

Review of E.O. 12564 and “Reasonableness”

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This presentation was modified from its original format for
508 compliancy.

Executive Order 12564
September 15, 1986
Drug-Free Federal Workplace

http://www.workplace.samhsa.gov/FedPgms/Pages/Model_Plan/Appendix_A.aspx

Section 1. Drug-Free Workplace.

- (a) Federal employees are required to refrain from the use of illegal drugs.**
- (b) The use of illegal drugs by Federal employees, whether on duty or off duty, is contrary to the efficiency of the service.**
- (c) Persons who use illegal drugs are not suitable for Federal employment.**

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Section 7. Definitions.

- (c) For purposes of this Order, the term "illegal drugs" means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.**

Mandatory Guidelines for Federal Workplace Drug Testing Programs; Final Notice

53 FR 11979; April 11, 1988

When the Federal Workplace Drug Testing Program was established, HHS adopted the same 300 ng/mL testing levels for opiates that were used by the Department of Defense for testing service members. These levels were selected in an attempt to provide the greatest opportunity to identify anyone who may have used heroin; however, at the 300 ng/mL level, many who have not used heroin but had taken a prescription codeine or morphine medication or eaten normal dietary amounts of poppy seeds have also tested positive.

Changes to the Testing Cutoff Levels for Opiates for Federal Workplace Drug Testing Programs; Notice of Proposed Revisions

62 FR 57587; November 16, 1995

http://www.workplace.samhsa.gov/DrugTesting/Files_Drug_Testing/Notices_Docs_Resources/FR_Proposed/Changes_OpiateCutoffs111695.pdf

Since the purpose of the drug testing program is to deter or detect individuals using illicit drugs, establishing the testing levels for opiates at the proposed 2,000 ng/mL and adding the requirement to detect 6-AM [at 10 ng/mL] will eliminate the identification of most persons legitimately using opiate-containing pharmaceutical available by medical prescription or in over-the-counter preparations, or those who have ingested poppy seeds.

Laboratory Opiate Positives Using
300 ng/mL Cutoff
1/1/92 through 3/31/93

Specimen results	Number
Specimens tested	1,097,218
Specimens initially tested opiate positive	11,528
Specimens confirmed by GC/MS and reported as positive for morphine and/or codeine	7,294

7,294 Specimens Confirmed by GC/MS
(300 ng/mL cutoff) and
Reported Positive for Morphine and/or Codeine -
Morphine Quantitative Results

Specimen results, ng/mL	Number
Less than 300	1,582
300 - 999	3,293
1,000 - 1,999	1,056
2,000 - 2,999	437
3,000 - 3,999	230
4,000 - 4,999	126
5,000 - 9,999	279
10,000 - 19,999	117
Greater than 20,000	174

MRO Review of Laboratory Opiate Positives Using 300 ng/mL Cutoff 1/1/92 through 3/31/93

Results	Number	Percentage
Specimens tested	317,500	
Lab positive for morphine and/or codeine	1,294	
MRO reversed for morphine and/or codeine	1,128	87%
MRO verified for morphine and/or codeine	146	11%
Unable to contact	19	2%
Rejected	1	

MRO Review of Laboratory Opiate Positives Using 300 ng/mL Cutoff - II 1/1/92 through 3/31/93

- Analysis of 1,128 MRO Reversed Laboratory positive morphine and/or codeine

Reason	Number	Percentage
Valid Rx use (self or others)	955	85%
Consistent with poppy seeds	134	12%
No clinical evidence of unauthorized use	23	2%
Other, e.g., foreign pharmaceutical	16	1%

MRO Review of Laboratory Opiate Positives Using 300 ng/mL Cutoff - III 1/1/92 through 3/31/93

Results	Number	Percentage
Specimens tested	317,500	
Lab positive for morphine and/or codeine	1,294	
MRO reversed for morphine and/or codeine	1,128	87%
MRO verified for morphine and/or codeine	146	11%
Unable to contact	19	2%
Rejected	1	

MRO Review of Laboratory Opiate Positives Using 300 ng/mL Cutoff - IV 1/1/92 through 3/31/93

- Analysis of 146 MRO-verified, laboratory-positive morphine and/or codeine

Reason	Number	Percentage
Non-valid Rx use (e.g., family member of friend)	96	66%
Clinical evidence of unauthorized or illegal use	15	10%
Presence of heroin marker, 6-AM	5	3%
Other, e.g., foreign pharmaceutical	30	21%

Reasonableness

- ‘.....whether a particular search meets the “reasonableness standard” is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.....’
- It has been well established that collecting urine for a Federal workplace drug test is considered a “search” under the Fourth Amendment to the Constitution.

Reasonableness - II

- “Special needs” doctrine:
 - Developed by the US Supreme Court through a series of cases permitting suspicionless drug testing in certain situations

Reasonableness - III

- Under the “special needs” doctrine, the court identifies a special need which makes impracticable adherence to the warrant and probable cause requirements, then balances the government’s interest in conducting the particular search against the individual’s privacy interests upon which the search intrudes.