administrator and participating in the working group of employing office Drug Program Coordinators;
16. Ensuring that all employees subject to random testing receive individual notices as described in Section IX of the ICE Plan prior to implementation, and that such employees return a signed acknowledgment or receipt form;
17. Overseeing and inspecting collection sites;
18. Monitoring, evaluating, and reporting on compliance, program quality, and program statistics;
19. Ensuring that supervisors receive training and that employees are fully informed of the ICE Program and Plan; and
20. Consulting with OHC Dallas or OHC Laguna to ensure that an applicant's drug test has been conducted and whether an offer of employment must be rescinded in the case of a positive result.

4.6. The Office of Professional Responsibility (OPR) is responsible for:

1. Receiving, evaluating and processing all complaints and/or allegations pertaining to employee illegal drug use;
2. Investigating allegations of employee illegal drug use and preparing reports of investigation for prosecution or management action, when deemed necessary;
3. Suspending security clearances in connection with employees found to use illegal drugs (if warranted); and
4. Providing requested data to the Drug Program Coordinator identifying ICE personnel in sensitive-designated positions and/or those employees who possess an active security clearance on a quarterly basis.

4.7. The Medical Review Officer is responsible for:

1. Receiving and securing all laboratory test results in accordance with the HHS *Mandatory Guidelines for Federal Workplace Drug Testing Programs* (Mandatory

Guidelines) and the DHS *Handbook for Safeguarding Sensitive Personally Identifiable Information*;

2. In the event of a verified positive test result for an applicant tentatively selected for employment, notifying the appropriate human resources official who is responsible for ensuring immediate withdrawal of the tentative offer of employment based on the failure of the applicant to meet a condition of employment;
3. Ensuring that individuals who have tested positive or have adulterated, substituted, or invalid results are afforded an opportunity to discuss the test results in accordance with the ICE Plan;
4. Coordinating with, and reporting to, the Drug Program Coordinator on all activities and findings on a regular basis;
5. Referring written determinations regarding verified positive, adulterated, substituted, diluted, or invalid results to the Drug Program Coordinator in a manner consistent with confidentiality requirements;
6. Ordering a new specimen collection under direct observation for invalid test results when necessary; and
7. Confirming with the Drug Program Coordinator when an individual who has been tentatively selected for employment has obtained a verified positive test result.

4.8. Supervisors are responsible for:

1. Ensuring their employees are informed of the ICE Drug Free Workplace Directive and the ICE Plan, and the consequences associated with policy violations;
2. Completing training that covers the testing requirements and procedures of the ICE Plan, behavioral patterns that may indicate a drug abuse problem, and procedures for referral of employees to the EAP;
3. Documenting employees' performance and behavior problems that might indicate drug use;
4. Ensuring that employees selected for random drug testing are available for testing and notified of the requirement;
5. Documenting factual observations to support reasonable suspicion testing and obtaining approval from a higher-level supervisor to formally request a drug test;
6. Forwarding a request for reasonable suspicion testing to the Drug Program Coordinator;
7. Referring employees to the EAP for assistance in obtaining counseling and rehabilitation upon a finding of illegal drug use; and

8. Consulting E&LR, regarding the appropriate disciplinary action upon a finding of illegal drug use.

4.9. Employees are responsible for:

1. Fully conforming to the prohibition of drug use specified in this Directive;
2. Immediately notifying supervisor of any off-duty drug related arrest or court conviction;
3. Complying with the program requirements and testing procedures contained in the Plan;
4. Reporting any dangerous behavior of others to supervisors or to the Joint Intake Center; and
5. Where needed, seeking assistance from EAP.

4.10. EAP Coordinators are responsible for:

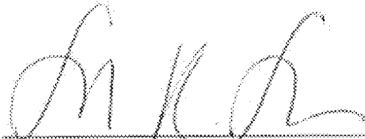
1. Working with the Drug Program Coordinator to provide educational materials and training to managers, supervisors, and employees regarding the prevention of illegal drug use in the workplace;
2. Assisting supervisors with performance and/or personnel problems that may be related to illegal drug use;
3. Monitoring the progress of referred employees during and after the rehabilitation period and, with employee consent, providing feedback to supervisors in accordance with 42 C.F.R. Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records;
4. Ensuring 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; and
5. Ensuring that the ICE EAP Counselors maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs.

4.11. EAP Counselors are responsible for:

1. Serving as the primary point of contact for employees who ask or are referred for assessment, counseling, and referral;
2. Making referrals for treatment to employees;
3. Being familiar with all applicable laws and regulations, including drug treatment and rehabilitation insurance coverage, available to employees through the Federal Employee Health Benefits Program;

4. Documenting and signing, as called for in the contract, the treatment plan prescribed for all employees referred for treatment after obtaining the employee's signature on this document; and
5. When making referrals, considering the following factors:
 - 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. Preference of the employee.
5. **Procedures/Requirements.** Program procedures are contained in the accompanying ICE Plan.
6. **Recordkeeping.** All test results, medical records, and the annual report to HHS will be maintained in the Drug Program Coordinator files at OHC headquarters. The Medical Review Officer will maintain results of all test results and medical documentation submitted by employees related to positive, adulterated, substituted, diluted, or invalid results. Records created as part of the Mandatory Guidelines will be maintained in accordance with General Records Schedule 1, Item 36 a - e. Supervisors will maintain reports and documentation related to an employee's suspected drug use in accordance with General Records Schedule 1.
7. **Authorities/References.**
 - 7.1. Executive Order 12564, Drug-Free Federal Workplace, September 15, 1986, as amended.
 - 7.2. Executive Order 10450, Security Requirements for Government Employment.
 - 7.3. Executive Order 13526, National Security Information, Classified National Security Information.
 - 7.4. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301 note (1987) (hereafter the "Act").
 - 7.5. Mandatory Guidelines for Federal Workplace Drug Testing Programs, 53 FR 11970 (1988) (as amended).

- 7.6. The Privacy Act of 1974 (5 U.S.C. § 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.
- 7.7. 5 C.F.R., National Security Positions, and successor thereto.
- 7.8. Regulations implementing the Privacy Act of 1974 for DHS (6 C.F.R. Part 5, Disclosure of Records and Information, DHS Regulations implementing the Privacy Act of 1974).
- 7.9. 6 C.F.R. Part 5, Disclosure of Records and Information, DHS Regulations implementing the Privacy Act of 1974.
- 7.10. Civil Service Reform Act of 1978, Pub. L. 95-454.
- 7.11. Sections 523 and 527 of the Public Health Service Act and implementing regulations at 42 Code of Federal Regulations (C.F.R.) Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records.
- 7.12. Federal Employees Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570.
- 7.13. DHS Directive 066-05, Drug-Free Workplace Program.
- 7.14. DHS Directive 047-01, Privacy Policy and Compliance.
- 7.15. DHS Directive 254-02, Employee Assistance Program.
- 7.16. DHS Directive 11005, Suspending Access to DHS Facilities, Sensitive Information and IT Systems.
- 7.17. DHS Directive 11056.1, Sensitive Security Information (SSI).
- 7.18. ICE Policy on Disciplinary and Adverse Action Operating Procedures.
8. **Attachments.** ICE Drug-Free Workplace Plan.
9. **No Private Rights.** These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



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