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THE DOMESTIC POLICY COUNCIL

DRUG ABUSE POLICY

SEPTEMBER 11, 1986

September 11, 1986

MEMORANDUM FOR EDWIN MEESE III

FROM: RALPH C. BLEDSOE

SUBJECT: Cabinet Meeting on Drug Abuse Policy

The Cabinet will meet today at 2:00 p.m. in the Cabinet Room to discuss Drug Abuse Policy. Following the Cabinet photograph, you should lead discussion of the three major decisions the Domestic Policy Council is asking the President to make. They are:

1. Approve submitting the proposed legislative package to support the President's six drug abuse policy goals.
 2. Approve development and implementation of an Executive Order to achieve a drug-free Federal workplace.
 3. Approve implementation of action steps recommended in the Working Group on Drug Abuse Policy Report.
- o You may wish to provide background on the Council's meetings on this issue and the formation of the Working Group, as well as the NDEPB participation and actions.
 - o Carlton Turner can provide further background about the Working Group, its Task Forces, and the report.
 - o Legislation - You or Richard Willard could go through the legislation title by title, pausing for discussion of issues that were raised by Council members. Two or three issues should be resolved by the President in this discussion.
 - The "tone" of Title I. This would assure those who objected to the harshness, that the President's emphasis on voluntarism and treatment will be in the transmittal language.
 - The issue of proposing repeal or modification of the Mansfield Amendment.
 - The issue of whether to include the death penalty for drug traffickers.
 - o You can discuss the legislative strategy if needed, pointing out what Congress has done, and indicate that our proposals have been cleared by OMB and are ready for submittal after the Sunday evening address.

- o Executive Order - The second topic, the Executive Order can also be discussed by you or Richard Willard. You might give an overview of the 7 sections, and then review the two issues the Council could not resolve:
 - Whether to authorize agencies the discretion to test all job applicants, or only to test applicants for sensitive positions. The President had previously expressed a preference to only test for sensitive positions, but several agencies have asked for reconsideration.
 - Options for defining sensitive positions. Three options are offered: to include all nine specific categories of positions, include a list of fewer categories, or only include a general statement.

- o Other Drug Abuse Policy Initiatives. The third topic, other initiatives proposed in the Working Group report, will be handled by Carlton Turner. He will indicate the major initiatives under each of the six goals, and describe the specific action steps recommended by the Working Group.

These include a number of Executive Branch actions to strengthen Federal programs, and to work with the private sector to support the President and Mrs. Reagan's drug prevention efforts.

- o At the end of the meeting, you might re-emphasize the overall theme: holding drug user's accountable for their actions, and seeking a drug-free America.

THE WHITE HOUSE
WASHINGTON
September 11, 1986

MEMORANDUM FOR THE PRESIDENT

FROM: THE DOMESTIC POLICY COUNCIL
SUBJECT: Drug Abuse Policy Initiatives

Issue: What initiatives should be in the Administration's Drug Abuse Policy package?

Background: On August 4, 1986, you announced six new goals to build upon past accomplishments to curb drug abuse, and to lead Americans toward a drug-free society. Your six goals are:

- o Drug-Free Workplaces
- o Drug-Free Schools
- o Expand Drug Treatment and Research
- o Improve International Cooperation
- o Strengthen Law Enforcement
- o Increase Public Awareness and Prevention

The Domestic Policy Council established a Working Group on Drug Abuse Policy to develop legislation and other action steps to implement initiatives in support of the goals. The Working Group, in conjunction with the National Drug Enforcement Policy Board (NDEPB), has recommended comprehensive legislative proposals, an Executive Order for a drug-free Federal workforce, and other specific actions. These were reviewed by the Domestic Policy Council, and are described in the Working Group report.

Legislation - The Administration's legislative initiative is a comprehensive proposal with a separate title keyed to each of your six goals. It was discussed by the Domestic Policy Council, and is a coordinated, balanced package supporting the attack on both drug supply and demand. The proposed legislation would redirect FY 87 outlays by approximately \$300 million, and bring total annual spending on drug abuse programs to about \$2.8 billion. Senate Republicans are waiting for details of our proposal before proceeding with a bill of their own.

There is some disagreement among Council members on the tone of Title I, Drug-Free Workplaces, of the proposed legislation. A few feel it is too harsh and that it may draw negative publicity. Other Council members feel that it and the Executive Order will strengthen our ability and that of government contractors and private industry to make workplaces drug-free, and that we can make your intent quite clear in transmittal documents.

Two other issues require your clarification. First, whether our legislation should include Justice's recommendation for repeal of the Mansfield Amendment, which prohibits Federal officers from participating in drug arrests in foreign countries; or, State's recommendation to modify it to lift restrictions only in countries with special treaties.

Mansfield Amendment:

_____ Seek to Repeal _____ Seek to Modify

Second, the proposed legislation does not prescribe the death penalty for major traffickers. While you have previously opposed this under certain conditions, some Council members feel a stronger position may now be needed because of Congressional proposals calling for the death penalty.

Death Penalty for Major Drug Traffickers:

_____ Include _____ Do Not Include

Executive Order - The Council also discussed a draft Executive Order which focuses on achieving a drug-free Federal workplace, and complements Title I of the proposed Administration legislation. Our legislative proposal amends appropriate laws to make it clear that there is no Federal statutory bar to drug testing in the workplace or in educational institutions. The draft Executive Order sets an example by balancing intolerance of illegal drug use with fair treatment of individual employees. It stresses voluntary compliance and treatment for employees seeking help. Drug screening guidelines are established for the Executive Branch, allowing flexibility by department and agency heads. The Order authorizes testing of Federal employees holding sensitive positions that affect safety and security, and permits corrective administrative action if employees do not accept a "helping hand."

Two issues require your clarification. First, the proposed Executive Order authorizes mandatory testing of applicants for sensitive jobs. While you have previously indicated a preference for testing only applicants for sensitive positions, some departments, including Defense, have asked for reconsideration to allow them the flexibility to test all job applicants.

Authorize Agencies the discretion to test applicants for:

_____ All Positions _____ Sensitive Positions Only

Second, Justice proposes that the Executive Order list nine categories of sensitive positions to support legal defense of mandatory testing. Other Council members argue that we could reduce political resistance by not specifying categories of

employees such as Senior Executives, Schedule C employees, the uniformed services, and air traffic controllers; or, by only making a general reference to positions involving safety and security, or which require a high degree of trust and confidence.

Options for definition of sensitive positions:

- _____ Include specific categories
- _____ Fewer, more general categories
- _____ General description only

Other Initiatives - Additional drug policy initiatives for each goal are outlined below, and are presented in detail in the Working Group report.

Goal #1 - Drug-Free Workplaces

- o Accelerate development of a drug-free Federal workplace.
- o Work with government contractors, and private sector management and labor leaders to fight drug abuse in the workplace.
- o Encourage States and local governments and their contractors to pursue drug-free workplaces.
- o Communicate accurate and credible information about elimination of drug abuse in the workplace.

Goal #2 - Drug-Free Schools

- o Issue Schools Without Drugs to communicate accurate and credible information on how to achieve drug-free schools.
- o Encourage all schools to establish a policy of being drug free through grants administered under the proposed Zero Tolerance Act, and through anti-drug activities developed by communities and student leaders.
- o Ensure that Federal laws against distributing drugs in or near schools are extended and enforced in cooperation with local authorities.

Goal #3 - Expand Drug Abuse Treatment and Research

- o Encourage States and communities to develop programs to treat specific drug-related health problems through new demonstration grants and elimination of unnecessary restrictions imposed under current block grant programs.
- o Expand drug abuse research in health-related areas, including drug testing.

- o Strengthen medical and health programs aimed at drug abuse prevention by establishing a Center for Substance Abuse Prevention within HHS.
- o Support efforts to achieve a drug-free Federal workplace.

Goal #4 - Improve International Cooperation

- o Convene a conference for U.S. Ambassadors in October to convey an international sense of urgency and to discuss increased regional cooperation.
- o Repeal the Mansfield Amendment to allow Federal officers to participate in drug arrests in foreign countries, seek authorization to confiscate U.S. property of drug dealers who violate foreign laws, and amend immigration requirements to allow deportation of alien drug traffickers.

Goal #5 - Strengthen Law Enforcement

- o Continue to execute Operation Alliance to increase cooperative drug law enforcement along the United States - Mexican border.
- o Seek legislation addressing such areas as penalties for large-scale domestic drug trafficking, punishments for possession of controlled substances, increased penalties for leaders of major drug rings, import/export violations, juvenile drug trafficking, and clandestine drug manufacturing.
- o Strengthen money laundering enforcement and penalties.
- o Seek to restore appropriate level of FY 1987 funding for law enforcement agents, prosecutors, and prison facilities.

Goal #6 - Increase Public Awareness and Prevention

- o Encourage all Americans to join the First Lady's drug abuse awareness and prevention campaign through a nationally televised address, letters soliciting fortune 500 support, a series of White House briefings, a "presidential Honor Role" for significant contributors, national drug prevention poster and essay contests, and major media campaigns to reinforce positive peer pressure and to make drug use socially unacceptable.
- o Encourage corporations, service organizations, and the media to develop drug prevention programs.
- o Ensure that every American has access to accurate and effective information about drug abuse and strategies for eliminating drugs from our society.

- o Propose legislation to facilitate private sector support and use of drug abuse material developed for foreign audiences.
- o Reduce illegal drug activity in Public Housing Authorities.

Data collected by HHS indicates that your drug abuse policy goals are right on target. An estimated 67 percent of all cocaine users have only minimal demand and will respond to social unacceptance, awareness and prevention efforts, and strict no-drug use policies in schools and workplaces, including drug testing where appropriate. Polls indicate that the public will also respond favorably to strong leadership from the Federal government, and will accept a firm, yet fair, drug prevention program which attacks both supply and demand in our workplaces, in our schools, and throughout our society.

Recommendations: The Domestic Policy Council recommends that you approve the following initiatives for inclusion in your Drug Abuse Policy package: 1) the proposed six-part legislative package, 2) the Executive Order supporting a drug-free Federal workforce, and 3) action steps supporting the major policy initiatives in the Drug Abuse Policy Working Group report.

Edwin Meese III
Chairman, Pro Tempore

Decisions:

I. Submit the proposed legislative package consistent with the above direction, to support the Administration's six drug abuse policy goals.

_____ Approve _____ Disapprove _____ Further Discussion

II. Develop and implement an Executive Order consistent with the above features and direction, to achieve a drug-free Federal workforce.

_____ Approve _____ Disapprove _____ Further Discussion

III. Implement the action steps recommended by the Working Group on Drug Abuse Policy and the National Drug Enforcement Policy Board, consistent with the major initiatives listed above.

_____ Approve _____ Disapprove _____ Approve as Modified

Administration Aides Back Tests Of Federal Employees for Drugs

By BERNARD WEINRAUB

Special to The New York Times

WASHINGTON, Sept. 10 — Top Reagan Administration officials generally agreed today on widespread drug testing of Federal employees but could not agree on whether to dismiss second offenders, Administration officials said today.

President Reagan is expected to decide Thursday on this and other details of his drive to control drug abuse. With polls showing high public concern, and with an election approaching, Congress, too, is moving rapidly toward action on the issue. The House began debate today on its bipartisan \$1.5 billion plan. [Page A24.]

In an extended White House meeting of the Domestic Policy Council, Cabinet officials engaged in what one Administration aide described as a "fairly strong debate" over the Government's response if a Federal employee fails a second drug test after undergoing treatment.

B Officials said that the Cabinet members had generally agreed to proposals that would permit drug testing of more than half of all Federal civilian workers. Under the proposed executive order, the head of almost every Federal agency would establish a drug testing

program that would cover employees who have access to secret or sensitive information. The order may cover as many as 1.1 million of the 2.1 million civilian Federal employees, excluding postal workers.

The officials also generally agreed that employees found to be using drugs would be given treatment, at least the first time.

But several key Administration officials argued forcefully that a Federal employee should be dismissed if he or she failed a drug test twice. These officials included Attorney General Edwin Meese 3d, Education Secretary William J. Bennett and Constance J. Hornner, director of the Office of Personnel Management, the Government's central personnel agency.

Opposing this group, and arguing that further treatment should be provided for Federal employees who fail a second drug test were Bill Brock, the Labor Secretary; Dr. Otis R. Bowen, the Health and Human Services Secretary, and Peter J. Wallison, the White House counsel, an Administration offi-

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REAGAN AIDES BACK DRUG TESTING PLAN

Continued From Page A1

cial said.

The official said that at one point Mr. Wallison, arguing against dismissal, said, "But this looks punitive."

Mr. Bennett responded, "Well, it should be punitive."

White House and other Administration officials declined publicly to characterize the two-hour meeting in the Roosevelt Room, but one White House official said, "I've been to meetings where debates were just as strong."

White House, Justice Department and other Administration officials have expressed concern in recent days that the entire issue of drug testing for Federal employees has overshadowed Mr. Reagan's announced plan to undertake a national effort to combat drug abuse. Mr. Reagan and his wife, Nancy, are scheduled to deliver a nationally broadcast speech Sunday on the drug issue, and the White House is scheduled to announce its legislative package on Monday.

The House's drug bill, which has bipartisan support and which stirred Republicans to press the Administration to take the lead on the issue, does not mention testing of Federal employees.

\$250 Million Increase Is Seen

One Administration official said today that the White House was tentatively planning to propose a new package that would increase anti-drug spending next year by at least \$250 million, and possibly far more. One White House official said that, over the 1987 fiscal year the Administration may propose a package that would increase spending on controlling narcotics by as much as \$1 billion, some of it new money and the rest taken from other programs.

Mr. Reagan was scheduled to decide Thursday on the Administration's new drug initiative in a cabinet meeting at which the issue of testing will be one of the subjects, officials said. In the past, Mr. Reagan has opposed the dismissal of Federal employees who fail drug tests, but it is unclear what his position is on those who fail for a second time.

At today's meeting, an Administration official said, Mr. Meese and Mr. Bennett stressed that the issue of narcotics testing should not serve as the centerpiece for the anti-drug effort, which is expected to focus on education and rehabilitation as well as enforcement.

Obstacles to Reagan Effort

About 85 percent of the \$1.7 billion Federal budget for anti-drug programs this year goes to law enforcement, and only 1 percent to education. The Administration has been criticized for focusing almost entirely on enforcement, while in major cities, like New York, addicts are being turned away from rehabilitation centers because of a lack of Government funds.

One White House official said that since Mr. Reagan's decision to turn the drug issue into a priority of his final two years in the White House, "a flood of proposals" has been unleashed amid inter-agency bickering over programs. Complicating the President's effort take the lead on the issue, the official said, was a series of House and Senate antidrug programs.

A White House official said that the Administration proposal that Mr. Reagan will discuss Thursday "isn't all that different" from the current House measure dealing with drug abuse and drug trafficking.

Panel Urges Wide Federal Drug Testing

By Judith Havemann
and Edward Walsh
Washington Post Staff Writers

The White House Domestic Policy Council recommended yesterday that President Reagan approve mandatory drug tests for the 1.1 million government employees in sensitive positions—roughly half the federal work force.

The Cabinet-level advisory body, headed by Attorney General Edwin Meese III, failed to agree on whether to recommend that all government job applicants be tested or whether the tests should be limited to persons seeking sensitive positions. The president is expected to decide that issue today when he reviews the council's recommendations for the first time.

The House, meanwhile, began debate on a comprehensive anti-drug measure amid complaints by some liberal Democrats that proposed amendments to the bill would carry a national crusade against drug abuse too far.

The liberals' discontent was centered on three amendments that would allow imposition of the death penalty in drug-related murder cases, relax the "exclusionary rule" against illegally obtained evidence in drug cases and involve the military in attempts to prevent illegal drugs from entering the country.

The flurry of antidrug activity comes as President and Nancy Reagan prepared to address the nation Sunday on drugs.

Rising public concern over drug abuse and the November elections

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White House Panel Urges Wide Federal Drug Testing

DRUGS, From A1

have fueled efforts to use the federal work force to "show the way" to private employers concerned about curbing drug use among their employees.

The Domestic Policy Council, meeting yesterday for the second time on a proposed presidential order, eliminated provisions to test all members of the Senior Executive Service, all political appointees, all military personnel and all air traffic controllers. These were dropped in favor of giving agency heads leeway to decide who should be tested in addition to those in sensitive positions.

Transportation Secretary Elizabeth Hanford Dole argued for flexibility and against limiting the mandatory urinalysis requirement to controllers.

Labor Secretary William E. Brock, who had spoken against some earlier hard-line proposals when the council met inconclusively on Monday, agreed to the recommendation yesterday, according to a source.

On Monday, council members had expressed concern over whether federal managers ought to be required to observe the production of the urinalysis samples to prevent substitutions. Law enforcement officials said yesterday that such dangers were minimal as long as the tests were conducted randomly.

The council will recommend a "two-strikes-and-you're-out" provision that calls for the firing of a drug user after two chances at becoming drug-free. The details of this provision had not been worked out yesterday, sources said.

In the House, Majority Leader

James C. Wright Jr. (D-Tex.) and Minority Leader Robert H. Michel (R-Ill.) agreed to allow consideration of 44 amendments that are expected to be acted on today before the House passes its antidrug legislation.

Rep. Don Edwards (D-Calif.), chairman of the House Judiciary subcommittee on civil and constitutional rights, called the proposed amendments "controversial, unnecessary and politically sensitive provisions" that should not be introduced into the drug abuse debate. He said the antidrug measure as drafted was "a good bill," but that "fear and hysteria to some extent" were propelling the House toward more drastic measures.

Some Democrats also fear that they are being led into a political trap on the highly visible drug issue and will be depicted by Republican opponents this fall as "soft" on drugs if they oppose the death penalty amendment and proposed expansion of police powers.

According to Democratic and Republican sources, Michel insisted that 12 proposed amendments—including the three most controver-

sial—be considered by the House, and that Wright agreed rather than risk seeing the House's antidrug initiative falter.

Wright, who is in line to succeed retiring Speaker Thomas P. (Tip) O'Neill Jr. (D-Mass.) next year and who played the leading Democratic role in shaping the drug package, yesterday defended his decision as an attempt to preserve the "bipartisan" nature of the legislation.

"This doesn't mean you favor the amendments, but in good faith I had to allow them to be offered," he said.

The House bill would authorize \$1.5 billion for antidrug efforts in the fiscal year that begins Oct. 1 and a total of almost \$3 billion over the next three years. According to one estimate, the cost could reach \$6 billion over five years if all provisions of the measure were fully implemented.

The bill would increase criminal penalties for drug offenses, beef up agencies such as the Customs Service and Coast Guard that are charged with interdicting drug traffic, and pour millions of dollars into drug education programs and new prison construction.

ADMINISTRATION
LEGISLATIVE SUMMARY

September 11, 1986

THE ADMINISTRATION'S LEGISLATIVE PROPOSAL

On August 4, 1986, the President announced six new goals to build upon past accomplishments to curb drug abuse, and to lead Americans toward a drug-free society. The six goals are:

- o Drug-Free Workplaces
- o Drug-Free Schools
- o Expanding Drug Treatment and Research
- o Improving International Cooperation
- o Strengthening Law Enforcement
- o Increasing Public Awareness and Prevention

The Administration's proposed legislation includes a separate title supporting each of the six goals.

Title I. Drug-Free Workplaces

- o The proposed bill emphasizes the unacceptability of drug use in the workplace. It amends appropriate laws to make it clear that there is no Federal statutory bar to drug testing in the workplace or in educational institutions. This Title supports efforts to achieve a drug-free workforce by the Federal government and by grant recipients.

Title II. Drug-Free Schools

- o The proposed legislation requests an FY 1987 budget authorization of \$100 million for grants to State and local educational agencies to establish drug-free learning environments within elementary and secondary schools.
- o Funding is proposed through offsets in the Department of Education FY 1987 appropriation.
- o Demonstrated success is required as a condition for continued funding.
- o The proposed bill will also state that it is not unlawful under Federal law for schools to conduct drug tests, and thus remove potential Federal statutory obstacles to drug screening by the States and local school districts.

Title III. Expanding Drug Treatment and Research

- o The proposed legislation eliminates unnecessary restrictions imposed under current block grant programs.
- o (Note: Separate FY 87 budget amendments totaling \$221 million will be sought to expand centers which treat endemic users, encourage States and communities to treat drug-related health problems through Community Development Systems Projects, improve research in health-related areas, including drug testing, and establish a Center for Substance Abuse Prevention within HHS.)

Title IV. Improving International Cooperation

- o The legislation proposes repeal of the Mansfield Amendment, which prohibits Federal officers from participating in drug arrests in foreign countries.
- o Rules on forfeiture of property in the United States derived from violation of foreign drug laws are amended to permit confiscation of drug dealer assets.
- o Immigration requirements are amended to allow deportation of aliens involved in drug trafficking.

Title V. Strengthening Law Enforcement

- o The proposed legislation includes eight subtitles clarifying and strengthening penalties for drug dealing.
- o It addresses such areas as penalties for large-scale domestic drug trafficking, punishments for possession of controlled substances, increased penalties for leaders of major drug rings, import and export violations, juvenile drug trafficking, and clandestine drug manufacturing.
- o Money laundering enforcement and penalties are strengthened.

Title VI. Increasing Public Awareness and Prevention

- o The legislation proposes a narrow, two year exemption from Federal procurement statutes which mandate competition even when a substantial portion of the services are donated. This exemption will apply only to services donated to the government to aid in the campaign against drug abuse.
- o Authorization is included to make United States Information Agency films on the dangers of drug abuse available for domestic audiences.

EXECUTIVE ORDER

EXECUTIVE ORDER

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DRUG FREE FEDERAL WORKPLACE

I, RONALD REAGAN, President of the United States of America, find that:

Drug use is having serious adverse effects upon a significant proportion of the national workforce and results in billions of dollars of lost productivity each year;

The Federal government, as an employer, is concerned with the well-being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity;

The Federal government, as the largest employer in the Nation, can and should show the way towards achieving drug free workplaces through a program designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and potential drug users that drugs will not be tolerated in the Federal workplace;

The profits from illegal drugs provide the single greatest source of income for organized crime, fuel violent street crime and otherwise contribute to the breakdown of our society;

The use of illegal drugs, on or off duty, by Federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust placed in such employees as servants of the public;

Federal employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs;

The use of illegal drugs, on or off duty, by Federal employees impairs the efficiency of Federal departments and agencies, undermines public confidence in them, and makes it more difficult for other employees who do not use illegal drugs to perform their jobs effectively. The use of illegal drugs, on or off duty, by Federal employees also can pose a serious health and safety threat to members of the public and to other Federal employees;

The use of illegal drugs, on or off duty, by Federal employees in certain positions evidences less than the complete reliability, stability and good judgment that is consistent with access to sensitive information, and creates the possibility of coercion, influence, and irresponsible action under pressure

which may pose a serious risk to national security, the public safety, and the effective enforcement of the law; and

Federal employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves.

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 3301(2) of Title 5 of the United States Code, section 7301 of Title 5 of the United States Code, section 290ee-1 of Title 42 of the United States Code, deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the Federal service, and in order to establish standards and procedures to ensure fairness in achieving a drug-free Federal workplace and to protect the privacy of Federal employees, it is hereby ordered as follows:

Sec. 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.

Sec. 2. Agency Responsibilities.

(a) The head of each Executive agency shall develop a plan for achieving the objective of a drug-free workplace with consideration of the rights of the government, the employee and the general public.

(b) Each agency plan shall include:

(1) A statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;

(2) Employee Assistance Programs emphasizing high level direction, education, counseling, referral to rehabilitation and coordination with available community resources;

(3) Supervisory training to assist in identifying and addressing illegal drug abuse by agency employees;

(4) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues; and

(5) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis in accordance with this Order.

Sec. 3. Drug Testing Programs.

(a) The head of each Executive Agency shall establish a program to test for the use of illegal drugs by employees in or applicants to sensitive positions. The extent to which such employees or applicants are tested and the criteria for such testing shall be determined by the head of each agency, based upon the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to the public health and safety or national security that could result from the failure of an employee adequately to discharge his or her position.

(b) The head of each Executive agency shall establish a program for voluntary employee drug testing.

(c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each Executive agency is authorized to test an employee for illegal drug use under the following circumstances:

(1) When there is a reasonable suspicion that any employee uses illegal drugs;

(2) In an examination authorized by the agency regarding an accident or unsafe practice; or

(3) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance Program.

Sec. 4. Drug Testing Procedures.

(a) Sixty days prior to the implementation of a drug testing program pursuant to this Order, agencies shall notify employees that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation and inform them of the procedures for obtaining such assistance through the agency's Employee Assistance Program. Agency drug testing programs already ongoing are exempted from the 60-day notice requirement. Agencies may take action under section 3(c) of this Order without reference to the 60-day notice period.

(b) Before conducting a drug test, the agency shall inform the employee to be tested of the opportunity to submit medical documentation that may support a legitimate use for a specific drug.

(c) Drug testing programs shall contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting; and procedures, consistent with applicable law, to protect the confidentiality of test results and related medical and rehabilitation records. Procedures for providing urine specimens must allow individual privacy, unless the agency has reason to believe that a particular individual may alter or substitute the specimen to be provided.

(d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and agencies shall conduct their drug testing programs in accordance with these guidelines.

Sec. 5. Personnel Actions.

(a) Agencies shall, in addition to any appropriate personnel actions, refer any employee who is found to use illegal drugs to an Employee Assistance Program for assessment, counseling and referral for treatment or rehabilitation as appropriate.

(b) Agencies shall initiate action to discipline any employee who is found to use illegal drugs provided that, such action is not required for an employee who:

(1) Voluntarily identifies himself as a user of illegal drugs or who volunteers for drug testing pursuant to section 3(b) of this Order, prior to being identified through other means;

(2) Obtains counseling or rehabilitation through an Employee Assistance Program; and

(3) Thereafter refrains from using illegal drugs.

(c) Agencies shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, the head of an Executive agency may, in his or her discretion, allow an employee to return to duty in a sensitive position if it is determined that this action would not pose a danger to public health or safety or the national security.

(d) Agencies shall initiate action to remove from the service any employee who is found to use illegal drugs and:

(1) Refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or

(2) Does not thereafter refrain from using illegal drugs.

(e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing any adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in an administrative proceeding unless they are confirmed by a second analysis of the same sample or unless the employee confirms the accuracy of the initial test by admitting the use of illegal drugs.

(f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, a criminal conviction, administrative inquiry, or the results of an authorized testing program. Positive drug test results may be rebutted by other evidence that an employee has not used illegal drugs.

(g) Any action to discipline an employee who is using illegal drugs (including removal from service, if appropriate) shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.

(h) Drug testing shall not be conducted pursuant to this Order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of Title 21 of the United States Code received as a result of the operation of drug testing programs established pursuant to this Order.

Sec. 6. Coordination of Agency Programs.

(a) The Director of the Office of Personnel Management shall:

(1) Issue government-wide guidance to agencies on the implementation of the terms of this Order;

(2) Ensure that appropriate coverage for drug abuse is maintained for employees and their families under the Federal Employees Health Benefits Program;

(3) Develop a model Employee Assistance Program for

Federal agencies and assist the agencies in putting programs in place;

(4) In consultation with the Secretary of Health and Human Services, develop and improve training programs for Federal supervisors and managers on illegal drug use; and

(5) In cooperation with the Secretary of Health and Human Services and heads of Executive agencies, mount an intensive drug awareness campaign throughout the Federal workforce.

(b) The Attorney General shall render legal advice regarding the implementation of this Order and shall be consulted with regard to all guidelines, regulations and policies proposed to be adopted pursuant to this Order.

Sec. 7. Definitions.

(a) This order applies to all agencies of the Executive Branch.

(b) For purposes of this Order, the term "agency" means an Executive agency, as defined in 5 U.S.C. 105; the Uniformed Services, as defined in 5 U.S.C. 2101(3) (but excluding the armed forces as defined by 5 U.S.C. 2101(2)); or any other employing unit or authority of the Federal government, except the United States Postal Service, the Postal Rate Commission and the employing units or authorities in the judicial and legislative branches.

(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.

(d) For purposes of this Order, the term "employee in a sensitive position" refers to:

(1) An employee in a position which an agency has designated Special Sensitive, Critical-Sensitive or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position which an agency head has designated or in the future designates as sensitive in accordance with Executive Order No. 10450, as amended;

- (2) An employee who has been granted access to classified information or may be granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of Executive Order No. 12356;
- (3) Individuals serving under Presidential appointments;
- (4) Members of the Senior Executive Service as defined in Subchapter II of Chapter 31 of Title 5 of the United States Code;
- (5) Law enforcement officers as defined in 5 U.S.C. 8331(20);
- (6) Individuals employed under Schedule C in the excepted service under the authority of section 213.3301 of Title 5, Code of Federal Regulations and Executive Order No. 10577;
- (7) Members of the uniformed services (but excluding the armed forces) as defined in 5 U.S.C. 2101;
- (8) Air traffic controllers as defined in 5 U.S.C. 2109; and
- (9) Other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, frequent contact with the public, or any other functions requiring a high degree of trust and confidence.

(e) For purposes of this order the term "employee" means all persons appointed in the Civil Service as described in 5 U.S.C. § 2105 (but excluding persons appointed in the armed forces as defined in 5 U.S.C. § 2101(2)).

(f) For purposes of this order, the term "Employee Assistance Program" means agency-based counseling programs which offer assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health programs which affect employee job performance. Employee Assistance Programs are responsible for referring drug-using employees for rehabilitation and for monitoring employees' progress while in treatment.

Sec. 8: Effective Date

This Order shall become effective on the date of its issuance.

RONALD REAGAN

THE WHITE HOUSE

September __, 1986