



NUMBER: Directive 1080.5

SUBJECT: CPSC Drug-Free Workplace Program

DIRECTIVE OWNER: Office of Human Resources Management (EXRM)

EFFECTIVE DATE: April 15, 2024

- 1. PURPOSE.** This directive implements the Consumer Product Safety Commission's (CPSC) commitment to a drug-free workplace. The directive establishes the contours of CPSC's drug-free workplace program, while the companion Manual 1080.5, *CPSC Drug Free Workplace Program*, provides greater detail regarding the implementation and administration of the program.
- 2. AUTHORITIES.**
 - a. Executive Order 12564, *Drug-Free Federal Workplace*
 - b. Executive Order 13467, *Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information, June 30, 2008, as amended by Executive Order 13764, Amending the Civil Service Rules, Executive Order 13488, and Executive Order 13467 to Modernize the Executive Branch-Wide Governance Structure and Processes for Security Clearances, Suitability and Fitness for Employment, and Credentialing, and Related Matters* (Jan. 17, 2017)
 - c. Executive Order 13526, *Classified National Security Information*
 - d. 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)
 - e. *Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine*, 88 Fed. Reg. 70,768 (Oct. 12, 2023)
 - f. *Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid*, 88 Fed. Reg. 70,814 (Oct. 12, 2023)
 - g. Civil Service Reform Act of 1978, Pub. L. 95-454
 - h. Sections 523 and 527 of the Public Health Service Act and implementing regulations at 42 C.F.R. Part 2, *Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records*



- i. The Privacy Act of 1974 (5 U.S.C. § 552a)
 - j. Policies and Procedures Implementing the Privacy Act of 1974, 16 C.F.R. part 1014
 - k. Federal Employees Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570
 - l. Substance Abuse and Mental Health Services Administration (SAMHSA), *Guidance for Selection of Testing Designated Positions* (May 6, 2013)
 - m. CPSC Order No. 1080.1, *Employee Assistance Program* (Mar. 20, 1989)
3. **DEFINITIONS.** See Manual 1080.5 for additional definitions.
- a. **Drug Program Coordinator (DPC).** The Supervisory Human Resources Specialist for Employee and Labor Relations, EXRM, or their designee, is the DPC and responsible for implementing the Drug-Free Workplace Program within CPSC. The DPC serves as project officer for all services required by the program. The DPC may delegate a Human Resources Specialist to be responsible for the day-to-day management of the program.
 - b. **Employee Assistance Program (EAP).** The CPSC-contracted counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health issues, and monitors the progress of employees while in treatment. The EAP is not involved in the collection of specimens or the initial reporting of test results.
 - c. **Illegal Use.** Use of a controlled substance (including misuse of prescription drugs) found in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the Controlled Substances Act, the possession of which is unlawful under chapter 13 of that Title. The term “illegal use” does not include the use of a controlled substance pursuant to a valid prescription or other uses authorized by federal law. Illegal use is defined by the federal law cited in this paragraph, not by state or local law.
 - d. **Medical Review Officer.** The individual responsible for receiving laboratory results generated from the CPSC Drug-Free Workplace Program who is a licensed physician with knowledge of pharmacology and toxicology of illicit drugs 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. CPSC historically utilizes a contracted service for this function.
 - e. **Random Testing.** A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs, and may either be:



1. Uniform, unannounced testing of all testing designated employees occupying a specified area, element, or position; or
 2. A statistically random sampling of such employees based on a neutral criterion, such as social security numbers.
- f. Testing Designated Positions (TDPs).** Employees in TDPs at CPSC are subject to random testing. They include those serving in “sensitive positions” pursuant to Executive Order 12564 and as identified according to SAMHSA’s *Guidance for Selection of Testing Designated Positions*. The TDPs at CPSC are:
1. Commissioner (EX-0301)
 2. Administrative Services Specialist and Officer (GS-0301)
 3. Chemist (GS-1320)
 4. Engineering Technician (GS-0802)
 5. Physical Sciences Technician (GS-1311)
- g. Verified Positive Test Result.** A test result that was positive on an initial 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), and reviewed and verified by the Medical Review Officer in accordance with this plan and the *Mandatory Guidelines for Federal Workplace Drug Testing Programs*.
- 4. SCOPE.** This Directive applies to all CPSC employees, including Presidential Appointees with Senate Confirmation (PAS). The CPSC Drug-Free Workplace Program includes the following types of drug testing:
- a. Applicant Testing;
 - b. Random Testing;
 - c. Reasonable Suspicion Testing;
 - d. Accident or Unsafe Practice Testing;
 - e. Voluntary Testing; and
 - f. Testing as Part of or as a Follow-up to Counseling or Rehabilitation.

At a minimum, CPSC will conduct random testing and applicant testing for the following



drugs authorized in the Mandatory Guidelines for Federal Workplace Drug Testing Programs: Marijuana metabolite (THCA); Cocaine metabolite (Benzoyllecgonine); Codeine/Morphine; Hydrocodone/Hydromorphone; Oxycodone/Oxymorphone; Acetylmorphine Phencyclidine; Amphetamine/Methamphetamine; and MDMA4/MDA. CPSC may make changes to the list of drugs in accordance with law and regulation. Individuals in Testing Designated Positions will be informed of any changes to the list of drugs for which CPSC conducts random testing, with 30-day advance notice before such testing is conducted. CPSC may conduct drug testing for any substance identified on Schedule I and II of the Controlled Substance Act for reasonable suspicion testing; accident or unsafe practice testing; and testing as part of or as a follow-up to counseling or rehabilitation.

5. **RESPONSIBILITIES.** See Manual 1080.5 for greater detail regarding responsibilities.
 - a. **Drug Program Coordinator (DPC):** As DPC, the Supervisory Human Resources Specialist for Employee and Labor Relations, EXRM, or their designee, is responsible for the implementation and day-to-day management of the drug-free workplace program within CPSC. The DPC serves as the principal contact regarding laboratory and collection activities. The DPC historically contracts with other government agencies or outside organizations to provide necessary services outside of CPSC's capability.
 - b. **Employees:** Employees are required to comply with the Drug-Free Workplace Plan.
 - c. **Medical Review Officer:** The Medical Review Officer (a contractor) receives all laboratory test results; discusses a positive test result with the employee; and refers any verified positive test result to the DPC.
 - d. **Supervisors:** Supervisors are trained to recognize and address illegal use of Schedule I and II drugs by employees.
6. **PROCEDURES.** CPSC adheres to the Department of Health and Human Services' *Mandatory Guidelines for Federal Workplace Drug Testing Programs* and the *Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid*. See Manual 1080.5 for greater detail regarding responsibilities.
 - a. **Applicant Testing:** Every vacancy announcement for positions designated for applicant testing will identify the testing requirement. Each applicant will be notified that appointment is contingent upon a negative drug test result and CPSC will decline to extend a final offer of employment to any applicant with a verified positive test result.
 - b. **Random Testing:** Only employees in testing designated positions are subject to random testing. Individuals in TDPs selected for random testing, and their first-line supervisors (if applicable), shall be notified of required drug testing on the same day the test is scheduled.



- c. Reasonable Suspicion Testing:** Reasonable suspicion testing may be required of any employee in a testing designated position when there is a reasonable suspicion that the employee uses drugs illegally whether on or off duty. Reasonable suspicion testing may also be required of any employee in any position when there is a reasonable suspicion of on-duty use or on-duty impairment from illegal use of drugs.
- d. Accident or Unsafe Practice Testing:** Employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to others or the overall operation of CPSC may be subject to post-accident drug testing.
- e. Voluntary Testing:** Employees not in testing designated positions may volunteer for unannounced random testing by notifying the Drug Program Coordinator. These employees will then be included in the pool of employees subject to random testing and be subject to the same conditions and procedures, until such a time as they withdraw from participating.
- f. Testing as Part of or as a Follow-up to Counseling or Rehabilitation:** Non-PAS employees referred for counseling or a rehabilitation program for illegal drug use through the EAP will be subject to unannounced testing for a period of one year following completion of such a program.
- g. Determination of Illegal Use of Schedule I and II Drugs:** An employee may be found to use drugs illegally based on any appropriate evidence including, but not limited to: direct observation; a criminal conviction; a verified positive test result of a drug test; or an employee's voluntary admission.
- h. EAP Referral After Verified Positive Test Results:**

 - 1. The DPC shall refer any non-PAS employee found to be illegally using drugs to the EAP.
 - 2. A PAS found to be illegally using drugs will be offered EAP on a voluntary basis and the matter will be documented and reported through the Chief Human Capital Officer to the Office of Presidential Personnel.
- i. Other Mandatory Administrative Actions After Verified Test Results**

 - 1. If the employee occupies a sensitive position, the employee's supervisor will reassign the employee from the sensitive position. This may involve a detail to a set of duties, or assigning to a nonwork status (non-punitive). Disciplinary action taken against an employee found to use drugs illegally may include the full range of disciplinary actions, including termination. The severity of the action chosen will depend on the circumstances of each case.



2. CPSC's Chief Human Capital Officer will inform the Office of Presidential Personnel of the positive test result for a PAS.
 - j. **Confidentiality:** Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. § 552a, et seq., and Section 503(e) of the Supplemental Appropriations Act of 1987, and may not be released without prior written consent of the employee except to the Medical Review Officer, to the EAP Administrator, the Office of Presidential Personnel, the employee's supervisory or management officials (or CPSC's Chief Human Capital Officer in the case of a PAS), or pursuant to a court order.
7. **CANCELLATION.** This Directive, in conjunction with Manual 1080.5, supersedes and cancels Order No. 1080.5, *CPSC Drugfree Workplace Plan* (July 1, 2011).

Alex Hoehn-Saric
Chair

Date