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EMPLOYEE DRUG TESTING

A Single Agency Is Needed to Manage Federal Employee Drug Testing



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The Honorable Dennis DeConcini
Chairman, Subcommittee on Treasury,
Postal Service, and General Government
Committee on Appropriations
United States Senate

The Honorable Barbara Mikulski
United States Senate

This report, prepared in response to your request, discusses how federal agencies have implemented their employee drug testing programs and calls for making a single agency responsible for managing federal drug testing efforts.

As arranged with you, we plan no further distribution of this report until 30 days after the date of the report, unless you release the contents earlier.

The major contributors to this report are listed in appendix II. If you have any questions on this report, please contact me at 275-5074.

A handwritten signature in cursive script that reads "Bernard L. Ungar".

Bernard L. Ungar
Director, Federal Human
Resource Management Issues

Executive Summary

Purpose

In September 1986, after determining that drug use was having serious adverse effects upon a significant portion of the national workforce and was resulting in billions of dollars of lost productivity each year, President Reagan issued Executive Order 12564. The order required all federal employees to refrain from using illegal drugs and authorized drug testing under certain circumstances to identify illegal drug users.

Because of concerns about the implementation of federal employee drug testing, the Chairman, Subcommittee on Treasury, Postal Service, and General Government, Senate Committee on Appropriations, and Senator Barbara Mikulski requested that GAO examine whether centralized management could improve the administration of federal employee drug testing programs. This report presents the results of GAO's work.

Background

Executive Order 12564 requires the head of each executive branch agency to develop a plan for achieving a drug-free workplace. The plans were to include provisions for identifying illegal drug users through testing on a controlled and carefully monitored basis.

The Executive Order and the 1987 Supplemental Appropriations Act (Public Law 100-71) identified roles a number of federal agencies were to play in helping agencies design their drug testing programs. Some of these agencies were the Office of Personnel Management, which provided guidance for agencies to use in preparing their plans; the Department of Health and Human Services, which provided scientific and technical guidance; and the Department of Justice, which provided legal advice on agency proposals.

In assessing the extent to which agencies had implemented drug testing, GAO visited 18 judgmentally selected executive agencies.

Results in Brief

GAO believes that a single federal agency needs to be assigned overall responsibility for managing federal employee drug testing. Currently, there is no agency responsible for overseeing the implementation of such efforts. In testimony before the House Subcommittee on Human Resources in May 1987,¹ GAO cited this lack of oversight as its biggest concern. GAO said that without oversight, there can be no assurance that employees are being treated equitably, that agencies comply with

¹Federal Employee Drug Testing (GAO/T-GGD-87-18, May 20, 1987).

existing guidelines, or that needed modifications to the guidelines and program operations are identified and implemented.

GAO's current review confirmed the existence of such problems. It found that employees were subject to drug testing in some federal agencies, while in other agencies, they were not. Also, in those agencies that had implemented drug testing, GAO found disparities in drug testing practices, wide variations in the costs for such testing, and operational problems associated with drug testing that had not been identified.

Principal Findings

No Federal Agency Is Responsible for Managing Overall Federal Drug Testing Efforts

Although several agencies were responsible for helping to design employee drug testing programs, no federal agency is responsible for overseeing the implementation of those programs. Because of this lack of oversight, federal employees are not always being treated equitably and there are wide variances in the costs agencies pay for testing-related services. Additionally, GAO noted certain operational problems related to federal employee drug testing that had not been identified.

Inequities Exist in Employee Drug Testing Programs

Because the head of each executive agency is responsible for implementing a drug testing program, the extent to which federal employees are required to participate in drug testing and the penalties imposed for drug use are primarily dependent on the emphasis placed upon drug testing at the agency for which they work. This situation has contributed to inequities in the treatment of federal employees. (See p. 13.)

Agencies could not begin drug testing until their plans had been certified by the Department of Health and Human Services, and many agencies were not testing any of their employees because they either had not or had only recently obtained such certification. In many agencies where plan certification had been received earlier, drug testing had also not been fully implemented. Only 6 of the 18 agencies GAO visited had implemented all aspects of their drug testing programs. The remaining agencies' programs were not yet underway because of court injunctions, union negotiations, and other factors.

In reviewing the plans developed by the 18 agencies, GAO also found differences in the sensitive positions designated for random testing and the

frequency with which employees in those positions were to be tested. Testing-designated positions at the agencies GAO visited ranged from 0.8 percent to 100 percent of each agency's total workforce, and situations existed in which positions that were subject to testing in some agencies were not in others. Also, testing frequencies ranged from a low of 4 percent of employees in testing-designated positions per year to a high of 100 percent of such employees.

Penalties for the use of illegal drugs also varied. In one agency, employees who used illegal drugs were transferred to positions that did not require random testing. Other agencies fired employees after either their first or second offense. (See p. 17.)

Drug Testing Costs Varied Significantly

A laboratory drug test can have two phases—a screen test and a confirmation test. GAO found that a number of agencies were receiving both a screening and a confirmation test for \$8.90, while others were paying over \$87.00 for the same services. (See p. 20.)

The laboratory sends the test results to a medical review officer for independent review and verification. Here again, GAO noted differences in rates among agencies. For example, hourly rates ranged from \$50 to \$200 per hour. (See p. 21.)

Operational Problems Are Not Being Identified and Dealt With

GAO found that two agencies were not complying with quality assurance procedures required by existing guidelines and that, for a variety of reasons, 11 of the 18 agencies reviewed had not provided Congress with the information on their drug testing operations required by Public Law 100-71. GAO also noted that the Department of Health and Human Services had failed to notify all federal agencies of a problem that had surfaced in distinguishing a legal form of methamphetamine from an illegal form of that drug. (See p. 21.)

Recommendation

To obtain the leadership needed to address the problems GAO identified, GAO recommends that the Director, Office of Management and Budget, take the action necessary to have responsibility for overseeing federal drug testing efforts assigned to a single federal agency. An agency with such responsibility should help ensure that employees are being treated equitably and determine which agencies are not in compliance with

existing program guidelines. It could also ensure that needed modifications to the drug testing program are identified and implemented. (See p. 25.)

GAO sees several agencies capable of fulfilling this role. While good arguments can be made for each, GAO believes that drug testing is a personnel issue and that, accordingly, this responsibility should be in the Office of Personnel Management.

Agency Comments

Representatives from the 18 agencies GAO reviewed generally agreed that the information GAO presented accurately described the status of their drug testing programs. Officials from the Office of Personnel Management, the Department of Health and Human Services, and the Office of National Drug Control Policy all agreed that a single federal agency should have overall responsibility for employee drug testing. There was not consensus, however, on which agency that should be.

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Abbreviations

ATF	Bureau of Alcohol, Tobacco and Firearms
BOP	Bureau of Prisons
DCAA	Defense Contract Audit Agency
DEA	Drug Enforcement Administration
DOE	Department of Energy
DOT	Department of Transportation
FBI	Federal Bureau of Investigation
GSA	General Services Administration
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
ICG	Interagency Coordinating Group
INS	Immigration and Naturalization Service
MRO	medical review officer
NRC	Nuclear Regulatory Commission
OMB	Office of Management and Budget
ONDCP	Office of National Drug Control Policy
OPM	Office of Personnel Management
TDP	testing-designated position
USDA	Department of Agriculture

Introduction

In March 1986, as part of an effort to reduce the demand for illegal drugs, the President's Commission on Organized Crime suggested that both public and private employees be tested for their use. The Commission believed that testing would deter employees from using illegal drugs.

Shortly thereafter, in September 1986, President Reagan issued Executive Order 12564.¹ The order requires all federal employees to refrain from using illegal drugs and authorizes drug testing on a carefully controlled and monitored basis in order to identify illegal drug users.

Circumstances Under Which Federal Employees Can Be Tested for Illegal Drugs

The executive order requires the head of each executive agency to establish a program to test employees in sensitive positions for the use of illegal drugs. It also authorizes testing

- when there is reasonable suspicion that an employee is using illegal drugs (reasonable suspicion testing),
- in an investigation authorized by the agency regarding an accident or unsafe practice (post-accident testing),
- as part of the follow-up to counseling and rehabilitation for illegal drug use (follow-up testing), and
- prior to hiring any individual applying for employment (applicant testing).

As specified in the executive order, the conditions under which employees can be tested for the use of illegal drugs are rather broad. As a result, numerous court challenges have been and continue to be filed, which further refine the limits of the federal government's authority to impose drug testing on its employees. Because of the decentralized nature of the program, these court challenges have been filed against individual federal agencies and cover virtually all of the drug testing categories identified in the executive order.

With regard to post-accident testing, for example, the order states that drug testing is permissible in an investigation authorized by an agency regarding an accident or unsafe practice. However, one court recently determined that the Navy's plans to test any Navy employee after any accident with motor vehicles or equipment, regardless of how minor,

¹51 Fed. Reg. 32,889 (1986), reprinted in 5 U.S.C. 7301 note at 909-11 (1988).

was overly broad.² And in another decision, a court ruled that the Department of Health and Human Services' (HHS) plans to test any employee involved in an on-the-job accident with property damage in excess of \$1,000 was also overly broad.³

In addition to identifying the general conditions under which employees could be tested, the executive order also contains guidance on other aspects of drug testing. For example, the order provides that before starting with drug testing, agencies are required to inform the employee to be tested of the opportunity to submit medical documentation supporting the legitimate use of a specific drug. Agencies are also required to initiate action to discipline an employee found to have used illegal drugs unless that employee (1) voluntarily identified himself/herself as an illegal drug user or volunteered for testing, (2) obtained counseling or rehabilitation, and (3) thereafter refrained from using illegal drugs. Employees who refuse counseling or rehabilitation or do not refrain from using illegal drugs can be removed from federal employment.

Several Agencies Had a Role in Helping to Design Federal Employee Drug Testing Programs

Several agencies, including the Office of Personnel Management (OPM), HHS, and the Department of Justice, had a role in helping executive agencies design their drug testing programs.

The Office of Personnel Management

The executive order required OPM to issue governmentwide guidance for agencies to use in preparing a plan for carrying out their drug testing program. OPM's initial guidelines were issued in November 1986 and have been periodically updated since that time.

The guidelines identified the types of drug testing that were authorized by the order and provided general information to be used in determining the sensitive positions for which drug tests would be administered. The executive order stated that agency heads were responsible for determining the employees to be tested on the basis of such factors as (1) the nature of the agency's mission and its employees' duties and (2) the

²American Federation of Government Employees v. Cheney, No. 88-3823 DLJ (N.D. Cal., 3/15/90).

³American Federation of Government Employees v. Sullivan, 744 F. Supp. 294 (D.D.C. 1990).

danger to the public health and safety or national security that could result from the failure of an employee to adequately discharge his/her duties. OPM's guidance pointed out that such tests could be administered randomly. The guidelines also provided information on the actions that could be taken if an employee was determined to have used illegal drugs. These actions ranged from reprimanding the employee in writing to removing the employee from federal service.

The Department of Health and Human Services

The executive order authorized HHS to promulgate scientific and technical guidance to be used by all executive branch agencies in carrying out their drug testing operations. HHS's responsibilities were further defined in the 1987 Supplemental Appropriations Act (Public Law 100-71), which President Reagan signed into law on July 11, 1987. The act supplemented the executive order by (1) requiring agencies to follow the guidelines promulgated by HHS and (2) stating that before an agency could use funds for drug testing, the Secretary of HHS must certify to Congress that the agency had a plan that, among other things, conformed to the executive order and the HHS guidelines. HHS was also required to specify the drugs for which employees could be tested and to submit an agency-by-agency analysis of (1) the criteria and procedures to be used by the agencies to designate employees for drug testing, (2) position titles designated for random drug testing, and (3) the nature, type, and frequency of such tests.

The HHS guidelines, which were initially issued in February 1987, were modified and issued as mandatory guidelines in April 1988. They included information on the types of drugs for which agencies were to test and established specific chain-of-custody and quality assurance procedures to help ensure the reliability of the drug testing process.

The Department of Justice

The executive order gave the Attorney General responsibility for providing legal advice to the agencies with regard to all guidelines, regulations, and policies that were proposed to be adopted. In this role, the Department of Justice reviewed agency plans to determine whether they could be defended in court.

Other Organizations

Other organizations involved in certain aspects of employee drug testing included the Office of Management and Budget (OMB), the National Drug Policy Board, and the Office of National Drug Control Policy (ONDCP). Before any agency could use funds for drug testing, OMB was required by

Section 503 of Public Law 100-71 to provide a cost analysis of that agency's drug testing program.

The National Drug Policy Board was established on March 26, 1987, by Executive Order 12590.⁴ The Board was charged with coordinating federal drug control program activities targeted at reducing the demand for, and supply of, illegal drugs. Public Law 100-690, passed in November 1988, replaced the Board with ONDCP. The law gave ONDCP responsibilities similar to those of the National Drug Policy Board and provided the organization with a policy development and coordinating role in the drug-related efforts of all government agencies. Although strategy papers prepared by ONDCP in 1989 and 1990 briefly mention employee drug testing, the law does not specifically mention a drug testing role for ONDCP.

The Interagency Coordinating Group (ICG), a committee established under the National Drug Policy Board and continued under ONDCP, assists agencies in preparing their employee drug testing plans. ICG, formed in 1987, is made up of an official from HHS, OPM, and Justice. ICG prepared a model plan for agencies to use as a guide in developing their drug testing plans and helped answer questions related to drug testing that had been raised by the agencies. It also reviewed agency drug testing plans prior to their being sent to HHS for certification. ICG has no explicit legislative authority over plan implementation.

Objective, Scope, and Methodology

In response to a request from the Chairman, Subcommittee on Treasury, Postal Service, and General Government, Senate Committee on Appropriations, and Senator Barbara Mikulski, our objective was to determine whether centralized management would improve the administration of federal employee drug testing programs. Our review included an assessment of

- the extent to which agencies have implemented their drug testing programs,
- the methods used by agency heads to determine which employees would be subject to random drug testing and the frequency with which these employees would be tested,
- the cost paid for testing-related services, and
- the extent to which problems associated with drug testing have been identified and corrected.

⁴52 Fed. Reg. 10,021 (1987).

We reviewed Executive Order 12564, Public Law 100-71, guidelines prepared by OPM and HHS, the drug testing program model plan prepared by ICG, and the annual statements of ONDCP. We also interviewed cognizant officials from the agencies involved in helping to implement federal employee drug testing and from the agencies whose employee drug testing operations we reviewed. The 18 agencies with drug testing programs included in our review are listed in appendix I.

In assessing the extent to which agencies had implemented drug testing, we reviewed 18 executive branch agencies with certified drug testing plans. The 18 agencies were judgmentally selected and included 10 that had been authorized to start testing before the executive order was issued. The mix of agencies we selected allowed us to compare the drug testing operations of agencies in different phases of employee drug testing. We used records and documents related to drug testing at these agencies and information we obtained from previous GAO reports and testimony on employee drug testing.

We reviewed semiannual drug testing program statistics as of March 31, 1990, that the executive agencies we reviewed had submitted to HHS, but we did not independently verify these data. To the extent that this information was available, it allowed us to determine whether there were any inconsistencies between the information we found and the information the agencies had provided to HHS. With the exception of the Army, for which the latest data available covered the period from April 1989 through March 1990, we also compiled drug testing data at the agencies we reviewed for the period from July 1, 1989, to June 30, 1990. The June 30, 1990, data were the latest available at these agencies.

We did our work from May 1990 to September 1990 in accordance with generally accepted government auditing standards. The views of responsible agency officials were sought during the course of our work and are incorporated where appropriate.

Assigning Overall Responsibility to a Single Agency Would Improve the Management of Federal Employee Drug Testing

Although several agencies were responsible for helping to design employee drug testing programs, there is no federal agency responsible for overseeing the implementation of the programs. In testimony before the House Committee on Post Office and Civil Service's Subcommittee on Human Resources in May 1987 on federal employee drug testing, we identified the lack of oversight as our biggest concern. We pointed out that without oversight, there can be no assurance that all employees are being treated equitably, that agencies comply with existing guidelines, or that needed modifications to the guidelines and program operations are identified and implemented.

Our current review has confirmed the existence of such problems. With regard to the equitable treatment of employees, we found that in some federal agencies, employees were subject to drug testing while in other agencies, they were not. There were also disparities in the testing practices of those agencies that had implemented drug testing and differences in how employees found to have used illegal drugs were being dealt with. Additionally, we found wide variations in the costs of testing-related services and operational problems associated with drug testing that had not been identified and dealt with.

The executive order gave the head of each agency discretion in determining how to structure a drug testing program; therefore, some differences among agencies were to be expected. However, since no agency has been delegated overall responsibility for the program, the various methods used by the agencies to implement drug testing have not been examined in order to identify those agencies in need of assistance or to determine whether there is an appropriate rationale for program differences, the cost effectiveness of the testing approaches being used, or how such a program could best be structured.

Inequities Exist in Employee Drug Testing Programs

Because the head of each executive agency has been delegated responsibility for implementing a drug testing program, the extent to which federal employees are required to participate in drug testing and the penalties imposed for the use of illegal drugs primarily depend upon the emphasis placed on drug testing at the agencies for which they work. Some agencies are currently drug testing, while others either have not begun or have not yet reached the point where their plans have been certified by HHS. We also found that in those agencies where testing has been implemented, there are differences in the extent to which such testing is occurring, the rationale used to designate employees for random testing, and the frequency with which such employees will be

tested. There are also differences in the penalties imposed for the use of illegal drugs.

Drug Testing Has Not Been Fully Implemented in All Federal Agencies

Agency drug testing programs are in various stages of development, but most have not been fully implemented. Among other things, agencies were not authorized to begin drug testing until their plans had been certified by HHS, and many agencies had not begun testing because they either had only recently obtained such approval or had not yet obtained it. As of September 1990, 124 agencies had plans that had been certified by HHS. A total of 56 of these plans had not been approved until 1990—21 in April and 35 in September. Four other agencies had submitted plans during August and September that were in the process of being certified, and, according to an HHS official, seven had not yet submitted a plan as of December 1, 1990.

We also noted that plans that had been approved before 1990 generally had not been fully implemented at the time of our review. Sixteen of the 18 agencies we reviewed have had certified plans since August 1988; the remaining agencies received certification by April 1989. However, only six of these agencies had fully implemented all aspects of their drug testing program. Of the remaining 12,

- 9 had not implemented post-accident testing,
- 8 had not fully implemented random testing, and
- 7 had not fully implemented reasonable suspicion testing.

Agencies with approved plans had not fully implemented them for a number of reasons, including court injunctions, union negotiations, and voluntary delays. The following examples illustrate some of these reasons:

- The Defense Contract Audit Agency's (DCAA) drug testing plan contained provisions to randomly test 5,300 of its employees. According to DCAA officials, DCAA has been unable to reach agreement with a union representing 700 of its employees and, as a result, has decided not to test any. The officials also said it could take up to 3 years before union negotiations are complete and random testing can begin.
- At the Department of Housing and Urban Development (HUD), an agency official said that HUD had deferred testing of union employees pending the outcome of negotiations but continued testing its non-union employees. An agreement on testing procedures was reached with the union in March 1990, but because the procedures deviated from HHS

guidelines, testing of union employees could not begin until a waiver had been approved. The waiver had not been granted at the time we completed our fieldwork because the HHS committee authorized to grant such a waiver meets only once annually—in December.

- Seven agencies were under court injunction not to test in one or more testing categories. In two of these agencies, officials said that they also did not test in the categories that were not under court injunction. This occurred even though the Deputy Director of the National Drug Policy Board told us that in October 1988 agencies had been encouraged not to totally suspend drug testing. For example, the Department of Agriculture (USDA) voluntarily delayed testing in all categories while it was under court order not to implement portions of its random testing program. Although not ordered by the court to halt all testing, USDA did so because it was concerned about further litigation.

The fact that no agency is responsible for overseeing the implementation of employee drug testing has, in our view, exacerbated the problems agencies face in implementing employee drug testing. With regard to court intervention, for example, Justice is responsible for reviewing agency plans before their certification to determine whether they could be defended in court. However, there is no agency with the authority to initiate action to change agencies' certified drug testing plans on the basis of the results of individual court rulings. As a result, practices that have been prohibited in one agency could very well continue in another. Moreover, it is likely that other agencies may eventually have to spend the time and effort necessary to face legal challenges that could have been avoided with this type of programmatic oversight.

Agencies That Have Implemented Drug Testing Differ in Their Practices for Randomly Testing Employees in Sensitive Positions

The head of each agency is required to determine the number of sensitive positions within his/her agency that are to be subject to random testing and the frequency of such tests. Positions selected by the agency heads are referred to as testing-designated positions (TDP).

At the 18 agencies we reviewed, we found differences in the manner in which positions were designated for random testing and in the frequency with which employees in those positions were to be tested. The proportion of employees designated for random testing ranged from 0.8 percent to 100 percent of an agency's total workforce, and agencies planned to randomly test from 4 percent to 100 percent of the employees in those positions annually.

We did not conduct an in-depth analysis of the composition of TDPS at each of the 18 agencies we reviewed, but it was evident from the work that we did that certain positions were subject to random testing in some agencies but not in others. The following are some examples:

- At the Department of the Navy, all positions requiring a top secret security clearance were declared subject to random drug testing. At the Department of the Army, however, officials said that only selected positions with a top secret security clearance were declared subject to random testing. The difference in viewpoints as to what constitutes a TDP has resulted in the Navy having 24.9 percent of its workforce designated as TDPS while the Army has designated 2.4 percent.
- DCAA designated all auditor, administrative support, and security positions having possible access to classified information as TDPS. In contrast, officials at the Department of Energy (DOE), which also has employees who have access to classified information, designated a position as being subject to random testing if it was considered to have a direct impact on public health and national security. DCAA designated 75.7 percent of its personnel for random testing while DOE designated 6.1 percent.

Regardless of the method chosen to select them, all employees in TDPS are considered by their agencies to be in positions in which drug use could, among other things, result in danger to the public health and safety and/or national security. However, the extent to which the agencies test such individuals also varies significantly. As shown in the following table, some agencies, such as DCAA, the Bureau of Prisons (BOP), and the Federal Bureau of Investigation (FBI), plan to test 4 percent or 5 percent of their employees in TDPS annually, while others, such as the Department of Transportation (DOT) and DOE, plan to test 50 percent. There are also agencies, such as the Nuclear Regulatory Commission (NRC) and Navy, that plan to test 100 percent of their employees in TDPS annually.

Chapter 2
Assigning Overall Responsibility to a Single
Agency Would Improve the Management of
Federal Employee Drug Testing

Table 2.1: Random Drug Testing
Frequencies at the 18 Agencies GAO
Reviewed

Agency	Testing frequency (percent)
Army	^a
BOP	5
DOT	50
Customs	10
NRC	100
DOE	50
Drug Enforcement Administration (DEA)	30
FBI	5
HUD	50
Interior	15
Secret Service	25–30
DCAA	4
Department of Agriculture (USDA)	50
Bureau of Alcohol, Tobacco and Firearms (ATF)	10
General Services Administration (GSA)	20
HHS	10
Immigration and Naturalization Service (INS)	5
Navy	100

^aPercentage varies—decision delegated to field commanders.

Our purpose in discussing the designation of TDPS and the frequency with which random tests were to be conducted is not to imply that agency heads erred in their judgment. Rather, we are presenting this information because it illustrates the need for guidance that an agency familiar with how drug testing is being implemented in all of the federal agencies would have the ability to provide. For example, the agency could provide additional help to agency heads in designating TDPS so that more consistency can be achieved in the rationale used to designate such positions. It could also provide guidance on how drug tests could be administered in the most cost-effective manner. The fact that agencies are planning to test from 4 percent to 100 percent of employees in TDPS illustrates a critical need for such assistance, especially when the results in all but one agency indicated that less than 0.7 percent of the employees tested have tested positive for illegal drugs. The remaining agency administered 86 tests and had a 3.5-percent positive rate.

Disciplinary Actions Vary

Information on the measures agencies can take to discipline employees who test positive for illegal drugs is contained in the guidelines prepared

by OPM. These measures range from reprimanding the employee in writing to removing the employee from federal service.

In a previous GAO fact sheet,¹ we pointed out that disciplinary actions for the use of illegal drugs could vary from agency to agency. According to an attorney in the headquarters office of the Army Judge Advocate General, for example, actions taken against employees Army-wide for the 12-month period ending June 30, 1990, resulted in either permanent reassignment or demotion to a position that did not require random testing. The attorney said each Army installation commander is vested with the authority to make the final decision for disciplinary actions at his or her installation. He also stated that since the executive order and OPM guidance give discretion to the agencies, such disciplinary actions could appropriately be taken.

At DEA, FBI, and the Secret Service, for example, employees who test positive for illegal drugs and do not resign will generally be fired. A DEA official said that if the testimony of a DEA employee were questioned in a criminal court case because the employee had been found to have used illegal drugs, the chance of obtaining a successful criminal prosecution could be jeopardized. Therefore, an employee found to have used illegal drugs would be fired except in unusual circumstances. We were told that one situation in which an employee might not be fired could involve the use of a medication containing a narcotic that was legally prescribed to an immediate family member.

At other agencies we reviewed, procedures call for firing employees who test positive for illegal drugs twice, or once if the employee does not accept the agency's offer of rehabilitation. For example, according to DOT procedures, employees who test positive for illegal drugs are to be offered rehabilitation. If the offer is not accepted, the employee is to be fired. If the offer is accepted and the employee successfully completes rehabilitation, meets aftercare rehabilitation requirements, and tests negative for illegal drugs for 1 year, the employee can return to a sensitive position in the random testing pool. The DOT employee is reminded that a second positive drug test at any time following completion of rehabilitation will result in immediate removal.

¹Drug Testing: Action by Certain Agencies When Employees Test Positive for Illegal Drugs (GAO/ GGD-90-56FS, Apr. 6, 1990).

Drug Testing Costs Vary Significantly Among Agencies

There are two phases of the laboratory drug test, a screen test and a confirmation test. If an illegal drug is not detected in an employee's urine sample during screening, the test is considered complete. If an illegal drug is detected, a more sophisticated test is performed to confirm the results of the initial screening. The laboratory also sends the test results to a medical review officer (MRO) for independent review and verification. Agencies are responsible for obtaining these services, and our review showed that they are paying significantly different amounts.

With regard to laboratory services, we found that some agencies contracted for such services on their own while others, such as the Department of the Interior, wrote their contracts with the intention of inviting other agencies to participate. Interior was able to get about 50 other agencies to join its contract and negotiated a cost of \$8.90 for both a screening and confirmation test, provided that the rate of positive test results was below 5 percent. None of the agencies we reviewed exceeded that rate.

The amounts to be paid by all of the agencies we reviewed are shown in the following table. They range from \$8.90—the amount negotiated by Interior for screening and confirmation—to over \$87 at INS.

Chapter 2
Assigning Overall Responsibility to a Single Agency Would Improve the Management of Federal Employee Drug Testing

Table 2.2: Amounts Agencies Are Paying for Laboratory Services

Agency	Screen test	Confirmation test
Interior	\$8.90	No additional charge
DCAA	8.90 ^a	No additional charge
GSA	8.90 ^a	No additional charge
USDA	8.90 ^a	No additional charge
HHS	8.90 ^a	No additional charge
FBI	18.64	\$30.58
DEA	18.64 ^b	30.58
Secret Service	18.71 ^b	30.58
DOT	24.57	No additional charge
DOE	24.57 ^c	No additional charge
ATF	17.00	No additional charge
BOP	25.00	No additional charge
Customs	11.75	30.00
Army	13.70-18.40 ^d	28.53-66.00 ^e
Navy		
INS	47.49	40.50
NRC	8.00	14.00-66.00 ^e
HUD	22.00	55.00

^aAgency uses the Interior contract.

^bAgency uses the FBI contract.

^cAgency uses the DOT contract.

^dArmy uses two laboratories.

^eDepending on the type of drug being tested.

^fNot readily available. Tests are conducted in Navy laboratories.

Agencies are also paying significantly different amounts for the services of an MRO. The amount paid and the basis of the cost are shown in the following table.

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Assigning Overall Responsibility to a Single
Agency Would Improve the Management of
Federal Employee Drug Testing**

**Table 2.3: Amounts Agencies Are Paying
for the Services of an MRO**

Agency	Cost	Provider
Army	Not identified	Agency doctor
BOP	Not identified	Agency doctor
DOT	Not identified	Agency doctor
Customs	\$50 per hour	Private doctor
NRC	200 per hour	Private doctor
DOE	30,000 per year	Private doctor
DEA	^a	Private doctor
FBI	^a	Private doctor
HUD	70 per hour	Private doctor
Interior	70 per positive 3 per negative	Private doctor
Secret Service	8,400 per year	Private doctor
DCAA	65 per hour ^b	Public Health Service
USDA	65 per hour	Public Health Service
ATF	65 per hour	Public Health Service
GSA	65 per hour	Public Health Service
HHS	65 per hour	Public Health Service
INS	65 per hour	Public Health Service
Navy	65 per hour	Public Health Service

^aNot identifiable. MRO duties are a part of the overall health services provided by contract to FBI and DEA.

^bAll of the agencies that contracted with the Public Health Service also paid an initial fee of \$500.

**Operational Problems
Are Not Being
Identified and Dealt
With**

When we expressed concern about the lack of oversight of federal drug testing efforts in our previous testimony, we pointed out that without oversight, there can be no assurance that agencies are complying with existing guidelines or that needed modifications to the guidelines and program operations are identified and dealt with. Our work has confirmed that this problem exists. In a previous assignment, for example, we found that two agencies, BOP and DOT, were not implementing quality assurance procedures required by the HHS guidelines. We also found that 11 of the 18 agencies we reviewed had not provided the program information to Congress that was required by Public Law 100-71. Additionally, HHS did not notify agencies of a problem that surfaced at BOP in distinguishing a legal form of methamphetamine from an illegal form of that drug.

Quality Assurance
Procedures Were Not
Always Implemented

Each agency testing employees for the use of illegal drugs was also required to submit control samples to the testing laboratory that either contained a known amount of an illegal drug or no drugs at all. These samples, known as blind samples, were to be used as a check on the reliability of laboratory testing. During the initial 90-day period of an agency's drug testing program, blind samples equal to at least 50 percent of the total number of employee specimens (up to a maximum of 500) are required to be submitted. Thereafter, the agency is required to submit blind samples equal to a minimum of 10 percent of the number of employee specimens (to a maximum of 250) submitted per quarter.

In past work, we found that DOT and BOP had not complied with this requirement. As we previously reported, DOT submitted approximately 16,000 employee urine samples from July 1988 through June 1989.² DOT should also have submitted 1,250 blind samples; however, DOT officials estimated that they submitted a total of between 74 and 79. At BOP, 5,025 employee drug tests were conducted between June 1988 and July 1989. Although over 500 blind samples should have been sent along with these urine samples, BOP sent none.

In discussing the failure of agencies to include blind samples with employee specimens, an HHS official responsible for developing the testing guidelines told us that HHS was not aware of the noncompliance. (HHS does not have the authority to monitor the day-to-day operations of agency drug testing programs.) At BOP, an official told us that the agency was aware of the requirement for blind samples but did not send any because the agency did not know how to obtain them. DOT officials also said they were aware of the requirement, but because they were preoccupied with implementing drug testing, they decided to rely upon samples submitted by another agency as a test of laboratory reliability.

Both BOP and DOT informed us that they have corrected this problem.

Some Agencies Did Not
Submit Required Reports
to Congress

Section 503 of Public Law 100-71 requires that each executive agency submit an annual report on its drug testing activities to Congress. Each report is to be submitted at the time of the President's annual budget submission to Congress.

²Employee Drug Testing: DOT's Laboratory Quality Assurance Program Not Fully Implemented (GAO/GGD-89-80, Sept. 29, 1989).

Seven of the 18 agencies we reviewed submitted drug testing statistics to Congress. Three of these submitted the statistics late. The remaining 11 agencies had not submitted their reports for various reasons. An official at INS said it had provided the statistics to Justice but that Justice did not report them to Congress. Five other agencies—FBI, DOT, USDA, Interior, and DEA—thought that HHS reported these statistics to Congress from similar reports that the agencies submitted to HHS semiannually. HUD and DOE knew of the requirement but did not provide the information, and two agencies—NRC and BOP—said they did not report because they were not aware of the requirement.

GSA informed us that an OMB circular exempted them from reporting. A GSA official said the information was not required, as the cost of GSA's drug testing operation did not meet the \$500,000 criterion set by OMB Circular A-11, which sets this figure as the minimum amount for which program costs must be sent to Congress. However, an OMB official said that Public Law 100-71 required all agencies to provide Congress with drug testing program information.

Problems in Identifying Illegal Drugs

On July 11, 1989, BOP's Assistant Surgeon General Medical Director notified HHS that BOP had disciplined an employee for using an illegal methamphetamine but had subsequently found that this positive test had occurred after the employee had used an over-the-counter drug containing a legal form of methamphetamine. BOP noted that if the laboratory conducting the test had used another recognized confirmation test, the laboratory would have found that the specific methamphetamine in the specimen was one legally used in nonprescription drugs.

An HHS official was unable to provide us with an explanation as to why there was no action taken on the matter. He said that HHS should have alerted all other agencies but did not. He said that HHS plans to include this information when it updates the MRO manual.

Conclusion

Over 4 years have passed since President Reagan issued Executive Order 12564. Despite the time that has passed, many agencies have not fully implemented employee drug testing. Several agencies either have only recently had their drug testing plans approved or have not yet submitted them. Others have either had certain aspects of their drug testing programs enjoined by court order or decided not to implement their program because they could not agree with employee groups on how to conduct such testing. In those agencies where testing had begun, we noted

disparities among agencies in how the programs were implemented, significant differences in testing-related costs, operational problems that had not been identified and resolved, and a lack of oversight, monitoring, and evaluation.

One of our major concerns with federal employee drug testing is that employees have not been treated equitably. Only employees in certain federal agencies were subject to drug testing because the programs had not been fully implemented. Also, because of disparities in program implementation, some employees in sensitive positions were being tested for the use of illegal drugs while others in similar situations were not. Moreover, some agencies fired employees who were found to have used illegal drugs while others either offered employees a second chance or transferred them to positions that do not require random testing.

The problems we identified in this sensitive and controversial program stem largely from the fact that no agency has been charged with the responsibility for overseeing the Executive Branch's efforts to implement employee drug testing. A coordinating committee of agencies that are involved in certain aspects of employee drug testing exists and has benefitted the program through such means as providing guidance aimed at helping agencies to design their drug testing plans. However, this has not been enough. Little effort has been devoted to overseeing the implementation of such programs or assessing the results that have been achieved.

The federal drug testing program can benefit from and needs better management and leadership. A single agency should be designated with overall responsibility for the design, implementation, and oversight of the program. This does not mean that individual federal agencies should not retain an appropriate degree of flexibility to design and operate their programs in line with such factors as their missions and employee populations. But this flexibility has to be tempered with the need to take into account overall program policies and requirements, such as employee equity, litigation, and technical guidelines.

Nor does designation of a single agency with overall responsibility mean that agencies that currently have expertise in a particular matter would not be called upon to fulfill that role. In fact, such agencies could be given additional responsibilities. For example, if another agency besides HHS were given overall responsibility for program leadership and oversight, HHS could still be tasked with evaluating agency compliance with medical/technical guidelines. The role of the lead agency would be to see

that all aspects of program policy, guidance, assistance, monitoring, and reporting are covered and that adjustments or changes are made as needed.

In carrying out its responsibilities, the lead agency could, for example, see that the following questions are answered:

- What changes in policy, guidance, or implementation need to be made to achieve greater equity among employees in the drug testing area?
- Is the program meeting its objectives, and are the approaches that have been taken cost effective? Can desired results be achieved at less cost?
- Are agencies complying with legislation, program policy, and guidance? What changes are needed in these areas based on agency experience?
- Can agencies save money, time, and effort and would employees be treated more equitably if all agencies were promptly made aware of the implications of court decisions for their program design or implementation?
- Are agencies implementing the program at a reasonable pace?
- What major differences in agency approaches are or are not appropriate?
- Are problems being experienced by one agency that can affect other agencies promptly being surfaced?
- Are any changes in drug testing procedures necessitated by advances in technology?
- Should each agency be required to report both to another federal agency and to Congress, or should a lead agency be required to compile information from agencies and submit one comprehensive report to Congress?

Our call for the designation of an overall lead agency raises the question of which agency should be given such a role. We see three agencies—OPM, HHS, and ONDCP—as likely candidates. While good arguments can be made for each, we suggest OPM be given the overall lead role. Drug testing is a personnel issue, and as the lead federal agency in this area, OPM sets policy, establishes guidance, and monitors agency implementation with regard to personnel-related matters.

Recommendation

We recommend that the Director of OMB take the action necessary to have a single federal agency designated for managing federal employee drug testing. In choosing an agency to assume this responsibility, a determination should be made as to which agency is in the best position to provide overall program guidance and to monitor all aspects of agency drug testing operations.

Agency Comments

The information contained in this report was discussed with officials from the agencies whose drug testing programs we reviewed and with officials from OPM, HHS, and ONDCP. In general, officials from the agencies we reviewed said that the information we presented accurately described the status of their drug testing programs.

Officials from OPM, HHS, and ONDCP all agreed that a single federal agency should have overall responsibility for federal employee drug testing. However, there was no consensus as to which agency should be assigned such responsibility.

The 18 Agencies With Drug Testing Programs Included in Our Review

Bureau of Alcohol, Tobacco and Firearms
Bureau of Prisons
Defense Contract Audit Agency
Department of Agriculture
Department of the Army
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of the Navy
Department of Transportation
Drug Enforcement Administration
Federal Bureau of Investigation
General Services Administration
Immigration and Naturalization Service
Nuclear Regulatory Commission
United States Customs Service
United States Secret Service

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