



OFFICE OF THE INSPECTOR GENERAL

U.S. NUCLEAR REGULATORY COMMISSION
DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Audit of NRC's Drug-Free Workplace Program Implementation

OIG-20-A-13

July 8, 2020



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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

**OFFICE OF THE
INSPECTOR GENERAL**

July 8, 2020

MEMORANDUM TO: Margaret M. Doane
Executive Director for Operations

FROM: Dr. Brett M. Baker */RA/*
Assistant Inspector General for Audits

SUBJECT: AUDIT OF NRC'S DRUG-FREE WORKPLACE PROGRAM
IMPLEMENTATION (OIG-20-A-13)

Attached is the Office of the Inspector General's (OIG) audit report titled *Audit of NRC's Drug-Free Workplace Program Implementation*.

The report presents the results of the subject audit. Following the June 3, 2020, exit conference, agency staff indicated that they had no formal comments for inclusion in this report.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG followup as stated in Management Directive 6.1.

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at (301) 415-5915 or Vicki Foster, Team Leader, at (301) 415-5909.

Attachment: As stated



Office of the Inspector General

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Defense Nuclear Facilities Safety Board

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Results in Brief

Why We Did This Review

Federal agencies are mandated to develop a plan for achieving the objective of a drug-free workplace and establish a program to test for the use of illegal drugs by employees in sensitive positions. The Nuclear Regulatory Commission's (NRC) Office of Administration (ADM) is the lead NRC office responsible for implementing NRC's program. Along with drug testing, NRC's program includes written policy, employee education, supervisory training, and an Employee Assistance Program.

Opioid abuse has become an alarming issue in the United States (U.S.), reaching epidemic proportions. Also, marijuana legalization and usage in several states and the District of Columbia has also increased over the past decade. NRC's Drug-Free Workplace Program (DFWP) becomes more important as the opioid epidemic grows and U.S. drug laws evolve.

Audit of NRC's Drug-Free Workplace Program Implementation

What We Found

NRC has the framework in place to effectively and efficiently implement NRC's DFWP; however, opportunities exist for improving the availability of program information provided through guidance and training.

NRC should communicate the necessary quality information and consider audience, information, availability, cost, and requirements when selecting methods to communicate internally. However, NRC has not fully communicated quality DFWP information through guidance and training. This occurred because NRC has neither updated its guidance nor delivered the required training to supervisors and staff. As a result, NRC employees may not be aware of pertinent information related to DFWP.

What We Recommend

This report makes four recommendations to improve the effectiveness and efficiency of NRC's DFWP by updating the *NRC Drug-Free Workplace Plan* and the *NRC Drug Testing Manual* and by ensuring the *Drug-Free Workplace Training for Supervisors* is available and taken by supervisors that were promoted when the training was unavailable.

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ABBREVIATIONS AND ACRONYMS

ADM	Office of Administration
CBD	Cannabidiol
DFWP	Drug-Free Workplace Program
GAO	Government Accountability Office
HHS	Department of Health and Human Services
NRC	Nuclear Regulatory Commission
SAMHSA	Substance Abuse and Mental Health Services Administration
THC	Tetrahydrocannabinol
U.S.	United States

I. BACKGROUND

The U.S. NRC's policy is to have a workplace free from the illegal use, possession, or distribution of controlled substances by the officers and employees of NRC. Implementation of NRC's DFWP plays an integral role in upholding this policy and serves as an effective aid to deter employee abuse of illegal substances. Implementation of the NRC DFWP becomes even more important as the opioid epidemic grows and U.S. drug laws evolve.

U.S. Opioid Epidemic

Opioid abuse has become an alarming issue in the U.S., reaching epidemic proportions. Over 70,000 people died from drug overdoses in 2017—about 191 people every day—with the largest portion of these deaths attributed to opioids. Additionally, the Council of Economic Advisors estimates that in 2015, the economic cost of the opioid crisis alone was more than \$500 billion when considering the value of lives lost due to an opioid-related overdose.¹

Marijuana Legalization and Cannabidiol (CBD) Usage

While marijuana use remains illegal at the Federal level, marijuana legalization and usage in several states and the District of Columbia has also increased over the past decade. Laws regarding the legality of marijuana use vary; depending on the state, marijuana can potentially be used for medical and/or recreational purposes. Because marijuana remains illegal under Federal law,² NRC has warned staff it will continue to operate in accordance with Federal law, which identifies marijuana as a drug tested under the NRC DFWP. Figure 1 shows the variance in state and territory law regarding marijuana usage.

¹ Government Accountability Office (GAO) Report GAO-19-157SP, March 2019, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, "Emerging Issue Requiring Close Attention: Federal Efforts to Prevent Drug Misuse."

² Marijuana is a Schedule I substance under the Controlled Substance Act meaning that it has a high potential for abuse, no currently accepted medical use in treatment in the U.S., and a lack of accepted safety for use under medical supervision.

Public Law 100-71, enacted July 1987 by the Senate and House of Representatives, stipulates in Section 503 that the Department of Health and Human Services (HHS) establishes standards for Federal workplace drug-testing programs. The Substance Abuse and Mental Health Services Administration (SAMHSA), an operating division of HHS, has developed the Drug Free Workplace Toolkit which provides information to help employers develop and sustain successful drug-free workplace programs.

Drug-Free Workplace Program at NRC

ADM is the lead NRC office responsible for implementing the NRC DFWP consistent with the Executive Order, Section 503 of Public Law 100-71, and SAMHSA HHS guidance. NRC implements the program using the *NRC Drug-Free Workplace Plan* which sets forth objectives, policies, procedures, and implementation guidelines. In addition, NRC uses the *NRC Drug Testing Manual* to assure that NRC's drug-testing procedures are uniformly implemented for all NRC employees and applicants entering testing-designated positions.

The *NRC Drug-Free Workplace Plan* describes the following five components SAMHSA identified as needed to achieve a Drug-Free Federal Workplace:

Written Policy A clearly written policy forms the foundation for a drug-free workplace program. It should include: (1) rationale for the policy (2) expectations for compliance (3) assistance options to support employees in following the policy and (4) consequences for violating the policy.

Employee Education Employees at all levels should be prepared for a drug-free workplace policy and program. Employees in the organization need information about problems associated with substance misuse.

Supervisor Training Training for supervisors to help maximize the effectiveness of the drug-free workplace policy and program. Supervisors should be well-informed about the policy and program and be aware of legally sensitive areas.

Employee Assistance Program Employee Assistance Program designed to help employees with personal problems such as alcohol and other drugs that may affect job performance.

Drug-Testing Drug-testing to protect the workplace from the negative effects of substance misuse. Conducting drug-testing helps comply with Federal regulations and can deter employees from coming to work unfit for duty.

ADM oversees the drug-testing component of NRC's DFWP which maintains three contracts with a total budget for Fiscal Year 2019 of \$306,000. In addition, ADM staff who implement DFWP consists of two fulltime equivalents and two contractors at NRC headquarters. Each NRC Regional Office has primary and secondary coordinators to facilitate drug-testing in their respective regions, but these employees are not included in ADM DFWP staffing since drug-testing is an ancillary task for them.

II. OBJECTIVE

The audit objective was to assess the effectiveness and efficiency of NRC's implementation of the NRC Drug-Free Workplace Program. The report appendix contains information on the audit scope and methodology.

III. FINDING

NRC has the framework in place to effectively and efficiently implement NRC's DFWP; however, opportunities exist for improving the availability of program information provided through guidance and training.

DFWP Guidance and Training Are Not Fully Communicated

NRC should communicate the necessary quality information and consider audience, information, availability, cost, and requirements when selecting methods to communicate internally. However, NRC has not fully communicated quality DFWP information through guidance and training. This occurred because NRC has neither updated its guidance nor delivered the required training to supervisors and staff. As a result, NRC employees may not be aware of pertinent information related to DFWP.

What Is Required

Management Should Communicate Quality Information

According to GAO's *Standards for Internal Control in the Federal Government*,³ management should use quality information to achieve the entity's objectives. Quality information is appropriate, current, complete, accurate, accessible, and provided on a timely basis. Additionally, NRC's

³ GAO-14-704G, September 2014.

Principles of Good Regulation states agency positions need to be readily understood and easily applied. NRC should communicate quality information to implement the DFWP as prescribed by the HHS established standards for Federal workplace drug-testing programs.

What We Found

DFWP Guidance and Training Are Not Fully Communicated

NRC guidance and training for DFWP are not fully communicated and there are opportunities to provide more current and complete information. In addition, NRC guidance and training for DFWP are not readily accessible.

NRC's DFWP guidance could be improved to provide current and complete information. The *NRC Drug-Free Workplace Plan* and the *NRC Drug Testing Manual* do not include Schedule II⁴ drugs from the Controlled Substance Act—oxycodone, oxymorphone, hydrocodone, and hydromorphone—in its list of drugs being tested. However, NRC does currently test for these drugs.

Furthermore, HHS's mandatory guidelines allows Federal agencies to implement alternative testing methods for employees that are unable to provide sufficient urine specimens for testing. NRC has not implemented alternative testing methods; therefore, its guidance does not address NRC's use of alternative testing methods.

DFWP guidance at NRC has been released via Yellow Announcements for the last few years. The DFWP guidance in Yellow Announcements covers recent updates from HHS, including updates on opioids, and the current Federal stance on marijuana including oils, like CBD, and marijuana infused products. However, this information, that is only available via Yellow Announcements, is not readily available. An NRC employee would need to search NRC's announcements to find out the information instead of reviewing DFWP guidance.

⁴ Schedule II drugs have a high potential for abuse, have a currently accepted medical use in treatment in the U.S., but may lead to severe psychological or physical dependence. Examples of these drugs are morphine, cocaine, methadone, hydrocodone, fentanyl, and methamphetamine.

NRC's *Drug-Free Workplace Training for Supervisors* was not always available to NRC staff even though this class is required within 6 months of assuming supervisory responsibility. NRC's *Drug-Free Workplace Training for Supervisors* has been under revision for approximately 2 years. NRC staff who are responsible for moving classroom trainings to online classes stated this type of update usually takes 6 months. Staff explained this DFWP class went through a contract ending and subsequent rebidding, a lack of funding, and a lack of prioritization for the update. Nevertheless, as of May 26, 2020, NRC staff indicated that the *Drug-Free Workplace Training for Supervisors* was completed and has assigned this class to supervisors that have not taken it. NRC determined that 170 NRC employees need to take the initial DFWP supervisory training.

Why This Occurred

Guidance and Training Updates Are Needed

NRC's DFWP guidance and training need to be updated. NRC's guidance has not been updated in 12 years and the training for supervisors is in the process of being updated.

Guidance Updates

The *NRC Drug-Free Workplace Plan* has not been updated since 2007. The *NRC Drug Testing Manual* has not been updated since 2008. ADM management has stated its desire to wait for HHS to update its model plan that serves as a template to Federal agencies. However, HHS recommended NRC update its guidance due to the following changes:

- Programmatic changes (i.e. office/division/branch renaming).
- Testing for opioids.
- Alternative testing methods.
- Clarification on the Federal stance on marijuana and CBD.

Training Updates

NRC's *Drug-Free Workplace Training for Supervisors* was not always available to NRC staff because there were limited offerings, the class may not have been assigned to some supervisors, and staff could have overlooked the requirement. During the transition to update and move the

training class online, NRC offered the class 4 times over 3 years: January 18, 2017; November 1, 2017; May 17, 2018; and May 14, 2019. This means employees that missed an offering would have had to wait more than 6 months for another offering. Furthermore, auto-assignment of classes for new supervisors stopped working when NRC changed its online training systems from iLearn to the Talent Management System in fall 2019. During this change, some new supervisors may not have been assigned NRC's *Drug-Free Workplace Training for Supervisors*. In addition, agency officials noted that some staff who were assigned the course at any given time overlooked the requirement.

Of 170 supervisors that were identified as needing to take NRC's initial *Drug-Free Workplace Training for Supervisors*, it is unclear how many supervisors were affected by limited offerings, lack of auto-assigning, or overlooked the requirement to take the class.

After the fieldwork for this audit, NRC staff indicated that as of May 26, 2020, the *Drug-Free Workplace Training for Supervisors* updates have been completed and the supervisors that have not taken it, have been assigned to do so. An automatic assignment was established in the Talent Management System for the initial drug testing course for all new supervisors. This means when an employee's supervisory status changes from non-supervisor to supervisor, the Talent Management System will look to see if they have completed the course, and if not, it automatically assigns the course to their transcript with a due date 6 months from assignment. Since the course is now online, it can be taken as soon as assigned and removes the limitation of waiting for in person training. OIG will further review this matter for closure during the audit follow up process.

Why This Is Important

NRC Employees Can be Misled by Outdated or Unavailable Guidance

When there is a lack of complete or up-to-date information, there is always a concern that employees will not clearly understand the requirements. In this case, DFWP information is not readily available so employees may not be able to locate the guidance and may not be aware of NRC's process.

In one instance, an NRC employee that tested positive for a covered drug explained they took their spouse's prescription medication; an indication that better training may help the employee to better understand taking someone else's prescription for a covered drug is illegal. It is noted that the employee's identity was not disclosed and confidentiality was maintained.

In another instance, an NRC employee filed a grievance against NRC for being tested so many times during a year through the random selection process. OIG observed a random drawing of NRC employees for drug testing and confirmed the random selection process is random and it is possible for an employee to be tested more than once a year. Training to include testing information could alleviate the false notion employees often express—that NRC's random testing process is not actually random.

The purpose of the *Drug-Free Workplace Training for Supervisors* is to understand NRC policies relevant to illegal drug use. Without the training, supervisors may not be able to effectively perform their role in the process.

Recommendations

OIG recommends that the Executive Director for Operations

1. Revise the *NRC Drug-Free Workplace Plan* to reflect the most up-to-date U.S. Department of Health and Human Services requirements.
2. Revise the *NRC Drug Testing Manual* to reflect the most up-to-date U.S. Department of Health and Human Services requirements.
3. Deliver NRC's *Drug-Free Workplace Training for Supervisors* to NRC supervisors, as required.
4. Require that the NRC employees who were promoted to supervisors while the *Drug-Free Workplace Training for Supervisors* was unavailable take the class.

IV. AGENCY COMMENTS

An exit conference was held with the agency on June 3, 2020. Prior to this meeting, agency management reviewed and provided comments to the discussion draft version of this report which OIG incorporated, as appropriate. Agency management stated their general agreement with the findings and recommendations in this report and opted not to provide formal comments.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The audit objective was to assess the effectiveness and efficiency of NRC's implementation of the NRC Drug-Free Workplace Program.

Scope

This audit focused on the implementation of NRC's Drug-Free Workplace Program. We conducted this performance audit at NRC headquarters (Rockville, MD) from November 2019 to April 2020. Internal controls related to the audit objective were reviewed and analyzed.

Methodology

OIG reviewed relevant criteria such as the Government Accountability Office's *Standards for Internal Control in the Federal Government*, Executive Order 12564 *Drug-Free Federal Workplace*, and the *Model Plan for a Comprehensive Drug-Free Workplace Program* from HHS. OIG reviewed internal NRC guidance documents relevant to its DFWP including the *NRC Drug-Free Workplace Plan*, the *NRC Drug Testing Manual*, and a few management directives.

OIG interviewed NRC staff to gain an understanding of roles, responsibilities, and processes related to NRC's DFWP. OIG interviewed staff from ADM, the Office of the Chief Human Capital Officer, the Office of the General Counsel, and the NRC regions. OIG observed NRC's process for selecting employees to be tested for the random testing component of NRC's DFWP. OIG analyzed information about employees that failed random drug tests from fiscal year 2014 through fiscal year 2019 including treatment, follow-up testing, and disciplinary actions to ensure steps occurred within a reasonable timeframe and communication was properly executed. Also, OIG reviewed the deferral tests for the second random test of 2019.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Throughout the audit, auditors considered the possibility of fraud, waste, and abuse in the program.

The audit was conducted by Vicki Foster, Team Leader; Ziad Buhaissi, Audit Manager; Regina Revinson, Audit Manager; George Gusack, Senior Auditor; Curtis Browne, Senior Auditor; Ashley Garrett, Management Analyst; Phillippe Mathis, Student Intern; and Bobbie Castillo, Student Intern.

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COMMENTS AND SUGGESTIONS

If you wish to provide comments on this report, please email OIG using this [link](#).

In addition, if you have suggestions for future OIG audits, please provide them using this [link](#).