(i) Observable phenomena, such as direct observation of:

(A) The use or possession of illegal drugs; or

(B) The physical symptoms of being under the influence of drugs;

(ii) A pattern of abnormal conduct or erratic behavior;

(iii) Arrest for a conviction of a drug related offense, or the identification of the individual as the focus of a criminal investigation into illegal drug possession use, or trafficking;

(iv) Information that is either provided by a reliable and credible source or is independently corroborated;

(v) Evidence that an employee has tampered with a drug test; or

(vi) Temperature of the urine specimen is outside the range of 32.5–37.7 degrees centigrade or 90.5–99.8 degrees Fahrenheit.

(b) The fact that an employee had a confirmed positive test for the use for the use of illegal drugs at some prior time, or has undergone a period of rehabilitation or treatment, will not, in and of itself, be grounds for testing on the basis of reasonable suspicion.

(c) The requirements of this part relating to the testing for the use of illegal drugs are not intended to prohibit the contractor from pursuing other existing disciplinary procedures or from requiring medical evaluation of any employee exhibiting aberrant or unusual behavior.

§ 707.11 Drugs for which testing is performed.

Where testing is performed under this part, at a minimum, contractors will be required to test for the use of the following drugs or classes of drugs: marijuana; cocaine; opiates; phencyclidine; and amphetamines. However, when conducting reasonable suspicion or occurrence testing, the contractor may test for any drug listed in Schedules I or II of the Controlled Substances Act.

§ 707.12 Specimen collection, handling and laboratory analysis for drug testing.

(a) Procedures for providing urine specimens must allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Contractors shall utilize a chain of custody procedure for maintaining control and accountability from point of collection to final disposition of specimens, and testing laboratories shall use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with the HHS Mandatory Guidelines (see § 707.5(a)). The contractor shall ensure that only testing laboratories certified by the Department of Health and Human Services, under subpart C of the HHS Mandatory Guidelines are utilized.

(b)(1) If the individual refuses to cooperate with the urine collection (e.g., refusal to provide a specimen, or to complete paperwork), then the collection site person shall inform the MRO and shall document the non-cooperation on the specimen chain of custody form. The MRO shall report the failure to cooperate to the appropriate management authority, who shall report to DOE if the individual holds an access authorization. Individuals so failing to cooperate shall be treated in all respects as if they had been tested and had been determined to have used an illegal drug. The contractor may apply additional sanctions consistent with its disciplinary policy.

(2) The collection site person shall ascertain that there is a sufficient amount of urine to conduct an initial test, a confirmatory test, and a retest, in accordance with the HHS Mandatory Guidelines. If there is not a sufficient amount of urine, additional urine will be collected in a separate container. The individual may be given reasonable amounts of liquid and a reasonable amount of time in which to provide the specimen required. The individual and the collection site person must keep the specimen in view at all times. When collection is complete, the partial specimens will be combined in a single container. In the event that the individual fails to provide a sufficient amount of urine, the amount collected will be noted on the ‘‘Urine Sample Custody Document.’’ In this case, the collection site person will telephone the individual’s supervisor who will determine the next appropriate action.

This may include deciding to reschedule the individual for testing, to return the individual to his or her work site and initiate disciplinary action, or both.

§ 707.13 Medical review of results of tests for illegal drug use.

(a) All test results shall be submitted for medical review by the MRO. A confirmed positive test for drugs shall consist of an initial test performed by the immunoassay method, with positive results on that initial test confirmed by another test, performed by the gas chromatography/mass spectrometry method (GC/MS). This procedure is described in paragraphs 2.4 (e) and (f) of the HHS Mandatory Guidelines.

(b) The Medical Review Officer will consider the medical history of the employee or applicant, as well as any other relevant biomedical information. When there is a confirmed positive test result, the employee or applicant will be given an opportunity to report to the MRO the use of any prescription or over-the-counter medication. If the MRO determines that there is a legitimate medical explanation for a confirmed positive test result, consistent with legal and non-abusive drug use, the MRO will certify that the test results do not meet the conditions for a determination of use of illegal drugs. If no such certification can be made, the MRO will make a determination of use of illegal drugs. Determinations of use of illegal drugs will be made in accordance with the criteria provided in the Medical Review Officer Manual issued by the Department of Health and Human Services [DHHS Publication No. (ADM) 88–1526].

§ 707.14 Action pursuant to a determination of illegal drug use.

(a) When an applicant for employment has been tested and determined to have used an illegal drug, processing for employment will be terminated and the applicant will be so notified.

(b)(1) When an employee who is in a testing designated position has been tested and determined to have used an illegal drug, the contractor shall immediately remove that employee from the testing designated position; if such employee also holds, or is an applicant for, an access authorization, then the contractor shall immediately notify DOE security officials for appropriate adjudication. If this is the first determination of use of illegal drugs by that employee (for example, the employee has not previously signed a DOE drug certification, and has not previously tested positive for use of illegal drugs), the employee may be offered a reasonable opportunity for rehabilitation, consistent with the contractor's policies. If rehabilitation is offered, the employee will be placed in a non-testing designated position, which does not require a security clearance, provided there is such an acceptable position in which the individual can be placed during rehabilitation; if there is no acceptable non-testing designated position, the employee will be placed on sick, annual, or other leave status, for a reasonable period sufficient to permit rehabilitation. However, the employee will not be protected from disciplinary action which may result from violations of work rules other than a positive test result for illegal drugs.

(2) Following a determination by the site occupational medical department, after counseling or rehabilitation, that the employee can safely return to duty, the contractor may offer the employee reinstatement, in the same or a comparable position to the one held prior to the removal, consistent with the contractor's policies and the requirements of 10 CFR part 710. Failure to take the opportunity for rehabilitation, if it has been made available, for the use of illegal drugs, will require significant disciplinary action up to and including removal from employment under the DOE contract, in accordance with the contractor's policies. Any employee who is twice determined to have used illegal drugs shall in all cases be removed from employment under the DOE contract. Also, if an employee who has signed a DOE drug certification violates the terms of the certification, DOE shall conduct a timely review of the circumstances of such violation, and the individual's continued eligibility for a DOE access authorization shall be determined under the provisions of 10 CFR part 710,