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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RETAIN UNTIL SUPERSEDED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

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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			
a. Unexcused Tardiness 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. Penalty depends on length and frequency of tardiness. 4th offense typically may warrant 5-day suspension to removal.	Oral admonishment	Oral admonishment to 1-day suspension	Oral admonishment to 5-day suspension
b. Absence without leave (AWOL) 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. Penalty depends on length and frequency of absences. Removal may be appropriate for a 1st or 2nd offense if the absence is prolonged.	Reprimand to 5-day suspension	1-day to 14-day suspension	5-day suspension to removal
	FOR <u>INSTRUCTIONAL</u> USE ONLY		
c. Failure to follow established leave procedures.	Reprimand to 5-day suspension	1-day to 5-day suspension	5-day suspension to removal

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	FOR INSTRUCTIONAL USE ONLY		
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
b. Drug-related:			
(1) Unauthorized possession of a drug or controlled substance while on Government premises or in a duty status	5-day to 30-day suspension	14-day suspension to removal	Removal
(2) Unauthorized use of a drug or controlled substance while on Government premises or in a duty status	14-day to removal	30-day suspension to removal	Removal
(3) Reporting to or being on duty while under the influence of a drug or controlled substance	30-day suspension to removal	Removal	
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	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
6. Abusive or offensive language, gestures or other conduct [Also see "Discourtesy", ¶7 below]	Reprimand to 10-day suspension	5-day suspension to removal	30-day suspension to removal
7. Discourtesy Penalty for 4th offense within one year may be 14-day suspension to removal	Oral admonishment to 1-day suspension	Reprimand to 5-day suspension	1-day to 10-day suspension
FOR INSTRUCTIONAL USE ONLY			
8. Stealing, actual or attempted; unauthorized possession of Government property or property of others			
a. Where substantial value is not involved	Reprimand to removal	Reprimand to removal	5-day suspension to removal
b. Where substantial value is involved	14-day suspension to removal	Removal	
9. Using Government property or Government employees in duty status for other than official purposes 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. For misuse of Government vehicles, see ¶27 below.	Reprimand to removal	1-day suspension to removal	14-day suspension to removal

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> <u>ONLY</u>		
19. Participating in a strike, work stoppage, slowdown, sickout, or other job action	Removal		
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 harassment	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. 638a(c)(2)]	1-month suspension to removal
33. Mutilating or destroying a public record [18 U.S.C. 2071]	Removal

FEDERAL TESTING ISSUES

1. Sensitive vs. non-sensitive positions
 - One Executive Order or More
2. Sensitive positions
 - Most agree testing should be mandatory vs. voluntary
 - Penalties - Defined vs. Agency Head Discretion
3. Non-Sensitive positions
 - Mandatory vs. voluntary
 - Penalties - Disagreement over how many chances employee has to stop illegal drug use (See Labor memo, Item #3)
 - Penalties - Defined vs. Agency Head Discretion
4. Pre-employment screening
 - Urine test or questionnaire

PRIMARY PLAYERS:

Justice (Willard)

Labor (Baroody)

White House Counsel (Jay Stephens or Bob Kruger)

OPM (Claudia Cooley)

U.S. Department of Labor

Solicitor of Labor
Washington, D.C. 20210



August 22, 1986

MEMORANDUM FOR: Richard K. Willard
Chairman, Legislative Review Task Force
Drug Use Prevention Working Group

FROM: George R. Salep *GRS*

SUBJECT: Comments on August 18 Preliminary Report

I have undertaken an initial review of the materials provided us, and have several comments. I am enclosing a revision of your draft Executive Order which has been edited to the extent necessary to take account of these comments.

1. Fourth Amendment Considerations; Statutory Nexus Requirements.

We agree with your position that a program which limits mandatory testing to sensitive jobs stands the best chance of passing muster under the Fourth Amendment. These jobs involve national security, the protection of health and safety of the public and other similarly sensitive jobs. In our view, requiring each agency head to specifically identify the positions in each agency which will fall into any of these categories would strengthen the argument that the selection is constitutionally permissible. In addition, this process of agency designation will help ensure that the nexus between an employee's private drug use and his or her job performance is properly established for purposes of Civil Service Reform Act disciplinary requirements.

2. Due Process and Privacy Considerations.

While we also believe your analysis of due process and privacy rights implications may well be overly optimistic, the procedural protections in the proposed Executive Orders included with your preliminary report will no doubt help to defend any such order against constitutional challenges on due process or privacy grounds. Such arguments would be strengthened, in our view, by specifically guaranteeing an employee a right to a retest upon request, and ensuring privacy in the production of a sample for testing.

As a practical matter, we think it would also be wise to take into account the criminal process implications that will flow from a program of federal drug testing. It is my understanding that federal agencies may be under a legal

obligation, pursuant to 28 U.S.C. 535 (Investigation of Crimes Involving Government Officers and Employees) to refer to appropriate law enforcement personnel any positive drug test indicating use of an illegal substance. Moreover, such tests might be considered as probable cause for the issuance of search warrants. I believe we should explore these matters further in our discussions.

3. Rehabilitation Act Obligations.

The Rehabilitation Act requires that a reasonable accommodation be made for the handicapped. While your analysis quite properly draws a distinction between the obligation owed to an "addict" and the obligation owed to a "recreational user," the point where the latter begins to transform into the former is not always apparent. Moreover in some cases, a characteristic of the employee's addiction may be an inability to acknowledge the addiction and the need for professional help. Accordingly, interpretation of the Act's obligations to require reasonable accommodation in employment only to those who voluntarily admit their problem appears likely to invite serious legal challenge.

We believe our efforts could withstand legal challenge if an Executive Order provided appropriate job protection and rehabilitation assistance not only to those whose drug abuse problem is revealed for the first time through voluntary admission or other conduct, but also to those whose problem is revealed through testing. In order to ensure that the person is entitled to protection under the Rehabilitation Act (i.e., is dependent on drugs rather than simply a "recreational user"), we would suggest a certification by a family physician or supervisor that the employee has a physiological or psychological drug dependency. Moreover, as a matter of policy we believe a first-time determination of drug abuse, by testing or otherwise, should not be grounds for removal from employment, although lesser forms of personnel action would be appropriate in such cases.

While the Rehabilitation Act applies to pre-employment applicants as well as employees, it would not appear that it would be "reasonable" to require the federal government or any employer to hire an applicant who is not undergoing rehabilitation or to pay for rehabilitation of an applicant's addiction. It might be appropriate in the spirit of our efforts, however, to encourage flexibility when an addict-applicant is in a rehabilitation program already, and to ensure that positive test results are not used as a per se rejection tool should an individual apply for another federal job at a later time. Whether a

pre-scheduled, single drug test for all job applicants, paid for by the federal government and performed to its specifications, is likely to provide useful information in a cost-effective manner is another practical question.

4. Status of Existing Collective Bargaining Provisions.

An additional legal issue not covered in your memorandum is whether an Executive Order can alter conflicting practices and procedures in an existing collective bargaining agreement. The statutory authorities cited in your draft Executive Order as the basis for Presidential action in this area refer to statutes granting him authority to "regulate" the criteria for hiring and for the conduct of employees. If this is so, then on its face 5 U.S.C. 7116(a)(7) would make it an unfair labor practice to enforce any obligation of the new order that is in conflict with an existing collective bargaining agreement. Absent a sound legal argument to the contrary, we would recommend that any new Executive Order simply take cognizance of existing agreements and thus avoid disruptive and lengthy litigation with federal employee unions on this point.

I am enclosing for your consideration a proposed Executive Order that would conform with the suggestions noted above, together with a copy of your proposed order on sensitive employees (most of which is included verbatim, or with minor editing, in our revision). Our revision includes one additional suggestion not discussed above: that the testing program be extended to include abuse of otherwise legal (prescription) drugs which would substantially impair the ability of an employee to carry out sensitive duties.

Enclosures

cc: Peter J. Wallison
Carlton Turner

Executive Order No. _____ of August __, 1986

Drug Free Federal Employment

WHEREAS drug abuse, on or off duty, by federal employees in sensitive positions 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 who must set an example for other employees and the public;

WHEREAS drug abuse, on or off duty, by federal employees in sensitive 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 drug abuse, on or off duty, by federal employees in sensitive positions can pose a serious health or safety threat to members of the public and to other federal employees;

WHEREAS drug abuse, on or off duty, by federal employees can impair the efficiency of federal departments and agencies by undermining public confidence in their functions, creating suspicion and distrust among employees, and result in increased absenteeism and in less reliable and decreased production;

WHEREAS drug abuse, on or off duty, can be ascertained by a program of random testing carried out under appropriate due process and privacy safeguards;

WHEREAS drug abuse, on or off duty, is primarily the responsibility of the abuser, but employers have an obligation under the law to make reasonable accommodation;

WHEREAS the laws governing the conduct of civil servants provide procedures for agency actions terminating employees on the basis of conduct;

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including Sections 3301(2) and 7301 of Title 5 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) All federal employees are required to refrain from drug abuse as defined by this order.
- (b) Drug abuse by federal employees in sensitive positions whether on duty or off duty is contrary to the efficiency of the service.
- (c) Persons who engage in drug abuse 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 identify as sensitive those positions which, in the judgment of the head of the agency, involve national security, the protection of health and safety of the public, and other similar positions requiring a high degree of public trust and reliance.
- (b) The head of each agency shall establish a drug testing program, consistent with the standards set forth in this order, and other relevant rules, regulations and collective bargaining agreements and obligations, for all employees in sensitive positions. The extent of and related 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 all employees in positions to be designated as sensitive: (i) that their positions have been designated as sensitive; (ii) that drug abuse is prohibited, and the definition thereof; (iii) that testing for drug abuse is to be conducted, and the procedures therefor; and (iv) that counseling and rehabilitation are available, and the procedures for obtaining such assistance.
- (b) Agency testing procedures shall provide for the privacy of employees in providing specimens for testing, for an immediate retest upon request of an employee, and for notification of employees 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 request 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

- (a) All employees may seek drug abuse counseling or rehabilitation services from their agency on a voluntary basis, consistent with existing rules, regulations and any relevant collective bargaining provisions.
- (b) An employee in a sensitive position who is found to be engaged in drug abuse shall have the opportunity, only after the first such determination of drug abuse, to obtain drug abuse counseling or rehabilitation services, upon certification by a physician or supervisor that the employee may have a physiological or psychological drug dependency.
- (c) The Director of the Office of Personnel Management shall ensure that the contract negotiated with any carrier of health plans offered Federal employees under chapter 75 of title 5, United States Code shall include the provision of drug abuse counseling and rehabilitation services.

Section 5: Transfer and Removal Actions

- (a) Any employee in a sensitive position engaged in drug abuse counseling or rehabilitation may be transferred to available non-sensitive duties until certification of successful completion of such counseling or rehabilitation.
- (b) Any employee in a sensitive position engaged in drug abuse not eligible for counseling or rehabilitation, or who has not successfully completed a counseling or rehabilitation program in 3 months or such additional time as the agency head may in his discretion provide, shall be subject to appropriate personnel action; provided, however, that a first determination of drug abuse shall not be grounds for removal from employment.

- (c) The results of a drug test conducted pursuant to this order and information developed by the agency in the course of the drug testing of the employee shall be admissible in evidence in processing any adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in administrative or disciplinary proceedings. Positive test results are preliminary results until confirmed as positive (by both initial and confirmatory testing) or by an admission of the employee.
- (d) The determination of an agency that an employee in a sensitive position is engaged in drug abuse may be made on the basis of any appropriate evidence, including direct observation, conviction of a criminal offense involving drugs, 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 engaged in drug abuse.
- (e) Any action to remove an employee who is engaged in drug abuse shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act.

Section 6: Applicable Agreements

To the extent this order is applicable to employees covered by collective bargaining agreements, any existing agreement shall for its duration control agency action involving rehabilitation, testing, and personnel actions to the extent of any direct conflict.

Section 7: Applicants for Employment

- (a) Applicants for federal employment may be required to take a drug test of the same type as required for federal employees in sensitive positions, and with the same rights as those employees concerning retesting, submission of related medical evidence, and confidentiality.
- (b) Applicants whose test results indicate drug abuse may not be hired, except that agencies shall give reasonable consideration to those applicants who are already enrolled in rehabilitation programs.
- (c) Applicants whose test results indicate drug abuse may reapply for other positions at a future time,

and shall not be prejudiced by the results of any such test except where a history of drug abuse may be relevant to the specific sensitive nature of a position.

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 "drug abuse" means: (1) the use of any controlled substance, as defined by section 802(6) of Title 21, United States Code, the possession of which is unlawful under chapter 13 of that title, unless that substance is possessed or used pursuant to a valid prescription or is otherwise authorized by law; or (2) the use of any drug, regardless of use pursuant to lawful prescription, which results in the inability to substantially perform sensitive responsibilities of positions designated pursuant to section 2(a) of this order.

Section 9: Effective Date

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

RONALD REAGAN

THE WHITE HOUSE

August __, 1986



DEPARTMENT OF THE TREASURY
WASHINGTON

August 25, 1986

MEMORANDUM FOR RALPH C. BLEDSOE
SPECIAL ASSISTANT TO THE PRESIDENT FOR
POLICY DEVELOPMENT

FROM: Robert B. Zoellick *RBZ*
Executive Secretary

SUBJECT: Drug Abuse Policy Working Group

Thank you for sending Secretary Baker the Attorney General's memorandum of August 12, 1986, establishing the Drug Abuse Policy Working Group.

While we were unaware of a request to designate Assistant Secretary Frank Keating to serve on the Working Group, the Treasury Department is pleased to do so.

Best of luck in this important work.

Copy to: Edwin Meese, III - Attorney General
Carlton Turner - Deputy Assistant to the President
Frank Keating, II - Assistant Secretary

THE WHITE HOUSE

WASHINGTON

August 22, 1986

MEMORANDUM FOR DONALD T. REGAN

FROM: CARLTON TURNER

SUBJECT: Status Report on Drug Abuse Policy Initiatives

The Domestic Policy Working Group on Drug Abuse Policy and its task forces have been considering various proposals and action items for the President's new drug initiatives. The preliminary task force reports were presented to the working group on Monday, August 18, 1986, and the drafts have since undergone the first round of revisions. On Tuesday, August 26th, the drafts will again be presented to the working group for comments and follow-up actions. The preliminary results of the Working Group and its task forces are summarized in Attachment A.

As part of the working group process, HHS has developed data showing that our 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.
- The emphasis on prevention will also have a long term benefit by stopping new users, many of whom would develop increasingly intensive use habits.

Other items of interest:

- The Department of Education reports that schools and colleges are following the lead of the President and Secretary Bennett in taking a hard line against illegal drug use.
- A soon-to-be-released Gallup poll indicates that drug abuse has become the most serious problem facing public schools, replacing discipline which had been named as the most serious problem for the past 16 years. Some 90 percent of the respondents support mandatory anti-drug instruction in the schools, 78 percent favor expelling students caught with drugs on school property, and 67 percent would allow school officials to search lockers and personal effects for drugs.

- The "get tough on illicit drug users" approach is receiving wide support throughout the private sector, including school systems, service clubs and other community-based groups, and we are receiving many offers of assistance.
- Many private sector groups are adopting Mrs. Reagan's "Just Say No" approach in their prevention and awareness efforts both for youth and adults. We will continue to push making "Just Say No" the common element of all prevention efforts.

The media coverage concerning the drug testing issue is causing some reservations among Federal managers regarding whether we are serious about a drug-free Federal workplace.

- In the working group, there is no argument against testing those persons in sensitive positions, and everyone agrees that illegal drug use has no place in any workplace.
- We have not reached a consensus on several critical issues, including voluntary testing, removal of drug users from sensitive positions, disciplinary actions, and the number of opportunities a drug user has to stop illegal drug use before Federal employment is terminated.
- We are trying to achieve a balance between intolerance of illegal drug users and fair treatment. The mood of the country indicates that the public will accept a strong program and, further, that the public will eventually demand strong leadership from the Federal government.

We are continuing to work toward an Executive Order which allows mandatory testing for all sensitive positions. Further, the draft Executive Order will be written permissive, i.e., allowing the department or agency head to develop a specific program appropriate to the nature of their operation.

Legislative Review:

The Department of Justice has identified 278 individual pieces of drug-related legislation before the 99th Congress. Of those, 35 have been developed since August 5.

Of greater importance are the proposals being made by the House Democrats and the Senate Republicans, since those initiatives are most likely to be moving this fall.

- The House Democratic Drug Initiative is a broad and disorganized group of proposals which appear to be in substantial need of work. See Attachment B for an index of the proposal.

- There is some concern that the Republican leadership in the House is likely to sign on and support the Democrat initiative and later attempt to make modification by amendment, rather than to propose a separate package.
- The Senate Republicans are reportedly drafting a proposal which does not include any drug testing provisions. A copy has been requested.
- Senate Democrats have introduced a bill, S. 2715, with primary focus on rehabilitation and education.

New Administration proposals:

- Attachment C is a summary of legislation proposed by the U.S. Forest Service to reduce the production of cannabis on Federal lands.
- The Attorney General will put an 11-title legislative proposal before the Domestic Policy Council in September. See Attachment D for a summary.

I have also attached a copy of the legislative summary provided by the Domestic Policy Council to you as part of the Drug Abuse Policy Coordination Plan on August 8, 1986.

The Legislative Review Task Force is scheduled to meet again on Monday, August 25th, to discuss the broad array of legislation.

Attachments:

- A. DPC Working Group Preliminary Recommendations (Please note that the Department of Labor's recommendations had not yet been received at the time this memorandum was sent.)
- B. Index: House Democratic Drug Initiative
- C. Forest Service proposal
- D. Summary of Drug Bill being proposed by the Attorney General.
- E. Summary of Congressional Activity and Proposed Administration Legislative Initiatives, August 8, 1986

DOMESTIC POLICY COUNCIL WORKING GROUP ON DRUG ABUSE POLICY

PRELIMINARY RECOMMENDATIONS

GOAL #1 - DRUG-FREE WORKPLACE

This goal is to protect the public and the workforce and to increase productivity by ensuring that workers in sensitive occupations are clear-minded and free of the effects of illegal drugs. As the Nation's largest single employer, the Federal Government should serve as a model for dealing constructively with drug and alcohol abuse in the workplace. The Military Services have led the way in identifying drug users and moving toward a drug-free military force. Several Federal agencies have begun or are planning similar programs.

Proposed Actions:

- Accelerate working toward a drug-free Federal workplace.
 - Issue Executive Order regarding the use of illegal drugs by employees of the Federal Government.
 - Implement mandatory drug screening for those employees in sensitive positions: public safety, law enforcement, national security, and other sensitive positions as determined by the department head.
 - Seek voluntary compliance for those not in sensitive positions.
 - Provide treatment for those individuals seeking help.
 - Train supervisors to detect symptoms of drug use by any employees.
- Encourage state and local governments to develop drug-free workplaces.
- Call on private citizens and local politicians to incorporate this goal in their own agendas.
- Work with government contractors to establish a policy of drug-free work environments.
- Mobilize management and labor leaders in the private sector to fight the problem of drug abuse in the workplace.

GOAL #2 - DRUG-FREE SCHOOLS

This goal is to have every educational institution drug-free, from grade schools through universities.

Individual communities have the primary responsibility for creating drug-free schools. With the help of reliable information on what works, they can initiate effective prevention programs in each school. But, as schools begin to implement such programs, the Federal Government can provide useful assistance and make a contribution to the effort.

Legislation:

- The Drug-Free Schools Act of 1986 (The Zero Tolerance Act) has been prepared by the Department of Education as an essential element of the national goal of drug-free schools. The bill would authorize \$100 million for fiscal years 1987 through 1991. Other legislation has been proposed by Members of Congress which would cost more and not be as effective.

Proposed Actions:

- Develop ways to communicate accurate and credible information on how to achieve a drug-free school.
 - Schools Without Drugs, scheduled for release on September 16, 1986, has been prepared by the Department of Education to provide parents, school officials, students and communities with reliable and practical information about the problem of school-age drug use and what they can do to achieve drug-free schools. A White House Ceremony is planned, with Mrs. Reagan announcing the book's release. The book will be available free of charge, and copies will be mailed to all elementary and secondary schools.
- Encourage all schools to establish a policy of being drug free.
 - The Secretary of Education will continue to be a national advocate for drug-free schools.
 - The Zero Tolerance Act (\$80 million of the total \$100 million) would provide grants to school districts which have a sound plan for getting drugs out of their schools and keeping them out.

- The plan must include tough disciplinary provisions that are developed in conjunction with parents, law enforcement officials and the courts.
- States and localities must demonstrate their own commitment to prevention by providing at least one-third of the cost of the program.
- Make certain that Federal laws against distributing drugs in or near schools are known and enforced in cooperation with local authorities.
 - The Secretary of Education and Attorney General are working on a joint effort. Possibilities include a joint press briefing or letter.
- Encourage local school districts to expand their drug abuse education as part of an overall health curriculum.
 - Grants under the Zero Tolerance Act would encourage schools to expand drug abuse prevention as part of the overall health curriculum.
- Encourage student leaders and student organizations of all types to sponsor and support the drug-free goal.
 - Encourage efforts, such as the TARGET project (National Federation of High School Associations), to train student leaders in developing anti-drug activities.
- Encourage community support and positive peer pressure for drug-free achievement oriented school environment.
 - The Zero Tolerance Act would authorize the Secretary of Education to reserve \$20 million (of the total \$100 million) for national prevention and awareness programs for students.

GOAL #3 - EXPAND DRUG TREATMENT

The health dangers posed by drug use are more evident than at any time in recent history, and we need to make appropriate treatment available to those experiencing health damage and addiction.

Legislation:

- Legislation is being developed to remove earmarks on the Alcohol, Drug Abuse and Mental Health Block Grants received by the states. The Block Grant program was established by the Administration in 1982 to give the states flexibility in

spending the money in areas of greatest local need. Since then, Congress placed quotas on the block grants, restricting the amount spent by the states for drug abuse services, including treatment. The Administration opposed all earmarks.

- Explore possible benefits of transferring Federal funding drug abuse services from the Block Grant Program to Title 19, Medicaid.

Proposed Actions:

- Encourage states and communities to develop programs to treat specific drug-related health problems.
 - Establish Community Systems Development Projects which would provide short-term financial assistance (on a matching basis with a declining Federal share) to communities to assist them in mobilizing comprehensive, integrated treatment and prevention efforts to reduce illegal drug use. (\$70 million, 14 FTEs)
 - The projects would build on existing public and private sector institutions to develop a permanent capability which can be sustained by the states and communities themselves.
 - Anticipated results: integration of alcohol and drug abuse into the mainstream of health care; involvement of all segments of the community in enhancing the local treatment and prevention system; and establishment of coordinated alcohol and drug abuse prevention and treatment systems nationwide.
- Improve research in health-related areas, including drug testing.
 - Develop enhanced epidemiology and surveillance systems to assure accurate tracking of the incidence and prevalence of alcohol and drug use and improved identification of risk factors and risk groups. (\$3 million, 8 FTEs)
 - Improve research to strengthen resources for preventing, identifying and treating illegal drug use. (\$33 million, 38 FTEs) Priorities are:
 - * More effective methods of preventing, detecting, diagnosing and treating illicit drug use and intervening with high risk children and adolescents.

- * Alternative, improved and less costly drug detection mechanisms.
- * National accredited system for laboratory testing.
- Bolster medical and health programs aimed at prevention.
 - Establish a National Center for Prevention, Education and Early Intervention Services to strengthen coordination of Federal activities with public and volunteer efforts. (\$15 million, 18 FTEs)
 - On an ongoing basis, the Center would disseminate knowledge gained from prevention and treatment research through statewide prevention networks.
 - On an emergency basis, the Center would provide immediate aid to communities in drug crisis through rapid response technical assistance, needs assessment, and advice on effective prevention strategies.

GOAL #4 - EXPAND INTERNATIONAL COOPERATION

We must build on what we have already accomplished and move forward. Now our goal is nothing less than the full and active support and cooperation of every country with which the United States must work to defeat international drug trafficking.

Specific actions under this goal are being addressed by the National Drug Enforcement Policy Board. One new initiative has been announced:

- On August 6, 1986, President Reagan announced that he would call back for special consultations U.S. Ambassadors to other countries which may face major drug production, transportation, or consumption problems.
- A Conference for U.S. Ambassadors has been scheduled for October 6-7, 1986 to convey the sense of urgency with which the U.S. Government is approaching the issue of drug demand reduction and to create the opportunity for U.S. Ambassadors to discuss increased regional cooperation.

GOAL #5 - STRENGTHEN LAW ENFORCEMENT

Here again, much has been accomplished. Strong and visible law enforcement is needed to cause disruptions in drug trafficking and in trafficking routes. Law enforcement is also critical to maintaining an atmosphere in which major health programs can advance.

D R A F T - AUGUST 22, 1986

Specific actions under this goal are being addressed by the National Drug Enforcement Policy Board. One new initiative has been announced:

- On August 14, 1986, the Reagan Administration announced Operation Alliance, a major new cooperative drug law enforcement effort along the 2,000-mile border between the United States and Mexico.
- Under the program, more than 20 U.S. agencies -- including Federal, state and local authorities -- will coordinate efforts to choke off the flow of drugs, weapons and other contraband across the border.
- More than 500 Federal law enforcement personnel will be hired or reassigned to the area.
- The Administration has asked Congress for \$266 million over the next two years to hire additional agents and prosecutors and buy new air surveillance equipment.

GOAL #6 - INCREASE PUBLIC AWARENESS AND PREVENTION

This goal is primary. Continuing leadership by the President and Mrs. Reagan is vitally important to achieve more gains in the fight against illegal drugs. Attitudes have changed, awareness has increased, and many people are ready to join in the fight.

Legislation:

- No new funding is proposed. The cooperative and cost-effective partnership between government and the private sector will bring resources to the national public awareness and prevention effort far beyond those which could be purchased by any amount of government spending.
- Legislative changes would be helpful to remove certain regulatory restrictions concerning solicitation of funds, private sector donations, and use of materials developed for foreign audiences. The following actions are recommended:
 - Prepare and issue government-wide guidelines which clarify the Federal employee's options in seeking corporate support and funds for various programs.
 - Re-evaluate the Competition and Contracting Act of 1984, specifically the exceptions to full and open competition, and request any necessary legislative changes to allow private companies to donate services, e.g., communications, technical advice, film

production, etc. for government-funded programs without the complicated administrative procedures required of contractors.

- Re-examine the restrictions for limited use of materials developed for foreign consumption by the Department of Defense and the United States Information Agency and propose any necessary legislative changes or exemptions.

Proposed Actions:

- Ask all citizens and private sector organizations to join the First Lady's drug abuse awareness and prevention campaign.
 - Present a nationally-televised Presidential message to the Nation with a general call to arms.
 - Send Presidential letters to the Chief Executive Officers of the Fortune 500 companies and selected foundations requesting their support and encouraging sponsorship of drug prevention activities.
 - In conjunction with the release of the letter, launch a major media campaign of public service announcements featuring the President, First Lady, Cabinet Officers, national celebrities and athletes.
 - Host, with the First Lady, a series of White House conferences and briefings in Washington and around the country, targeting specific networks of individuals such as religious leaders, corporate leaders, youth group leaders, etc.
 - Establish a "Presidential Honor Roll" as an incentive for companies that contribute significant resources in the area of drug abuse prevention.
 - Conduct a national drug prevention essay and poster contest for the Nation's students, with awards presented at a White House ceremony.
- Redouble efforts in all media forms, to stop illegal drugs and to make their use unacceptable in our society.
 - Establish a Presidential Media Advisory Board.
 - Hold an annual drug abuse prevention symposium for community affairs/public affairs representatives and

their foundation counterparts to share materials, films, goals and objectives.

- Disseminate accurate and credible information about the health dangers of drug abuse.
 - Encourage the use of positive peer pressure by adopting the theme of "Just Say No" as a consistent message in all campaigns against the use of illegal drugs.
 - Establish interagency prevention task force:
 - * Act as the coordinating body for Federal programs, ensuring that these programs effectively respond to the needs which exist within communities and that federal resources are used in coordination with those at other levels of government to assist grassroots organizations.
 - * Provide a centralized location with a toll-free number for technical assistance, information and general referrals.
 - * Manage a Speakers' Bureau which consists of expert government and private sector speakers for addressing conferences, meetings and general media requests.
 - * Review all materials developed by the various agencies for accuracy, credibility and consistency in message.
- Encourage corporate America to get involved in prevention programs within their organizations, communities, our Nation and in foreign countries where they have subsidiaries.
 - Establish a Presidential Private Sector Commission to promote and identify private sector initiatives and potential sources of support within the private sector for drug prevention activities.
 - Publish a catalog of model corporate and other private sector programs.
 - Identify contacts in corporations, organizations and foundations and develop strategies for encouraging drug prevention support among these contacts.
 - Encourage U.S. based, multi-national corporations which are involved in prevention activities in the United States to encourage programmatic assistance in other

countries in which they operate, particularly source countries.

- Approach and encourage foreign corporations operating in the United States to launch or support prevention initiatives both within the United States and their home countries.
 - Schedule drug prevention experts to address major business conferences, trade association meetings, national conventions, etc.
 - Encourage national corporations specializing in children's services or products, such as Mattel, Walt Disney Productions, Shakey's, Wendy's, etc., to review their available resources and assist in launching programs for young people.
 - Develop incentive and recognition programs for government agency employees who work with the private sector in developing new and innovative programs.
 - Encourage Employee Assistance Programs to broaden counseling programs to include prevention and education for their employees, their families and their communities.
- Stimulate development of innovative prevention programs in the private sector.
 - Sponsor White House Conferences and briefings to share information, ideas and model programs in illegal drug use prevention with target groups such as religious leaders, youth and civic group leaders, etc.
 - Follow-up with agency-sponsored mini-conferences or workshops on the local and regional levels.
 - Determine and pursue opportunities to increase drug abuse prevention activities by the constituency groups of each agency through workshops, meetings, special events and material distribution.
 - Include presentations on drug abuse prevention in White House Office of Public Liaison events.
 - Develop and distribute training and educational materials specifically geared toward targeted groups, e.g., ethnic groups, physicians, parents, teachers, etc.

INDEX
Draft House Democratic Drug Initiative
August 20, 1986

<u>Number</u>	<u>Title/Short Description</u>
	<u>Proposed Armed Services Committee Submission for Omnibus Drug Bill</u>
	A series of proposals as follows:
RWC995	Defense Narcotics Act of 1986
	The President should apply the full measure of his executive powers against the introduction of narcotics into the U.S. including deployment of radar, aircraft, and military personnel, to expand the role of the nation's armed forces in the war on drugs
RWC041	Role of the National Guard
BENNET041	President may assign members of the armed forces to assist drug enforcement officials in searches, seizures and arrests outside the land area of the U.S.
HUNTER041	Members of the armed forces and DOD equipment may be assigned to apprehend and arrest persons and seize property suspected of illegally entering the U.S. in connection with drug smuggling, at or near initial point of entry
HUNTER094	Armed forces equipment and personnel may be used to halt the unlawful penetration of the U.S. borders by aircraft and vessels carrying narcotics.
ROSTEN040	<u>International Drug Traffic Enforcement Act</u>
	Prohibits importation of drug paraphernalia except for medical or scientific needs as prescribed by AG
H.R.5406	<u>Coast Guard Drug Interdiction and Law Enforcement Act of 1986</u>
	Provides for Coast Guard drug interdiction and law enforcement

H.R.5358
(LUNDIN077)

Drug Eradication Act of 1986

To facilitate the interdiction of narcotic drugs, controlled substances, and material for their manufacture from entry into the U.S., reduce or eliminate the original production of these items in other countries, and to ensure the development and implementation of eradication programs in countries cultivating, producing and exporting controlled substances

Report
(H.R.5176)

Supplemental Views: Comprehensive Money
Laundering Prevention Act

RAB859

Proposed Public Works and Transportation Title
to Drug Bill - 8/12/86

To amend the Federal Aviation Act to establish criminal penalties, including forfeiture or seizure of aircraft, for persons who forge or falsify aircraft registration certificates or who transport controlled substances by aircraft or operate an aircraft in violation of FAA regulations. The bill also provides for the conduct of a study to determine the relationship between the usage of controlled substances and highway safety

YSHDAE
(H.R.5378)

Drug Abuse Education and Prevention Act of 1986

To provide Federal financial assistance for drug abuse education and prevention programs including early intervention and rehabilitation referral

DINGEL429

Drug Abuse Prevention and Treatment Act of 1986

Provides for allotments of monies to States for drug abuse prevention and treatment, including community based prevention activities, education programs (including AIDS). Establishes the Agency for Substance Abuse Prevention under ADAMHA. Calls for a White House Conference on drug abuse and drug trafficking control. Includes designer drugs in the Controlled Substances Act. Sets up coordination of efforts related to alcohol and drug abuse among Indian youth, an Indian Health Service Prevention and Treatment Program and other similar programs. Sets up Advisory Commission on the Comprehensive Education of Intercollegiate Athletes.

EL712

Recommendations of the Committee on Post Office
and Civil Service

Changes U.S. Code to set up programs, under OPM auspices, to provide prevention, treatment and rehabilitation services to Federal employees with respect to drug and alcohol abuse. Special mention of an education program, employee assistance programs, and a demonstration project regarding employees health benefits

N/A

Indian Alcohol and Substance Abuse Prevention
and Treatment Act of 1986

Sets up a series of programs with regard to the Indians

H.R.5266

To require the President to submit legislation for the reorganization of the Executive branch in order to more effectively combat drug trafficking and drug abuse

MDB831

White House Conference on Drug Abuse and Control
Resolution of 1986

Calls for a White House Conference within 9 months to develop recommendations and further action in this area

MDB839

Designer Drug Enforcement Act of 1986

Includes designer drugs in the Controlled Substances Act

MDB838

Money Laundering Control Act of 1986

Prohibits financial transactions in criminally derived properties and other such commercial transactions and the transport of monies outside the U.S. to further such transactions

5393REPT

Drug Enforcement Enhancement Act of 1986

Authorizes additional appropriations to various organizations within DOJ for drug enforcement related activities

HUGHES315

Narcotics Penalties and Enforcement Act of 1986

Sets up penalties for serious traffickers, major traffickers and others

The following are highlights of proposed legislation by Agriculture to reduce production of cannabis (marijuana) on National Forest lands. We have lost nearly one million acres of National Forest lands to the growers.

- Repeals existing limiting authority that now constrains Forest Service drug enforcement activities on National Forest System lands;
- Creates new and expanded authority for Forest Service to combat drug problems on National Forest lands through authority to:
 - pursue fleeing suspects beyond National Forest boundaries;
 - investigate violations of Forest Service law and regulations, relating to both misdemeanors and felonies; and
 - cooperate with any other Federal law enforcement agency having primary jurisdiction over offense committed;
- Authorizes Secretary to designate Forest Service employees to:
 - carry firearms;
 - serve without warrant according to rule of law; and
 - seize without warrant or process any evidentiary item provided for by Federal law;
- Authorizes Secretary to designate other Federal employees to assist Forest Service and to empower such other Federal employees to carry out purposes of the Act while so designated;
- Authorizes Forest Service employees designated by Secretary to investigate and enforce section 401 of the Controlled Substance Act;
- Authorizes the use of special strike forces and permits Forest Service to cooperate with other Federal, State, and local law enforcement officials in investigations and enforcement of criminal drug statutes;
- Authorizes \$20 million to be appropriated annually to carry out the purposes of this Act, and further provides Secretary with the authority to fund activities carried out under this Act using monies received from management of the National Forest System lands in the event the authorized funds are not appropriated.

DRUG BILL SUMMARY

Title I, the Drug Penalties Enhancement Act of 1986 would increase penalties for drug trafficking offenses to include five-year mandatory minimum prison terms for drug offenses and includes a mandatory term of up to twenty years for drug trafficking resulting in death.

Title II, the Drug Possession Penalty Act of 1986 increases the penalties for simple possession of controlled substances to a mandatory fine of not less than \$1,000 and not more than \$5,000 for a first offense, a mandatory fine of \$2,500 to \$5,000 plus a mandatory prison term of 15 days to two years for a second offense, and a mandatory fine of \$5,000 to \$25,000 and a mandatory prison term of 90 days to three years for a third offense.

Title III, the Continuing Drug Enterprise Penalty Act of 1986 would authorize the death penalty for a person who is the principal administrator, organizer or leader of a major drug trafficking ring.

Title IV, the International Forfeiture Enabling Act of 1986 would authorize U.S. authorities to seize and civilly forfeit property in the U.S. used in or derived from the violation of foreign drug laws.

Title V, the Repeal of the "Mansfield Amendment" would delete 22 U.S.C. 2291(c) which prohibits U.S. officials from participation in narcotics arrests in foreign countries and from being present during the interrogation of criminal suspects by foreign authorities.

Title VI, the Juvenile Drug Trafficking Act of 1986 would provide enhanced penalties for using juveniles in the furtherance of a drug distribution scheme and strengthen the existing law prohibiting the sale of drugs near schools.

Title VII, the Controlled Substances Import and Export Penalties Enhancement Act of 1986 makes amendments with respect to importation of controlled substances to track those set out in Title I above.

Title VIII, the Narcotic Trafficker Deportation Act of 1986 amends the Immigration and Nationality Act to facilitate deportation of aliens involved in drug trafficking.

Title IX, the Criminal Rules Sentencing Amendments would modify Rule 35 of the Federal Rules of Criminal Procedure clearly to authorize courts to lower a sentence upon the application of the Government where the defendant has provided substantial assistance to the Government in the investigation or prosecution of other crimes.

Title X, the Chemical Diversion and Trafficking Act of 1986 would establish controls over the production of drug precursors and chemicals essential to the manufacturing of controlled substances.

Title XI, the Assets Forfeiture Fund Amendments would strengthen the federal forfeiture program and thus enhance our ability to forfeit the assets and proceeds of drug trafficking enterprises.

Congressional Activity

Congressional activity in recent weeks has been brisk on this issue, listed below are some of the major legislative initiatives currently on the Hill.

1. The Drug Dependent Offenders Amendment of 1986. (H.R.5076) Federal offenders placed on probation or parole who have drug dependency problems may be required to undergo drug testing, counseling, and other treatment programs as a condition of probation or parole.
2. The Designer Drug Enforcement Act. (H.R.5246, S.1437) Makes designer drugs illegal and subjects traffickers of controlled substance analogs to the stiffest drug penalties.
3. Career Criminal Amendments. (H.R.4885) Expands the Armed Career Criminal Act to include violent crimes and drug crimes.
4. The Money Laundering Control Act. (H.R.5217, S.2683) Creates a new crime of money laundering; improves investigatory tools and reduces restrictions on law enforcement in the banking area.
5. Providing for a White House Conference on Drug Abuse and Control. (H.J.Res.631) The resolution calls for the President to convene a White House Conference on Drug Abuse and Control by April 1987.
6. Technical Amendments to Comprehensive Crime Control Act. (H.R.2774) Eliminates technical problems with and clarifies many new provisions of the Comprehensive Crime Control Act of 1984.
7. Judiciary and Judicial Procedure Amendment (H.R.1193) A bill to amend the United States Code, to provide amounts from the Department of Justice assets forfeiture fund for drug abuse prevention, treatment, and rehabilitation programs.
8. Readiness Enhancement of Air Force Reserve Special Operation Act. (H.R.1307) A bill to authorize the appropriation of funds for the operation and maintenance of a Special Operations Wing of the Air Force Reserve.

9. Controlled Substances Importation, Increased Enforcement by Coast Guard Act. (H.R.2132) A bill to amend Public Law 96-350 to further define the Customs waters for the purposes of certain drug offenses.
10. Crimes and Criminal Procedure. (H.R.2774) A bill to amend Title 18 of the U.S.C. and other laws to make minor technical amendments of provisions enacted by the Comprehensive Crime Control Act of 1984.
11. Anti-Smuggling Act. (H.R.3479) A bill to amend the Tariff Act of 1930 to increase measures to combat smuggling by vessels, vehicles, and aircraft, and for other purposes.
12. Omnibus Diplomat. (H.R.4151) A bill to provide enhanced diplomatic security and combat international terrorism and for other purposes.
13. Readiness Enhancement of Air Force Reserve Special Operations Act. (S.531) A bill to authorize the appropriation of funds for the operation and maintenance of Special Operations Wing of the Air Force Reserve. To authorize the appropriation of funds for the operation and maintenance of the D of the Department of Defense Task Force on Drug Enforcement, and to require certain reports.
14. Drug Money Seizure. (S.571) A bill to amend Subchapter II of Chapter 53, of Title 31, United States Code, relating to currency reports.
15. Mail Order Drug Paraphernalia Act. (S.713) A bill to prohibit the interstate sale and transportation of drug paraphernalia.
16. Comprehensive Crime Control. (S.1236) A bill to prohibit the interstate sale and transportation of drug paraphernalia.
17. Controlled Substance Analogs Enforcement Act of 1985. (S.1437) A bill to amend the Controlled Substances Act to create new penalties for the manufacture with intent to distribute, the possession or the distribution of controlled substance analogs, and for other purposes.
18. Anti-Smuggling Act of 1985. (S.1694) A bill to amend the Tariff Act of 1930 to increase measures to combat smuggling by vessels, vehicles, and aircraft, and for other purposes.

19. Action Drug Prevention Program. (S.668) A bill to provide funding for the ACTION drug prevention program in HHS out of proceeds received by the Customs forfeiture fund and the Justice assets forfeiture fund.
20. State and Local Narcotics Control Assistance Act of 1985. (S.15) A bill to authorize HHS to make grants to States for drug abuse prevention, and other purposes, and to authorize the Attorney General to make grants to increase State and local enforcement of laws against drug abuse.
21. Student Chemical Abuse Prevention Act of 1985. (S.1820) A bill to provide assistance to State and local educational agencies for the development of and expansion of demonstration chemical substance prevention programs.
22. Department of the Treasury Appropriations. (H.R.5267) A bill to authorize additional appropriations for fiscal year 1987 for the United States Customs Service for drug enforcement capabilities.
23. Reorganization of Executive Branch Drug Trafficking and Abuse Functions. (H.R.5266) Requires the President to submit legislation for the reorganization of the Executive Branch in order to more effectively combat drug trafficking and drug abuse.
24. Department of Defense Narcotics Enforcement Assistance Act of 1986. (H.R.5270) A bill to authorize additional appropriations to the Department of Defense for armed forces assistance to civilian drug enforcement agencies.
25. Coast Guard Drug Interdiction Enhancement Act of 1986. (H.R.5268) A bill to authorize additional appropriations and personnel for the Coast Guard for drug interdiction.

Proposed Administration Legislative Initiatives

Through the Domestic Policy Council various Departments and Agencies have developed draft legislation that would support the President's Drug initiative.

Department of Justice

The National Drug Abuse Prevention Act of 1986. Establishment of a drug abuse prevention program which provides for a drug-free workplace and allows testing to identify and hold accountable users of illegal drugs in educational institutions, the private workforce and the Federal Government. This is not a budget item.

Department of Education

The Zero Tolerance Act. State set-asides for drug prevention activities at the state level. State discretionary grants to local school districts requiring each district to submit to the state agency a plan to achieve "Drug-Free Schools." Federal discretionary grants for development and dissemination of program models and materials on alcohol and drug prevention in schools. The estimated cost of this program is \$100 million.

Office of Personnel Management

Propose legislative changes to make current illegal drug use an absolute disqualifier for entry into Federal employment and a basis for termination, regardless of a claimed "handicapping" condition or effect on job performance. States, local governments, and government contractors would be encouraged to develop drug free workplaces.

Department of Health and Human Services

Restructuring the existing Title III of the Narcotics Addict Rehabilitation Act (NARA) to include all controlled substance abusers and to streamline the cumbersome regulatory and reporting requirements of the original Law.

Drafting a model statute to provide states with the basis for broader treatment authority for controlled substance abusers in their jurisdiction.

These are proposed legislative actions that would allow execution of those policies approved by the President and the Domestic Policy Council. They would cover activities beyond the limits the President has set; e.g., hiring in sensitive positions and any mandatory testing for sensitive positions. That is why this proposed legislation will need a reviewing body. (It is proposed that the Domestic Policy Council Working Group on Drug Policy be this body.)

THE WHITE HOUSE

WASHINGTON

August 20, 1986

MEMORANDUM FOR ADMINISTRATION SPOKESMEN

FROM: TOM GIBSON *gr for*
SUBJECT: White House Talking Points

Attached for your information and use are talking points on America's crusade against drug abuse.

If you have any questions concerning these materials, please contact the Office of Public Affairs at 456-7170.

AMERICA'S CRUSADE AGAINST DRUG ABUSE

- o Illegal drugs ruin lives, destroy families, and weaken entire communities. Drug abuse is not a private matter. For the sake of our Nation, it must end.
- o Drug abuse was a major national problem when President Reagan took office, and fighting drug abuse became one of the earliest priorities of his Administration.

The Reagan Commitment

- o In 1982, President Reagan published a comprehensive five-point strategy to stop drug abuse and drug trafficking. The strategy included international cooperation, drug law enforcement, drug abuse prevention, treatment, and research.
- o Thirty-seven different federal agencies are working together in this vigorous national effort.
- o Under the Reagan Administration, federal spending for drug law enforcement will virtually triple -- from a little over \$700 million in FY 1981 to an anticipated \$2.1 billion in FY 1987.
- o President Reagan set up the Organized Crime Drug Enforcement Task Forces under the Attorney General in 1982 to attack drug trafficking by major criminal organizations.
- o In 1982, the President asked the Vice President to establish a South Florida Task Force to respond to the drug trafficking emergency there. The effort pooled the resources of nine federal agencies, including the military, with state and local authorities.
- o The unprecedented successes of the South Florida Task Force led in 1983 to the creation of the National Narcotics Border Interdiction System -- now a model for coordinating interdiction efforts around all our borders.
- o On August 14, 1986, the Reagan Administration announced Operation Alliance, a major new cooperative drug law enforcement effort along the 2,000 mile U.S.-Mexico border. Under the program, more than 20 U.S. agencies -- including federal, state and local authorities -- will coordinate efforts to choke off the flow of drugs, weapons and other contraband across the border. More than 500 federal law enforcement personnel will be hired or reassigned to the area. The Administration has asked Congress for \$266 million over the next two years to hire additional agents and prosecutors and buy new air surveillance equipment.

WHITE HOUSE TALKING POINTS

- o In 1981, the First Lady began a major program to increase public awareness of the dangers of drug abuse and to get people involved in helping young people "Just Say No" to drugs. Since that time, Mrs. Reagan has traveled over 100,000 miles to 28 states and six foreign countries in her campaign and has clearly become the national leader in the effort to stop drug abuse by young people.

The President's Program Has Made Gains

- o In 1981, one foreign country was eradicating narcotics; today, 14 countries and all 50 states are eradicating. Shortages of marijuana supply are now being reported throughout the country, primarily as a result of eradication programs in Colombia and the United States.
- o Aggressive enforcement activity against cocaine manufacturers in Colombia, Peru and Bolivia is disrupting the flow of cocaine. U.S. helicopters have been aiding the effort in Bolivia.
- o Enhanced interdiction has increased U.S. seizures of illegal drugs. In 1981, we seized two tons of cocaine. In 1985, we seized 20 tons -- a ten-fold increase.
- o Under the Organized Crime Drug Enforcement Task Forces, over 3,600 drug criminals have been convicted and more than \$300 million of their assets seized.
- o Since the First Lady became involved in 1981, the number of parent groups has grown from 900 to 9,000 groups nationwide. Our school-aged children have formed over 10,000 "Just Say No" Clubs around the country.
- o The number of individuals who are using illegal drugs has stabilized in most categories and decreased in several. Most notably, the number of high school seniors using marijuana on a daily basis has dropped from one in 14 in 1981 to one in 20 in 1984-85.
- o The U.S. Armed Forces have cut the use of illegal drugs in the military by 67 percent since 1981.
- o Attitudes are changing. In 1985, polls showed 73 percent of our teenagers believed that possession of small amounts of marijuana should be treated as a criminal offense, compared to 44 percent in 1979.

WHITE HOUSE TALKING POINTS

The President's Redoubled Efforts Will Focus on the User

- o On August 4, 1986, President Reagan announced six new goals to build upon what has been accomplished and lead us toward a drug-free America:
 1. Drug-Free Workplaces for all Americans;
 2. Drug-Free Schools from elementary to university level;
 3. Effective Drug Abuse Treatment to tackle the health dangers posed by drugs;
 4. Improved International Cooperation to achieve full and active involvement by every country with which the United States must work to defeat international drug trafficking;
 5. Strengthened Law Enforcement to take additional initiatives which will hit drug traffickers with renewed force; and
 6. Increased Public Awareness and Prevention -- the goal on which success ultimately depends -- to help every citizen understand the stakes and get involved in fighting the drug menace.
- o President Reagan called for the commitment of all Americans in "taking a stand in every city, town, and village in this country and making certain drug users fully understand their fellow citizens will no longer tolerate drug use."
- o As the President stated, "Our goal is not to throw users in jail, but to free them from drugs. We will offer a helping hand; but we will also...refuse to let drug users blame their behavior on others.... And finally, yet first and foremost, we will get the message to the potential user that drug use will no longer be tolerated; that they must learn to 'Just Say No.'"

Testing of Federal Employees

- o The President's program does not include mandatory testing for all federal employees.
- o Testing will be required for employees in positions which involve sensitive areas. Many of these agencies already have testing programs in place.
- o For non-sensitive positions, the President would allow voluntary testing at the discretion of the agency head and would provide access to treatment and rehabilitation to those who are found to be drug users.

WHITE HOUSE TALKING POINTS

A Role for All Americans

- o Although we must try to cut off the supply of illegal drugs, ultimate success depends upon stopping their use. This cannot be done solely by government programs; in fact, it requires the support and involvement of all Americans.
- o President Reagan believes there is a role for each American in this effort. The task at hand is to fight illegal drug use in every segment of our society.
- o There is a role for parents, teachers and students; for industry and labor leaders; for White House officials and the military; and for the entertainment industry and the news media.

The time has come for each and every one of us to make a personal and moral commitment to actively oppose the use of illegal drugs -- in all forms and in all places. We must remove all traces of illegal drugs from our Nation.

-- President Reagan
July 30, 1986