

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Wallison, Peter J.: Files
Folder Title: Drug Policy Program September
1986 (17)
Box: OA 14008

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

G.O.

ISSUES

1. Pre-employment testing and hiring standards.

Authorized
3(c)

a. Should pre-employment testing be required for all sensitive jobs or authorized and left to agency discretion? (OPM).

Authorized
3(c)

b. Should pre-employment testing for nonsensitive jobs be authorized and left to agency discretion or prohibited? (DOL).

~~Not covered~~
Not suitable

c. Should agencies be prohibited from hiring current drug users in nonsensitive jobs for which they are otherwise qualified? (DOL).

2. Employees in sensitive positions.

Categorically
defined

a. Should these be categorically defined in the Executive Order or left to agency discretion?

They are

b. Should employees with access to "Secret" information be included?

They are

c. Should Presidential appointees, SES and Schedule C employees be included?

No

d. Should agencies be permitted to retain current drug users on-duty in sensitive positions? (DOL).

In some agencies
nonsensitive
employees

e. Should agencies be precluded from disciplining or removing sensitive employees who voluntarily identify themselves as drug users? (DOL, HHS).

f. Should agencies be precluded from removing sensitive employees who are willing to undergo rehabilitation? (HHS).

Doesn't address

g. Should agencies be required to restore sensitive employees to their former positions if they successfully undergo rehabilitation? (HHS).

Doesn't
address

h. Should agencies be required to remove or transfer sensitive employees who fail their first attempt at rehabilitation?

3. Nonsensitive employees

Would permit
testing for
off-duty
use.

a. Should testing be permitted when there is reasonable suspicion of drug use on or off duty, or must the agency have probable cause to believe there is drug use that adversely affects job performance? (DOL).

NOT precluded

Not precluded

Permitted,
(not required)

NOT
addressed

- b. Should agencies be precluded from disciplining or removing nonsensitive employees who voluntarily identify themselves as drug users? (DOL, HHS).
- c. Should agencies be precluded from removing nonsensitive employees who are willing to undergo rehabilitation? (HHS).
- d. Should agencies be permitted to discipline or remove nonsensitive employees for non-job-related drug use? (DOL).
- e. Should agencies be required to give a second chance at rehabilitation to nonsensitive employees who voluntarily identify themselves as drug users? (HHS).

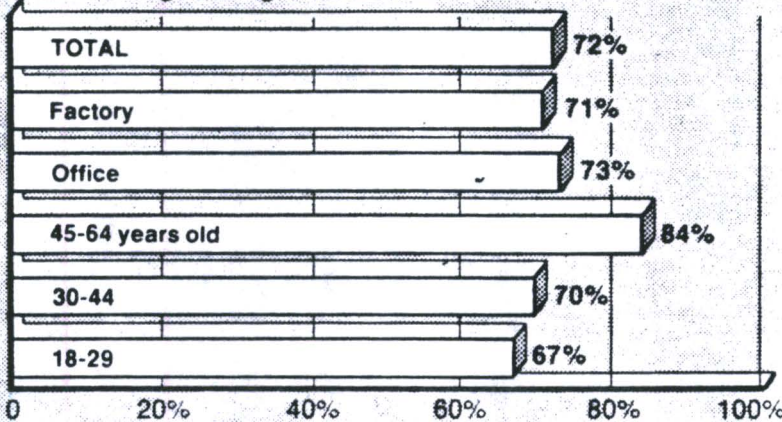
1. Collective bargaining agreements (Civil Div. has taken position that ~~was~~ whether this is subject to collective bargaining is issue for FCRA)
2. AG approval of each plan
3. 5(g) - refer to AG provision

The New York Times / CBS NEWS POLL

Support for Drug Testing

"If your employer wanted to test all employees to determine if they had used illegal drugs recently, would you be willing to be tested, or would that be an unfair invasion of your privacy?"

Percentage willing to be tested:



Based on telephone interviews with the 689 full-time workers in the sample of 1,210 polled Aug. 18-21.

The New York Times/Sept. 2, 1986

The New York Times / CBS NEWS POLL

Opinion About Drugs: The Generation Gap

	18-44 years	45 & older	TOTAL
Call drugs the nation's most important problem	11%	16%	13%
Call drugs their community's most important problem	15	11	13
Say increased drug use reflects "fundamental breakdown" in morals	44	60	50
Serious, but not moral breakdown	52	28	42
Say they know where drugs are sold	28	10	20
Say illegal drug use could be cut "a great deal" by:			
Drug testing in workplace	50	53	51
Stiffer penalties for sellers	39	63	48
More educational programs	46	44	45
Stiffer penalties for users	37	49	42
Military raids into other countries	36	36	35
More drug treatment programs	30	32	31
Having celebrities speak out	23	28	26
Favor testing workers in general	39	53	44
Testing would be invasion of privacy	53	32	44
If full-time worker, would take test	69	85	72
Testing would be invasion of privacy	25	12	22
Who is most responsible for drug problem?			
Sellers	54	66	59
Users	30	17	25
Say marijuana possession should be criminal	54	61	57
Say movies and television glamorize drugs	62	65	63
Cite "Miami Vice" for glamorizing	14	6	11
Which is a more serious problem today?			
Illegal drug use	39	46	42
Alcohol abuse	39	21	32
Both equal	20	28	24

Based on 1,210 telephone interviews conducted Aug. 18-21.

The New York Times/Sept. 2, 1986

Job Category	APPLICANTS		CURRENT EMPLOYEES			
	Sensitive	Non sensitive	Sensitive		Non sensitive	
			Voluntary	Involuntary	Voluntary	Involuntary
Basis for testing or identification	DOJ: Pre-employment tests for all OPM: Pre-employment tests at agency discretion	DOJ: Pre-employment tests at agency discretion DOL: No pre-employment tests		1) Random or uniform 2) Reasonable suspicion of drug use on or off duty 3) Accident investigation 4) Rehabilitation followup		1)DOJ: Reasonable suspicion of drug use on or off duty DOL: probable cause for job-related drug use 2)Accident investigation 3)Rehabilitation followup
Agency action upon identification as drug user	Must not hire	DOJ:Must not hire DOL:Must hire if otherwise qualified	1)DOJ:Must reassign to nonsensitive position or nonduty status DOL:May reassign to nonsensitive position or nonduty status	2)DOJ:May discipline or remove HHS&DOL:Must not discipline or remove	DOJ:May discipline or remove HHS&DOL:Must not discipline or remove	DOJ:Must discipline; may remove HHS:Must discipline; must not remove DOL:May discipline or remove if job-related
Agency action after successful rehabilitation	May hire	Must hire (by statute)	DOJ:Any discipline stands; otherwise at agency discretion HHS:May cancel any discipline; must return to prior sensitive position; must not take further adverse action		DOJ:Any discipline stands; otherwise at agency discretion HHS:May cancel any discipline; must not take further adverse action	
Agency action after unsuccessful rehabilitation	Must not hire	DOJ:Must not hire; DOL:Must hire if otherwise qualified	DOJ:Must remove or transfer to nonsensitive position HHS:May remove or discipline; may offer second chance at rehabilitation		DOJ:Must discipline; may remove DOL:May discipline or remove if job-related HHS:Must not discipline or remove until given a second chance at rehabilitation	DOJ:Must discipline; may remove DOL:May discipline or remove if job-related

WHEREAS the use and consumption of narcotics by persons privileged to be employed in certain positions in the departments and agencies of the Government poses a serious risk to the national security, the public safety and the effective enforcement of the law; and

WHEREAS several departments and agencies have implemented testing programs in order to identify persons in such positions who use or consume narcotics and to take appropriate action regarding their employment to protect the national security and the public safety and to preserve the effective enforcement of the law; and

WHEREAS it is important that such programs remain in existence and that like programs be adopted by other departments and agencies where necessary; and

WHEREAS it is equally important that all persons covered by such programs receive fair, impartial and equitable treatment at the hands of the Government, that mutually consistent and no less than minimum standards and procedures be in place to protect the privacy and dignity interests of employees, and that individuals who use or consume narcotics be notified of the availability of appropriate counseling, referral, rehabilitation or other medical treatment:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including Section 3301(2) of Title 5 of the United States Code; Section 7301 of Title 5 of the United States Code; [Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et. seq.); Section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j); and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1, et. seq.)] and as President of the United States, and deeming such action in the best interests of national security, public safety, and law enforcement, it is hereby ordered as follows:

- Section 1:
- (a) This order applies to all agencies of the Executive Branch.
 - (b) For the purposes of this order, the term "agency" means an Executive department, as defined in 5 U.S.C. 101 or any employing unit of authority of the Federal government, other than those of the judicial and legislative branches.
 - (c) For the purpose of this order, the term "narcotic" means any narcotic drug as defined in Section 802 (16) of Title 21.

Section 2: The head of each department and agency of the Government shall establish and maintain within his department or agency an effective narcotic testing program to identify persons employed or seeking employment in the positions described in Section 3(a) of this order who use or consume narcotics.

- Section 3: (a) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security, public safety or law enforcement as a "sensitive position." Employment or retention in employment in a sensitive position shall be made subject to the results of a test to determine the use or consumption of narcotics.
- (b) Should there develop information through testing or otherwise indicating that a person applying for or occupying a sensitive position has used or consumed narcotics, the head of the department or agency concerned or his representative shall determine whether employment or retention in employment of such person is clearly consistent with the interests of national security, public safety or law enforcement.
- (c) Where possible, persons who are found to have used or consumed narcotics shall be transferred to non-sensitive positions and offered counseling or treatment, or both, in accordance with the Federal Personnel Manual Supplement [and consistent with the requirements of the Drug Abuse Act and the Drug Rehabilitation Act].

Section 4: [Eligibility for Reemployment]

Section 5: The following factors may be considered in determining whether to designate a position as "sensitive"

- (a) The position involves the national security or the internal security of the department or agency such that drug abuse by the occupant of the position could cause disruption of operations, destruction of property, threats to the safety of personnel, or the potential for unwarranted disclosure of classified information.
- (b) The position involves law enforcement.
- (c) The position involves protection of property or persons from harm.
- (d) The position involves exposure to dangerous substances, equipment or situations.

Section 6: The following guidelines are to be observed in designing programs to test employees in "sensitive positions"

- (a) Employees in or applicants for positions that have been designated as "sensitive" should not be required to participate in testing except in the following circumstances:
 - (1) Before appointment or selection;
 - (2) Periodically after appointment or selection on the basis of neutral criteria;
 - (3) When there is probable cause to believe that an employee is under the influence of a controlled substance while on duty; or
 - (4) In an examination authorized by the department or agency regarding a mishap or safety investigation.
- (b) When a department or agency establishes a testing program, it shall inform, in writing, each employee in a sensitive position before the initial test, of:
 - (1) The reasons for the test;
 - (2) The consequences of a positive result or refusal to cooperate, including adverse action;
 - (3) The opportunity to submit supplemental medical documentation that may support a legitimate use for a specific drug; and
 - (4) The availability of drug abuse counseling and referral services, including the name and phone number of the local employee assistance program counselor.
- (c) An employee whose test results indicate narcotics usage shall be offered counseling or treatment, or both, in accordance with the Federal Personnel Manual Supplement, if qualified. Confirmed test results may be used in an adverse action proceeding or for other appropriate purposes, except as otherwise limited by rules issued by the department or agency concerned.

- (d) Preliminary test results may not be used in administrative or disciplinary proceedings. Positive test results are preliminary results until confirmed as positive (by both initial and confirmatory testing) or by an admission of the employee.
- (e) Test samples shall be processed under chain of custody procedures which ensure linkage of specimens with the identity of those being tested.
- (f) Test samples shall be tested at a certified laboratory.
- (g) Programs should contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting, and procedures to protect the confidentiality of test results.

Section 7: The Attorney General is requested to render to the heads of departments and agencies such advice as may be required to enable them to establish and maintain an appropriate narcotics testing program.

Section 8: [Effective date]

WHEREAS the use and consumption of narcotics by persons privileged to be employed in certain positions in the departments and agencies of the Government poses a serious risk to the national security, the public safety and the effective enforcement of the law; and

WHEREAS several departments and agencies have implemented testing programs in order to identify persons in such positions who use or consume narcotics and to take appropriate action regarding their employment to protect the national security and the public safety and to preserve the effective enforcement of the law; and

WHEREAS it is important that such programs remain in existence and that like programs be adopted by other departments and agencies where necessary; and

WHEREAS it is equally important that all persons covered by such programs receive fair, impartial and equitable treatment at the hands of the Government, that mutually consistent and no less than minimum standards and procedures be in place to protect the privacy and dignity interests of employees, and that individuals who use or consume narcotics be notified of the availability of appropriate counseling, referral, rehabilitation or other medical treatment:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including Section 3301(2) of Title 5 of the United States Code; Section 7301 of Title 5 of the United States Code; [Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et. seq.); Section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j); and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1, et. seq.)] and as President of the United States, and deeming such action in the best interests of national security, public safety, and law enforcement, it is hereby ordered as follows:

- Section 1:
- (a) This order applies to all agencies of the Executive Branch.
 - (b) For the purposes of this order, the term "agency" means an Executive department, as defined in 5 U.S.C. 101 or any employing unit of authority of the Federal government, other than those of the judicial and legislative branches.
 - (c) For the purpose of this order, the term "narcotic" means any narcotic drug as defined in Section 802 (16) of Title 21.

Section 2: The head of each department and agency of the Government shall establish and maintain within his department or agency an effective narcotic testing program to identify persons employed or seeking employment in the positions described in Section 3(a) of this order who use or consume narcotics.

- Section 3: (a) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security, public safety or law enforcement as a "sensitive position." Employment or retention in employment in a sensitive position shall be made subject to the results of a test to determine the use or consumption of narcotics.
- (b) Should there develop information through testing or otherwise indicating that a person applying for or occupying a sensitive position has used or consumed narcotics, the head of the department or agency concerned or his representative shall determine whether employment or retention in employment of such person is clearly consistent with the interests of national security, public safety or law enforcement.
- (c) Where possible, persons who are found to have used or consumed narcotics shall be transferred to non-sensitive positions and offered counseling or treatment, or both, in accordance with the Federal Personnel Manual Supplement [and consistent with the requirements of the Drug Abuse Act and the Drug Rehabilitation Act].

Section 4: [Eligibility for Reemployment]

Section 5: The following factors may be considered in determining whether to designate a position as "sensitive"

- (a) The position involves the national security or the internal security of the department or agency such that drug abuse by the occupant of the position could cause disruption of operations, destruction of property, threats to the safety of personnel, or the potential for unwarranted disclosure of classified information.
- (b) The position involves law enforcement.
- (c) The position involves protection of property or persons from harm.
- (d) The position involves exposure to dangerous substances, equipment or situations.

Section 6: The following guidelines are to be observed in designing programs to test employees in "sensitive positions"

- (a) Employees in or applicants for positions that have been designated as "sensitive" should not be required to participate in testing except in the following circumstances:
 - (1) Before appointment or selection;
 - (2) Periodically after appointment or selection on the basis of neutral criteria;
 - (3) When there is probable cause to believe that an employee is under the influence of a controlled substance while on duty; or
 - (4) In an examination authorized by the department or agency regarding a mishap or safety investigation.
- (b) When a department or agency establishes a testing program, it shall inform, in writing, each employee in a sensitive position before the initial test, of:
 - (1) The reasons for the test;
 - (2) The consequences of a positive result or refusal to cooperate, including adverse action;
 - (3) The opportunity to submit supplemental medical documentation that may support a legitimate use for a specific drug; and
 - (4) The availability of drug abuse counseling and referral services, including the name and phone number of the local employee assistance program counselor.
- (c) An employee whose test results indicate narcotics usage shall be offered counseling or treatment, or both, in accordance with the Federal Personnel Manual Supplement, if qualified. Confirmed test results may be used in an adverse action proceeding or for other appropriate purposes, except as otherwise limited by rules issued by the department or agency concerned.

- (d) Preliminary test results may not be used in administrative or disciplinary proceedings. Positive test results are preliminary results until confirmed as positive (by both initial and confirmatory testing) or by an admission of the employee.
- (e) Test samples shall be processed under chain of custody procedures which ensure linkage of specimens with the identity of those being tested.
- (f) Test samples shall be tested at a certified laboratory.
- (g) Programs should contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting, and procedures to protect the confidentiality of test results.

Section 7: The Attorney General is requested to render to the heads of departments and agencies such advice as may be required to enable them to establish and maintain an appropriate narcotics testing program.

Section 8: [Effective date]

This document was created in the DPC deliberative process and may not be circulated, disseminated or released without the approval of the DPC.

All Positions Version: 9-2-86 11:45 a.m.

Executive Order No. _____ of September __, 1986

Drug Free Federal Workplace

WHEREAS drug use is having alarming and tragic effects upon a significant proportion of the national workforce and results in billions of dollars of lost productivity each year;

WHEREAS 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;

WHEREAS 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, getting the message to drug users and potential drug users that drug use will not be tolerated in the federal workplace;

WHEREAS 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 given to such employees as servants of the public;

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

WHEREAS the use of illegal drugs, on or off duty, by federal employees 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;

WHEREAS the use of illegal drugs, on or off duty, by federal employees can pose a serious health or safety threat to members of the public and to other federal employees;

WHEREAS the use of illegal drugs, on or off duty, by federal employees creates suspicion and distrust within an agency or department that disrupts its smooth and efficient functioning;

WHEREAS the use of illegal drugs, on or off duty, by federal 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, the public safety, and the effective enforcement of the law;

WHEREAS federal employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves, and will only take such steps if made accountable for their unsuitable and illegal use of drugs; and

WHEREAS standards and procedures should be put in place to ensure fairness in achieving a drug-free federal workplace, to allow an appropriate response to be made to the use of illegal drugs by a federal employee, and to protect the privacy of federal employees:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, 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 United States Code; and as President of the United States, and deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the federal service, it is hereby ordered as follows:

Section 1: *Drug Free Workplace*

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

Section 2: *Agency Responsibilities*

- (a) The head of each agency shall develop a plan for achieving the objectives herein which addresses the problem of drug abuse in the workplace (forthrightly decisively) in a fair and equitable manner with due consideration of the rights of the Government, the employee and the general public.
- (b) The plan shall include:

- (i) a strong statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;
- (ii) employee assistance programs emphasizing high level direction, education, counseling, referral to rehabilitation and coordination with available community resources;
- (iii) supervisory training to assist in identifying and addressing drug abuse in the workplace;
- (iv) provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;
- (v) provision for identifying users in the workplace, including testing on a controlled and carefully monitored basis in accordance with this order.

Section 3: Drug Testing Programs

(a) The head of each agency shall establish and conduct a program to test for illegal drug use under the following circumstances:

- (i) When there is a reasonable suspicion that any employee uses illegal drugs;
- (ii) In an examination authorized by the agency regarding an accident or unsafe practice; or
- (iii) After an employee seeks counseling or rehabilitation for illegal drug use through an Employee Assistance Program.

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

(c) The head of each agency may establish a drug testing program to identify any applicant who uses illegal drugs.

(d) The head of each agency is authorized to test any current employee in a sensitive position for the use of illegal drugs. The extent and criteria for such testing shall be determined by the agency head, based on an employee is authorized to test

Agency duty?

under influence of work place

An employee

is authorized to test

reasonable suspicion

Should this apply to emp who volunteer testing in part? contract provisions

Confusion

[Handwritten scribbles]

*Don't
forget
to
add
this*

upon [the degree of sensitivity of the agency's mission and its employees' duties] and the available resources for a testing program,

and a determination by the agency head that the failure or inability of an employee to discharge his or her function would reasonably be deemed likely to endanger public safety, health or national security

Section 4: Drug Testing Procedures

- (a) Agencies shall notify employees 60 days prior to the implementation of a drug testing program pursuant to this order that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation and the procedures for obtaining such assistance. Drug testing programs already ongoing in agencies are exempted from the 60 day notice requirement. Agencies may take action under Section 3(a) 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.
- (d) Drug testing programs shall be 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.

reasonably be deemed likely to endanger public safety, health or national security

Section 5. Personnel Actions

- (a) Agencies shall refer all employees who are found to use illegal drugs to their Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate.
- (b) Agencies shall initiate action to discipline [or remove from the service] any employee who is found to use illegal drugs, provided that such action is not required for an employee who:
 - (i) voluntarily identifies himself as a user of illegal drugs or who volunteers for drug testing pursuant to section 3(b) of this

Permits removal of nonproductive employees

add ... ok if ... not done ... not part of ...

Order prior to being identified through other means;

- (ii) obtains counseling or rehabilitation through an Employee Assistance Program; and
- (iii) thereafter refrains from using illegal drugs.

(c) Agencies must not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to obtaining counseling or rehabilitation through an Employee Assistance Program. Agencies shall initiate action to remove from the service or transfer to a non-sensitive position any employee in a sensitive position who is found to use illegal drugs and:

change if obtains counseling, not transferable

- (i) refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or
 - (ii) does not thereafter refrain from using illegal drugs.
- (d) 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 the 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.
- (e) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, conviction of a criminal offense, 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.

(f) Any action to ^{to} remove ^{including removal from service} or discipline an employee who is using illegal drugs, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.

(g) 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, United States Code, received as a result of the operation of drug testing programs established pursuant to this order.

28 U.S.C. § 535 applies to 18 U.S.C. ?

Section 6: Coordination of Agency Programs

- (a) The Director of the Office of Personnel Management shall:
- (i) Issue government-wide guidance to agencies on the implementation of the terms of this order.
 - (ii) Ensure that appropriate coverage for drug abuse is maintained for employees and their families under the Federal Employees Health Benefits Program.
 - (iii) Develop a model Employee Assistance Program for Federal agencies and assist them in putting strong programs in place.
 - (iv) In consultation with the Secretary of Health and Human Services develop and improve training programs for Federal supervisors and managers on illegal drug use.
 - (v) In cooperation with the Secretary of Health and Human Services and agency heads, 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 must approve all guidelines, regulations and policies adopted pursuant to this order.

In consultation with AG. (only) will do work with AG

Section 7: Definitions

- (a) This order applies to all agencies of the Executive Branch.
- (b) For the 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); the United States Postal Service; or any employing unit or authority of the Federal government, other than those of the judicial and legislative branches.
- (c) For the purpose 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, 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.

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

- 1.2 m*
including military
- (i) 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 10450 of April 27, 1953 as amended;
 - (ii) 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 12356 of April 2, 1982;
 - (iii) individuals serving under Presidential appointments;
 - (iv) members of the Senior Executive Service as defined in Subchapter II of Chapter 31 of Title 5, United States Code;
 - (v) law enforcement officers as defined in 5 U.S.C. § 8331(20);
 - (vi) 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 10577;
 - (vii) members of the uniformed services as defined in 5 U.S.C. § 2101(3);
 - (viii) air traffic controllers as defined in 5 U.S.C. § 2109; and
 - (ix) other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

(e) For the purpose of this order the term "employee" means all persons described in 5 U.S.C. § 2105. Additionally, employees of the United States Postal

Service and the Postal Rate Commission are employees
- - for the purpose of this order.

- (f) For the 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.

Section 8: *Effective Date*

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

RONALD REAGAN

THE WHITE HOUSE

September __, 1986

This document was created in the DPC deliberative process and may not be circulated, disseminated or released without the approval of the DPC.

All Positions Version: 9-2-86 11:45 a.m.

Executive Order No. _____ of September __, 1986

Drug Free Federal Workplace

WHEREAS drug use is having [alarming and tragic] effects upon a significant proportion of the national workforce and results in billions of dollars of lost productivity each year;

WHEREAS 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;

WHEREAS 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, getting the message to drug users and potential drug users that drug use will not be tolerated in the federal workplace;

WHEREAS 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 given to such employees as servants of the public;

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

WHEREAS the use of illegal drugs, on or off duty, by federal employees 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;

WHEREAS the use of illegal drugs, on or off duty, by federal employees can pose a serious health or safety threat to members of the public and to other federal employees;

WHEREAS the use of illegal drugs, on or off duty, by federal employees creates suspicion and distrust within an agency or department that disrupts its smooth and efficient functioning;

WHEREAS the use of illegal drugs, on or off duty, by federal 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, the public safety, and the effective enforcement of the law;

WHEREAS federal employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves, and will only take such steps if made accountable for their unsuitable and illegal use of drugs; and

WHEREAS standards and procedures should be put in place to ensure fairness in achieving a drug-free federal workplace, to allow an appropriate response to be made to the use of illegal drugs by a federal employee, and to protect the privacy of federal employees:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, 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 United States Code; and as President of the United States, and deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the federal service, it is hereby ordered as follows:

Section 1: Drug Free Workplace

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

Section 2: Agency Responsibilities

- (a) The head of each agency shall develop a plan for achieving the objectives herein which addresses the problem of drug abuse in the workplace forthrightly and decisively in a fair and equitable manner with due consideration of the rights of the Government, the employee and the general public.
- (b) The plan shall include:

- f
- (i) a ~~strong~~ statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;
 - (ii) employee assistance programs emphasizing high level direction, education, counseling, referral to rehabilitation and coordination with available community resources;
 - (iii) supervisory training to assist in identifying and addressing drug abuse in the workplace;
 - (iv) provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;
 - (v) provision for identifying users in the workplace, including testing on a controlled and carefully monitored basis in accordance with this order.

Section 3: Drug Testing Programs

an employee

(a) The head of each agency shall establish and conduct a program to test for illegal drug use under the following circumstances:

- (i) When there is a reasonable suspicion that any employee uses illegal drugs;
- (ii) In an examination authorized by the agency regarding an accident or unsafe practice; or
- (iii) After an employee seeks counseling or rehabilitation for illegal drug use through an Employee Assistance Program.

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

(c) The head of each agency may establish a drug testing program to identify any applicant who uses illegal drugs.

(d) The head of each agency is authorized to test any current employee in a sensitive position for the use of illegal drugs. The extent and criteria for such testing shall be determined by the agency head, based

not required

notes
agency duty?
incentive?
5 D.S.C. 2302(b)(10)

Regulations: setting forth class to be tested and reasons

Danger to co-workers or selves

upon [the degree of sensitivity of the agency's mission and its employees' duties] and the available resources for a testing program,

and a determination by the agency head that the failure or inability of an employee to discharge his or her function would ~~not~~ ^{reasonably be deemed likely to endanger public safety, health or national security}

Section 4: Drug Testing Procedures

- (a) Agencies shall notify employees 60 days prior to the implementation of a drug testing program pursuant to this order that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation and the procedures for obtaining such assistance. Drug testing programs already ongoing in agencies are exempted from the 60 day notice requirement. Agencies may take action under Section 3(a) 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.
- (d) Drug testing programs shall be 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.

Section 5. Personnel Actions

- (a) Agencies shall refer all employees who are found to use illegal drugs to their Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate.
- (b) Agencies shall initiate action to discipline or remove from the service any employee who is found to use ~~illegal~~ illegal drugs, provided that such action is not required for an employee who:
 - (i) voluntarily identifies himself as a user of illegal drugs or who volunteers for drug testing pursuant to section 3(b) of this

what does this mean?

Permits removal of non-sensitive employees

Order prior to being identified through other means;

- (ii) obtains counseling or rehabilitation through an Employee Assistance Program; and
- (iii) thereafter refrains from using illegal drugs.

(c) Agencies ~~must~~ ^{shall} not ^{successful} allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to obtaining counseling or rehabilitation through an Employee Assistance Program. Agencies shall initiate action to remove from the service or transfer to a non-sensitive position any employee in a sensitive position who is found to use illegal drugs and:

if obtains counseling not transferable

- (i) refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or
- (ii) does not thereafter refrain from using illegal drugs.

(d) 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 the 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.

(e) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, conviction of a criminal offense, 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.

(f) Any action to remove or discipline an employee who is using illegal drugs shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.

(g) 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, United States Code, received as a result of the operation of drug testing programs established pursuant to this order.

Section 6: Coordination of Agency Programs

- (a) The Director of the Office of Personnel Management shall:
- (i) Issue government-wide guidance to agencies on the implementation of the terms of this order.
 - (ii) Ensure that appropriate coverage for drug abuse is maintained for employees and their families under the Federal Employees Health Benefits Program.
 - (iii) Develop a model Employee Assistance Program for Federal agencies and assist them in putting strong programs in place.
 - (iv) In consultation with the Secretary of Health and Human Services develop and improve training programs for Federal supervisors and managers on illegal drug use.
 - (v) In cooperation with the Secretary of Health and Human Services and agency heads, 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 must approve all guidelines, regulations and policies adopted pursuant to this order.

Section 7: Definitions

- (a) This order applies to all agencies of the Executive Branch.
- (b) For the 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); the United States Postal Service; or any employing unit or authority of the Federal government, other than those of the judicial and legislative branches.
- (c) For the purpose 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, 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.

- (d) For the purpose of this order, the term "employee in a sensitive position" refers to:
- (i) 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 10450 of April 27, 1953 as amended;
 - (ii) 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 12356 of April 2, 1982;
 - (iii) individuals serving under Presidential appointments;
 - (iv) members of the Senior Executive Service as defined in Subchapter II of Chapter 31 of Title 5, United States Code;
 - (v) law enforcement officers as defined in 5 U.S.C. § 8331(20);
 - (vi) 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 10577;
 - (vii) members of the uniformed services as defined in 5 U.S.C. § 2101(3);
 - (viii) air traffic controllers as defined in 5 U.S.C. § 2109; and
 - (ix) other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.
- (e) For the purpose of this order the term "employee" means all persons described in 5 U.S.C. § 2105. Additionally, employees of the United States Postal

Service and the Postal Rate Commission are employees for the purpose of this order.

- (f) For the 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.

Section 8: *Effective Date*

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

RONALD REAGAN

THE WHITE HOUSE

September __, 1986