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and follow-up. These services shall be available to all contractor on-site employees involved in the DOE contract. The contractor has no obligation to pay the costs of any individual's counseling, treatment, or rehabilitation beyond those services provided by the contractor's employee assistance program, except as provided for in the contractor's benefits programs. DOE undertakes no obligation to pay for any individual's counseling, rehabilitation, or treatment, unless specifically provided for by contract.

(b) Education and training programs for on-site employees on a periodic basis, which will include, at a minimum, the following subjects:

(1) For all on-site employees: Health aspects of substance abuse, especially illegal drug use; safety, security, and other workplace-related problems caused by substance abuse, especially illegal drug use; the provisions of this rule; the employer's policy; and available employee assistance services.

(2) For managers and supervisors:

(i) The subjects listed in paragraph (b)(1) of this section;

(ii) Recognition of deteriorating job performance or judgment, or observation of unusual conduct which may be the result of possible illegal drug use;

(iii) Responsibility to intervene when there is deterioration in performance, or observed unusual conduct, and to offer alternative courses of action that can assist the employee in returning to satisfactory performance, judgment, or conduct, including seeking help from the employee assistance program;

(iv) Appropriate handling and referral of employees with possible substance abuse problems, especially illegal drug use; and

(v) Employer policies and practices for giving maximum consideration to the privacy interests of employees and applicants.

§ 707.7 Random drug testing requirements and identification of testing designated positions.

(a)(1) Each workplace substance abuse program will provide for random testing for evidence of the use of illegal drugs of employees in testing designated positions identified in this section.

(2) Programs developed under this part for positions identified in paragraph (b)(3) of this section shall provide for random tests at a rate equal to 50 percent of the total number of employees in testing designated positions for each 12 month period. Employees in the positions identified in paragraphs (b)(1), (b)(2), and (c) of this section will be subject to random testing at a rate equal to 100 percent of the total number of employees identified, and those identified in paragraphs (b)(1) and (b)(2) of this section may be subject to additional drug tests.

(b) The testing designated positions subject to random drug testing are:

(1) Positions determined to be covered by the Personnel Security Assurance Program (PSAP), codified at 10 CFR part 710. PSAP employees will be subject to the drug testing standards of this part and any additional requirements of the PSAP rule.

(2) Positions which entail critical duties that require an employee to perform work which affords both technical knowledge of and access to nuclear explosives sufficient to enable the individual to cause a detonation (high explosive or nuclear), in what is commonly known as the Personnel Assurance Program (PAP). PAP employees will be subject to the drug testing standards of this part and any additional requirements of the PAP program.

(3) Positions identified by the contractor which entail duties where failure of an employee adequately to discharge his or her position could significantly harm the environment, public health or safety, or national security, such as:

(i) Pilots;

(ii) Firefighters;

(iii) Protective force personnel, exclusive of those covered in paragraphs (b)(1) or (b)(2) of this section, in positions involving use of firearms where the duties also require potential contact with, or proximity to, the public at large;

(iv) Personnel directly engaged in construction, maintenance, or operation of nuclear reactors; or

(v) Personnel directly engaged in production, use, storage, transportation,

or disposal of hazardous materials sufficient to cause significant harm to the environment or public health and safety.

(4) Other positions determined by the DOE, after consultation with the contractor, to have the potential to significantly affect the environment, public health and safety, or national security.

(c) Each contractor shall require random testing of any individual, whether or not an employee, who is allowed unescorted access to the control areas of the following DOE reactors: Advanced Test Reactor (ATR); C Production Reactor (C); Experimental Breeder Reactor II (EBR-II); Fast Flux Test Facility (FFTF); High Flux Beam Reactor (HFBR); High Flux Isotope Reactor (HFIR); K Production Reactor (K); L Production Reactor (L); N Production Reactor (N); Oak Ridge Research Reactor (ORR); and P Production Reactor (P). A confirmed positive test shall result in such an individual being denied unescorted access. If such an individual is not an employee of the contractor, that individual may be granted unescorted access only after the individual meets the conditions established in § 707.14(d) of this part. If, after restoration of unescorted access, such an individual is determined to have used illegal drugs for a second time, unescorted access shall be denied for a period of not less than three (3) years. Such an individual thereafter shall be granted unescorted access only upon a determination by DOE that a grant of unescorted access to the individual presents no unacceptable safety or security risk. If such an individual is an employee, that individual is subject to the other requirements of this part, including appropriate disciplinary measures.

(d) A position otherwise subject to testing under this part may be exempted from such testing if it is within the scope of another comparable Federal drug testing program, as determined by DOE, after consultation with the contractor, to avoid unnecessary multiple tests.

§ 707.8 Applicant drug testing.

An applicant for a testing designated position will be tested for the use of illegal drugs before final selection for employment or assignment to such a position. Provisions of this part do not prohibit contractors from conducting drug testing on applicants for employment in any position.

§ 707.9 Drug testing as a result of an occurrence.

When there is an occurrence which is required to be reported to DOE by the contractor, under contract provisions incorporating applicable DOE Orders, rules, and regulations, it may be necessary to test individuals in testing designated positions, or individuals with unescorted access to the control areas of the DOE reactors listed in § 707.7(c), for the use of illegal drugs, if such individuals could have caused or contributed to the conditions which caused the occurrence. For an occurrence requiring immediate notification or reporting as required by applicable DOE Orders, rules, and regulations, the contractor will require testing as soon as possible after the occurrence but within 24 hours of the occurrence, unless DOE determines that it is not feasible to do so. For other occurrences requiring notifications to DOE as required by applicable DOE Orders, rules, and regulations, the contractor may require testing.

§ 707.10 Drug testing for reasonable suspicion of illegal drug use.

(a)(1) It may be necessary to test any employee in a testing designated position, or individuals with unescorted access to the control areas of the DOE reactors listed in § 707.7(c), for the use of illegal drugs, if the behavior of such an individual creates the basis for reasonable suspicion of the use of illegal drugs. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee, or is a physician from the site occupational medical department, must agree that such testing is appropriate. Reasonable suspicion must be based on an articulable belief that an employee uses illegal drugs, drawn from particularized facts and reasonable inferences from those facts.

(2) Such a belief may be based upon, among other things: