

# MS 650 Drug-Free Workplace Program

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**Responsible Office:** Office of Human Resource Management

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*MS 650 Drug-Free Workplace Program Procedures*

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## Attachment

Attachment A – Drug- Free Workplace Plan

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### 1.0 Purpose

This Manual Section sets forth the Peace Corps policy for promoting a drug-free work environment, which will be implemented through its Drug- Free Workplace Plan (“The Plan”) (Attachment A) and procedures.

### 2.0 Authority

Executive Order 12564; Section 503 of the Supplemental Appropriations Act of 1987; 5 U.S.C. 7301, Presidential Regulations, Federal Register, Volume 73, Number 228, dated November 25, 2008; (SAMHSA Guidelines); Sections 523 and 527 of the Public Health Service Act and implementing regulations at 42 CFR Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records; Federal Employees Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570. Privacy Act, 5 U.S.C. 552a, et. Seq.; See also Mandatory Guidelines for Federal Workplace Drug Testing Programs, Department of Health and Human Services, Substances Abuse and Mental Health Service Administration (SAMHSA), <http://workplace.samhsa.gov>

### 3.0 Definitions

**3.1 Applicant** means any individual tentatively selected for employment with the Peace Corps for a Testing Designated Position.

**3.2 Employees** mean all Peace Corps employees (including personal services contractors), both permanent and temporary, and part-time.

**3.3 Illegal Drugs** mean 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 that Title. The term "illegal drugs" does not mean the use of a controlled substance

pursuant to a valid prescription or other uses authorized by federal law. (See Section XIII D of the Plan.)

**3.4 Sensitive Information** includes information that has limited access, is not explicitly intended for public consumption, or has internal constraints on its access such as classified information. Sensitive Information is defined in greater detail in the Procedures.

**3.5 Testing Designated Positions** are:

- (a) positions designated by the Director as Special Sensitive, Critical Sensitive, or Noncritical-Sensitive, or positions designated by the Director as sensitive in accordance with Executive Order No. 10450, as amended;
- (b) employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the Director under Section 4 of Executive Order No. 12356;
- (c) Presidential appointees;
- (d) law enforcement officers as defined in 5 U.S.C. §§8331(20) and 8401(17); and
- (e) other positions that the Peace Corps Director 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.

## **4.0 Policy**

### **4.1 General**

- (a) It is important that employees with access to sensitive information be reliable, stable, and show good judgment. Illegal drug use creates the possibility of coercion, undue influence, and irresponsible action under pressure that may undermine Peace Corps activities. To protect our national security, eliminate risk to the health, welfare, and safety of the public and Peace Corps employees, and to increase productivity in the workplace, it is the policy of Peace Corps that the use of illegal drugs, on or off duty, will not be tolerated. Every Peace Corps employee is responsible for complying with this policy.
- (b) Peace Corps will promote its drug-free workplace program policy through implementation of its Plan. Peace Corps employees must adhere to the required policies and procedures set forth in the Plan. The Plan includes, but is not limited to, policies and procedures, objectives, and guidelines concerning:
  - (1) A “safe harbor” provision, under which the Peace Corps will not initiate disciplinary action against any employee who, prior to being identified through other means or testing, voluntarily admits to illegal drug use, obtains counseling or rehabilitation and thereafter refrains from using illegal drugs (See Section 4.5).

- (2) Employee assistance programs, which provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been confirmed positive (See MS 658 *Peace Corps Employee Assistance Program*).
  - (3) Supervisory training, which assists supervisors and managers in recognizing and addressing illegal drug use by employees.
  - (4) Employee education, which uses written materials, videotapes, lunchtime employee forums, and employee drug awareness days to educate the Peace Corps on such topics as the symptoms and effects of drug use on performance.
  - (5) The nature, frequency, and type of drug testing to be administered, including applicant testing, random testing of employees in sensitive positions that have been designated as testing designated positions, reasonable suspicion testing, accident or unsafe practice testing, voluntary testing, and testing as part of or as a follow-up to counseling or rehabilitation.
  - (6) Finding of drug use and disciplinary consequences, including written reprimand, short-term and long-term suspension, and removal from service.
  - (7) Test results and records disclosure, which are protected under the provisions under the Privacy Act, 5 U.S.C. 552a, et. Seq. and Section 503(e) of Public Law 100-71.
- (c) Accomplishing the goal of a drug-free workplace rests primarily with senior officials and supervisors at the Peace Corps, in keeping with their responsibility for the performance and well-being of employees.

## 4.2 Drugs Tested

- (a) The Peace Corps will test for the following drugs: Marijuana, Cocaine, Opioids, 6-Acetylmorphine (6-AM), Phencyclidine (PCP), Amphetamines/Methamphetamines, Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone, Methylenedioxyamphetamine (MDA), and Methylenedioxymethamphetamine (MDMA).
- (b) State vs. Federal Laws on Recreational and Medical Marijuana
  - (1) Employees should bear in mind that the legalization of marijuana for recreational purposes in states or local governments (e.g. District of Columbia, Alaska, Colorado and Washington) has not changed the federal Drug-Free Workplace Program rules. Marijuana continues to be classified as a Schedule I controlled substance under the Controlled Substances Act, a federal law. As such, the use of marijuana continues to be illegal under federal law, regardless of the position of any given state or local government on the use of marijuana. An employee who tests positive for the usage of marijuana for any reason will be subject to disciplinary action under this Manual Section.

- (2) The medical use of marijuana even with a prescription is not an acceptable alternative medical explanation for a positive tetrahydrocannabinol (THC) test result. However, the use of a legitimately-prescribed FDA-approved drug (such as Marinol/Dronabinol, a synthetic form of marijuana), would not subject an employee to disciplinary measures.

### **4.3 Types of Drug Testing**

The Plan includes the following types of drug testing: (1) applicant testing for Testing Designated Positions; (2) random testing of those employees in Testing Designated Positions; (3) reasonable suspicion testing; (4) accident or unsafe practice testing; (5) voluntary testing; and (6) testing as part of or as a follow-up to counseling or rehabilitation.

### **4.4 Positions Designated for Random Testing**

- (a) Employees in Testing Designated Positions are subject to random testing.
- (b) If an employee believes his or her position has been wrongly designated a Testing Designated Position, the employee may file an administrative appeal to Director, Office of Human Resource Management, who has authority to review the appeal and make a recommendation on the appeal to the Peace Corps Director. During the appeal process, the position in question shall remain a Testing Designated Position and the employee is subject to random testing. The appeal must be submitted by the employee, in writing, to Director, Office of Human Resource Management, within 15 days of notification that the employee's position has been designated a Testing Designated Position, setting forth all relevant information. The Director, Office of Human Resource Management, will render a decision within 15 days of receipt. The decision of the Director, Office of Human Resource Management, is final and is not subject to further administrative review.

### **4.5 Voluntary Referral and Safe Harbor**

- (a) A fundamental purpose of the Drug-Free Workplace Program is to assist employees who themselves are seeking treatment for drug use. For this reason, disciplinary action will not be initiated against any employee who provides evidence of all of the following conditions:
  - (1) voluntarily identifies him/herself to the Employee Assistance Program (EAP) as a user of illegal drugs prior to being identified through other means or testing, whichever is earlier;
  - (2) obtains and completes counseling or rehabilitation through EAP; and
  - (3) thereafter refrains from using illegal drugs.
- (b) Voluntarily identifying may affect an employee's security clearance. (See section 4.7 below.)

## **4.6 Finding of Drug Use and Disciplinary Consequences**

- (a) Peace Corps shall initiate disciplinary action, up to and including termination of employment, against any employee found to use illegal drugs, unless the employee meets the criteria for voluntary referral and safe harbor in accordance with Section 4.5.
- (b) The Peace Corps shall initiate action to remove an employee for:
  - (1) refusing to obtain counseling or rehabilitation through the EAP, after having been found to use illegal drugs; or
  - (2) not refraining from illegal drug use after a first finding of such use.
- (c) Using illegal drugs may affect an employee's security clearance, including under conditions of voluntary self-identification as stated in section 4.5. In the event an employee's security clearance is suspended or revoked as a result of using illegal drugs, the employee may be reassigned to a position that does not require a security clearance or the employment of the employee may be terminated. (See section 4.7 below.)

## **4.7 Security Clearance**

Under the Department of State's *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information; Guideline H: Drug Involvement*, testing positive for illegal drug use specifically, or any illegal drug use in general, after being granted a security clearance raises a security concern and may result in the Peace Corps revoking the employee's security clearance.

For any employee who voluntarily identifies under section 4.5 or is found to use illegal drugs, the Office of Safety and Security will:

- (a) initiate an inquiry to ascertain whether the employee continues to meet the requirements for a security clearance; and
- (b) suspend the employee's security clearance access during the inquiry.

## **5.0 Roles and Responsibilities**

### **5.1 Director, Office of Human Resource Management**

Director, Office of Human Resource Management is responsible for oversight and implementation of the Drug Free Workforce Program, including:

- (a) Coordinating with and reporting to the Associate Director for Management on all activities and findings on a regular basis.
- (b) Assigning the duties of the Plan's Drug Program Coordinator, Employee Assistance Program Administrator Employee, Assistance Program Coordinator and Employee Assistance Counselors.

- (c) Receiving reports from the Plan's Medical Review Officer on any applicant or employee with a verified positive drug test result;
- (d) Notifying the Chief, Information and Personnel Security Branch, Office of Safety and Security (OSS/IPS) of any employee with a security clearance who has a verified positive drug test result.

## **5.2 Supervisors**

Except as modified by the Peace Corps Director to suit specific program responsibilities, first-line supervisors shall:

- (a) Attend training sessions on illegal drug-use in the workplace.
- (b) Initiate a drug test based on reasonable suspicion. A higher level supervisor, in consultation with Employee Labor Relations and the Office of the General Counsel, must review and concur, in advance, with all tests ordered on the basis of a reasonable suspicion.
- (c) Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use.
- (d) Initiate appropriate disciplinary action upon a finding of illegal drug use.
- (e) In conjunction with personnel specialists, assist higher-level supervisors and the EAP Administrator in evaluating employee performance and or personnel problems that may be related to illegal drug use.

## **6.0 Procedures**

This Manual Section is implemented by the Plan and the supplemental procedures, The Director of the Office of Human Resource Management is authorized to issue the procedures which must be cleared by the Office of the General Counsel.

The Inspector General may issue policy directives and implementing procedures applicable to drug testing of OIG employees.

## **7.0 Effective Date**

This Manual Section shall be effective on the date of issuance.