



**EVALUATION OF THE
DEPARTMENT OF LABOR'S
RANDOM DRUG TESTING IMPLEMENTATION
FYs 1996-2000**

**OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION AND MANAGEMENT**

Report No. 2E-07-780-0001

Date Issued: October 10, 2000

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ACRONYMS AND GLOSSARY

ACRONYMS

ADPLs	-	Agency Drug Program Liaisons
DOL	-	United States Department of Labor
DPC	-	Drug Program Coordinator
MSHA	-	Mine Safety and Health Administration
OASAM	-	Office of the Assistant Secretary for Administration and Management
OIG	-	Office of Inspector General
OSHA	-	Occupational Safety and Health Administration
TDPs	-	Testing Designated Positions

GLOSSARY

Agency Drug Program Liaisons - Serve as the primary contacts with the DPC in implementing the DOL Drug-Free Workplace Plan in their respective agencies. These individuals are located in the National Office.

Drug Program Coordinator - The individual designated as having primary responsibility for implementing, directing, administering, and managing the DOL Drug-Free Workplace Plan.

Testing Designated Positions - Those sensitive positions whose incumbents operate independently and who, if on illegal drugs, would pose such a great potential risk to the public or the agency that it cannot be minimized by internal controls.

EXECUTIVE SUMMARY

We conducted an evaluation of the Office of the Assistant Secretary for Administration and Management's (OASAM) implementation of the U.S. Department of Labor's (DOL) random drug testing program. The purpose of the evaluation was to determine whether the Department's random drug testing program was implemented as stipulated in DOL's Drug-Free Workplace Plan (Plan) in Fiscal Years (FY) 1996 through 2000.

RESULTS OF EVALUATION

FINDING - DOL's RANDOM DRUG TESTING PROGRAM CAN BE IMPROVED

We found that DOL's random drug testing program can be improved in two areas: (1) completion rates of scheduled drug tests can be increased and (2) deferred randomly scheduled drug tests should be completed within 60 days.

We also found that the Department's random drug testing selection plan ensures that each employee who was subject to random testing had an equal probability of selection in FYs 1996 - 2000.

RECOMMENDATIONS

We recommend that:

1. DOL's Safety and Health Center update the *Department of Labor Drug Testing Handbook* to include procedures for employee drug testing within 60 days after deferral.
2. DOL's Safety and Health Center actively notify agencies of the Plan's rules regarding random testing and enforce the 60-day deferral provision stipulated in DOL's Drug-Free Workplace Plan.
3. Agency Drug Programs train drug program liaisons and coordinators in the standard operating procedures for implementing the Department's random drug testing program.

AGENCY COMMENTS and OIG's RESPONSE

During the exit conference, Safety and Health Center officials told us that they are in agreement with our

recommendations and provided documentation of corrective actions taken. We consider these recommendations to be resolved and closed.

BACKGROUND

Legal Authority

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

DOL's Drug-Free Workplace Plan

DOL has implemented a Drug-Free Workplace Plan¹ with the purpose of setting forth objectives, policies, procedures, and implementation guidelines, to achieve a drug-free Federal workplace, consistent with Executive Order 12564 and Section 503 of the Supplemental Appropriations Act of 1987. Approximately 3,000 positions in the Department have been identified for random testing to provide a means of ensuring that the performance of these functions is not impaired by the use of illegal drugs. These testing designated positions (TDPs) are positions where 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. The DOL Plan includes random testing of 10 percent of employees in TDPs. These individuals are tested for: marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

The Plan stipulates that employees in these positions will have an equal statistical chance of being selected each year for unannounced testing, which could occur on any scheduled workday and without individualized suspicion that a particular individual is using illegal drugs. At the same time, recognizing that employees are entitled to be free of unreasonable intrusions on their rights, the Plan contains important safeguards for the rights of employees, including advance notice of the circumstances under which testing is permissible and of the scope of testing, privacy during collection, stringent laboratory standards, provisions for challenging results, and assurance of availability of rehabilitation programs.

Coordination of DOL's drug-free workplace program, including testing of employees and follow up actions, is the responsibility of the Workers' Compensation and Substance Control Team in the Safety and Health Center of the Office of the Assistant Secretary for Administration and Management (OASAM). The mission of the Safety and Health Center is to provide leadership, policy guidance,

¹U.S. Department of Labor. *Department of Labor Drug-Free Workplace Plan*. Revised June, 2000. Appendix A - Revised - 06/05/2000.

technical advice, and overall administration and management of the Department's internal safety, health, and workers' compensation programs. A Drug Program Coordinator (DPC) is assigned to carry out the purposes of this Plan and has the responsibility for implementing, directing, administering, and managing the drug program with the DOL.

Random Drug Testing Program Implementation

In implementing the program of random testing, the Plan requires that the Drug Program Coordinator:

- (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 DOL's duty to achieve the objective of a drug-free workplace. The frequency with which random tests will be administered is 10 percent per annum.

An individual selected for random testing and the individual's first-line supervisor must be notified the same day the test is scheduled, preferably within two hours of the scheduled testing. The supervisor must explain to the employee that the employee is under no suspicion of taking drugs and that the employee was selected randomly. Agency representatives can take as long as one month to complete the drug tests for individuals on the list they receive from OASAM's Safety and Health Center.

An employee selected for random drug testing may obtain a deferral of testing if two higher-level management officials concur that a compelling need necessitates a deferral on such grounds as the employee is:

- (1) In a leave status (sick, annual, administrative or leave without pay);
- (2) In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification; or
- (3) Required to attend a previously-scheduled meeting or keep a previously-scheduled appointment.

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

The Department has issued a handbook setting forth standard operating procedures for managers implementing all DOL drug testing consistent with the DOL Drug-Free Workplace Plan².

²U.S. Department of Labor. *Department of Labor Drug Testing Handbook*. Revised Edition, November 1999.

PURPOSE AND METHODOLOGY

PURPOSE

The purpose of the evaluation was to determine whether the Department's random drug testing program was implemented as stipulated in DOL's Drug-Free Workplace Plan (Plan) in Fiscal Years (FY) 1996 through 2000. Specifically, we answered the following questions:

- (1) Did the Department's random drug testing selection plan ensure that each employee who was subject to random drug testing had an equal probability of selection each year?
- (2) Did responsible DOL officials apply the Plan's criteria for deferral of testing in the cases of employees who were not tested when they were randomly selected for drug testing?
- (3) Were those employees who were not tested for drugs when first randomly selected tested within the following 60 days?

METHODOLOGY

Our evaluation focused on the Mine Safety and Health Administration (MSHA), the Occupational Safety and Health Administration (OSHA), and the Office of Inspector General (OIG) because in FYs 1996 through September 11, 2000, MSHA, OSHA, and OIG accounted for over 95 percent of all scheduled random tests at DOL. MSHA contributed about 52 percent, OSHA about 39 percent, and OIG about 4.6 percent of all scheduled random tests at DOL. The remaining random tests are distributed among several other DOL agencies.

To answer the evaluation questions, we:

- (1) Reviewed the DOL's random drug testing sampling plan for FYs 1996-2000.
- (2) Examined OASAM data on random drug test completions for the same period.
- (3) Conducted interviews with the DOL Drug Program Coordinator and Agency Drug Program Liaisons.

We held an entrance conference with OASAM officials on September 11, 2000. Field work was conducted at OASAM's offices at the Frances Perkins Building in Washington, D.C. An exit conference was held with OASAM officials on October 3, 2000 to discuss the results of our review.

We conducted our review in accordance with the *Quality Standards for Inspections* published by the President's Council on Integrity and Efficiency.

FINDINGS AND RECOMMENDATIONS

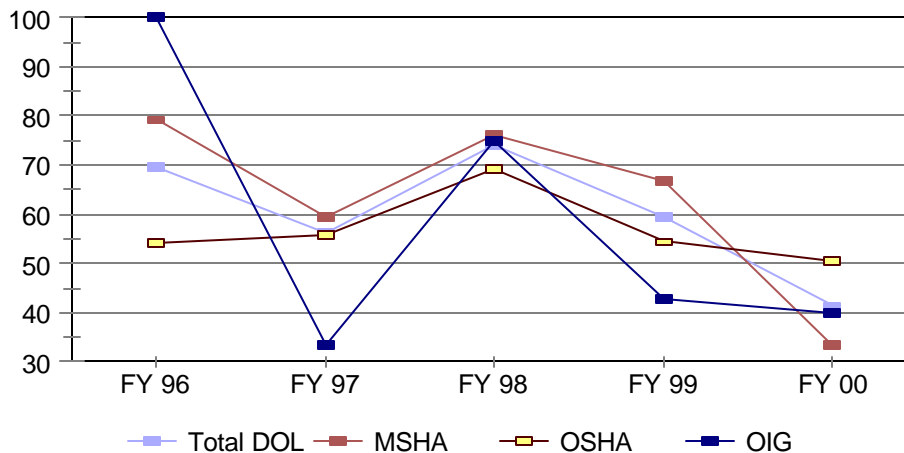
FINDING - DOL's RANDOM DRUG TESTING PROGRAM CAN BE IMPROVED

We found that DOL's random drug testing program can be improved in two areas: (1) completion rates of scheduled drug tests can be increased and (2) deferred randomly scheduled drug tests should be completed within 60 days.

We also found that the Department's random drug testing selection plan ensures that each employee who was subject to random testing had an equal probability of selection in FYs 1996 - 2000.

Regarding the areas that need improvement, first, in FYs 1996-2000, about 61 percent of 1,813 scheduled random drug tests were completed DOL-wide. As of September 11, 2000 (towards the end of FY 2000) the completion rate was 41 percent. As the following graph shows, random testing completion rates DOL-wide and for MSHA, OSHA, and OSHA in FYs 1996 through 2000 are similar. They fall well short of the expected 100 percent and are declining.

Declining Random Drug Testing Completion Rates Fiscal Years 1996 - 2000³



³Please refer to Exhibit 2 for a table displaying the completion rates of random drug tests scheduled in FYs 1996 through 2000.

Second, we found that section F. of the random testing provision of the Plan has been improperly implemented. Followup tests of deferred tests were not completed and, as a consequence, many employees whose tests were deferred were never tested. Although this is a long-standing practice, it violates Department policy, which requires that an employee whose random drug test is deferred be subjected to an unannounced test within the following 60 days.

DOL's Drug Program Coordinator and MSHA, OIG, and OSHA Drug Program Liaisons agreed that excusing employees from testing may be the main contributor to the low completion rates just mentioned, since deferral and subsequent re-scheduling of drug tests would likely result in 100 percent or near-100 percent completion rates. They also said that they were following long-standing Department practice as set forth in the Drug Testing Handbook, which does not include procedures for testing after deferral.

AGENCY COMMENTS

During the exit conference, Safety and Health Center officials told us that they are in agreement with our recommendations. They also told us that they have taken the following corrective actions:

1. They have updated the *Department of Labor Drug Testing Handbook* to include procedures for employee drug testing within 60 days after deferral, as stipulated by the *Department of Labor Drug-Free Workplace Plan*.
2. They have distributed the updated *Department of Labor Drug Testing Handbook* and have notified Agency Administrative Officers and DOL Drug Program Coordinators that testing of deferred employees will be conducted within 60 days of deferral, as stipulated in DOL's Drug-Free Workplace Plan.
3. They have also held two meetings—one with Agency Administrative Officers and a second one with DOL Drug Program Coordinators—to inform them of the standard operating procedures for implementing the deferral and subsequent testing of employees under the Department's random drug testing program.

OIG's RESPONSE

We consider these recommendations to be resolved and closed, because OASAM has instituted the corrective actions detailed above.

Recommendations

We recommend that:

1. DOL's Safety and Health Center update the *Department of Labor Drug Testing Handbook* to include procedures for employee drug testing within 60 days after deferral.
2. DOL's Safety and Health Center actively notify agencies of the Plan's rules regarding random testing and enforce the 60-day deferral provision stipulated in DOL's Drug-Free Workplace Plan.
3. Agency Drug Programs train drug program liaisons and coordinators in the standard operating procedures for implementing the Department's random drug testing program.

**EXHIBIT 1 - RANDOM TESTING SAMPLING
PLAN**

Random Selection Procedures

The Department of Labor uses a computer system developed by EcoAnalysis for conducting Random Drug Test selection for 10% of the testing designed positions (TDPs). This system is used for each required testing which is 4 times during the fiscal year.

This same EcoAnalysis computer system is used by NASA and other Federal Agencies.

This system uses the simple random sampling technique. In this system, all employees in TDPs have the same chance of being selected for testing every time random sampling is done. Once selected, the person's name is put back into the pool for the same chance of selection again. Because a person's name is put back into the pool, it is very possible that that person may be selected again, while another person is not selected at all.

Each time a run is scheduled the program randomly selects a work location(region). A random number is generated from 1 to 11. Each region is assigned a number and where there is a match, random selection takes place. If region is selected, it will be at 10% within the region before the random move to another region using the same procedures mentioned above. After the region is selected the program randomly selects work location("crew"). A random number from 1 to the number of work locations is generated. The list of work location crews is sorted alphabetically. The work location corresponding to the random number generated is selected. (For example), Albany is selected, if it's code is 5th on the list alphabetically, and the number 5 is generated. Once a crew is selected, the value of the crew scheduling factor determines the number of persons in each crew to be selected. In DOL's case, the factor is 50. Therefore, a test will be generated for 50% of the persons in each crew selected. The program sorts the individual by social security number and generates a random number from 1 to the number of employees in the crew. The program then selects the name corresponding to the random number. The program stops selecting names from the crew when it reaches the percentage of the crew indicated by the crew scheduling factor. In addition, the program stops selecting crews when it has selected the number of tests required during the scheduling period.

**Compliance
Software**

3160 West
Pinebrook Road
P.O. Box 980700
Park City, UT
84098-0700

Phone:
(800) 647-9070
(801) 647-9835

FAX:
(801) 647-9835

Wednesday, September 17, 1997

Sam DeGenova
US Department of Labor
Office of Safety & Health
Rm. N1301
Washington, DC 20210

Dear Mr. Degenova:

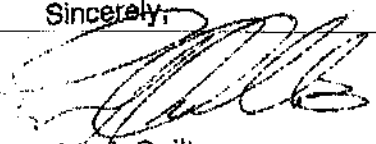
This letter is in response to your request for an audit of the performance of your installation of HEIDI and the random selections of personnel for drug tests.

SV Our ~~audit~~ included an on-site visit, several hours of on-line review of your data, and a review of the system reports generated by HEIDI that provide easy access to statistical information. Our review of the data indicates that your HEIDI installation is performing random selections without bias and that the distribution of selections is valid. The document attached to this letter provides a basic overview of the expected distribution for a pool group with your configuration. You can compare this with your HEIDI system reports for distribution frequency.

It is important that DOL personnel subject to testing understand that some "lucky" few will be selected many times. In fact, multiple selections are a key sign that the process is random. Since DOL is randomizing first by location, thereby impacting a larger number of personnel at the same time, the effect is more visible. The HEIDI software is completely impartial and also prohibits the operator from introducing bias. The Microsoft algorithms used in HEIDI have been thoroughly researched and validated as acceptable by independent experts.

If you need additional information, Compliance Software can provide you with a litigation package on HEIDI's random selection process that thoroughly discusses the algorithms and their implementation in the software. During the past five years, all challenges pertaining to HEIDI's selection process have been quickly put to rest well before litigation upon review of the documentation. Please call me if you have any additional concerns at (801) 463-6791.

Sincerely,



Eric J. Quilter
President

**EXHIBIT 2 - RANDOM DRUG TESTING
COMPLETION RATES FOR
FYs 1996 - 2000**

***Random Drug Testing Completion Rates
for Fiscal Years 1996 - 2000***

Fiscal Year	Totals*	MSHA+OIG +OSHA	MSHA	OSHA	OIG
10/01/95 - 09/30/96	69.52	70.43	79.19	54.14	100.00
10/01/96 - 09/30/97	56.40	56.82	59.46	55.83	33.33
10/01/97 - 09/30/98	74.01	73.96	76.21	69.30	75.00
10/01/98 - 09/30/99	59.34	59.53	66.67	54.40	42.86
10/01/99 - 09/11/00	41.38	41.67	33.33	50.42	40.00

*Totals consist of all DOL scheduled random drug tests.