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DRAFT

September 2, 1986

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM: THE DRUG ABUSE POLICY WORKING GROUP
Carlton Turner, Chairman

SUBJECT: Drug Abuse Policy Initiatives

Issue - What actions should the Administration take to implement the President's drug abuse policy initiatives?

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

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

The Working Group on Drug Abuse Policy was tasked to propose legislation and other actions ~~items~~ to implement the President's new drug initiatives. Proposed actions in support of each goal, including legislative options, were developed. The Working Group and its five task forces analyzed Congressional and Administration legislative proposals, and developed options for addressing these proposals within the context of the President's overall drug abuse program. Given the accelerated legislative pace within the Congress, the most immediate policy questions are associated with pending legislation and the appropriate strategy to achieve the President's policy goals. Equally important decisions must be made regarding Administration policy for achieving a drug-free Federal workforce to set a strong example for America's total workforce.

Discussion - The House Democratic leadership is sponsoring a fast-tracked Omnibus Drug Package (summary attached) that includes twelve titles representing smaller packages from each of the committees that had previously considered some aspect of the drug abuse problem. This initiative reflects some Administration priorities, but it is a broad and disorganized group of proposals in need of substantial work. It carries an estimated authorization price tag of approximately \$2 billion. Senate Democrats are also sponsoring a \$1 billion bill which focuses on drug rehabilitation and education. House Republicans have not developed an alternative bill. Their influence on the House bill is limited by a September 5 cut-off on proposed amendments, a closed rule and a hard push by the House leadership. Senator

Dole is working on a bill, but Senate Republicans appear to be waiting for details of the Administration's legislative proposals before proceeding with a bill of their own.

The Working Group has developed a legislative proposal keyed to the President's six new goals (summary attached). The titles dealing with Drug-Free Schools and Strengthening Law Enforcement have cleared the OMB screening process and could be transmitted to Congress immediately. The other titles could be screened on an expedited basis once key policy questions are resolved, particularly those relating to drug-free workplaces and costs. This comprehensive proposal could be promptly communicated to the Senate Republican leadership to ensure that the President's priorities are properly represented in the upcoming legislative debate.

The Working Group has also developed a proposed Executive Order which authorizes Federal agencies to support the President's goal of Drug-Free Workplaces. This Executive Order would complement enabling legislation in the proposed legislative package, and would provide more detailed guidance to agency heads. The proposed Executive Order could be issued without supporting legislation; however, the Administration would then expose itself to legislative restrictions if it proceeded without the support of Congress. The Executive Order seeks to reduce the use of illegal drugs by Federal employees by:

- o Authorizing voluntary drug screening for employees not in sensitive positions;
- o Authorizing treatment for those individuals seeking help;
- o Encouraging supervisory training to detect employee drug use;
- o Authorizing drug screening for all new employees; and,
- o Authorizing agency heads to screen all employees in sensitive positions, and to take appropriate administrative action if counselling or other available treatment fails to stop employee drug use.

Proposed actions in addition to potential legislation have also been developed to support each of the President's goals. These proposed actions are summarized as follows:

PROPOSED NON-LEGISLATIVE ACTIONS

Goal #1 - Drug-Free Workplace

- o Issue an Executive Order authorizing agency heads to implement appropriate drug screening programs to stop drug use by Federal employees, and to set a strong example for similar workplace drug prevention programs across the Nation.

- o Encourage states, local governments, and the private sector to pursue drug-free workplaces.
- o Work with government contractors, and management and labor leaders to fight drug abuse in the workplace.

Goal #2 - Drug-Free Schools

- o Issue Schools Without Drugs to communicate accurate and credible information on how to achieve drug-free schools.
- o Ensure that Federal laws against distributing drugs in or near schools are known and enforced in cooperation with local authorities.
- o Use grants under the proposed Zero Tolerance Act to expand drug abuse prevention as a part of the overall health curriculum.
- o Encourage student leaders to develop anti-drug activities through programs such as the TARGET project, and utilize funds authorized by proposed legislation to encourage community support and positive peer pressure for drug-free, achievement oriented school environments.

Goal #3 - Expand Drug Treatment

- o Encourage states and communities to develop programs to treat specific drug-related health problems by establishing Community Systems Development Projects to provide short-term financial assistance to mobilize local efforts to reduce illegal drug use.
- o Improve research in health-related areas, including drug testing and enhanced epidemiology and surveillance systems.
- o Strengthen medical and health prevention programs by establishing a National Center for Prevention, Education and Early Intervention Services.

Goal #4 - Expand International Cooperation

- o Convene a Conference for U.S. Ambassadors in October to convey a sense of urgency and to create an opportunity for U.S. Ambassadors to discuss increased regional cooperation.

Goal #5 - Strengthen Law Enforcement

- o Execute Operation Alliance, which was announced on August 14, 1986 to increase cooperative drug law enforcement along the United States-Mexican border.

- o Actively pursue Congressional approval for \$226 million over the next two years to hire additional agents and prosecutors and to buy new air surveillance equipment.

Goal #6 - Increase Public Awareness and Prevention

- o Expand the First Lady's drug abuse awareness and prevention campaign through a nationally televised address to the Nation, letters soliciting Fortune 500 support, public service messages, a "Presidential Honor Role", and national drug prevention essay and poster contests.
- o Tap all media forms to stop illegal drugs, and to make their use socially unacceptable.
- o Disseminate accurate and credible information about the health dangers of drug abuse.
- o Encourage corporate initiatives at home and abroad in support of drug abuse prevention.
- o Sponsor private sector White House Conferences to share information, ideas and model drug abuse programs. Target groups such as religious leaders, youth and civic group leaders, and local business leaders and elected officials.

Data developed by HHS indicates that the President's goals of drug-free workplaces, drug-free schools, and expanded awareness and prevention are right on target. An estimated 67 percent of all cocaine users have only minimal demand and will respond well to social unacceptance, awareness and prevention efforts, and strict no-drug use policies in schools and workplaces, including drug testing where appropriate. A Gallup poll (pending release) indicates that drug abuse has replaced discipline as the most serious problem facing public schools. Some 90 percent of the respondents support mandatory anti-drug instruction in schools, 78 percent support expelling students caught with drugs on school property, and 67 percent would allow school officials to search lockers and personal effects for drugs. Media coverage concerning the drug testing issue is raising questions over whether the Administration is serious about a drug-free Federal workplace. We need to achieve balance between intolerance of illegal drug use and fair treatment of individual employees. The mood of the country indicates that the public will demand strong leadership from the Federal government, and will accept a firm, yet fair, prevention program within the workplace.

Options - In order to implement legislative initiatives within the President's overall drug abuse policy, several options are available for Administration consideration:

OPTION #1 Propose a comprehensive legislative package supporting each of the President's six drug abuse policy goals.

Pros

- o Offers a coordinated package of positive actions which will unleash a nationwide government and private sector effort to work for a drug-free society without throwing excessive funding at ineffective bureaucratic programs. Does not preclude immediate issuance of an Executive Order supporting a drug-free Federal workplace.
- o Would provide a comprehensive basis for Senate Republicans to support and advance the President's total drug abuse program during the upcoming legislative debate.

Cons

- o Requires rapid development and clearance of the Administration's legislative package.
- o Requires politically sensitive policy decisions regarding drug screening within the Federal workplace, and associated assistance and penalties.

OPTION #2 Propose legislation dealing with all areas except drug abuse within the Federal workplace, and address this "internal" issue through an Executive Order.

Pros

- o Provides Senate Republicans with an Administration bill to guide their efforts to counter the Democratic initiatives.
- o Allows more deliberate consideration of the sensitive issues associated with drug screening within the Federal workforce, and does not preclude separate follow-on legislation in support of the Executive Order policies.

Cons

- o Could be perceived as "backing down" on the issue of drug screening within the workplace.
- o Requires a more fragmented approach to legislation in support of the President's overall strategy, and could encourage restrictive legislation preempting implementation of the Administration's drug abuse policy for the Federal workforce.

OPTION #3 Propose legislation for Drug-Free Schools and Strengthening Law Enforcement at this time with other proposals to follow.

Pros

- o Allows rapid transmittal of two key pieces of legislation

which have been fully developed and which have already completed the clearance process.

- o Provides immediate Republican alternative legislation which addresses both demand and supply, and allows the President to continue to unfold his comprehensive plan in a deliberate, fully coordinated manner.

Cons

- o Does not provide a comprehensive proposal to represent overall Administration policy in the face of the omnibus drug package being fast-tracked by the House Democrats.
- o May lead to a missed opportunity to enact the President's total package during the upcoming intense focus on drug abuse legislation.

OPTION #4 Proceed to develop the Administration's comprehensive drug abuse policy initiatives at a deliberate pace, and counter House Democrat initiatives with other legislative strategy.

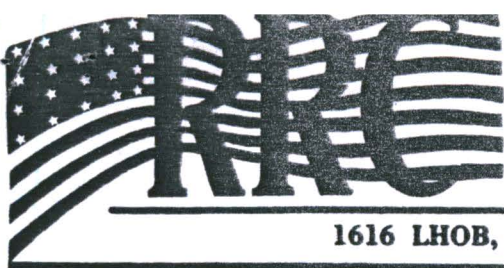
Pros

- o Will facilitate thorough coordination of all aspects of the President's initiative before proposing necessary legislation as a comprehensive package.
- o Will allow the President to retain his leadership role on this issue, while avoiding accusations that he is merely reacting to House Democrats during an election year.

Cons

- o May sacrifice the Administration's best opportunity to enact legislation critical to successful realization of the President's goals over the next two years.
- o May leave House and Senate Republicans without a viable alternative to the "big spending" Democratic legislation.

Recommendation - The Working Group recommends that the Domestic Policy Council endorse the specific non-legislative actions proposed in support of the President's six drug abuse policy goals, including prompt issuance of an Executive Order supporting a drug-free Federal workplace. The Working Group further recommends that the Council support the legislative action outlined in Option #1, including immediate communication of the Administration's legislative proposals to the Senate Republican leadership.



House Republican Research Committee

JERRY LEWIS
Chairman
ROBERT H. MICHEL
Minority Leader
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OMNIBUS DRUG PACKAGE

STATED AUTHORIZATION COSTS
8/28/86

BILL SECTION/COMMITTEE

TOTAL COSTS
(in millions)

TITLE I: Foreign Affairs.

(H.R. 5352) The International Narcotics Control Act attempts to eradicate the foreign supply of narcotics; in part, through regional cooperation, additional aircraft and incentive programs for other nations.

\$ 65.445 (\$57.5 was previous authorization)
35 (conditioned on Presidential request)
3 (USIA)
2 (AID)

TITLE II: Armed Forces.

The "Defense Narcotics Act of 1986" authorizes funds for the Army, Navy, and Air Force; and for continued Navy deployment of Coast Guard law enforcement teams.

* Posse Comitatus

\$213 (equipment)
15 (Coast Guard)

TITLE III: Ways and Means.

International Drug Traffic Enforcement Act strengthens Customs' drug enforcement capability, including increased criminal and civil penalties and investigatory powers. Certain trade benefits are denied to countries failing to cooperate in drug enforcement.

* Customs personnel reduction

\$ 20 (Customs' Fund)
1,145.131 (\$219 million new authorization)

TITLE IV: Merchant Marine.

At-sea drug interdiction and maritime air surveillance program for the Coast Guard (H.R. 5406).

\$128 (each fy 1987, 1988)

TITLE V: Banking.

A. Drug Eradication Act of 1986 attempts to improve interdiction efforts, as well as to reduce foreign cultivation. It uses the U.S. vote in multilateral development banks to promote drug eradication programs in foreign countries.

B. H.R. 5176 "Comprehensive Money Laundering Prevention Act" (Similar to Republican bill).

\$ 0

0

TITLE VI: Judiciary.

A. H.J. Res 631 "White House Conference on Narcotics Abuse and Control Resolution of 1986."

B. H.R. 5246 "Designer Drug Enforcement Act of 1986."

C. H.R. 5076 "Drug and Alcohol Dependent Offenders Treatment Act of 1986."

\$ 4 (approximation based on previous conference)

0

12 (\$14mn for fy 1988, \$16mn for fy 1989)

* AMENDMENT TO BE MADE IN ORDER.

BILL SECTION/COMMITTEE

**TOTAL COSTS
(in millions)**

D. H.R. 4885 "Career Criminal Amendments Act of 1986."	0	
E. "Narcotics Penalty and Enforcement Act of 1986."	0	
F. "Drug Enforcement Enhancement Act of 1986," including block grant to states--drug enforcement on 50/50 match.	60	(DEA expansion)
	100	(block grant; \$200mn for fy 1988)
	31	(U.S. Attorneys)
* Death Penalty	167	(prison construction; \$450mn for fy 1988, \$527 for fy 1989)
* Exclusionary rule modification, substitute asset availability, elimination of cap on state prison contracts with federal government.		
TITLE VII: Public Works.		
This package allows states to establish criminal penalties for the use of fraudulent aircraft registrations, establishes criminal penalties for the transportation of drugs and calls for study of the relationship between drug use and highway safety.	\$ 0	
TITLE VIII: Education.		
"Drug Abuse education and Prevention Act of 1986," has four components; federal, state, local and higher education at all levels--the emphasis is federally funded drug education programs.	\$350	(each fy 1987-89)
	3	(Secretary of Labor study)
* Reduce dollar figure and increase percentage of state matching grant.		
TITLE IX: Energy and Commerce.		
H.R. 5334 "Drug Abuse Prevention and Treatment Act of 1986," provides federal assistance to states and communities for drug treatment and prevention programs; establishes an Agency for Substance Abuse Prevention; includes designer drugs in the Controlled Substances Act; attempts to increase cooperation among departments to combat Indian Drug Abuse; and establishes an Advisory Commission on Intercollegiate Athletes.	\$180	(agency funding and state assistance)
	0.65	(ceiling for Advisory Commission)
	.4	(demo project for Indian Rehabilitation for each fy 1987 and 1989)
TITLE X: Post Office.		
Title V Amendments require OPM to establish employee assistance programs and education programs to combat drug abuse and to classify controlled substances as non-mailable matter.	\$ 7	(OPM will report to Congress on the costs within 6 months)
* Drug testing		
TITLE XI: Government Operations.		
H.R. 5266 requires the President to submit recommended legislation to reorganize the executive branch to coordinate efforts to combat drug abuse.	\$ 0	
TITLE XII: Interior.		
"Indian Alcohol and Substance Abuse Prevention Act," modifies laws and provides authority to help Indians improve law enforcement and to organize a drug treatment and prevention program. It includes equipment funding for certain territories (Puerto Rico and the Virgin Islands).	\$ 41.5	(reg. centers)
	7.8	(equipment: territories)
	10	(emergency shelters, each fy 1988 and 1989)
	1	(police)
	4	(training, etc.)
	5	(Indian education)

* AMENDMENT TO BE MADE IN ORDER.

B. THE ADMINISTRATION BILL

I. DRUG FREE WORKPLACE

There can be little doubt that drug use, whether on or off the job, seriously impairs employee health and productivity.

Moreover, due to current law enforcement priorities, drug use has been effectively decriminalized in most jurisdictions, thereby allowing drug users to escape responsibility for the harm which their conduct causes society. It is a fundamental principle of life in a free society that individuals should be held accountable for their actions, hence, we believe that an essential first step in reducing the demand for illegal drugs is to ensure that drug users suffer some penalty for their actions. Mandatory drug testing for employees in sensitive positions, with some employment related sanction, will reduce the demand for illegal drugs and is a necessary first step if we are to realize our goal of a drug-free workplace.

The first title of the administration bill would mandate a drug free federal workplace and authorize a limited program of drug testing for employees with sensitive responsibilities relating to national security, public safety and the protection of life and property. Drug testing would also be authorized for all applicants for employment and for any employee where there is reasonable suspicion to believe that he uses illegal drugs or in the course of an accident investigation relating to national security, public safety and the protection of life and property. The bill also amends existing statutes, including the Drug Abuse Office and Treatment Act and the Rehabilitation Act of 1974, to make clear that neither of these statutes would preclude the federal government from taking disciplinary action against

employees found to be using drugs. Finally, federal employees convicted of trafficking in drugs would be automatically dismissed and barred from all future federal employment.

While the federal government can set the standard for a drug-free workplace, much remains to be done among private sector employers. Many corporations have instituted drug-testing programs with great success, but others have been deterred by the potential for legal liability arising under certain vaguely worded federal statutes and expansive judicial interpretations. In an effort to remove this impediment, this title of the bill would also provide that no federal statute should be interpreted to bar the use of drug testing by private employers. In light of the administration's commitment to the principle of federalism, the bill does not preempt state and local laws which might also prevent drug testing programs. Hopefully, the President's leadership will encourage states and localities to reconsider any prohibitions which they may have enacted.

II. DRUG FREE SCHOOLS

Title II of the administration bill addresses the problems of drugs in our educational institutions. In order to help schools fight the problem of illegal drug use, this title would establish a special \$100 million grant program to help fund school drug prevention programs and research aimed at reducing

drug use in schools. In addition, continuation of the funding levels for local educational agencies would be contingent on their submission of a plan for achieving and maintaining drug-free schools and then demonstrating that its schools had made progress in reducing drug use.

With respect to drug testing programs, educational institutions could face the same legal constraints as does private enterprise. Hence, this title too would provide that no federal statute be interpreted to bar drug testing by educational institutions.

III. IMPROVED RESEARCH INTO PREVENTION AND TREATMENT

Many individuals who abuse drugs do so not out of physical or psychological compulsion, but consciously, as a matter of free choice. These people should learn to "just say no" and be held accountable for their decisions. Sadly however, many others have become addicted to drug use and can only break free with the aid of psychological counseling or medical treatment. Here, it is appropriate for government, schools and private employers to lend a helping hand.

The third title of the administration bill focuses on research and assistance programs to enhance drug treatment and prevention programs. Specifically this bill will authorize an additional \$___ million for drug research and treatment programs.

IV. INTERNATIONAL COOPERATION

The administration remains committed to an aggressive strategy to stop the supply of drugs through effective law enforcement techniques in the United States and improved international cooperation to halt the flow of drugs before they reach our borders. As a general matter, we are doing as much as we can, in consultation with our allies, to halt the flow of narcotics across our borders. However, we have identified several additional changes, incorporated in title IV, to aid in this effort.

First, is repeal of the "Mansfield Amendment" which prohibits federal officers from participating in illegal drug arrests in foreign countries or from being present during interrogation of an American arrested in a foreign country. Another proposal would allow federal authorities to seize and civilly forfeit property located in the United States that was either derived from the commission of a violation of a foreign drug law or intended to be used in the commission of such a violation. Finally, this title would amend the Immigration and Nationality Act to allow deportation of aliens involved in all types of drug trafficking.

V. STRENGTHENING LAW ENFORCEMENT

While much has been accomplished in our law enforcement efforts, we have also identified a number of statutory enhancements of our existing powers which would aid in the war on illegal drugs. The six subparts of this title of the bill would strengthen and clarify the penalties for drug dealing in a number of significant respects, including the imposition of the death penalty for the principal organizer of a major drug ring.

Three changes are particularly noteworthy. One would amend rule 35 of the Federal Rules of Criminal Procedure to authorize a court to reduce a sentence upon the application of the government if the defendant has provided substantial assistance to the government in the investigation and prosecution of another crime. Currently, some courts have concluded that where there is a statutory mandate for a minimum sentence, they cannot reduce this minimum even where the government so moves the court. Another change would establish controls over the production of drug precursors and chemicals essential to the manufacture of controlled substances. And controlled substance analogs (so called "mutant" drugs) would be placed on the schedule of controlled substances absent the filing of an Investigational New Drug request by the manufacturer.

Although not included in this package, increased funding for law enforcement agencies is clearly the key to a successful anti-

drug effort. The President's budget requests additional money to fund various drug enforcement activities and these requests are generally being favorably received by the Congress.

VI. PUBLIC EDUCATION AND PRIVATE SECTOR INVOLVEMENT

Perhaps our most powerful weapon in the war on drugs is a determined campaign of public education to warn Americans, and particularly our youth, of the dangers illegal drug use. In this struggle to change public attitudes toward drug use, it is essential that we enlist the assistance of private enterprise, educational institutions and non-profit groups in a coordinated fashion. ACTION and the Department of Health and Human Services have taken the lead in establishing the kinds of private sector-public sector partnerships which can make a serious impact on public perceptions about drugs.

Unfortunately, these efforts have been hampered by certain statutory constraints on the utilization of volunteer services. Notably, the Competition in Contracting Act and other laws governing procurement have frustrated efforts by private individuals, particularly producers and directors, who offer to prepare TV and radio public service announcement on the dangers of drug use if the government will pick up their out of pocket expenses. Because some money must be spent, the laws require that the proposal be advertised to solicit competition, and the

attendant red tape and delay generally leads to a withdrawal of the offer.

To resolve this problem, title VI of the administration bill would create a narrow, one year exemption from the federal statutes mandating competition in procurement for services donated to the government to aid in the campaign against drug use--but only where at least 50% of the actual reasonable costs of providing the property and services have been donated. This exemption is limited in scope and duration because we do not want to imply that we are seeking to dispense with the salutatory principle of competition in government procurement in all cases. Instead, this limited exemption could be reviewed and extended by the Congress if it proves to be effective.

Another statutory barrier to our public education efforts is contained in section 1461 of title 22, the general authorization of the United States Information Agency. This bars USIA from releasing any film, radio spot, or book to domestic audiences if it was prepared for a foreign audience. While such a prohibition in the domestic display of "political propaganda" might make sense as a general matter, there have been several occasions in which outstanding USIA films on the dangers of drug use could not be shown to domestic audiences for this reason. Hence, section 2 of this title would create a narrow exception from this

prohibition for USIA film and other material discussing the dangers of illegal drug use.

Federal Personnel Manual System

FPM Letter 751-

Published in advance
of incorporation in FPM

RETAIN UNTIL SUPERSEDED

SUBJECT: Tables of Suggested Actions for
Correcting Employee Misconduct

Washington, D. C. 20415

Heads of Departments and Independent Establishments:

1. This FPM letter states the policy of the Office of Personnel Management on agencies publishing tables of suggested actions for correcting employee misconduct. It includes a sample table (see attachment) which may be used by agencies for guidance in developing or modifying a table of suggested actions. However, it should be noted that the sample table is offered only as guidance by example. It is not meant to be construed by agencies or third parties as a Government-wide table, or as reflecting a judgment by OPM on what offenses should or should not be included on a table for a particular occupation or agency or what range of penalties should be used for a listed offense.

2. A published table of suggested actions offers several important benefits. Such a table transmits a clear message that misconduct has adverse consequences, and that those consequences are both certain and foreseeable. It benefits employees by informing them of their agency's standards and expectations regarding conduct. It also promotes uniformity in imposing discipline, ensuring that treatment of like offenses is reasonably consistent. Equally important, such a table can be instrumental in aiding supervisors in overcoming the natural human reluctance to confront the unpleasant circumstances inherent in disciplining employees and thereby helps ensure that actionable offenses are met with some standard minimum corrective action. Thus, unwanted behavior is more apt to receive the early attention that prevents minor offenses from growing into major conduct problems. Also, a table of suggested actions helps to ensure that an employee is not protected against action simply because he or she occupies a high level position within the agency. In addition to providing this supportive environment for good supervision and management, such a table assists agency internal auditors and OPM personnel management evaluators in reviewing the effectiveness of the agency's disciplinary program.

3. For these reasons, OPM strongly encourages each agency to publish a table or tables of suggested actions as a guide for correcting employee misconduct. An agency which does not have a published table may adopt or modify for its own use the sample table attached to this letter, or may wish to develop a table that takes into account the particularities of the agency. Departments or other large organizations may wish to establish separate tables for their components if differences in mission or operating environment so warrant.

Donald J. Devine
Director

Attachment

Inquiries: Appellate Policies Division, Office of Planning and Evaluation,
Office of Policy and Communications, (202) 254-5200

Code: 751, Discipline

Distribution: FPM

Preface to the
Guide for Correcting Employee Misconduct

The table of penalties provided below is being included with this FPM Letter only for the purpose of giving guidance by example to agencies developing or modifying their own tables. The Office of Personnel Management recognizes the possibility of variation from the table in the assessment of penalties for particular offenses depending on such factors as grade level and type of position occupied by the offending employee. Such variations are appropriate and to be expected. For example, while an oral admonishment might be appropriate discipline for a lower level employee committing a first offense of falsifying a travel voucher, a penalty up to and including removal would be more appropriate for an employee occupying a position with significant fiscal responsibility such as auditor or IRS agent. For that reason, this table is not offered as a Government-wide table of penalties nor should agencies or third party adjudicators interpret the table as representing OPM's judgment concerning actionable offenses or the range of appropriate penalties for listed offenses.

In establishing or modifying a table of penalties, agencies are reminded to be aware of their rights and obligations under the Federal Labor-Management Relations Statute, 5 U.S.C. Chapter 71.

As further guidance, OPM suggests that an agency consider including as part of its table of penalties a narrative section covering the following areas:

1. The agency's issuance should state that its table is meant as a guide to disciplining employees and that a penalty greater or lesser than one listed in the table may be appropriate. That is, the use of a particular penalty should not be necessarily mandatory because it is listed in an agency's table. This does not mean, however, that deviations from the table should be frequent. A carefully crafted table will establish the correct penalty in most cases. Equally important, the table should make clear that, even for offenses where removal is not listed for a first offense, removal on a first infraction nevertheless may be assessed for an aggravated offense. As discussed under item 3 below, selecting a proper penalty requires balancing the mitigating and aggravating factors in the particular case. It should be noted that penalties for certain offenses are prescribed in statute. [For example, see 31 U.S.C. 638a(c)(2) concerning misuse of Government vehicles]. It is suggested that the table indicate which penalties are mandatory.

2. The agency's issuance should also state that its table is not meant to be an exhaustive listing of all offenses.

3. The agency's table should include a discussion of the general categories of mitigating and aggravating factors to be considered when selecting a penalty. For guidance in this area, the agency should refer to the decision of the Merit Systems Protection Board in Curtis Douglas, et. al. v. Veterans Administration, MSPB Docket No. SF075299024, April 10, 1981, pages 32-33 (Slip Opinion).

4. An agency's table should include information on the period of time over which offenses are cumulative for purposes of assessing progressively stronger penalties. This period is often referred to as the "reckoning period" and may vary for different offenses. For example, in assessing a penalty for current tardiness an agency may not wish to count tardiness that occurred long ago. However, for offenses reflecting character traits such as dishonesty, an agency may wish to specify a lengthy or indefinite reckoning period. Information concerning reckoning periods may be included in a narrative section preceding the table, or a separate column may be added to the table indicating the reckoning period for each listed offense.

5. In conjunction with the discussion on reckoning periods, mentioned in item 4 above, the agency may wish to include a provision that a specified number of infractions, even for unrelated offenses, over a given period may trigger consideration of removal whether or not removal is listed for any of the offenses individually.

6. In addition to the above, the agency may wish to include a statement that oral admonishments can not be considered disciplinary actions for purposes of citing the past disciplinary record, but that such admonishments may be considered under the Douglas factors when assessing a penalty. [See item 3, above.] Also, agencies may wish to include explanations covering whether days listed are calendar days or work days, whether the table applies to probationers, and whether the term "reprimand" means a written reprimand.

GUIDE TO CORRECTING MISCONDUCT
TABLE OF SUGGESTED ACTIONS

THIS MATERIAL FOR INSTRUCTIONAL PURPOSES ONLY
PLEASE REFER TO THE PREFACING REMARKS ABOVE

Nature of offense	1st offense	2nd offense	3rd offense
1. Attendance-related offenses			
<p>a. Unexcused Tardiness</p> <p>This includes delay in reporting at the scheduled starting time, returning from lunch or break periods, and returning after leaving work station on official business.</p> <p>Penalty depends on length and frequency of tardiness.</p> <p>4th offense typically may warrant 5-day suspension to removal.</p>	Oral admonishment	Oral admonishment to 1-day suspension	Oral admonishment to 5-day suspension
<p>b. Absence without leave (AWOL)</p> <p>These penalties generally do not apply to AWOL charged for tardiness of 1/2 hour or less. (See 1a above.) This offense includes leaving the work station without permission.</p> <p>Penalty depends on length and frequency of absences. Removal may be appropriate for a 1st or 2nd offense if the absence is prolonged.</p>	Reprimand to 5-day suspension	1-day to 14-day suspension	5-day suspension to removal
<p>c. Failure to follow established leave procedures.</p>	Reprimand to 5-day suspension	1-day to 5-day suspension	5-day suspension to removal

FOR INSTRUCTIONAL USE ONLY

Nature of offense	1st offense	2nd offense	3rd offense
2. Breach of safety regulation or practice			
a. Where imminent danger to persons or property is not involved.	Reprimand to 1-day suspension	1-day to 14-day suspension	5-day suspension to removal
b. Where imminent danger to persons or property is involved. "Persons" includes "self". Penalty depends on seriousness of injury or potential injury and extent or potential extent of damages to property. Safety regulations may include requirements to report accident or injury	Reprimand to removal	30-day suspension to removal	Removal
3. Breach of security regulation or practice			
a. Where restricted information is not compromised and breach is unintentional	Reprimand to 5-day suspension	1-day to 14-day suspension	5-day suspension to removal
b. Where restricted information is compromised and breach is unintentional	Reprimand to removal	30-day suspension to removal	Removal
c. Deliberate violation	30-day suspension to removal	Removal	
4. Offenses related to intoxicants			
Actions involving these offenses should be reviewed to insure the requirements of drug & alcohol abuse programs are met	<u>FOR</u> <u>INSTRUCTIONAL</u> <u>USE</u> <u>ONLY</u>		
a. Alcohol-related:			
(1) Unauthorized possession of alcoholic beverages while on Government premises or in duty status	Reprimand to 5-day suspension	5-day to 14-day suspension	14-day suspension to removal
(2) Unauthorized use of alcoholic beverages while on Government premises or in duty status	Reprimand to 14-day suspension	14-day to 30-day suspension	30-day suspension to removal
(3) Reporting to or being on duty while under the influence of alcohol	Reprimand to 30-day suspension	14-day suspension to removal	Removal
(4) Sale or transfer of an alcoholic beverage while on Government premises or in a duty status or while any person involved is in a duty status	Reprimand to removal	Removal	

Nature of offense	1st offense	2nd offense	3rd offense
<p>b. Drug-related:</p> <p>(1) Unauthorized possession of a drug or controlled substance while on Government premises or in a duty status</p> <p>(2) Unauthorized use of a drug or controlled substance while on Government premises or in a duty status</p> <p>(3) Reporting to or being on duty while under the influence of a drug or controlled substance</p>	<p>5-day to 30-day suspension</p> <p>14-day to removal</p> <p>30-day suspension to removal</p>	<p>14-day suspension to removal</p> <p>30-day suspension to removal</p> <p>Removal</p>	<p>Removal</p> <p>Removal</p>
<p>5. Making false, malicious or unfounded statements against coworkers, supervisors, subordinates, or Government officials which tend to damage the reputation or undermine the authority of those concerned</p>	<p>Reprimand to removal</p>	<p>14-day suspension to removal</p>	<p>30-day suspension to removal</p>
<p>6. Abusive or offensive language, gestures or other conduct [Also see "Discourtesy", ¶7 below]</p>	<p>Reprimand to 10-day suspension</p>	<p>5-day suspension to removal</p>	<p>30-day suspension to removal</p>
<p>7. Discourtesy</p> <p>Penalty for 4th offense within one year may be 14-day suspension to removal</p>	<p>Oral admonishment to 1-day suspension</p>	<p>Reprimand to 5-day suspension</p>	<p>1-day to 10-day suspension</p>
<p>FOR INSTRUCTIONAL USE ONLY</p>			
<p>8. Stealing, actual or attempted; unauthorized possession of Government property or property of others</p> <p>a. Where substantial value is not involved</p> <p>b. Where substantial value is involved</p>	<p>Reprimand to removal.</p> <p>14-day suspension to removal</p>	<p>Reprimand to removal</p> <p>Removal</p>	<p>5-day suspension to removal</p>
<p>9. Using Government property or Government employees in duty status for other than official purposes</p> <p>Penalty depends on the value of the property or amount of employee time involved, the nature of the position held by the offending employee, and other factors.</p> <p>For misuse of Government vehicles, see ¶27 below.</p>	<p>Reprimand to removal</p>	<p>1-day suspension to removal</p>	<p>14-day suspension to removal</p>

Nature of offense	1st offense	2nd offense	3rd offense
10. Misuse of official Government credential	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
11. Deliberate misrepresentation, falsification, exaggeration, concealment or withholding of a material fact, or refusal to testify or cooperate in an official proceeding.	Reprimand to removal	1-day suspension to removal	5-day suspension to removal
12. Loss of or damage to Government property, records, or information [Also see ¶28] Penalty depends on value of property or extent of damage, and degree of fault attributable to employee	Reprimand to 14-day suspension	Reprimand to removal	14-day suspension to removal
<u>FOR INSTRUCTIONAL USE ONLY</u>			
13. Offenses relating to fighting Penalty depends on such factors as provocation, extent of any injuries, and whether actions were defensive or offensive in nature.			
a. Threatening or attempting to inflict bodily harm	Reprimand to 14-day suspension	14-day to removal	30-day suspension to removal
b. Hitting, pushing or other acts against another without causing injury	Reprimand to 30-day suspension	30-day to removal	Removal
c. Hitting, pushing or other acts against another causing injury	30-day suspension to removal	Removal	
14. Delay in carrying out or failure to carry out instruction in a reasonable time	Reprimand to removal	Reprimand to removal	5-day suspension to removal
15. Insubordinate defiance of authority, disregard of directive, refusal to comply with proper order	Reprimand to removal	5-day suspension to removal	Removal
16. Sleeping, loafing, or failure to attend to duties			
a. Where no danger to persons or property is involved	Oral admonishment to 1-day suspension	Reprimand to 5-day suspension	5-day suspension to removal
b. Where danger to persons or property is involved	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

Nature of offense	1st offense	2nd offense	3rd offense
17. Negligent performance of duties			
a. Where wastage or other cost is insubstantial	Oral admonishment to reprimand	Reprimand to 5-day suspension	5-day to 30-day suspension
b. Where wastage or other cost is substantial	1-day to 5-day suspension	5-day suspension to removal	30-day suspension to removal
18. Offenses related to gambling			
a. Participating in an unauthorized gambling activity while on Government premises or in duty status	Oral admonishment to reprimand	1-day to 5-day suspension	5-day to 30-day suspension
b. Operating, assisting, or promoting an unauthorized gambling activity while on Government premises or in a duty status or while others involved are in a duty status	14-day suspension removal	Removal	
		<u>FOR</u> <u>INSTRUCTIONAL</u> <u>USE</u>	
19. Participating in a strike, work stoppage, slowdown, sickout, or other job action	Removal		<u>ONLY</u>
20. Indebtedness where agency operations or reputation are affected	Oral admonishment to reprimand	Reprimand to 5-day suspension	5-day suspension to removal

Offenses related to Supervisory/Managerial
Observance of Employee Rights

21. Sexual harrasment	Reprimand to removal	5-day suspension to removal	30-day suspension to removal
22. Discrimination based on race, color, sex, religion, national origin, age, marital status, political affiliation, or handicap	Reprimand to removal	5-day suspension to removal	30-day suspension to removal
23. Interference with an employee's exercise of, or reprisal against an employee for exercising, a right to grieve, appeal or file a complaint through established procedures	Reprimand to removal	5-day suspension to removal	
24. Reprisal against an employee for providing information to an Office of Inspector General (or equivalent) or the Office of Special Counsel, or to an EEO investigator, or for testifying in an official proceeding	30-day suspension to removal	Removal	

Nature of offense	1st offense	2nd offense	3rd offense
25. Reprisal against an employee for exercising a right provided under 5 U.S.C. Chap. 71 (governing Federal labor-management relations)	Reprimand to removal	5-day suspension to removal	30-day suspension to removal

Offenses proscribed in statute

26. Finding by MSPB of refusal to comply with MSPB order or of violation of statute causing issuance of Special Counsel complaint [5 U.S.C. §§1206(g)(1) and 1207(b)]	Reprimand to removal
27. Directing, expecting or rendering services not covered by appropriations [5 U.S.C. 3103]	Removal
28. Prohibited political activity a. Violation of prohibition against political contributions [5 U.S.C. 7323] b. Violation of prohibition against campaigning or influencing elections [5 U.S.C. §§7324 and 7325]	Removal 30-day suspension to removal
29. Failure to deposit into the Treasury money accruing from lapsed salaries or from unused appropriations for salaries [5 U.S.C. 5501]	Removal <u>FOR</u> <u>INSTRUCTIONAL</u> <u>USE</u> <u>ONLY</u>
30. Soliciting contributions for a gift for a superior; making a donation as a gift to a superior; accepting a gift from an employee receiving less pay [5 U.S.C. 7351]	Removal
31. Action against national security [5 U.S.C. 7532]	Suspension or removal
32. Willfully using or authorizing the use of a government passenger motor vehicle or aircraft for other than official purposes [31 U.S.C. 632a(c)(2)]	1-month suspension to removal
33. Mutilating or destroying a public record [18 U.S.C. 2071]	Removal

DPC WORKING GROUP ON DRUG ABUSE POLICY
August 26, 1986

INTRODUCTION

- o The leak
 - All handouts to be returned at end of meeting
 - Copies will be redistributed to those with need

STATUS

- Schools, Private Sector & Treatment on track
- Legislative Review has done a lot of work -- PRIORITY FOR WEEK --
-- EVERYONE NEEDS TO ASSIST
- NEW TASK FORCE - Drug-Free Public Housing chaired by HUD -- good potential - preliminary report due next Tuesday

THIS WEEK'S WORK:

1. Assist Justice in getting Legislative Package together
 - * PRIORITY - Must be finalized by September 2
2. Refine task force reports --
 - * Handout -- Section III
 - * Comments must be received by DAPO by COB Friday, Aug 29

REPORTS OF TASK FORCE CHAIRMEN

- Drug-Free Public Housing (Mike Dorsey)
- Treatment (Ian Macdonald)
- Drug-Free Schools (John Walters)
- Private Sector Initiatives (Rick Ventura)
- Drug-Free Workplace (Mike Baroody)
- Executive Order (Richard Willard)
- Legislative Review (Richard Willard)

Nancy Goetschius
755-0950

*5 elements
Public awareness
W/force
"Employee Assistance
Sup. Thru
Employee Rights*

REMINDERS

- Input must be received by DAPO no later than this Friday
- Next Meeting - Tuesday, Sept 2, 1:30 pm, Room 324
- ALL PAPERS BACK TO SHARYN

DPC WORKING GROUP ON DRUG ABUSE POLICY
 OEOB 324
 AUGUST 26, 1986 - 1:30 PM

<u>WG MEMBER</u>	<u>DEPARTMENT</u>	<u>MEETING REPRESENTATIVE</u>	<u>DOB</u>
BAROODY, MICHAEL E.	LABOR	<i>*DRUG-FREE WORK PLACE</i> BAROODY, MICHAEL E. CLEARY, PATRICK	09/14/46 10/23/55
COX, CHAPMAN B.	DEFENSE	COX, CHAPMAN B.	07/31/40
BAUER, GARY	EDUCATION	<i>* DRUG-FREE SCHOOLS</i> WALTERS, JOHN	02/08/52
BARUN, KEN	OFL	BARUN, KEN	WHS
DORSEY, MICHAEL	HUD	<i>* DRUG-FREE Public Housing</i> DORSEY, MICHAEL	02/06/43
FOLEY, SYLVESTER	ENERGY	FOLEY, SYLVESTER	09/19/28
HORNER, CONSTANCE	OPM	COOLEY, CLAUDIA	03/11/44
KEATING, FRANCIS	TREASURY	LANE, MICHAEL	10/22/42
MACDONALD, DONALD IAN	HHS	<i>* TREATMENT</i> MACDONALD, DONALD IAN	04/15/31
SCOCOZZA, MATTHEW	DOT	WALSH, RICHARD	06/05/27
VENTURA, HENRY	ACTION	<i>* PRIVATE SECTOR/INITIATIVES</i> VENTURA, HENRY	09/04/45
WILLARD, RICHARD	JUSTICE	<i>* LEGISLATIVE REVIEW</i> WILLARD, RICHARD BARBA, THOMAS	09/01/48 08/18/54
WROBLESKI, ANN B.	STATE	SHAW, CATHERINE	07/04/54
SVAHN, JACK	OPD	SVAHN, JACK	WHS
TURNER, CARLTON	DAPO	TURNER, CARLTON	WHS
BLEDSON, RALPH	DPC	KUBIC, CHUCK SWEET, ROBERT	WHS WHS
DUNLOP, BECKY NORTON	JUSTICE	DUNLOP, BECKY NORTON	10/02/51
STEELMAN, DEBBIE	OMB	SELFRIDGE, BARBARA	OEOB
BRADY, PHIL	OVP	BRADY, PHIL	WHS
STARK, JAMES	NSC	STARK, JAMES	WHS
LUMPKINS, SHARYN	DAPO	LUMPKINS, SHARYN	WHS
DOHERTY, EILEEN	PSI	DOHERTY, EILEEN	OEOB

DRAFT

ANNOTATED OUTLINE

REPORT OF THE WORKING GROUP ON DRUG ABUSE POLICY TO THE DOMESTIC POLICY COUNCIL

September 8, 1986

I. Summary

This section would contain a report summary, including the major findings, conclusions, and recommendations.

II. Introduction and Background

This section would contain a brief review of the drug abuse problem, the Administration's efforts since 1981, the recent actions by the President on the six goals, and the charter and establishment of the Working Group.

III. The Administration's Plan

This section would focus on actions and steps the Administration intends to take. It would include sections on each goal, with subsections on each initiative under a goal. It would include 1) statements on why each goal (and each initiative) is important, 2) the specific steps involved in each initiative, 3) what decisions are needed by the President, 4) and brief statements on the expected results from each goal/initiative.

IV. Legislative Action

This section would focus on legislative proposals, both those to be offered by the Administration, and those being proposed by Congress. Proposals would be categorized, and for each there would be references to options available to the Administration, i.e. support or non-support.

V. Funding

This section would focus on costing of the initiatives, both those offered by the Administration and any being proposed by Congress that are felt worthy of support.

VI. Communications

The final section of the Report would include a proposed plan for communications of the Administration's program.

Presentations of the Report will be given to the Council, without the President in attendance, on September 8 and 10 (and 15 if needed). It is tentatively planned that it would be given to the President on September 16. Think about how best to present the recommendations and the decision issues in a timely manner. The Administration plan would be presented first, with legislation to follow. The two would be combined for the September 16 meeting with the President.

DRAFT

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U.S. Department of Justice

Civil Division

DRAFT

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 26 1986

MEMORANDUM

TO: Carlton E. Turner
Chairman, Drug Use Prevention Working Group
Domestic Policy Council

FROM: Richard K. Willard
Chairman
Legislative Review Task Force

RE: *Revisions to Draft Executive Orders
and Legislative Update*

Attached are new draft Executive Orders revised after receipt of comments and suggested text revisions from the White House Counsel's office, OPM, HHS, FBI, DOL and others. This memorandum is intended as a broad summary of those comments in order to highlight the major areas of concern.

A continuing issue is whether the Executive Order should be limited to employees in sensitive positions. I recommend that the Order cover all employees, with mandatory testing and more severe sanctions for employees in sensitive positions. (Tab A.) The alternative draft covers only employees in sensitive positions, except for section 1(a). (Tab B.)

Section 1:

It has been recommended that Section 1 of Tab B be amended so that only employees in sensitive positions are required to refrain from illegal drug use. The proposed language is problematic because it seems to create a "double standard" for federal employees. The implication of the proposed revision is that illegal drug use by non-sensitive federal employees is not necessarily prohibited, at least off-duty.

The goal of the Executive Order should be to create a uniform government-wide standard prohibiting illegal drug use by all federal employees. To the extent that sensitive and non-sensitive employees have been treated differently in our draft Executive Orders, the dualism is based on different enforcement policies rather than a willingness to tolerate illegal drug use by nonsensitive employees. No federal employee should use illegal

drugs. However, the potential public safety and national security concerns of the sensitive federal employee justify the more rigorous enforcement tool of mandatory drug testing and more severe sanctions when drug use is detected.

Section 4:

It has been recommended that Section 4 be amended so that rehabilitation may be made available to employees in sensitive positions who do not come forward voluntarily prior to being caught. We have acceded to this suggestion. This section has also been reworded to make clear that agencies are not required to keep employees in sensitive positions who are undergoing rehabilitation. It should be kept in mind that certain agencies such as CIA and FBI do not have non-sensitive positions and thus may discharge employees who seek rehabilitation for drug addiction.

Section 5:

Several revisions have been suggested to Section 5. Their basic thrust is to provide employees in sensitive positions who are found to be using illegal drugs a "second-chance" before removal will be required. In keeping with this more lenient approach, we have revised this section to provide two basic personnel options: (1) an agency head will now have discretion to retain an employee in a sensitive position initially found to be using illegal drugs; (2) an agency head will still be required to remove or transfer an employee in a sensitive position twice found to be using illegal drugs. On the other hand, we have avoided the creation of a "safe-harbor" for drug users in sensitive positions by making it clear that they can be removed or transferred to a nonsensitive position even after the initial determination of illegal drug use.

Another revision to this section requires that some kind of disciplinary action (at a minimum, a reprimand) be taken with regard to any determination of illegal drug use. (In Tab A, this provision includes nonsensitive employees.)

Section 7:

It has been recommended that Section 7 be amended to commit to agency heads the discretion to "determine which employees involved in law enforcement, national security" and other related categories would be designated "employees in sensitive positions," so long as such employees fall within the categories now enumerated in paragraphs (d)(i)-(viii). We believe that this language does not meaningfully expand the discretion of the agency heads while simultaneously weakening the legal defensibility of actions taken pursuant to the order.

It is important to keep in mind that, under Section 2(b) agency heads are "authorized" but not required to test particular sensitive employees or groups of employees as they see fit. The

Executive Order is an umbrella which legally protects agency heads who wish to test; it is not an order compelling them to test any given employee or set of employees, let alone an order compelling blanket testing.

However, apart from the testing issue, the standards contained in the Executive Order are based upon a Presidential determination as to job sensitivity. If agency heads have the discretion to determine whether 1% or 50% of their employees are "sensitive," then the legal benefit of the Presidential determinations on suitability and performance "nexus" will be weakened.

Legislative Review:

The following initiatives are underway in the legislative review area. First, the Drug Policy Board is undertaking a review of significant criminal legislative initiatives. The Policy Board will take the lead in preparing comments on the draft legislative package assembled by Speaker O'Neill, since 90 percent of this package deals with law enforcement matters. We have referred to appropriate task forces of the Drug Use Prevention Working Group those portions of the O'Neill package that concern them and will ultimately funnel their comments to the Policy Board. In addition, the Policy Board will develop legislation for the Administration to propose in the law enforcement area, based upon draft legislation prepared by the Criminal Division of the Justice Department.

Second, we understand that OMB is undertaking a comprehensive review of the resource allocation and budgetary ramifications of significant legislative proposals.

Finally, our task force received yesterday legislative proposals from HHS and Education, which we have circulated for comment. We will assemble these proposals, together with the Department of Justice draft bill on drug-free schools and workplaces, into a demand-side legislative package to submit to you later this week.

A

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: 8-26-86 9:00 a.m.

Executive Order No. _____ of August __, 1986

Drug Free 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 is unacceptable in the federal workplace, and 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) The laws of our nation prohibit the use of illegal drugs and federal employees are required to refrain from the use of these 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: *Drug Testing For All Employees*

- (a) The head of each agency shall establish 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) During or after admission into a rehabilitation program as described in Section 5 of this order.
- (b) Agency heads shall establish programs which enable any employee to voluntarily submit to drug testing.
- (c) The head of each agency may establish a drug testing program to identify any applicant who uses illegal drugs.

Section 3: *Additional Drug Testing for Employees in Sensitive Positions*

- (a) The head of each agency shall establish a drug testing program for applicants for sensitive positions before appointment or selection.
- (b) Agency heads are 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 each agency head, based upon the degree of sensitivity of the agency's mission and its employees' duties and the available resources for a testing program.

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 counseling and rehabilitation are available and the procedures for obtaining such assistance.
- (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) Programs shall 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 and related medical and rehabilitation records.
- (d) 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: Rehabilitation

All employees currently using illegal drugs who cannot voluntarily cease such activity on their own must seek counseling or rehabilitation services from their agency. Employees undergoing counseling or rehabilitation from their agency and employees who have been identified as users of illegal drugs under a voluntary testing program under section 2(b) of this order are not required by this order to be removed from employment or disciplined so long as they thereafter refrain from using illegal drugs. This section does not require an agency to maintain any person in a sensitive position if the agency determines that the persons' use of illegal drugs makes it

inappropriate for the person to remain in a sensitive position.

Section 6. Personnel Actions

- (a) An agency head must initiate action to remove from the service or discipline any employee who is found to use illegal drugs. An agency head may in his discretion, transfer to a non-sensitive position any employee who is found to use illegal drugs.
- (b) An agency head shall initiate action to remove from the service or transfer any employee from a sensitive position who is found to use illegal drugs and:
 - (1) who has refused to undergo counseling or rehabilitation services as set forth in section 5; or
 - (2) who does not refrain from using illegal drugs after the first identification of that employee as a user of illegal drugs.
- (c) 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.
- (d) 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 are not conclusive and may be rebutted by other evidence that an employee has not used illegal drugs.
- (e) 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.
- (f) 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 7: *Coordination of Agency Programs*

(a) The Office of Personnel Management may promulgate government wide regulations to guide agencies in the implementation of the terms of this order.

(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 8: *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.

Section 9: Effective Date

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

RONALD REAGAN

THE WHITE HOUSE

August __, 1986

B

This is a Domestic Policy Council deliberative process document and may not be circulated, disseminated or released without the approval of the Domestic Policy Council.

Sensitive Positions 8-26-86 9:05 a.m.

Executive Order No. _____ of August __, 1986

Drug Free Federal Workplace

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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; by section 290ee-1 of title 42 of the 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) The laws of our nation prohibit the use of illegal drugs and federal employees are required to refrain from the use of these drugs.
- (b) The use of illegal drugs by federal employees in sensitive positions 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: *Drug Testing for Employees in Sensitive Positions*

- (a) The head of each agency shall establish a drug testing program covering all applicants for sensitive positions.
- (b) Agency heads are 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 each agency head, based upon the degree of sensitivity of the agency's mission and its employees' duties and the available resources for a testing program.

Section 3: *Drug Testing Procedures*

- (a) Agencies shall notify employees in sensitive positions 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 counseling and rehabilitation

are available and the procedures for obtaining such assistance.

- (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) Programs shall 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 and related medical and rehabilitation records.
- (d) 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 4: Rehabilitation

All employees in sensitive positions who use illegal drugs who cannot voluntarily cease such activity on their own must seek counseling or rehabilitation services from their agency. Employees undergoing counseling or rehabilitation from their agency are not required by this order to be removed from employment, so long as they thereafter refrain from using illegal drugs. This section does not require an agency to maintain any person in a sensitive position if the agency determines that the persons' use of illegal drugs makes it inappropriate for the person to remain in a sensitive position.

Section 5. Personnel Actions

- (a) An agency head must initiate action to remove from the service, or discipline any employee in a sensitive position who is found to use illegal drugs. An agency head may, in his discretion, transfer to a non-sensitive position any employee who is found to use illegal drugs.
- (b) An agency head shall initiate action to remove from the service or transfer any employee from a sensitive position who is found to use illegal drugs and:
 - (1) who has refused to undergo counseling or rehabilitation services as set forth in section 4; or

- (2) who does not refrain from using illegal drugs after the first identification of that employee as a user of illegal drugs.
- (c) 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.
- (d) 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 are not conclusive and may be rebutted by other evidence that an employee has not used illegal drugs.
- (e) Any action to remove an employee who is using illegal drugs shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.
- (f) 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 Office of Personnel Management may promulgate government wide regulations to guide agencies in the implementation of the terms of this order.
- (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.

Section 8: *Effective Date*

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

RONALD REAGAN

THE WHITE HOUSE

August __, 1986