

period for those individuals on an alternative work schedule, must report in person to the Designated Physician, the Designated Psychologist, or the SOMD before being allowed to return to normal duties. The Designated Physician, the Designated Psychologist, or the SOMD must provide a written recommendation to the appropriate HRP supervisor regarding the individual's return to work. An HRP-certified individual also may be required to report to the Designated Physician, the Designated Psychologist, or the SOMD for written recommendation to return to normal duties after any period of sick leave.

(h) *Temporary removal or restrictions.* The Designated Physician, the Designated Psychologist, or the SOMD may recommend temporary removal of an individual from an HRP position or restrictions on an individual's work in an HRP position if a medical condition or circumstance develops that affects the individual's ability to perform assigned job duties. The Designated Physician, the Designated Psychologist, or the SOMD must immediately recommend medical removal or medical restrictions in writing to the appropriate HRP management official. If the HRP management official concurs, he or she will then notify the appropriate HRP certifying official. To reinstate or remove such restrictions, the Designated Physician, the Designated Psychologist, or the SOMD must make written recommendation to the HRP management official for concurrence. The HRP management official will then notify the appropriate HRP certifying official.

(i) *Medical evaluation after rehabilitation.* (1) Individuals who request reinstatement in the HRP following rehabilitative treatment for alcohol use disorder, use of illegal drugs, or the abuse of legal drugs or other substances, must undergo an evaluation, as prescribed by the SOMD, to ensure continued rehabilitation and adequate capability to perform their job duties.

(2) The HRP certifying official may reinstate HRP certification of an individual who successfully completes an SOMD-approved drug or alcohol rehabilitation program. Recertification is based on the SOMD's follow-up evalua-

tion and recommendation. The individual is also subject to unannounced follow-up tests for illegal drugs or alcohol and relevant counseling for three years.

(j) *Medication and treatment.* HRP-certified individuals are required to immediately report to the Designated Physician, the Designated Psychologist, or the SOMD any physical or mental condition requiring medication or treatment. The Designated Physician, the Designated Psychologist, or the SOMD determines if temporary removal of the individual from HRP duties is required and follows the procedures pursuant to §712.14(h).

§712.15 Management evaluation.

(a) *Evaluation components.* An evaluation by the HRP management official is required before an individual can be considered for initial certification or recertification in the HRP. This evaluation must be based on a careful review of the results of the supervisory review, medical assessment, and drug and alcohol testing. If a safety concern is identified, the HRP management official must require the supervisor to temporarily reassign the individual to non-HRP duties and forward this information to the HRP certifying official. If the management evaluation reveals a security concern, the HRP management official must notify the applicable DOE personnel security office.

(b) *Drug testing.* All HRP candidates and HRP-certified individuals are subject to testing for the use of illegal drugs, as required by this part. Testing must be conducted in accordance with 10 CFR part 707, the workplace substance abuse program for DOE contractor employees, and DOE Order 3792.3, "Drug-Free Federal Workplace Testing Implementation Program," for DOE employees. The program must include an initial drug test, random drug tests at least once every 12 months from the previous test, and tests of HRP-certified individuals if they are involved in an incident, unsafe practice, occurrence, or based on reasonable suspicion. Failure to appear for unannounced testing within two hours of notification constitutes a refusal to submit to a test. Sites may establish a

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shorter time period between notification and testing but may not exceed the two-hour requirement. An HRP-certified individual who, based on a drug test, has been determined to use illegal drugs must immediately be removed from HRP duties, and DOE personnel security must be notified immediately.

(c) *Alcohol testing.* All HRP candidates and HRP-certified individuals are subject to testing for the use of alcohol, as required by this part. The alcohol testing program must include, as a minimum, an initial alcohol test prior to performing HRP duties and random alcohol tests at least once every 12 months from the previous test, and tests of HRP-certified individuals if they are involved in an incident, unsafe practice, occurrence, or based on reasonable suspicion. An HRP-certified individual who has been determined to have an alcohol concentration of 0.02 percent or greater shall be sent home and not allowed to perform HRP duties for 24 hours.

(1) Breath alcohol testing must be conducted by a certified breath alcohol technician and conform to the DOT procedures (49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, subparts J through N) for use of an evidential-grade breath analysis device approved for 0.02/0.04 cutoff levels, which conforms to the DOT model specifications and the most recent "Conforming Products List" issued by NHTSA.

(2) An individual required to undergo DOT alcohol testing is subject to the regulations of the DOT. If such an individual's blood alcohol level exceeds DOT standards, the individual's employer may take appropriate disciplinary action.

(3) The following constitutes a refusal to submit to a test and shall be considered as a positive alcohol concentration test of 0.02 percent, which requires the individual be sent home and not allowed to perform HRP duties for 24 hours:

(i) Failure to appear for unannounced testing within two hours of notification (or established shorter time for the specific site);

(ii) Failure to provide an adequate volume of breath in two attempts without a valid medical excuse; and

(iii) Engaging in conduct that clearly obstructs the testing process, including failure to cooperate with reasonable instructions provided by the testing technician.

(d) *Occurrence testing.* (1) When an HRP-certified individual is involved in, or associated with, an occurrence requiring immediate reporting to the DOE, the following procedures must be implemented:

(i) Testing for the use of illegal drugs in accordance with the provisions of the DOE policies implementing Executive Order 12564, and 10 CFR part 707 or DOE Order 3792.3, which establish workplace substance abuse programs for contractor and DOE employees, respectively.

(ii) Testing for use of alcohol in accordance with this section.

(2) Testing must be performed as soon as possible after an occurrence that requires immediate notification or reporting.

(3) The supervisor must remove an HRP-certified individual from HRP duties if the individual refuses to undergo the testing required by this section.

(e) *Testing for reasonable suspicion.* (1) If the behavior of an individual in an HRP position creates the basis for reasonable suspicion of the use of an illegal drug or alcohol, that individual must be tested if two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the individual or is the Designated Physician, the Designated Psychologist, or the SOMD, agree that such testing is appropriate.

(2) Reasonable suspicion must be based on an articulable belief, drawn from facts and reasonable inferences from those particular facts, that an HRP-certified individual is in possession of, or under the influence of, an illegal drug or alcohol. Such a belief may be based on, among other things:

(i) Observable phenomena, such as direct observation of the use or possession of illegal drugs or alcohol, or the physical symptoms of being under the influence of drugs or alcohol;

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

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

(iv) Detection of alcohol odor on the breath.

(f) Counterintelligence Evaluation. HRP candidates and, when selected, HRP-certified individuals, must submit to and successfully complete a counterintelligence evaluation, which includes a polygraph examination in accordance with 10 CFR part 709, Polygraph Examination Regulations and any subsequent revisions to that regulation.

§ 712.16 DOE security review.

(a) A personnel security specialist will perform a personnel security file review of an HRP candidate and HRP-certified individual upon receiving the supervisory review, medical assessment, and management evaluation and recommendation.

(b) If the personnel security file review is favorable, this information must be forwarded to the HRP certifying official. If the review reveals a security concern, or if a security concern is identified during another component of the HRP process, the HRP certifying official must be notified and the security concern evaluated in accordance with the criteria in 10 CFR part 710, subpart A. All security concerns must be resolved according to procedures outlined in 10 CFR part 710, subpart A, rather than through the procedures in this part.

(c) Any mental/personality disorder or behavioral issues found in a personnel security file, which could impact an HRP candidate or HRP-certified individual's ability to perform HRP duties, may be provided in writing to the SOMD, Designated Physician, and Designated Psychologist previously identified for receipt of this information. Medical personnel may not share any information obtained from the personnel security file with anyone who is not an HRP certifying official.

§ 712.17 Instructional requirements.

(a) HRP management officials at each DOE site or facility with HRP positions must establish an initial and annual HRP instruction and education program. The program must provide:

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(1) HRP candidates, HRP-certified individuals, supervisors, and managers, and supervisors and managers responsible for HRP positions with the knowledge described in paragraph (b)(1) of this section; and

(2) For all HRP medical personnel, a detailed explanation of HRP duties and responsibilities.

(b) The following program elements must be included in initial and annual instruction. The elements may be tailored to accommodate group differences and refresher training needs:

(1) The objectives of the HRP and the role and responsibilities of each individual in the HRP to include recognizing and responding to behavioral change and aberrant or unusual behavior that may result in a risk to national security or nuclear explosive safety; recognizing and reporting security concerns and prescription drug use; and an explanation of return-to-work requirements and continuous evaluation of HRP participants; and

(2) For those who have nuclear explosive responsibilities, a detailed explanation of duties and safety requirements.

§ 712.18 Transferring HRP certification.

(a) For HRP certification to be transferred, the individual must currently be certified in the HRP.

(b) Transferring the HRP certification from one site to another requires the following before the individual is allowed to perform HRP duties at the new site:

(1) Verify that the individual is currently certified in the HRP and is transferring into a designated HRP position;

(2) Incorporate the individual into the new site's alcohol and drug-testing program;

(3) Ensure that the 12-month time period for HRP requirements that was established at the prior site is not exceeded; and

(4) Provide site-specific instruction.

(c) Temporary assignment to HRP positions at other sites requires verification that the individual is currently enrolled in the HRP and has completed all site-specific instruction. The individual is required to return to