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(A) inserting "or section 403A" after "401(a)(1)";

(B) inserting "or a controlled substance analog" after "substance" the first place it appears; and

(C) striking out "841(b) of this title" and inserting in lieu thereof "401(b) in the case of a controlled substance or section 403A in the case of a controlled substance analog"; and

(2) in subsection (b) by--

(A) inserting "or section 403A" after "401(a)(1)";

and

(B) inserting "or a controlled substance analog" after "substance" the first place it appears.

(e) Section 501(c) (21 U.S.C. 871(c)) is amended by inserting "or controlled substance analogs" after "substances".

(f) Section 503 (21 U.S.C. 873) is amended--

(1) in subsection (a) by--

(A) inserting "and controlled substance analogs" after "substances" each place it appears; and

(B) inserting "and controlled substance analog" after "substance" each place it appears; and

(2) in subsection (d)(1)(A) by inserting "and controlled substance analogs" after "substances".

(g) Section 504 (21 U.S.C. 874) is amended by inserting "and controlled substance analogs" after "substances".

(h) Section 506(a) (21 U.S.C. 876(a)) is amended by inserting "or controlled substance analogs" after "substances".

(i) Section 509 (21 U.S.C. 879) is amended by inserting "or controlled substance analogs" after "substances".

(j) Section 511 (21 U.S.C. 881) is amended--

(1) in subsection (a) by--

(A) inserting "or controlled substance analogs" after "substances" each place it appears; and

(B) inserting "or controlled substance analog" after "substance" each place it appears;

(2) in subsection (f) by inserting "and all controlled substance analogs" after "schedule I" each place it appears; and

(3) in subsection (g)(1) by inserting "or controlled substance analogs" after "II".

(k) Section 515 (21 U.S.C. 885) is amended--

(1) in subsection (c) by inserting "or controlled substance analogs" after "schedule I"; and

(2) in subsection (d) by inserting "or controlled substance analogs" after "substances".

(l) Section 516(b) (21 U.S.C. 886(b)) is amended by inserting "or controlled substance analogs" after "substances".

(7) Section 1 of the Act of September 15, 1980 (21 U.S.C. 955a) is amended as follows:

(a) Subsections (a), (b), and (c) are amended by inserting "or a controlled substance analog all or part of which controlled substance analog is intended for human consumption" after "substance".

(b) Subsection (e) is amended by inserting "or controlled substance analog" after "substance" each place it appears.

(c) Subsection (g) is amended--

(1) in paragraph (1) by inserting "involving a controlled substance" after "section";

(2) in paragraph (2) by inserting "involving a controlled substance" after "Act"; and

(3) by adding the following new paragraph after paragraph (2):

"(3) Any person who commits an offense defined in subsection (a), (b), or (c) of this section involving a controlled substance analog shall be fined not more than \$250,000, or imprisoned not more than fifteen years, or both."

(8) Section 280E of the Internal Revenue Code of 1954 (26 U.S.C. 280E) is amended by inserting "or controlled substance analogs (within the meaning of section 102 of the Controlled Substances Act (21 U.S.C. 802))" after "Act)".

(9) Section 994 of title 28 of the United States Code is amended as follows:

(a) Paragraphs (1) (B) and (2) (B) of subsection (h) are amended by--

(1) striking out "section" the first place it appears and inserting in lieu thereof "sections";

(2) inserting "and 403A" after "401"; and

(3) inserting "and 843A" after "841".

(b) Paragraph (5) of subsection (i) is amended by--

- (1) inserting ", 403A," after "401;
- (2) inserting ", 843A," after "841; and
- (3) inserting "or controlled substance analog" after "substance".

(10) Section 902(q) of the Federal Aviation Act of 1958 (49 U.S.C. 1472q) is amended by--

(a) inserting "or controlled substance analog" after "substance" each place it appears; and

(b) striking out the second sentence and inserting in lieu thereof:

"For purposes of this subsection, the terms 'controlled substance' and 'controlled substance analog' have the meaning given such terms by section 102 of the Controlled Substances Act (21 U.S.C. 802)."

~~[Add amendments to sections that refer to marihuana, narcotics, and depressant or stimulant substances, etc.? See definition of depressant or stimulant substance in 21 U.S.C. §802(9).]~~

TECHNICAL AND CONFORMING AMENDMENTS TO S. 1437

SECTION-BY-SECTION ANALYSIS

Section 5(a) amends 18 U.S.C. §1791 to include controlled substance analogs among the specifically defined categories of contraband prohibited from federal prisons.

Section 5(b) amends 18 U.S.C. §1952(b) to include controlled substance analog offenses among the activities subject to the prohibition against interstate or foreign travel in aid of racketeering enterprises.

Section 5(c) amends 18 U.S.C. §2118, which prohibits robberies and burglaries of controlled substances from controlled substance registrants, to make the provision applicable to controlled substance analogs.

Section 5(d) amends 18 U.S.C. §3142(C)(2)(I), regarding conditions of release from pretrial detention, to include controlled substance analogs as one of the substances a defendant must refrain from using.

Section 5(e) amends 18 U.S.C. §3563(b)(8), as enacted by the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, to include controlled substance analogs as one of the substances a defendant must refrain from using in accordance with a condition of probation imposed by the court in its discretion. This amendment shall take effect when the sentencing reform provisions of the Comprehensive Act become effective.

Section 5(f) amends 18 U.S.C. §3607 to make this section's special probation and expungement procedures for first-time

simple possession offenses involving controlled substances applicable to first-time simple possession offenses involving controlled substances analogs. In addition, the amendment includes controlled substance analog offenses among drug offenses for purposes of determining whether the offense to which the special probation and expungement procedures may be applicable is a first drug offense. This amendment shall take effect when the sentencing reform provisions of the Comprehensive Crime Control Act of 1984 become effective.

Section 6(a) amends section 102(11) of the Controlled Substances Act (21 U.S.C. §802(11)) to include a reference to controlled substance analogs in the definitions of "distribute" and "distributor."

Section 6(b) amends section 307(f) of the Controlled Substances Act (21 U.S.C. §827(f)) to provide that regulations issued under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §355(i)), regarding the investigational use of new drugs, include procedures necessary to insure the security and accountability of controlled substance analogs, as well as controlled substances.

Section 6(c) amends section 405 of the Controlled Substances Act (21 U.S.C. §845) to provide enhanced penalties for the distribution of controlled substance analogs to persons under twenty-one years of age.

Section 6(d) amends section 405A of the Controlled Substances Act (21 U.S.C. §845A) to provide enhanced penalties for

the distribution of controlled substance analogs in or near a school.

Section 6(e) amends section 501(c) of the Controlled Substances Act (21 U.S.C. §871(c)) to authorize the Attorney General to accept for the Department of Justice any form of devise, bequest, gift, or donation of property for the purpose of preventing or controlling the abuse of controlled substance analogs, as well as controlled substances.

Section 6(f) amends section 503 of the Controlled Substances Act (21 U.S.C. §873) to provide that cooperative arrangements entered into by the Attorney General with local, State, and federal agencies concerning the trafficking in, and abuse of, controlled substances also reach activities involving controlled substance analogs.

Section 6(g) amends section 504 of the Controlled Substances Act (21 U.S.C. §874) to authorize the Attorney General to appoint advisory committees with respect to preventing and controlling the abuse of controlled substance analogs, as well as controlled substances.

Section 6(h) amends section 506(a) of the Controlled Substances Act (21 U.S.C. §876(a)) to authorize the Attorney General to subpoena witnesses, to compel the attendance and testimony of witnesses, and to require the production of records relevant or material to an investigation relating to controlled substance analogs, as well as controlled substances.

Section 6(i) amends section 509 of the Controlled Substances Act (21 U.S.C. §879) to include offenses involving controlled

substance analogs in the provision's directive relating to search warrants.

Section 6(j) amends section 511 of the Controlled Substances Act (21 U.S.C. §881), concerning the seizure and forfeiture of controlled substances and related property, to include controlled substance analogs.

Section 6(k) amends section 515 of the Controlled Substances Act (21 U.S.C. §885) to make subsection (c), concerning the burden of going forward with regard to vehicles, vessels, or aircraft used in connection with controlled substances in schedule I applicable to vehicles, vessels, or aircraft used in connection with controlled substance analogs. It also makes the language of subsection (d) providing immunity to State and local officials lawfully engaged in the enforcement of drug laws applicable to the enforcement of laws relating to controlled substance analogs. (Subsection (d)'s provision regarding the immunity of federal officers applies to the enforcement of the proposed controlled substance analog provision without the need for amendment.)

Section 6(l) amends section 516(b) of the Controlled Substances Act (21 U.S.C. §886(b)), regarding reimbursements for purchases of controlled substances, to make the provision applicable to controlled substance analogs.

Section 7 amends section 1 of the Act of September 15, 1980 (21 U.S.C. §955a), regarding the manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels. The amendment makes the offenses

proscribed, with the exception of subsection (d) relating to importation, applicable to controlled substance analogs.

Section 8 amends section 280E of the Internal Revenue Code of 1954 (26 U.S.C. §280E), which disallows any deduction or credit for amounts paid or incurred in any trade or business consisting of trafficking in schedule I or II controlled substances in violation of federal or State law. The amendment extends this prohibition to the unlawful trafficking in controlled substance analogs.

Section 9(a) amends 28 U.S.C. §994(h) to add controlled substance analog offenses to the categories of drug and other offenses for which the sentencing guidelines issued by the United States Sentencing Commission must specify a sentence to a term of imprisonment at or near the maximum term authorized. It also adds controlled substance analog offenses to the drug crimes which must be considered under this provision for purposes of determining if the defendant has previously been convicted of two or more prior felonies consisting of crimes of violence or drug offenses.

Section 9(b) amends 28 U.S.C. §994(i) to add controlled substance analog offenses to the categories of drug offenses for which the sentencing guidelines issued by the United States Sentencing Commission must specify a sentence to a substantial term of imprisonment if the violation involved trafficking in a substantial quantity of a drug.

Section 10 amends section 902(q) of the Federal Aviation Act of 1958 (49 U.S.C. §1472q), which prohibits the knowing and

willful transportation by aircraft of controlled substances without an airman's certificate where the transportation is provided in connection with any controlled substance felony under federal or State law. The amendment extends this provision to the transportation of controlled substance analogs in connection with controlled substance analog felonies.

DRAFT

TITLE VI

PUBLIC EDUCATION AND PRIVATE SECTOR INITIATIVES

A BILL

To encourage and enhance the use of private sector initiatives in a concerted campaign of public education on the dangers of illegal drug use.

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

SHORT TITLE

SEC. 601. This Act may be cited as the "Public Education and Private Sector Initiatives Act of 1986."

SEC. 602. (a) Notwithstanding any other provision of law, an agency may contract for property or services designed primarily to warn of the dangers of illegal drug use without complying with any requirement for competition in federal procurement, so long as at least 50% of the actual, reasonable costs of providing the property or service are being donated to the government.

(b) The provisions of this section shall take effect upon enactment and remain in effect for a period of two years thereafter.

Sec. 603. (a) Section 1461 of title 22 is amended to

insert, after the word "office" in the parenthetical, the following:

"or any information warning of the hazards of illegal drug use"

(b) The provisions of this section shall take effect upon enactment.

PUBLIC EDUCATION AND PRIVATE SECTOR INITIATIVES

SECTION BY SECTION ANALYSIS

This title makes two changes to remove statutory impediments to ongoing efforts to recruit private sector groups for volunteer programs to educate the public about the dangers of drug use. Both changes are limited in scope and do not reflect any fundamental criticism of the statutes being amended. Instead, they merely seek to change anomalies in the law, which we do not believe Congress ever intended, to ensure that they do not interfere with efforts to establish a public sector-private sector partnership to aid in the war on illegal drugs.

The Competition in Contracting Act, § 2711 of the Deficit Reduction Act of 1984, amending 41 U.S.C. 253, requires that wherever possible, competitive procedures be used in all federal procurement. This Act and other similar statutes embody a salutatory principle, but have had the unfortunate (and probably unforeseen) effect of making it more difficult to obtain volunteer services, particularly in producing public service announcements on the dangers of illegal drug use for television and radio.

In many instances, noted producers and directors have offered to prepare such public service announcements if the government will agree to pay their out of pocket expenses. However this limited expenditure of money by the government has the effect of bringing the transaction under the federal procurement statutes, triggering substantial red tape, including the requirement that the proposal be published in the Commerce Business Daily to solicit other proposals. Frequently, such publication means that the director or producer who developed the concept for the television or radio spot finds that other less talented individuals can take advantage of his original idea, and offer to produce it with lower out of pocket expenses (albeit at an equivalent decline in quality). Thus an Oscar-winning film producer may not be the "low bidder" on the contract, even though the government would get appreciably more for its money were he selected. We believe that in this limited circumstance, agencies should be authorized to accept such offers without going through normal procedures.

To resolve this problem, section 601 of title VI of the administration bill would create a narrow, two 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 in the near future if it proves to be effective.

Another statutory barrier to efforts to educate the public on the dangers of illegal drug use is contained in section 1461 of title 22, the general authorization of the United States Information Agency (USIA). This statute 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 on 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. This is a particularly acute problem where there is a need for a film in a language other than english, since the USIA product may be the only one available. Hence, section 602 of this title would create a narrow exception from this prohibition for USIA film and other material warning against the dangers of illegal drug use.

THE WHITE HOUSE
WASHINGTON
September 5, 1986

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM: RALPH C. BLEDSOE *Ralph C. Bledsoe*
Executive Secretary

SUBJECT: Meeting of September 8, 1986

Attached are an agenda and materials for the Domestic Policy Council meeting scheduled for Monday, September 8, 1986, at 2:00 p.m. in the Roosevelt Room. The purpose of this meeting is to review the Report of the Council's Working Group on Drug Abuse Policy.

The meeting will include an overview of the Working Group Report with initial discussion focusing on Administration legislative proposals and an Executive Order on a drug-free Federal workplace prepared by the Working Group. Each title of the Administration legislative proposal and the House bill will be discussed. It will be important that we complete review of these, so the Administration package can be put through the normal clearance process, and the President can discuss them with members of the Congressional leadership on Tuesday, September 9.

The Working Group has identified five issues for which the guidance of the Council is needed prior to publication of their Report in final form:

- o Should the long or short version of Title I be part of the Administration's legislative proposal?
- o Should the military be excluded from the Executive Order on Drug Abuse?
- o Should convicted drug users and traffickers be barred from future Federal service?
- o Should observation be allowed when drug tests are given?
- o Should all job applicants be tested for drugs?

Pros and Cons on each of these issues will be presented at the meeting.

If time permits on September 8, we will discuss other initiatives contained in the Working Group Report. Otherwise, these will be taken up at the Council meeting on Wednesday, September 10.

THE WHITE HOUSE

WASHINGTON

DOMESTIC POLICY COUNCIL

Monday, August 8, 1986

2:00 p.m.

Roosevelt Room

AGENDA

1. Drug Abuse Policy -- Carlton Turner
Deputy Assistant to the President
for Drug Abuse Policy
Office of Policy Development

Richard Willard
Assistant Attorney General
Civil Division
Department of Justice

DRAFT

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

9-4-86 4:00 p.m.

Executive Order No. _____ of September __, 1986

Drug Free Federal Workplace

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

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

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 in certain positions evidences less than the complete reliability, stability and good judgment that is consistent with access to sensitive information, and creates the possibility of coercion, influence, and irresponsible action under pressure which may pose a serious risk to national security, the public safety, and the effective enforcement of the law;

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

WHEREAS standards and procedures should be put in place to ensure fairness in achieving a drug-free federal workplace, 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 objective of a drug-free workplace with due consideration of the rights of the Government, the employee and the general public.
- (b) The plan shall include:
 - (i) a statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;

- (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 the use of illegal drugs by any employee in or applicant to a sensitive position. The extent and criteria for such testing shall be determined by the agency head, based upon the degree of sensitivity of the agency's mission and its employees' duties, the efficient use of agency resources, and a determination by the agency head that the failure of an employee to discharge adequately his or her position might reasonably be deemed likely to endanger public safety or national security.
- (b) The head of each agency shall establish a program for voluntary employee drug testing.
- (c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each agency is authorized to test an employee 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) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance 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 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. Procedures for providing urine specimens must allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.
- (d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and once promulgated, agencies shall conduct drug testing programs in accordance with these guidelines.

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 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 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 successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, an agency head may, in his discretion, allow an employee to return to duty in a sensitive position if it is determined that such would not pose a danger to public health or safety or the national security.
- (d) 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:
 - (i) refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or
 - (ii) does not thereafter refrain from using illegal drugs.
- (e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing 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.
- (f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, 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.
- (g) Any action to discipline an employee who is using illegal drugs, (including removal from the service, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.

- (h) Drug testing shall not be conducted pursuant to this order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of title 21, 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 be consulted with regard to all guidelines, regulations and policies proposed to be 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), (but excluding the armed forces as defined by 5 U.S.C. §2101(2)); 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

DRUG POLICY IMPLEMENTING MEMOS

<u>ADDRESSEE</u>	<u>FROM</u>	<u>SUBJECT</u>
1. Working Group	CT	<i>DONE -</i> 1 Contractor Guidance
2. All Agency Heads	RR	<i>In WH Clearance -</i> 1 Government Contractors; State & Local Governments; Information to Americans; EAP; Incentive Programs; Workforce Awareness; Constituency Groups; Executive Order
3. Director, PSI	DTR	<i>DONE -</i> 1 Letter to CEO's
4. Labor	RR	<i>First Draft</i> 1 Labor Leaders; <u>Workplaces Without Drugs</u> ; Onsite Assistance Team
5. HHS	RR	<i>First Draft</i> 1 "Helpline"; Center for Substance Abuse; Speakers Bureau; \$100 Million Expansion; \$70 Million Community Systems Development; ADAMHA Quotas; \$3 Million Epidemiology; \$33 Million Research; \$15 Million Center Budget; Drug Abuse Prevention Materials; Agency EAP's; Guidelines on Testing & Rehabilitation
6. Education	RR	<i>Ready for Clearance -</i> 1 Letter to State Boards; Advocate Role; Drug Abuse Education; Essay Contest; Model School Program; Schoolyard Law Enforcement; Local School Law Enforcement Cooperation
7. Defense	RR	<i>Ready for Clearance</i> 1 Model School Program
8. Justice	RR	<i>Ready for Clearance</i> 1 Schoolyard Law Enforcement; Local School Law Enforcement Cooperation
9. ACTION	RR	<i>Rough -</i> 1 Oversight Mechanism; Encourage Corporation & Service Organizations; Media Advisory Board; Media Campaign
10. Executive Branch Employees	RR	<i>Cleared</i> 1 Set Example; Help Fellow Workers
11. OPM	RR	<i>First Draft -</i> 1 EAP; Incentive & Recognition; Oversight Mechanism; Encourage Corporation & Service Organizations; Media Advisory Board
12. OMB	RR	<i>First Draft -</i> 1 Private Sector Donations; "Helpline"; Center for Substance Abuse; Speakers Bureau; \$100 Million Expansion; \$70 Million Community Systems Development; ADAMHA Quotas; \$3 Million Epidemiology; \$33 Million Research; \$15 Million Center Budget
13. HUD	RR	<i>Ready for Clearance</i> 1 Drug-Free Housing

September 5, 1986

HOUSE DEMOCRAT DRUG ABUSE LEGISLATION

A Summary of the House Democrat Proposal

The House Democratic leadership is sponsoring an Omnibus Drug Package. It includes twelve titles representing smaller packages from each of the committees that had previously considered some aspect of the drug abuse problem. The proposed legislation authorizes funds in excess of \$3.6 billion over the next three years.

The following analysis reflects the best available understanding of the bill as of September 5, and includes preliminary Administration positions where available. Cost figures represent best estimates of new authorizations through FY 1989. Several Amendments are anticipated prior to consideration by the House in early September.

Title I (Foreign Affairs Committee) - \$48 Million

- o The International Narcotics Control Act - authorizes increased funds for foreign eradication efforts, and modifies the Mansfield Amendment which restricts foreign activities of U.S. law enforcement officials; withholds \$1 million from Mexico pending conclusion of the Camarena investigation.
--The Administration could support some provisions of this Title.

Title II (Armed Forces Committee) - \$228 Million

- o The Defense Narcotics Act of 1986 - authorizes funds for the Army, Navy, and Air Force; continues funding for Navy deployment of Coast Guard law enforcement teams.
--The Administration could support with reservations regarding the specified combination of aircraft.

Title III (Ways and Means Committee) - \$239 Million

- o The 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.
--The Administration could support most provisions, but should oppose trade restrictions.

Title IV (Merchant Marine Committee) - \$256 Million

- o Proposes an at-sea drug interdiction and maritime air surveillance program for the Coast Guard.
--The Administration should oppose this Title pending completion of a Drug Policy Board study of the role of Customs and the Coast Guard in air interdiction.

Title V (Banking Committee) - No Funding Required

- o The Comprehensive Money Laundering Prevention Act - similar in major respects to a Treasury proposal; deals with regulatory aspects of money laundering.
--The Administration could support with qualifications; language modifications would be required.
- o The Drug Interdiction Act of 1986 - proposes using the U.S. vote in multilateral development banks to promote drug eradication programs in foreign countries; places inflexible restrictions on ability to support loans.
--The Administration should not support this provision.

Title VI (Judiciary Committee) - \$1,581 Million

- o Comprehensive Money Laundering Act - makes money laundering a criminal offense; based on original Administration proposal.
--The Administration could support this Act, but the Senate version is broader and more acceptable.
- o The Controlled Substance Analog Act of 1986.
--The Administration could support with reservations; the definition of "controlled substance analog" should be modified; the Senate bill is based on an Administration proposal and is more acceptable.
- o The Narcotics Penalty and Enforcement Act of 1986.
--The Administration could support with reservations; minimum sentence requirements should be modified and maximum sentences raised.
- o The White House Conference on Narcotics Abuse and Control Resolution of 1986.
--The Administration should oppose this unnecessary conference.
- o The Career Criminal Amendments Act of 1986.
--The Administration could support this Act which provides long sentences for firearm users with prior drug dealing or crime of violence convictions.

- o The Drug and Alcohol Dependent Offenders Treatment Act of 1986.
--The Administration should not oppose this new authority, but should not support excessive costs.
- o The Drug Enforcement Enhancement Act of 1986 - includes block grants to States for drug enforcement with a 50/50 match requirement; includes prison construction with a 3-year cost of over \$1 billion.
--The Administration should oppose the grant provisions, and excessive funding.

Title VII (Public Works Committee) - No Funding Required

- o Authorizes States to establish criminal penalties for the use of fraudulent aircraft registrations, establishes criminal penalties for transporting drugs, and calls for a study of drug use and highway safety.
--The Administration could support with minor reservations.

Title VIII (Education Committee) - \$1,053 Million

- o The Drug Abuse Education and Prevention Act of 1986 - emphasizes federally funded drug education programs.
--The Administration could support the concept of this Act, but major changes are required, including funding level.

Title IX (Energy and Commerce Committee) - \$181 Million

- o The Drug Abuse Prevention and Treatment Act of 1986 - provides Federal funds for State and local drug treatment and prevention programs; establishes an Agency for Substance Abuse Prevention; includes Designer Drugs in the Controlled Substances Act; establishes a demo project for Indian drug abuse rehabilitation; establishes an Advisory Commission on Intercollegiate Athletics.
--The Administration should oppose this Act; its "core" solution offers only more bureaucracy and its designer drug provisions conflict with the Judiciary Committee Title.

Title X (Post Office Committee) - Funding Undetermined

- o Requires OPM to establish employee assistance and education programs to combat drug abuse and to report the anticipated costs to Congress within six months.
--The Administration should oppose this Title based on its potentially excessive cost.
- o Classifies controlled substances as non-mailable matter.

Title XI (Interior Committee) - \$69 Million

- o The Indian Alcohol and Substance Abuse Prevention Act - provides assistance to Indians to improve law enforcement and to organize a drug treatment and prevention program.
- o Provides funding for equipment for Puerto Rico and the Virgin Islands.

--The Administration should oppose this unnecessary and restrictive Title.

Title XII (Government Operations Committee) - No Funding Required

- o Requires the President to propose legislation within six months to reorganize the Executive Branch to coordinate efforts to combat drug abuse.
 - The Administration should oppose any unnecessary reorganization.

September 5, 1986

DRUG ABUSE LEGISLATION

A Summary of the Administration's Legislative Proposal

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

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

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

Title I. Drug-Free Workplaces

- o The proposed bill emphasizes the unacceptability of drug use in the workplace. It states that it shall not be unlawful under Federal law for any employer, including the Federal government, to use drug screening to curb drug abuse in their workforce.

Title II. Drug-Free Schools

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

Title III. Expanding Drug Treatment

- o The proposed legislation authorizes \$170 million for demonstration grants to encourage states and communities to develop programs to treat specific drug-related health problems, and eliminates unnecessary restrictions imposed under current block grant programs.
- o (Note: A separate supplemental appropriation of \$36 million will be sought to improve research in health-related areas, including drug testing, and a \$15 million authorization will be sought to establish a Center for Substance Abuse Prevention within HHS.)

Title IV. Expanding International Cooperation

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

Title V. Strengthening Law Enforcement

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

Title VI. Increasing Public Awareness and Prevention

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

MEMORANDUM
OF CALL

TO: _____

YOU WERE CALLED BY _____ YOU WERE VISITED BY _____

OF (optional) _____

PLEASE PHONE PLEASE PHONE FTS AIRWORK

WILL CALL AGAIN RETURNED YOUR CALL WISHES AN APPOINTMENT

MESSAGE

current version -
changes are/will be
made -

~~ORIGINAL~~

RECEIVED BY _____
DATE _____
TIME _____

STANDARD FORM 63 (Rev. 6-61)
Prescribed by GSA
FORM (21 CFR) 101-11.4

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

9-4-86 4:00 p.m.

Executive Order No. _____ of September __, 1986

Drug Free Federal Workplace

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

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

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 in certain positions evidences less than the complete reliability, stability and good judgment that is consistent with access to sensitive information, and creates the possibility of coercion, influence, and irresponsible action under pressure which may pose a serious risk to national security, the public safety, and the effective enforcement of the law;

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

WHEREAS standards and procedures should be put in place to ensure fairness in achieving a drug-free federal workplace, 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 objective of a drug-free workplace with due consideration of the rights of the Government, the employee and the general public.
- (b) The plan shall include:
 - (i) a statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;

- (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 the use of illegal drugs by any employee in or applicant to a sensitive position. The extent and criteria for such testing shall be determined by the agency head, based upon the degree of sensitivity of the agency's mission and its employees' duties, the efficient use of agency resources, and a determination by the agency head that the failure of an employee to discharge adequately his or her position might reasonably be deemed likely to endanger public safety or national security.
- (b) The head of each agency shall establish a program for voluntary employee drug testing.
- (c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each agency is authorized to test an employee 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) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance 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 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. Procedures for providing urine specimens must allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.
- (d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and once promulgated, agencies shall conduct drug testing programs in accordance with these guidelines.

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 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 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 successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, an agency head may, in his discretion, allow an employee to return to duty in a sensitive position if it is determined that such would not pose a danger to public health or safety or the national security.
- (d) 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:
 - (i) refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or
 - (ii) does not thereafter refrain from using illegal drugs.
- (e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing 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.
- (f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, 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.
- (g) Any action to discipline an employee who is using illegal drugs, (including removal from the service, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.

- (h) Drug testing shall not be conducted pursuant to this order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of title 21, 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 be consulted with regard to all guidelines, regulations and policies proposed to be 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), (but excluding the armed forces as defined by 5 U.S.C. §2101(2)); 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

THE WHITE HOUSE

WASHINGTON

September 5, 1986

MEMORANDUM FOR DAVID CHEW
FROM: RALPH BLEDSOE, CARLTON TURNER
SUBJECT: Drug Abuse Policy Materials

David, attached is a notebook containing advance copies of materials on the President's Drug Abuse Policy initiatives. The notebook contains the following:

1. A summary of a proposed Administration legislative package developed by the Drug Abuse Policy Working Group.
2. Suggested Talking Points for the President to use when he meets with the Congressional Leadership on September 9 to discuss the proposed Administration legislative package.
3. A summary of the legislative proposals (12 titles) prepared by the House Democrats, including estimated costs and suggested Administration support or objection to some of the proposals. Comments were prepared by the Justice Criminal Division, since most of the bill addresses law enforcement. Costs were from the House Republican Research Committee, and will be reviewed by OMB.
4. A draft Administration bill containing six titles, corresponding to the six goals in the President's program. The draft material contains two versions of Title I, a longer and a shorter one, which will be discussed by the Domestic Policy Council on Monday, September 8.
5. A draft Executive Order, which would prescribe the President's approach for ensuring a drug-free Federal workplace.
6. A draft report of the Working Group on Drug Abuse Policy, to be discussed by the DPC on September 8 and 10, and presented to the President on September 16.

On the following page is a list of the key dates as now projected for discussion and development of the Drug Abuse Policy package.

cc Svahn, Kingon

KEY DATES FOR DRUG ABUSE POLICY DEVELOPMENT
As of September 5, 1986

- September 5 - Draft Working Group Report and Legislation Mailed to DPC Members, and to President in Santa Barbara.
- September 8 - DPC Meeting to Discuss Administration Legislative Proposals and Congressional Draft Legislation, as Developed by Working Group. (Following this meeting, we should submit the Administration legislative package for OMB clearance.)
- September 9 - President Meets with Bipartisan Congressional Leadership to discuss Administration Proposals and Congressional Legislative Proposals. (He could report that our legislative package is in our clearance process, and will be submitted the following week.)
- September 10 - DPC Meeting to Discuss the Working Group Draft Report on Other Administration Drug Policy Initiatives and Actions. (Following this meeting we will prepare the Final Report for presentation to the President.)
- September 14 - President and Mrs. Reagan speak to the nation on drug abuse. Some of the Administration Actions proposed by the Working Group may be announced in this talk.
- September 15 - DPC Meeting to Complete Package (if needed).
- September 16 - DPC Meeting with the President and Cabinet to Present for His Approval the Administration Policy and Action Plan, Including the Details of the Administration Legislative Package. (Following this meeting, the Administration legislative package can be introduced, and the departments and agencies can begin implementation of approved activities.)
- September 17 - First date Administration legislative package could be introduced.

THE WHITE HOUSE

WASHINGTON

September 5, 1986

MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

FROM:

RALPH C. BLEDSOE *Ralph C. Bledsoe*
Executive Secretary

SUBJECT:

Meeting of September 8, 1986

Attached are an agenda and materials for the Domestic Policy Council meeting scheduled for Monday, September 8, 1986, at 2:00 p.m. in the Roosevelt Room. The purpose of this meeting is to review the Report of the Council's Working Group on Drug Abuse Policy.

The meeting will include an overview of the Working Group Report with initial discussion focusing on Administration legislative proposals and an Executive Order on a drug-free Federal workplace prepared by the Working Group. Each title of the Administration legislative proposal and the House bill will be discussed. It will be important that we complete review of these, so the Administration package can be put through the normal clearance process, and the President can discuss them with members of the Congressional leadership on Tuesday, September 9.

The Working Group has identified five issues for which the guidance of the Council is needed prior to publication of their Report in final form:

- o Should the long or short version of Title I be part of the Administration's legislative proposal?
- o Should the military be excluded from the Executive Order on Drug Abuse?
- o Should convicted drug users and traffickers be barred from future Federal service?
- o Should observation be allowed when drug tests are given?
- o Should all job applicants be tested for drugs?

Pros and Cons on each of these issues will be presented at the meeting.

If time permits on September 8, we will discuss other initiatives contained in the Working Group Report. Otherwise, these will be taken up at the Council meeting on Wednesday, September 10.

THE WHITE HOUSE

WASHINGTON

DOMESTIC POLICY COUNCIL

Monday, August 8, 1986

2:00 p.m.

Roosevelt Room

AGENDA

1. Drug Abuse Policy -- Carlton Turner
Deputy Assistant to the President
for Drug Abuse Policy
Office of Policy Development

Richard Willard
Assistant Attorney General
Civil Division
Department of Justice

DRAFT

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

9-4-86 4:00 p.m.

Executive Order No. _____ of September __, 1986

Drug Free Federal Workplace

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

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

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 in certain positions evidences less than the complete reliability, stability and good judgment that is consistent with access to sensitive information, and creates the possibility of coercion, influence, and irresponsible action under pressure which may pose a serious risk to national security, the public safety, and the effective enforcement of the law;

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

WHEREAS standards and procedures should be put in place to ensure fairness in achieving a drug-free federal workplace, 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 objective of a drug-free workplace with due consideration of the rights of the Government, the employee and the general public.
- (b) The plan shall include:
 - (i) a statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;

- (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 the use of illegal drugs by any employee in or applicant to a sensitive position. The extent and criteria for such testing shall be determined by the agency head, based upon the degree of sensitivity of the agency's mission and its employees' duties, the efficient use of agency resources, and a determination by the agency head that the failure of an employee to discharge adequately his or her position might reasonably be deemed likely to endanger public safety or national security.
- (b) The head of each agency shall establish a program for voluntary employee drug testing.
- (c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each agency is authorized to test an employee 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) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance 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 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. Procedures for providing urine specimens must allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.
- (d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and once promulgated, agencies shall conduct drug testing programs in accordance with these guidelines.

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 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 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 successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, an agency head may, in his discretion, allow an employee to return to duty in a sensitive position if it is determined that such would not pose a danger to public health or safety or the national security.
- (d) 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:
 - (i) refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or
 - (ii) does not thereafter refrain from using illegal drugs.
- (e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing 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.
- (f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, 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.
- (g) Any action to discipline an employee who is using illegal drugs, (including removal from the service, if appropriate), shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.

- (h) Drug testing shall not be conducted pursuant to this order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of title 21, 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 be consulted with regard to all guidelines, regulations and policies proposed to be 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), (but excluding the armed forces as defined by 5 U.S.C. §2101(2)); 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