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United States
**Office of
Personnel Management**

Washington, D.C. 20415

In Reply Refer To

Your Reference

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The Office of Personnel Management submits herewith a legislative proposal, "To amend title 5, United States Code, to exclude individuals who illegally use controlled substances from employment in the executive branch, and for other purposes." We request that this proposal be referred to the appropriate committee for early consideration.

The President's Commission on Organized Crime, in its report to the President and the Attorney General, has found that a concerted nationwide campaign to reduce the demand for narcotics must be a national goal of the highest priority, and as a part of this effort, the Commission has urged that action be taken to make clear the utter unacceptability of drug use by Federal employees. This concern with Federal employees is not, of course, in any way a suggestion that drug abuse problems are any worse in the Federal work force than elsewhere, but is simply a recognition that the Federal Government should ensure that its own house is clean as a part of our effort to change national attitudes towards drug abuse.

This legislative proposal is designed to meet this objective by making it absolutely clear that illegal drug use is impermissible conduct by any Federal employees. Applicants for Federal jobs who abuse drugs should not be hired, and employees who abuse drugs should be separated. Procedural safeguards should not be able to be misused to frustrate this basic objective, and the provisions of this proposal will prevent this.

Under the regulatory authority that would be granted OPM by this proposal, we would ensure that individuals are given a reasonable opportunity to rehabilitate themselves from a dependence on illegal drugs. Where national security and the public safety permit, we would consider for employment former drug abusers who have successfully rehabilitated themselves, and when active employees are discovered to be

Honorable George Bush

2

drug abusers, they would, except when inconsistent with national security or the public safety, be given the opportunity for rehabilitation. While drug abuse is and must be completely incompatible with Federal employment, we recognize that the problem of drug abuse has been so widespread in our society that we must approach the task of ridding our Nation of drugs in a positive fashion, encouraging rehabilitation whenever possible.

The Office of Management and Budget advises that the enactment of this legislative proposal would be in accord with the program of the President.

A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely,

Constance Horner
Director

Explanation

"Federal Employee Drug Abuse Prevention Act of 1986"

- This proposal is designed to give the Government the necessary statutory support to enforce a policy of "utter unacceptability" of drug abuse in the Federal work force.
- Nexus. Under current law, the Government can exclude a drug abusing applicant from consideration for employment or take action against a drug abusing employee only if it can be shown that the drug abuse adversely affects job performance. This is called the "nexus" concept.
- Under this proposal, drug abuse would be excluded from the protection of the nexus concept. Drug use alone would be sufficient reason to refuse to consider an applicant, or to remove an employee, without any need to show an adverse effect on job performance.
- Misconduct. Nowhere in current law is it specifically stated that drug abuse by Federal employees is unacceptable conduct, although there is such a provision for excessive and habitual use of alcohol.
- Under this proposal, drug abusers would be barred from employment in the executive branch and OPM would have the responsibility for implementing this bar through regulations. These regulations would prevent the hiring of drug abusing applicants, and would require the separation of drug abusing employees if they do not successfully complete rehabilitation.
- Handicapping Condition. Under current law, drug abusers have resisted separation by claiming to be handicapped under the Rehabilitation Act, allowing them to delay removal with claims to be undergoing rehabilitation.
- Under this proposal, drug abuse would not be considered a handicapping condition for Federal employees.

A BILL

To prevent the use of, and reduce the demand for, illegal drugs in schools and workplaces by identifying users and holding them accountable for their use of illegal drugs through non-criminal sanctions; to ensure that federal law does not prohibit state and local governments, educational institutions, and private employers from conducting drug testing; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as the "Illegal Drug Use Prevention Act of 1986."

FINDINGS

SEC. 2. The Congress finds and declares that --

(a) The United States has a compelling interest in eradicating the use of illegal drugs not only through criminal law enforcement efforts, but also by preventing the use of illegal drugs and reducing the demand for them through action that makes individuals accountable for their use of illegal drugs.

(b) The use of illegal drugs evidences a willful disregard for the law.

(c) The use of illegal drugs by federal employees on or off duty is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special public trust given to such employees as servants of the public.

(d) An individual who uses illegal drugs on or off the job is less productive, less reliable, prone to greater absenteeism, more likely to be involved in on the job accidents, and incurs a higher level of health care costs than those who do not use illegal drugs.

(e) The use of illegal drugs by employees on or off the job

can pose a serious health or safety threat to members of the public and to other employees.

(f) The use of illegal drugs by federal employees on or off duty impairs the efficiency of federal departments and agencies by undermining public confidence in them, and thereby making it more difficult for other employees who do not use illegal drugs to perform their jobs effectively.

(g) The use of illegal drugs on or off duty by federal or private employees in certain positions evidences an unreliability, an instability, and a lack of judgment that is inconsistent with access to sensitive information, and renders such employees susceptible to coercion, influence, and irresponsible action under pressure so as to pose a serious risk to national security, public safety, and the effective enforcement of the law.

(h) The demand for illegal drugs encourages and supports the interstate trafficking in illegal drugs, and generates a range of serious criminal activity that threatens public peace and order and can corrupt public officials.

(i) Considered in the aggregate, the use of illegal drugs by employees reduces the productivity of the economy, undermining the ability of American industry to compete internationally, and causing the loss of jobs and productive capital.

(j) Individuals who use illegal drugs are not victims of forces beyond their control, and must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves. Such individuals will only take such steps if made accountable for their irresponsible and illegal use of drugs.

(k) Reducing the demand for illegal drugs will discourage interstate and foreign commerce in illegal drugs.

(l) Employers and educational institutions should establish clear policies to ensure that illegal drug users will be held accountable for their actions.

(m) Drug testing in appropriate circumstances is a diagnostic tool designed to create a healthier work environment, increase productivity, improve public safety, and protect national security.

(n) Experience with drug testing has shown that it can significantly contribute to reducing the demand for illegal drugs while protecting non drug-using coemployees and the public from the harms caused by illegal drug users.

DEFINITIONS

SEC. 3. As used in this Act --

(a) "federal employee" includes all members of the Civil Service, the Armed Forces, the Uniformed Services, and other employees as defined by sections 2101, 2105, and 2107 of title 5, United States Code;

(b) "illegal drugs" means controlled substances, as defined by section 802(6) of title 21, United States Code, the possession of which is unlawful under chapter 13 of title 21, United States Code. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law;

(c) "drug testing" means any drug testing conducted in accordance with scientific and technical guidelines promulgated by the Secretary of Health and Human Services after consultation with the Director of the National Institute on Drug Abuse.

DRUG PROGRAM

SEC. 4. Drug Free Federal Workforce

(a) All federal employees are required to refrain from the use of illegal drugs.

(b) Drug testing may be conducted of all applicants for employment and of the following federal employees to determine if they use illegal drugs:

(1) federal employees who have been or may be granted access to classified information;

(2) federal employees performing tasks relating to, or that may have an effect on, the national security, public safety, the protection of life or property, or the investigation of possible violations of federal law;

(3) federal employees serving under Presidential appointments, appointed to the Senior Executive Service as defined in Subchapter II of Chapter 31 of Title 5, United States Code, or appointed to Schedule C positions in the excepted service under the authority of section 213.3301 of Title 5, Code of Federal Regulations and Executive Order 10577; and

(4) federal employees in any other position determined by the head of the federal agency or by the appointing authority within the legislative or judicial branches to promote the efficiency of the service or position.

(c) Federal employers are authorized to conduct drug testing of any federal employee to determine if that employee uses illegal drugs:

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

(2) following an accident in which a federal employee was involved, or in the course of a safety investigation that relates to tasks or responsibilities of a federal employee;

(3) during and after admission into an agency approved rehabilitation program.

(d) Federal employment shall be refused to all applicants who use illegal drugs.

(e) If it is determined that an employee listed in subsections (b)(1)-(4) of this section uses illegal drugs on or off duty, the federal employer shall remove the employee. If it is determined that any other employee uses illegal drugs the federal employer shall remove or discipline the employee.

(f) The Office of Personnel Management may promulgate government wide regulations to guide agencies in the implementation of these provisions.

SEC. 5. Drug Free Private Workforce

(a) It shall not be unlawful under federal law for an employer to require as a condition of hiring or continued employment that employees refrain from the use of illegal drugs.

(b) It shall not be unlawful under federal law for any employer to conduct drug testing of its employees or applicants to determine if they use illegal drugs.

(c) It shall not be unlawful under federal law for an employer to refuse employment to applicants who use illegal drugs.

(d) It shall not be unlawful under federal law for an employer to take disciplinary action against an employee, including removal from employment, who use illegal drugs on or off the job.

SEC. 6. Drug Free Educational Institutions

(a) It shall not be unlawful under federal law for any educational institution to require as a condition of admission or continued enrollment that students refrain from the use of illegal drugs.

(b) It shall not be unlawful under federal law for any educational institution to conduct drug testing of its students or applicants for admission to determine if they use illegal drugs.

(c) It shall not be unlawful under federal law for an educational institution to refuse enrollment to applicants for admission who use illegal drugs.

(d) It shall not be unlawful under federal law for an educational institution to take disciplinary action against a student, including suspension or expulsion, who use illegal drugs whether or not committed at the educational institution.

SEC. 7. Judicial Review

(a) The promulgation of scientific and technical guidelines by the Secretary of Health and Human Services pursuant to section 3(d) of this Act is committed to the exclusive discretion of the Secretary and shall not be subject to judicial review.

(b) The decision to require drug testing of federal employees pursuant to sections 4(b) or (c) of this Act shall not be subject to judicial review.

SEC. 8. Severability

If any provision of this Act or the application of any provision to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected by such invalidation.

SEC. 9. Technical and Conforming Amendments

(a)(1) Subsection (c) of section 290ee-1 of title 42, United States Code, is amended by striking out paragraph (1) and inserting in lieu thereof the following:

A person who formerly used, or was addicted to, illegal drugs, but who, has not, in the last five years used such drugs, may not be denied or deprived of Federal civilian employment or a Federal professional license or right solely on the ground of that prior drug addiction or use.

(2) Subsection (c)(2) of section 290ee-1 of title 42, United States Code, is amended by inserting between "apply" and "to employment" the following: "to persons who use illegal drugs, or".

(b) Subsection (7)(B) of section 706 of title 29, United States Code, is amended:

(i) by striking out "Subject to the second sentence of this subparagraph, the" in the first sentence and inserting in lieu thereof "The", and

(ii) by striking out the second sentence and inserting in lieu thereof the following:

"The term 'handicapped individual' does not include any individual who uses, or is addicted to, illegal drugs. For purposes of sections 793 and 794 of this title as such sections relate to employment, the term 'handicapped individual' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others."

(c) Section 706 of title 29, United State Code, is further amended by adding the following new subsection to the end thereof:

"(16) The term 'illegal drugs' means controlled substances, as defined by section 802(6) of title 21, United State Code, the possession or distribution of which is unlawful under chapter 13 of title 21, United States Code."

(d) The provisions of this Act shall supersede any inconsistent federal law, rule or regulation.

SEC. 10. Effective Date

This Act shall become effective on its date of enactment and shall apply to any pending litigation.

*look at sensitive jobs in broader context
over 1 mil Fed employees have access to class info*

U.S. Department of Labor

Assistant Secretary for Policy
Washington, D.C. 20210



August 18, 1986

*Voluntary
training for supervisors*

MEMORANDUM FOR: DRUG-USE PREVENTION WORKING GROUP

FROM: DRUG-FREE WORKPLACE TASK FORCE

SUBJECT: MODEL PLAN FOR A DRUG-FREE FEDERAL WORKFORCE

good business practice

Introduction

In drafting a suggested plan for a drug-free federal workplace, we have sought to emulate successful programs which were crafted in conjunction with affected employees, programs which have withstood legal challenges. Much of the following plan follows the Department of Defense model, although some nuances have been borrowed from proposed Federal Railway Administration and Federal Protective Service systems.

A parallel can be drawn to the issue of drunk driving. It is clearly illegal and until recently enjoyed a degree of social acceptability. Recent education and awareness-raising about the issue has reversed the direction of peer pressure to where it has become unacceptable societal behavior. The issue of drug use should follow a similar course. It, too, is illegal, but until its "utter unacceptability" is conveyed clearly to all corners of society, peer pressure and social trends will not discourage the use of drugs. Ideally, clear policy and education will one day overtake the need for testing.

Policy/Education

In this light, the importance of a clear statement of policy and concomitant education cannot be diminished. Prior to promulgating any programs, the message needs to be conveyed loudly and clearly that drug use is reprehensible and will not be tolerated in the federal workforce.

The focus must be constructive, i.e., toward encouraging the non-productive to become productive members of society. The approach must also be flexible, reflecting the mission and needs of each agency. The emphasis must be rehabilitative, not punitive. As the President has said, "There should be an offer of help." These must be the watchwords for his program.

*remove drug & alcohol provisions of insurance -
insurance premiums up - but less
health problems?*

During the education phase, care should also be taken to make certain that any health insurer who wants to do business with the Federal Government must carry a drug rehabilitation component as an option. The insurer should only be required to pay for one rehabilitation per employee. Blue Cross/Blue Shield currently charges approximately \$2 per pay period for their rehabilitation. Managers must also be trained to deal with the problem. In short, the federal system should be prepared to help.

Survey

In 1980, shortly after the disaster on board the USS Nimitz, the Department of Defense undertook a worldwide survey of their military personnel. In an atmosphere rife with rumors of impending drug testing, DOD found that 27 percent of the military personnel had used drugs in the 30 days prior to the test. In 1982, that number dropped to 19 percent and to 9 percent by 1985. This survey was conducted by anonymous questionnaire. Some of the services conducted simultaneous anonymous urinalysis testing. Their results approximated those of the questionnaire. Cost of the questionnaire was \$600,000. Much of this figure represents the foreign travel necessary to complete the questionnaires due to worldwide dispersal of the military force. A similar survey should be duplicated for our purposes government-wide. It would provide guidance in preparation of programs and budgets, and would be essential to gauge results.

"Critical Jobs"

To date, DOD testing has focused only on employees in critical jobs. These are determined as falling within one of the following categories:

1. Law enforcement.
2. Positions involving the national security or the internal security of the Department of Defense in which drug abuse could cause disruption of operations, destruction of property, threats to the safety of personnel, or the potential for unwarranted disclosure of classified information.
3. Jobs involving protection of property or persons from harm.

Each branch of the service has compiled a list of such positions. These are reviewed by DOD. Some branches have pared their original lists after DOD scrutiny. At present, approximately 10 percent of civilian military personnel fall under this classification.

For government-wide purposes, each agency would compile its own list of critical positions. These lists would be reviewed for reasonableness and uniformity by OPM.

Once a position is classified as "critically sensitive," it would be written into the position description and the person in that position would be notified of the classification. The appropriate Employee Assistance Program (EAP) would also be identified.

Employees in critical jobs would be subject to pre-employment screening as well as to random and probable cause testing. Typically, random testing occurs, unannounced, once a year. However, frequency would be left to the agency.

Probable Cause Testing

The Department of Defense at present has no probable cause testing. However, the Federal Railway Administration (FRA) experience in this area is illustrative: the current FRA system comes after discussion with employee representatives. Probable cause testing would cover all employees not in critical jobs. This type of testing is legally more defensible if tied to job performance.

Government-wide probable cause testing would come after phase-in of critically sensitive testing.

Following the FRA model, probable cause testing would be at the request of a supervisor. The probable cause would require the corroboration of a second supervisor. To safeguard against harassment, no employee who tests negative twice in a one-year span can be retested for three years.

Pre-Employment Testing

On a shorter time frame, applicants for employment in the Federal Government would be tested for drug use. Those testing positive would be referred to an appropriate rehabilitation center. After thirty days, the applicant could retest and reapply.

Phase-In "Window"

Prior to the phase-in of testing, a ⁹⁰⁻~~ninety-day~~ "window" period would allow an employee to take action. A critically sensitive employee could attempt to transfer to another job if they objected to the possibility of testing. Any employee should also be able to cease drug use during this period or to come forward for help.

Testing and Enforcement

There are necessary safeguards required before testing can begin:

- o Laboratories need to be identified, certified as eligible for Federal use, and made subject to Government-wide quality control standards.
- o "State-of-art" testing methods and equipment should be used. At present, no portable equipment should be used.
- o Agency health clinics should prepare to become collection points (with forensic protocol), and agencies should establish a process for collection from applicants and employees at remote sites.
- o A "chain of custody" with integrity must be established for handling of tests. (A forensic protocol needs to be articulated.)

As for steps taken once an employee tests positive (and after appropriate verification), the following is suggested:

- o Employees in critical jobs should be reassigned, if possible, to noncritical positions and referred for rehabilitation.
- o An employee can be offered rehabilitation. The insurer would pay the first, the employee the second. A third offense would result in termination.
- o Rehabilitation which occurs during the "window" period would count toward an employee's total.
- o An employee could refuse rehabilitation. However, they would be on notice that after one more positive test, they would be subject to termination.

Costs

OPM estimates the cost of one test for all employees per annum to be \$70 million. This is based on initial screening and confirmation testing cost of approximately \$20 - \$30 per employee. Obviously, the costs of the program outlined above would be substantially less. Assuming the high end of the 10-20 percent range of "critical" DOD employees, costs of tests alone would be \$14 million. The more important costs--rehabilitation--would be borne by employees, the employer and insurers jointly. Non-DOD employees represent only 48 percent of the federal workforce. DOD is already testing critical

insurance

employees and has surveyed all employees. Thus, a government-wide approach would assume the cost of surveying 48 percent of the federal workforce, critical testing of that same 48 percent and probable cause testing of the entire workforce.

Conclusion

Drug use and abuse is a scourge on society. Our mission is to eradicate it, and to do so in a manner that shows our efficiency and the President's compassion.

We must make our message clear: drug use will not be tolerated. To be sure, anyone caught actually using drugs in the federal workplace would be terminated. However, for those who are ridden with this cancer, who satisfy this dark appetite away from the workplace, we "Stand by" as the President said, "ready to help them take the treatment that would free them from this habit." If we purge first offenders, we dump them out into the street, to already-overcrowded rehab centers and ultimately to an equally overcrowded welfare system. We need not sap hope, but instill it. Let our action and our help be the stitch that saves the fabric of our society.

legislation - no need ???

budget - \$70 millions ? ?

leniency weakens

F

G

H

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August 11, 1986

14 AUG 1986

WRITER'S DIRECT DIAL NO.:

(202) 861 - 1541

3838

The Honorable Carlton E. Turner
Deputy Assistant to the President
for Drug Abuse Policy and
Director, Drug Abuse Policy Office
Old Executive Office Building - Room 220
Washington, D.C. 20501

Dear Carlton:

In response to your request for names of industry leaders who would be interested in attending a White House briefing on the President's initiative to rid the work place of drugs, and hopefully willing to assist in such an effort, I am pleased to forward the attached list.

Keep up the good work.

Sincerely,

Dick

Richard A. Hauser

Attachment a/s

Mr. Gerry Dempsey
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Vice Chairman - Waste Management, Inc.
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(312) 654-8800

Mr. Phillip Rooney
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Oak Brook, Illinois 20521
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Mr. John R. Cookson
President - Household Products Division
Lever Brothers Company
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Mr. Charles W. Parry
Chairman and Chief Executive Officer
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American Laser Corporation
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The Honorable Bob Bergland
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Mr. William O. Bourke
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EDS
IBM

PAT CLEARLY

Lane Kirkland
→ model policy labor could use

J

U.S. Department of Labor

August 8, 1986

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



THIS WAS GOOD START

MEMORANDUM FOR DR. CARLTON E. TURNER

Director
White House Drug Abuse Policy

FROM:

CANDACE L. STROTHER *Candace Strother*
Deputy Assistant Secretary of Labor
for Occupational Safety and Health

523-6091

Per our discussion this morning, the attached briefing book prepared by my staff will provide a starting point for an interagency working group on drug abuse prevention and awareness in the workplace.

I have developed a proposed mission, timeline, and function for the working group with the Occupational Safety and Health Administration (OSHA) providing your research and administrative support.

We have front-line responsibility at the Federal level for workplace safety and health and will provide information, resources, a national staff, and access to worksites to help promote the President's effort.

We have many contacts in both labor and industry, and will facilitate discussion and help develop consensus on ways to combat this problem.

Following your review of this document, I will come over on Monday to discuss the next step.

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 - OSHA's Experience with Drug Abuse
 - Department of Labor Outreach
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Scope of WG

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SCOPE OF WORKING GROUP

1. Mission

On August 4, the President announced six goals leading to a drug-free America. The first is a drug-free workplace. He proposed to accomplish this by:

- creating a drug-free workplace for all federal employees;
- encouraging state and local government to follow the federal government's example;
- getting commitments from government contractors to follow suit;
- mobilizing management and labor leaders in the private sector in this effort.

2. Dimensions of the Workplace Drug Problem

● Extent of drug abuse in the workplace

- in the private sector Coordinate existing information.
- in the Federal sector Develop data base.

● Impact of drug abuse

- on accidents
- on productivity
- on the family
- on health
- on quality of life

● Resistance to Government interference in personal life styles

A dimension of the problem since it impedes solutions. Invasion of privacy and job security are key issues.

3. Remedies

● Prevention

- Education To spread awareness of the adverse effects of drug use.
 - * in schools
 - * in communities To train supervisors in recognition of drug abuse.
 - * in the workplace

SCOPE OF WORKING GROUP - Page 2

- Deterrence

* Screening

pre-employment

current employment

random

for cause

* Surveillance

undercover

other (dogs, etc.)

* Disciplinary actions

dismissal from job

civil and criminal sanctions

● Employee Assistance Programs

- Counseling

- Treatment

- Rehabilitation

Encouragement of, by Federal and State
governments.

4. Role of Private Sector Groups

- Trade associations
- Labor unions
- Civic organizations
- Media
- Academia

5. Role of Government

Action vs. information

Coordination vs. implementation

Time Line

II

TIMELINE

August 12

Initial meeting of Working Group; establish scope of the Working Group and specify work strategy; discussion of agenda; subgroups assigned

August 18

Discussion of subgroup progress report; refinement of scope; workplan revised

August 18-22

Begin constituent group meetings

August 25-29

Continue constituent group meetings; progress of subgroups

September 2-3

Develop first draft of working group report

September 4-5

Develop final working presentation for Presidential and Cabinet Council Briefing

September 8

Presentation delivered to President and Cabinet Council

September 9

Major Presidential address

Selling the
Program

III

Selling a Workplace Drug Control Program

In selling a workplace drug control program, productivity should be emphasized. Losses in productivity are most tragic at the human level exemplified by lost lives, injuries, family problems and low employee morale.

When shoddy goods appear in the marketplace, those goods are not purchased and company image destroyed. When goods are returned, revenues are lost. When a company's ROI (return on investment) plunges, stockholders lose faith in that company. All of these may be impacted by the use of drugs in the work force.

Unfortunately, there are not truly valid statistics on the drug impact on productivity, because market forces, in addition to drug abuse, come into play. The Alcohol, Drug and Mental Health Administration estimates \$100 billion in productivity is lost each year from drug and alcohol abuse. Research Triangle Institute estimated productivity losses from substance abuse to be \$99 billion in 1983. The Employee Assistance Society of North America estimates productivity losses at \$39.1 billion annually. No matter which estimate is used, productivity losses from abuse of drugs and alcohol are considerable and significantly erodes our gross national product.

Using productivity as a measure offers an opportunity to attack drug and alcohol abuse on an impersonal level and does not in any way impugn an individual nor infringe on an individual's rights.

The problem is selling the training and education concept, since the problem extends from the Board Room to the Factory Floor. Control programs cannot be sold on a personal basis. Rather, a generalized approach be used.

Training and education, not only to point up the bad effects of drug use but to train managers and fellow workers as to how to recognize signs of drug use in the work force is critical to a successful control program. Peer pressure is an essential ingredient to drug control.

Constituent
Groups

IV

STRUCTURE OF MEETINGS WITH CONSTITUENT GROUPS

1. Participants*

- o Governmental agencies outside DOL having similar interests in workplace drug problems: Department of Transportation; FAA; HHS; DOD (civilian, such as Army Corps of Engineers); EPA; DOE; FEMA
- o Governmental agencies which could provide input, assistance: HHS; National Institute on Drug Abuse; NIOSH; DEA
- o Employer groups: U.S. Chamber of Commerce; NAM; NFIB; ORC; CMA; Business Roundtable, AGC; ABC (non-union construction association)
- o Employee groups: AFL-CIO; Building and Construction Trades Council; other miscellaneous groups outside the AFL umbrella, such as National Migrant Action Committee
- o Miscellaneous: medical schools prominent in drug abuse activities; National Association of Counties; National Farm Labor Bureau; NACOSH; CACOSH

*Not an all-inclusive list

2. Format for the meetings

- o Option 1: Initial meeting with representative(s) from each category, with subsequent "subgroup" meetings within their own category
- o Option 2: Hold separate meeting with each category, with subsequent subgroups for substance/detailed discussions

3. Structure/Agenda for the meetings

- o Brief outline, explanation of the Presidential Initiative
- o Discussion of the dimensions of the workplace drug problem, including such issues as
 - statistics on drug abuse
 - discussion of high-risk groups by age, industry, economic status, geographical location, educational level, etc.
 - industry costs in terms of productivity, workers' compensation costs, rate of turn-over, absenteeism, etc.
 - societal costs
- o Elicit information from participants concerning their perceptions of the dimensions of the problem, both in terms of tangible information as well as their overall view

Structure of meetings

- o Elicit information from participants regarding their approaches with dealing with the issue.
- o Provide a brief outline of approaches we are aware of:
 - awareness program
 - counseling programs
 - control measures (detection; screening; condition of employment)
 - treatment and rehabilitation efforts
- o Provide an open forum for the discussion of the most effective, most appropriate role the government could play with regard to this issue
 - provide information
 - provide assistance in setting up model programs
 - act as coordinator or clearinghouse
 - be actively involved through such means as OSHA standards/enforcement mechanism, OSHA consultation and training mechanism, etc.
- o Provide an open forum for the discussion of most effective role private industry could play
 - role of labor-management cooperation
 - role of safety personnel, medical personnel, employee assistance staff
 - union role within the establishment
- o Discuss cost/administrative/organizational implications
- o Reach consensus on a "model approach" that would take into account the following:
 - employer interests in dealing with the issue
 - employee interests in terms of protection of privacy, individual rights, intrusion into established labor-relations practices
 - governmental role
 - cost and administrative implications

Federal
Statistics

7

Occupational Safety and Health
Administration

Cases of Alcoholism and Drug Abuse in Federal Agencies -- FY 1985 (continued)

Agency	Total Employees	Cases of Alcoholism	Penetration	Cases of Drug Abuse	Penetration	Cases of Emotional Problems	Pene- tration	Operat- ing Costs	Cas Pol Abu
Over 5,000 under 10,000									
ENVIRONMENTAL PRO- TECT AGENCY	13,473	31	0.23	4	0.04	482	3.58	128,651	
HOUSING & URBAN DEVELOPMENT	12,195	38	0.31	3	0.02	241	1.98	72,334	
LABOR	18,545	45	0.35	18	0.10	313	1.69	136,173	
NATIONAL AERO SPACE ADMIN	21,822	177	0.81	22	0.10	749	3.43	341,000	
TOTAL	82,196	425	0.52	74	0.09	2,141	2.60	876,158	
EDUCATION	5,022	15	0.30	0	0.00	20	0.40	16,565	
FEDERAL DEPOSIT IN- SURANCE CORP	6,723	18	0.27	9	0.13	90	1.34	45,000	
GENERAL ACCOUNT ING OFFICE	5,300	11	0.21	4	0.08	328	6.19	210,000	
GOVERNMENT PRINTING OFFICE	4,963	40	0.81	9	0.18	176	3.55	101,526	
COMMITTEE OF CONGRESS	5,274	34	0.64	11	0.21	181	3.43	95,735	
OFFICE OF PER- SONNEL MGMT	6,542	4	0.06	3	0.05	79	1.21	40,323	
PANAMA CANAL COMMISSION	8,449	69	0.82	12	0.14	20	0.24	45,173	
SMITHSONIAN INSTITUTION	5,650	112	1.98	18	0.32	96	1.70	36,000	
STATE	9,000	281	3.12	11	0.12	742	8.24		
U.S. INFOR- MATION AGENCY	4,360	32	0.73	9	0.21	186	4.27	65,000	
TOTAL	61,283	616	1.01	86	0.14	1,918	3.13	655,322	
U.S. Postal Service**	733,856	6300	0.85	2800	0.38	unknown***	-	unknown	340
Grand Total*	2,876,311	20,275	0.70	5857	0.20	37,095-1.29		11,285,412	340

*The above thirty agencies comprise approximately 95% of the total Federal workforce.

**The Postal Service's Poli Abuse Category (3400 cases) includes those employees which were treated for both alcohol and drugs.

***The Postal Service does not have, at the headquarters level, the operating costs for the programs. The costs are available, however, at each of the Postal Regional offices.

Occupational Safety and Health
Administration

CASES OF ALCOHOLISM AND DRUG ABUSE IN FEDERAL AGENCIES -- FY 1985 (SOURCE: OPM
U.S. Postal Service)

The thirty agencies below comprise approximately 95% of the Federal workforce.

AGENCY	TOTAL EMPLOYEES	CASES OF ALCOHOLISM	PENE-TRATION	CASES OF DRUG ABUSE	PENE-TRATION	CASES OF EMOTIONAL*	PENE-TRATION	OPERATING COSTS	Cases Pol A
OVER 100,000									
AGRICULTURE	111,141	345	0.31	65	0.06	2,172	1.95	614,010	
AIR FORCE	255,593	2,110	0.83	352	0.14	473	0.19	546,029	
ARMY	400,000	3,243	0.82	705	0.18	5,946	1.49	1,500,000	
HEALTH & HUMAN SERVICES	132,743	607	0.46	114	0.09	3,817	2.88	1,856,047	
NAVY	321,085	2,555	0.80	601	0.19	4,850	1.51	776,840	
TREASURY	139,096	384	0.28	95	0.07	3,371	2.42	699,752	
VETERANS ADMIN	243,966	1,634	0.67	383	0.16	3,863	1.58	854,209	
TOTAL	1,603,644	10,898	0.68	2,315	0.14	24,492	1.53	6,846,887	
OVER 25,000 & UNDER 100,000									
DEFENSE	56,603	463	0.82	68	0.12	1,499	2.65	771,009	
INTERIOR	72,863	304	0.42	54	0.07	1,419	1.95	42,500	
JUSTICE	66,182	269	0.41	28	0.04	1,648	2.49	547,376	
TRANSPORTATION	59,616	239	0.40	71	0.12	1,652	2.77	683,742	
TOTAL	255,264	1,275	0.50	221	0.09	6,218	2.44	2,044,627	
OVER 10,000 & UNDER 25,000									
COMMERCE	35,150	114	0.32	28	0.08	1,117	3.18	319,541	
GENERAL SERVICE ADMINISTRATION	25,700	140	0.54	21	0.08	320	1.25	93,500	
NATL GUARD	47,183	176	0.37	29	0.06	167	0.35	61,000	
TENNESSEE VALLEY AUTH	32,035	331	1.03	62	0.19	722	2.25	388,377	
TOTAL	140,068	761	0.54	140	0.10	2,326	1.66	862,418	
OVER 10,000 & UNDER 25,000									
ENERGY	16,141	114	0.71	25	0.15	356	2.21	198,000	

Agencies w/Allied
Responsibilities VI

Occupational Safety and Health
Administration

FEDERAL AGENCY ASSISTANCE TO PRIVATE SECTOR:

U.S. DEPARTMENT OF LABOR

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

- PUBLIC HEALTH SERVICE

Promote protection and advancement of Nation's physical and mental health, coordinate with States to set and implement national health policy and pursue effective intergovernmental relations; generate and uphold cooperative international health-related agreements, policies, and programs; conduct medical and biomedical research; sponsor and administer programs for the development of health resources, prevention and control of diseases, and alcohol and drug abuse; provide resources and expertise to the State and other public and private institutions in the planning, direction, and delivery of physical and mental health care services; enforce laws to ensure the safety and efficacy of drugs and protection against unsafe products.

- ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

Provides a national focus for the Federal effort to increase knowledge and promote effective strategies to deal with health problems and issues associated with the use and abuse of alcohol and drugs and with mental illness and mental health. Conducts research and administers Federal grants to increase knowledge and promote effective strategies to deal with related health issues and problems.

-National Institute on Alcohol Abuse and Alcoholism

-National Institute on Drug Abuse

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Provides policy, guidance, technical assistance and administration of "reasonable accommodation" of individuals handicapped by alcohol or drug abuse. Actions must be in accordance with the Rehabilitation Act of 1973.

FEDERAL ASSISTANCE TO FEDERAL AGENCIES:

*U.S. Office of Personnel Management

-Workforce Effectiveness and Development
provides policy, guidance and technical assistance to Federal agencies relative to Federal employees on Employee Assistance Programs for alcohol and drug counseling programs

Occupational Safety and Health
Administration

*U.S. Department of Health and Human Services

-Public Health Service

promotes effective intergovernmental relations, sets policies along with OPM (above), provides resources and expertise regarding planning, direction and delivery of health care services

-Alcohol, Drug Abuse, and Mental Health Administration

conducts research and administers Federal grants to increase knowledge and promote effective strategies to deal with related health issues and problems

ALSO DEALS WITH PRIVATE SECTOR

major components:

- National Institute on Alcohol Abuse and Alcoholism
- National Institute on Drug Abuse

*U.S. Equal Employment Opportunity Commission

provides policy, guidance, technical assistance and administration of "reasonable accomodation" of Federal employees handicapped by alcohol or drug abuse. Actions must be in accordance with the Rehabilitation Act of 1973

*U.S. Merit Systems Protection Board and Special Counsel

*U.S. Federal Labor Relations Authority

adjudication of Federal employee appeals of adverse personnel actions taken, may include factors of alcohol/drug abuse or lack of reasonable accomodation

DOL Drug Abuse V2
Programs

DEPARTMENT OF LABOR DRUG ABUSE PROGRAM

The Office of Personnel Management has issued regulations in 5 CFR Part 792 to implement the requirements for Federal agencies to establish civilian employee alcoholism and drug abuse programs as contained in the "Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment and Rehabilitation Act of 1970" and the "Drug Abuse Office and Treatment Act of 1972". These regulations establish OPM and agency responsibilities in providing prevention, treatment and rehabilitative services to Federal civilian employees with alcohol or drug problems.

The Department of Labor currently provides guidance to employees and managers in the areas of alcohol and drug abuse through the Employee Counseling Services Program. That program provides for the following services to employees:

- education to managers and employees to ensure the recognition of alcohol and drug abuse as treatable health problems;
- extension of the same consideration and assistance that is extended for other illnesses to employees having alcohol or drug problems;
- treatment of employees with problems in a nondisciplinary manner aimed at rehabilitation;
- provision of confidential counseling and information services to employees;
- making of referrals to treatment sources and conduct of followup evaluations;
- provision of consultation services to supervisors and managers;
- conduct of appropriate training for supervisors; and
- provision of stress management services.

There are two ways in which an employee may receive any or all of the services listed above appropriate to his or her drug or alcohol abuse problem. The first is a voluntary request from an employee for counseling and/or treatment services. The second is through management referral, with or without the consent of the employee. In either situation, the employee is provided up to five free sessions with a counselor in an effort to diagnose and successfully treat the problem. If the problem is not treatable within these sessions, the employee is referred to appropriate community resources.

Rules and Regulations

Federal Register

Vol. 50, No. 82

Monday, April 29, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

Federal Employees' Health and Counseling Programs; Regulatory Requirements for Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees

AGENCY: Office of Personnel
Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is amending 5 CFR by adding Part 792, which establishes OPM and agency responsibilities to provide prevention, treatment, and rehabilitation services to Federal civilian employees with alcohol and/or drug problems. Part 792 identifies those elements of the alcohol and drug abuse program that are mandatory and binding upon Federal departments and agencies. As a minimum, agencies are required to: (1) Establish and administer short-term counseling and/or referral programs to assist civilian employees with alcohol and/or drug problems; (2) issue internal program instructions; and (3) submit annual fiscal year reports to OPM on their counseling activities.

EFFECTIVE DATE: May 29, 1985.

FOR FURTHER INFORMATION CONTACT:
Ruby Giddings, (202) 632-5558.

SUPPLEMENTARY INFORMATION: OPM published an interim regulation on July 9, 1984 (49 FR 27921) that required Federal departments and agencies to operate, at a minimum, programs to assist their employees who experience work related problems associated with the use of alcohol and/or drugs. The regulation clarified those elements of the alcohol and drug abuse program that are essential to meet the statutory requirements of the public laws. The public comment period ended on

September 9, 1984. OPM received numerous comments from agencies and unions. There were a number of suggestions for specific improvements in the regulation that have been adopted in the final regulation. Specific comments received and related decisions are summarized below.

Comment: One agency recommended that the reference to employees having "alcohol and drug problems" be changed to "alcohol and/or other drug problems" throughout the regulation to consistently convey the idea that a person with either an alcohol problem or a drug problem or a person with both an alcohol and a drug problem may take advantage of the alcoholism and drug abuse programs and services afforded Federal civilian employees.

Response: OPM agrees in part with this suggestion and has adopted in the final regulation the reference to employees having "alcohol and/or drug problems"; therefore, acknowledging that employees may experience these two problems simultaneously. However, the word "other" has not been adopted as OPM feels that the two public laws are separate in authority and the use of the term "other" confuses two different employee problems.

Comment: One agency recommended that in paragraph (a) of § 792.105 the word "officials" be changed to "persons" to reflect the possibility that an agency may contract out for the program and that there may be no "officials" in the agency who are knowledgeable in counseling and referral services.

Response: OPM agrees that the term "officials" may be misleading but the recommended substitution of the word "persons" is too general. Therefore, OPM has decided to use the term "practitioners" in the final regulation.

Comment: One agency pointed out that the statutory citations should be updated to reflect the recent changes enacted by the Alcohol and Drug Abuse Amendments of 1983 (Pub. L. 98-24). The agency also urged that the statutory requirement contained in the supplementary information portion that encourages agencies to extend, to the extent feasible, these programs and services to the families of alcohol and drug abusers and to employees who have family members who are alcoholic or drug abusers be moved to the body of the regulation.

Response: The final regulation has been revised to reflect the amendments and to incorporate the Federal Government's statutory obligation to the families of alcohol and/or drug abusing employees and to employees who have family members who have an alcohol and/or drug problem in § 792.101 (Statutory requirements).

Comment: One union expressed concern that § 792.102 of the interim regulation, which requires short-term counseling and/or referral, or offers thereof, would be "woefully inadequate" to deal with the serious problems caused by alcohol and/or drug use and recommended that this section be replaced with a requirement for agencies to develop comprehensive programs for the counseling and treatment of these problems.

Response: The regulation is intended to establish only the minimum agency program requirements necessary to assist employees with these problems and does not prohibit agencies from expanding their program activities. Currently, agency programs range from a part-time counselor to units staffed with professional counselors who handle a broad range of employee services. The regulation is intended to provide the basis on which agencies can build their programs according to their particular management and employee needs. This approach also allows agencies the flexibility to provide these services either through internal programs, contractors, or consortia. While the points made are sound, OPM feels that the guidance to implement the regulation will encourage agencies to develop comprehensive, viable programs.

Comment: One agency requested that the regulation contain information on what type of leave would be appropriate for an employee seeking or undergoing treatment.

Response: OPM feels that existing leave regulations and guidance provide agencies with sufficient information and discretion to appropriately administer leave for these purposes. Therefore, emphasis on leave administration in this regulation is not necessary.

Comment: The majority of the comments focused on the content of § 792.105(c). Two agencies found this section to be possibly misleading regarding the responsibilities of the manager/supervisor to identify and refer

employees whose use of alcohol and/or drugs negatively affects conduct and/or performance. In particular, concern was expressed that the language implied that managers/supervisors will make referrals for counseling only when they have the knowledge that an employee's use of alcohol and/or drugs may be contributing to a performance or conduct deficiency. Also, several commenters recommended that the use of the term "rate" in the phrase "rate the employee accordingly and initiate an appropriate performance-based or adverse action at that time" be changed to evaluate. Specifically, concerns were expressed that the use of the word "rate" would infer that agency action would be connected to or dependent upon a formal employee rating under the agency's Performance Appraisal System and does not take into consideration action related to employee misconduct.

Response: With respect to the first point, OPM feels that the regulation should be limited to the required responsibility of the supervisor/manager. Anything other than absolute awareness (i.e., suspects or has reason to believe) should be addressed in guidance where examples can be provided. OPM agrees with the second point and this section has been revised accordingly.

Comment: One agency expressed concern that § 792.105(c) did not establish time limits on when the employee must seek counseling, begin or complete a rehabilitation program, or show improvements. This concern also reflected disappointment that the regulation did not define "rehabilitation," "participation," or "improvement."

Response: OPM feels that it is not feasible or desirable to establish time limits and define what constitutes "rehabilitation," "participation," or "improvement," as the conditions for rehabilitative treatment vary from individual to individual and must be judged on a case-by-case basis depending on the circumstances. Therefore, this type of information is best described in the implementing guidance.

Comment: One agency recommended that a section on prevention be added to the body of the regulation.

Response: While OPM agrees that prevention is an important part of the program and is established by law, it is felt that preventive actions are best handled in the implementing guidance because of the variety of approaches available to agencies to meet this mandate.

Comment: One agency thought that the regulation should clarify the

relationship of a management referral of an employee for counseling and a management offer or requirement of a medical examination when an employee asserts that a medical condition is contributing to a conduct or performance problem.

Response: OPM feels that there is no relationship. A medical examination does not apply to a referral to an Employee Counseling Program. However, if an employee alleges a medical condition, the employee may submit medical documentation or the agency may offer the employee a medical examination.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities because it only affects Federal employees and their families.

List of Subjects in 5 CFR Part 792

Alcoholism, Drug abuse, Federal employees.

U.S. Office of Personnel Management,
Donald J. Devine,
Director.

Accordingly, OPM is adopting the interim regulation as a final regulation with the following changes:

PART 792—FEDERAL EMPLOYEES HEALTH AND COUNSELING PROGRAMS

1. The authority for Part 792 is revised to read as follows:

Subpart B—[Reserved]

Authority: Sec. 201 of Pub. L. 91-616, 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Service Act by sec. 2(b)(13) of Pub. L. 93-24 (42 U.S.C. 290dd-1) and sec. 413 of Pub. L. 92-255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Service Act by sec. 2(b)(16)(A) of Pub. L. 98-24 (42 U.S.C. 290ee-1).

2. Section 792.101 is revised to read as follows:

§ 792.101 Statutory requirements.

Sections 290dd-1 and 290ee-1 of 42 United States Code, provide that the Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the Secretary of the Department of Health and Human Services, and with other Federal departments and agencies, appropriate prevention, treatment, and rehabilitation programs and services for

Federal civilian employees with alcohol and/or drug problems. To the extent feasible, agencies are encouraged to extend services to families of alcohol and/or drug abusing employees and to employees who have family members who have alcohol and/or drug problems. Such programs and services shall make optimal use of existing government facilities, services, and skills.

3. Section 792.102 is revised to read as follows:

§ 792.102 General.

It is the policy of the Federal Government to offer appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and/or drug problems. Short-term counseling and/or referral, or offers thereof, shall constitute the appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse, alcoholism, and/or drug abuse required under 42 U.S.C. 290dd-1(a) and 290ee-1(a). Federal departments and agencies must establish programs to assist employees with these problems in accordance with the legislation cited in § 792.101.

4. Paragraphs (a) through (c) of § 792.105 are revised to read as follows:

§ 792.105 Agency responsibilities.

(a) Agencies shall establish and administer programs through which practitioners who are knowledgeable in counseling and referral services can offer and provide employees who have alcohol and/or drug problems short-term counseling and/or referrals for long-term counseling or treatment.

(b) Agencies shall issue internal instructions implementing the requirements of 42 U.S.C. 290dd-1(a) and 290ee-1(a) and this regulation.

(c) Whenever a manager/supervisor becomes aware that a Federal employee's use of alcohol and/or drugs may be contributing to a performance or conduct deficiency, the manager/supervisor shall recommend counseling and refer the employee to the agency counseling program. If an employee fails to participate in any rehabilitative program or, having participated, the employee fails to bring conduct or performance up to satisfactory level, the agency shall evaluate the employee accordingly and initiate an appropriate performance-based or adverse action.

[FR Doc. 85-10281 Filed 4-26-85; 8:45 am]

BILLING CODE 5325-01-M



United States
Office of
Personnel
Management

Notice of Changes to Title 5 of the Code of Federal Regulations

The Office of Personnel Management has issued final regulations on OPM and agency responsibilities to provide prevention, treatment, and rehabilitation services to Federal civilian employees with alcohol and/or drug problems.

These regulations identify those elements of the alcohol and drug abuse program that are mandatory and binding upon Federal departments and agencies.

U.S. GOVERNMENT PRINTING OFFICE: 1985-460-592:2224

You can read a complete copy of the text at:

This notice expires on:

The Director of the Office of Personnel Management (OPM) is required to take steps to ensure that OPM regulations which apply to individuals or organizations outside OPM are posted in Federal agencies maintaining copies of the Federal personnel regulations [5 USC 1103(b)(2)(A)]. This notice, which should be posted in a prominent place, carries out that requirement.

OSHA's Experience
with Drug Abuse

V3

Occupational Safety and Health
Administration

OSHA'S EXPERIENCE WITH DRUG USE IN THE WORKPLACE

In the course of OSHA's workplace enforcement activities, our compliance staff has become aware of problems related to drug and alcohol abuse by workers. Although such drug abuse is acknowledged by both employers and employees, however, there is little hard data to support conclusive findings by the Agency on either the extent of the problem or its precise relationship to workplace injuries and illnesses. Abuse of drugs and alcohol by employees is generally concealed from compliance officers conducting workplace investigations; and while drug use is often suspected or alleged as a contributing factor to a workplace accident, causality often cannot be proven. Drug abuse is thought to be concentrated in younger, newer employees, who tend to have the most workplace accidents.

Staff in OSHA's Atlanta Region could think of 12 accidents over the past few years that were directly attributable to drug or alcohol abuse. A number of these relate to incidents where employees working at heights (such as roofers) fell to their deaths, and were later found to have been intoxicated by alcohol or under the influence of drugs. For example, at a tile company a worker looking for a drug "stash" in an unauthorized area suffered a fatal fall; at a rain-filled excavation, an employee fell and was drowned, and the autopsy revealed a high blood alcohol percentage; a bridge painter who had been seen smoking marijuana fell 40 feet to his death in a personnel basket. One compliance officer in the New York Region, talking to a young worker about drug abuse, was told, "You don't think I'd go up on that high steel if I didn't [use drugs], do you?"

One Area Office accepted an offer from a rehabilitation therapist to acquaint compliance officers with the signs of drug use in employees; another office was contacted by the safety director of a brewery who was concerned about employees drinking beer on the job, which was allowed by their union contract. This practice at breweries (permitting beer consumption) appears to be increasingly less prevalent. A number of OSHA offices have been contacted by employers asking what the Agency can do to help them control drug abuse.

In the Chicago Region, a fatality occurred when an employee fell into a trash compactor, and an autopsy showed the employee to have been intoxicated; but the machine itself was found not to be properly guarded, and the employee's use of alcohol could not be established as the cause of the fatal accident. The Dallas Region reports that a number of employers are developing drug testing programs for their workers; in the construction industry, it has been estimated (by informed observers) that 80 percent of the employees abuse drugs.

-2-

OSHA's Boston Region notes that they have received a number of allegations relating to the use of drugs or alcohol by fork lift drivers or machine operators, thus endangering other employees. Staff there recalled incidents in which a power company lineman said to be using drugs fell to his death; and in which a construction worker--who later was confined to the drug ward of a Veterans Administration hospital--broke his foot in a jobsite accident.

Another related problem often associated with drug and alcohol abuse is workplace intoxication because of exposure to industrial solvents. Such solvents--which are found, in large or small quantities, in almost all industrial workplaces--act as a depressant on the body in much the same way as alcohol, producing a "high." Toluene is the most common of these solvents, although others (methyl ethyl ketone, styrene, and xylene) have similar effects. Toluene is used in the printing industry as a cleaning agent, in glue manufacture, and in the paint and lacquer industries as a vehicle for pigment.

Exposure to such solvents at levels within OSHA's permissible exposure limits can be sufficient to produce intoxication. Thus, an employer can be in compliance with our standards, but his employees may still be able to experience (or even seek out) contact with solvents in the workplace capable of producing a pleasurable "high." This is particularly true of younger workers, who may hang out by a dip tank containing toluene or another solvent specifically to get high; in some instances, employees may obtain small quantities of the solvent for personal use or sale for this purpose. Occupations where such exposure is possible or likely are known among employees, and are therefore appealing to certain workers. In one instance, a recovering heroin addict admitted to having sought out a job where he would be exposed to styrene.

OSHA's standards for toxic substance exposure generally do not take into account levels at which intoxication may occur in setting permissible exposure limits; the criterion is more typically the level which will produce adverse health effects or lead to sufficient incapacity as to induce workplace accidents. In addition, solvents are often found in combinations in the workplace.

In addition, there is an association between workplace solvent intoxication and drug/alcohol abuse. It has been observed that employees who get high at work are often drug or alcohol abusers away from the job.

DOL Outreach

V4

DOL'S TRAINING MISSION

The Department of Labor has the vehicle to reach workplaces through existing programs, such as the:

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, established by Congress to help make the American workplace as safe and healthful as possible ;

EMPLOYMENT AND TRAINING ADMINISTRATION, which administers the Job Training Partnership Act nationwide;

EMPLOYMENT STANDARDS ADMINISTRATION, which enforces labor standards laws that protect workers;

MINE SAFETY AND HEALTH ADMINISTRATION, concerned with preventing accidents and illnesses in the nation's mines;

BUREAU OF LABOR-MANAGEMENT RELATIONS AND COOPERATIVE PROGRAMS, which encourages cooperation between labor and management to improve productivity and the quality of work life;

BUREAU OF INTERNATIONAL LABOR AFFAIRS, which helps develop international economic and trade policies affecting American workers;

WOMEN'S BUREAU, which seeks ways of promoting the welfare of women workers, expanding training and employment opportunities;

BUREAU OF LABOR STATISTICS, the federal government's principal data-gathering agency in the broad field of labor economics;

and the VETERANS' EMPLOYMENT AND TRAINING SERVICE, devoted to supervising and providing technical assistance to state Job Services to ensure that employment and training services are provided with preference for veterans.

Occupational Safety and Health
Administration

DRUG SCREENING IN THE WORKPLACE

Any attempt to promote the use of drug screening programs in the American workplace must recognize that two different groups of people must be convinced that such programs are beneficial: the workers and management. Each of these two groups would probably perceive the risks or costs of drug screening in different ways and will therefore be persuaded by different arguments.

Employee groups might view the major risk of drug screening to be the potential loss of personal autonomy. From their perspective, it is quite possible for an employer to enforce mandatory screening with adverse job actions taken if positive results are obtained. Naturally, this invasion of privacy and threat of job security will be resisted, unless efforts are made to cushion the employee from these risks. To this end it must be emphasized that drug screening programs must co-exist with employee assistance programs (EAP). EAPs provide the employee with a helpful alternative to dismissal or resignation should a drug or alcohol problem be discovered by drug screening. EAPs also can ensure confidentiality. Whenever a drug screening program is invoked, the employee population should be given adequate advance notice through the use of bulletins, newsletters, or whatever appropriate vehicle exists. Great effort should be made to offer multiple chances for employee comment on the impending program through mass meetings, comment boxes, or other appropriate means. Where the safety of the workforce or the consumer public is potentially compromised by drug and alcohol problems, the benefits of drug and alcohol screening will be more evident to employees. However, the most important element of drug screening programs in terms of soliciting employee participation will likely be a program design which is in fact helpful and not punitive to employees.

Management, while hopefully concerned about such employee issues, will likely also consider actual costs of such programs. EAPs and drug screening are not inexpensive. However, neither are accidents and low productivity cheap. As in most management decisions, the bottom line will probably figure prominently in the outcome. Persuading management of the long term benefits of drug screening and EAPs will likely be the best response to their concerns about costs.

Further Information
Required

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FURTHER INFORMATION NEEDED

1. Statistical information

- o statistics on employee drug abuse (as opposed to students, teenagers, etc.)
- o further breakdown by age-group, geographic location, perhaps industry
- o impact on productivity
- o other associated costs in addition to productivity losses
- o societal costs

2. Information on programs dealing with drug abuse

- o Federal civilian program
- o military program
- o model industry program
- o model programs by medical/social agencies, both private and public

3. Cost implications

- o Is there Federal money available for Federal agencies to be involved in this issue?
- o Is there Federal money available for private sector use?
- o Cost estimates on implementing control programs, counseling programs, treatment and rehabilitation programs