

DRUG TESTING PROGRAM OPTIONS AND PROS AND CONS

Option 1:

Designate all NRC positions as “sensitive” and put all NRC employees in the drug testing pool. NRC would not have to provide an explanation to HHS for not including preferred TDPs in the random drug testing pool, but would have to provide this information to members of the ICG in the form of a justification, for a consultative uniformity review.

Pros

1. Consistent with the plain language of the EO, to include NRC cleared individuals in the drug testing pool. In accordance with Section 145 of the Atomic Energy Act of 1954 (as amended) all NRC employees shall obtain at least a Secret, or L, security clearance. Therefore, any NRC employee, if they have a need-to-know, can have access to classified information. This satisfies the HHS preferred criteria of Personnel Having Access to “Truly Sensitive Information.”
2. Resolves Recommendations 1 and 4 in OIG Audit OIG-05-A-05.
3. Is consistent with the intent of NRC’s drug testing policy statement as reflected in Agency Announcement number 94, dated July 9, 1987. Given the nature of NRC’s responsibilities, and the importance of public trust and confidence in NRC’s ability to carry out its mission effectively, the Commission emphasizes that the use of illegal drugs by NRC employees is unacceptable and will not be tolerated by the agency.
4. Places greater emphasis on maintaining a drug-free workplace in a post-September 11, 2001, environment. Putting all NRC employees in the random drug testing pool will assist in ensuring that NRC is indeed a drug-free workplace, especially in light of recent positive drug test results for four NRC employees. If employees who are in the pool have been found to use illegal drugs, the probability is high that some individuals who are not in the pool are also using illegal drugs. This can place the agency at additional risk.
5. Establishes and maintains an effective deterrent factor for a larger pool of individuals as compared to the current practice. The cost of almost doubling the number of individuals in the pool now could be offset by reducing the testing rate to 25 percent. The ICG states that cost alone is not a sufficient criterion to decide whether or not a position is a TDP. In-line with this position, staff may consider testing rate options.
6. Satisfies HHS concerns regarding complexity of Category 3 criteria (i.e., "Category 3 remains unnecessarily complex...This section could be edited and summarized: Consistent with guidance, the NRC TDP pool is:...(3) Employees with Secret and above clearances...").

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7. Eliminates potential errors that are introduced when individuals are moved in and out of TDPs since all employees would be in the pool. Allows staff to focus efforts on managing the testing process and not employee movement in and out of TDPs. The Office of Human Resources (HR) estimates spending 312 hours a year on this effort and the Office of Administration (ADM) estimates spending 416 hours. This savings in staff time offsets the increased program costs to test all applicants for NRC employment. In spite of the effort expended by both offices, it has not been possible to maintain a 100 percent accurate pool. NRC's random drug testing pool is dynamic by nature.
8. Aligns NRC's program with other Federal agencies that require employees to hold a security clearance, although some link TDP criteria to position sensitivity and/or agency mission rather than to the actual security clearance. The following agencies are at or very near 100 percent TDPs: National Nuclear Security Administration; Bureau of Alcohol, Tobacco, Firearms, and Explosives; Defense Security Service; National Geospatial-Intelligence Agency; Department of Defense-Office of the Inspector General; Federal Bureau of Investigation; United States Secret Service; U.S. Agency for International Development; Drug Enforcement Administration; and Defense Nuclear Facilities Safety Board. The Department of Energy randomly tests all employees with a top secret security clearance and some other positions, i.e., couriers handling special nuclear materials and trainers who are part of the Human Reliability Program (they have access to weapons).
9. Reduces risk of hiring current drug users since 100 percent of all applicants would be tested.
10. Eliminates risk that HHS would not approve NRC's Drug-Free Workplace Program, Revision 2.

Cons

1. Reduces the number of times the agency actually tests individuals in higher risk positions if the testing rate is the same for all TDPs.
2. The drug testing program tracking system would need to be modified if the testing rate were modified. Although this would expend staff and financial resources, staff does not consider this a significant negative since this would be covered in the cost of annual software application maintenance. The existing tracking system is out of date and has not been modified since 1999. Staff is looking into replacing the existing system.
3. Increases the burden on drug testing program staff by requiring testing of all applicants.

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Option 2:

Revise the current TDP criteria to include NRC employees who carry firearms, those authorized to carry firearms, and those NRC employees who have drug rehabilitation program duties (i.e., Employee Assistance Program (EAP) employees), which is a preferred testing category. As stated by the ICG, individuals with EAP duties are so inimical to illegal drug use that such employees can expect inquiry regarding their fitness. This option would meet the ICG presumptive criteria pertinent to NRC. NRC would be required to provide an explanation for not including all pertinent preferred positions in the random drug testing pool (i.e., Personnel Having Access to "Truly Sensitive Information").

Pros

1. Resolves Recommendation 4 in OIG Audit OIG-05-A-05, and would not result in a significant increase to the number of individuals in the random drug testing pool since most of these individuals have been identified as being in TDPs for other reasons (i.e., they satisfy current Category 1, 2, or 3 criteria).
2. Meets current ICG guidance since employees who carry firearms are included in the ICG's presumptive TDP category and employees who are authorized to carry firearms are included in the preferred TDP category.
3. Meets the ICG preferred TDP criteria since employees who have employee assistance duties would be included in the pool.
4. Poses no impact to most employees who are currently in non-TDP positions.

Cons

1. May not be viewed by HHS as compliant with the plain language of the EO to include all NRC cleared individuals in the drug testing pool, and therefore may not be approved by HHS.
2. Requires explanation for preferred positions not included in the random drug testing pool (i.e., "Personnel Having Access to "Truly Sensitive Information"), which results in increased risk of HHS not approving NRC's Plan.
3. Does not satisfy HHS concerns regarding complexity of Category 3 criteria (i.e., "Category 3 remains unnecessarily complex...This section could be edited and summarized: Consistent with guidance, the NRC TDP pool is:...(3) Employees with Secret and above clearances...").
4. Potential for errors is introduced when individuals move in and out of TDPs, as they do each pay period.

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5. Does not allow staff to focus efforts on managing the testing process. Expends staff resources (estimated at approximately 728 hours per year) to track movement of employees in and out of the testing pool at the expense of managing the agency's Drug-Free Workplace Program. This effort does not effectively utilize NRC resources.
6. Expends staff effort in collecting information from Office Directors and Regional Administrators regarding individuals in their organizations who meet the Plan criteria does not effectively utilize NRC resources.
7. Treats employees inconsistently, which could lead to disparate treatment claims.

Option 3:

Revise the current TDP Category 3 to include employees who are in critical-sensitive positions requiring a "Q" or Top Secret security clearance, employees who are in positions of high public trust requiring an "L(H)" security clearance, employees who are in other sensitive positions that may require access to classified information two or more times a year, and those NRC employees who have drug rehabilitation program duties (i.e., Employee Assistance Program employees), which is a preferred testing category. As stated by the ICG, individuals with EAP duties are so inimical to illegal drug use that such employees can expect inquiry regarding their fitness. This option would also resolve Recommendation 4 of OIG audit OIG-05-A-05.

Pros

1. Resolves Recommendation 4 in OIG Audit OIG-05-A-05.
2. Brings NRC's TDP criteria closer in-line with the ICG's revised TDP guidance.
3. Poses no impact to most employees who are currently in non-TDP positions.

Cons

1. May not be viewed by HHS as compliant with the plain language of the EO to include all NRC cleared individuals in the drug testing pool, and therefore may not be approved by HHS.
2. Requires explanation for preferred positions not included in the random drug testing pool (i.e., "Personnel Having Access to "Truly Sensitive Information"), which results in increased risk of HHS not approving NRC's Plan.
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4. Potential for errors is introduced when individuals move in and out of TDPs, as they do each pay period.
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