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OA/ID Number: 85033
Folder ID Number: 85033-002

Folder Title:
Administrative, 1989-1991 [2]

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Doc. No. / Type	Subject/Title	Date	Restriction	Classification
01. Note	Florence [Gantt] to Brent Scowcroft Re: FBI (1 pp.)	2/2/90	(b)(1)	
02. Memo	Florence E. Gantt to J. Bonnie Newman Re: Request for Aircraft (1 pp.)	1/26/91	(b)(1)	S

Collection:

Record Group: Bush Presidential Records
Office: Scowcroft, Brent, Collection
Series: Administrative Files
Subseries:
WHORM Cat.:
File Location: Administrative, 1989 - 1991 [2]

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OA/ID Number: 85033-002
Date Closed: 9/8/2010
FOIA/Sys Case #: 2009-0275-S[2]
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THE WHITE HOUSE
WASHINGTON

June 8, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to Vail, Colorado on Friday, June 15, 1990 and return to Washington on Saturday, June 16, 1990. An aircraft is requested to depart Andrews on Friday, June 15 at 3:45 p.m. and return to Andrews late on Saturday evening.

WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

THE WHITE HOUSE

WASHINGTON

June 5, 1990

MEMORANDUM FOR ASSISTANTS TO THE PRESIDENT

FROM: C. BOYDEN GRAY
COUNSEL TO THE PRESIDENT

SUBJECT: Post-Employment Restrictions for David Bates

As you know, David Bates has left the White House staff as of this week. Because it has been some time since the last departure of a White House staffer covered by the statutory one-year post-employment "cooling-off" period for Senior Employees, David and I thought it would be useful to provide a summary of the limitations to which he will be subject during this period.

For one year after departing the government, a Senior Employee may not communicate -- by phone, letter, in person, or in any other manner -- with an intent to influence anyone at, his or her former agency concerning any particular matter pending before that agency or in which the agency has a direct and substantial interest. For Senior Employees leaving the White House, the entire Executive Office of the President is considered to be one agency for the purpose of this restriction. The bar covers both matters involving specific parties and general policy matters such as legislation. It does not matter whether the employee previously participated in or was responsible for the issue, or whether the issue was pending before he or she left the agency. The statute does not prohibit communication with Congress, other agencies, the public, or the press.

The law recognizes that agencies may need to consult with former Senior Employees and permits only a few other types of contacts. Permissible communications include:

- purely social conversation;
- responses to the former agency's request for information;
- personal matters, such as government benefits or interpretation of the post-employment restrictions; and
- statements based on the individual's special knowledge (such as employment references based on personal

knowledge), provided that the individual is not being paid.

Communications that are or could be construed as advocacy on behalf of a client are not allowed -- even in response to a specific question from someone at the former agency. To help ensure that permissible contacts with a former agency will not be misperceived, most former Senior Employees keep some kind of a log of their contacts with their former agencies.

Although the cooling-off period is the key post-employment restriction during the first year after the departure of a Senior Employee, three additional restrictions remain in effect after the one-year period ends. For your convenience, I have attached an updated memorandum that describes these additional restrictions. The memorandum also summarizes changes in the law that take effect for employees leaving Federal service on or after January 1, 1991.

Please share this memo with anyone on your staff who would find it helpful and feel free to contact me or Amy Schwartz of my staff if you have any questions.

Attachment

THE WHITE HOUSE

WASHINGTON

February 26, 1990

MEMORANDUM FOR PROSPECTIVE APPOINTEES

FROM: C. BOYDEN GRAY
COUNSEL TO THE PRESIDENT

SUBJECT: Post-Government Service Employment Restrictions Applicable to Former Senior Government Employees

Every prospective government officer or employee should understand the legal restrictions that will apply following his or her government service. Federal criminal law imposes several specific limitations on such activities, and penalties for violations can include fines and imprisonment of up to five years. The law is designed to preclude former officials from unfairly exploiting their prior government employment and affiliations.

Although the law imposes stricter limitations on individuals who occupy higher level positions, certain prohibitions apply (with specified exemptions) to all officials and employees of the executive branch, the independent agencies, and the District of Columbia, including most special government employees. Some departments and agencies are also subject to more stringent post-employment restrictions, which are not described in this memorandum. Applicable codes of professional ethics may also impose additional requirements.

I. THE GENERAL FEDERAL CRIMINAL LAW: 18 U.S.C. 207

Section 207 of Title 18 of the United States Code, as amended, ("the Act") contains the basic post-employment restrictions applicable to all Federal employees. The Ethics Reform Act of 1989 modified these existing post-employment restrictions effective for employees departing the government on or after January 1, 1991. Accordingly, one version of the Act applies to individuals who leave the government before that date (Attachment A), and another version applies to those who leave thereafter (Attachment B). This memorandum describes current law and notes the changes that will take effect on January 1, 1991.

A. Overview

Current law features four basic post-employment restrictions applicable across the executive branch:

1. The Lifetime Bar: A lifetime bar against a former government employee acting as a representative in any

particular matter involving specific parties in which he or she personally and substantially participated during government service.

2. Two-Year Official Responsibility Bar: A two-year restriction on former government employees acting as a representative in any particular matter involving specific parties over which he or she had official responsibility during his or her last year of government service (or in certain cases, earlier).

3. Two-Year Bar on Assisting by Personal Presence; Senior Employees Only: A two-year restriction on a former Senior Employee assisting, by personal presence, in a representation before the United States in any particular matter involving specific parties in which he or she participated personally and substantially during government service. This will be repealed, effective January 1, 1991.

4. One-Year Cooling-Off Period; Senior Employees Only: A one-year cooling-off period on a former Senior Employee, precluding any communications with the intent to influence his or her former department or agency on any particular matter, regardless of prior involvement. As of January 1, 1991, the most senior executive branch officials will be subject to a broadened one-year cooling-off period that also precludes such contacts with all Executive Level employees throughout the executive branch.

As to those employees leaving Federal service on or after January 1, 1991, two new bars will apply:

5. One-Year Bar on Representing a Foreign Entity; Senior Employees Only. Senior Employees will be subject to a new one-year bar on representing, aiding or advising a foreign government or foreign political party in any matter before any department or agency of the United States.

6. One-Year Bar on Aiding or Advising in an Ongoing Trade or Treaty Negotiation: Individuals who have been personally and substantially involved in a trade or treaty negotiation within the one-year period before leaving Federal service will be prohibited for one year after their departure from aiding or advising a party

other than the United States on the basis of specified non-public information about the negotiation.

Given the law's complexity, the above summaries are necessarily incomplete, and each restriction is described below in more detail. I also recommend strongly that you become familiar with the details of these restrictions, as set forth in Office of Personnel Management regulations at 5 C.F.R. Part 2637. (These regulations have not yet been updated to reflect the changes made by the Ethics Reform Act of 1989.) Limited excerpts from the regulations are set out in Attachment C and referenced in the discussion that follows. Copies of the complete regulations are available on request from my office.

C. The Restrictions

1. The Lifetime Bar

The Act creates a lifetime prohibition against a former employee acting as a representative in particular matters involving specific parties in which (a) he or she personally and substantially participated as a government employee, and in which (b) the government is a party or has a direct and substantial interest. When this bar applies, the former employee may not, as to the specific matter covered, act as agent for, or otherwise represent, anyone in any appearance before a court, department, agency, or government official or employee. In addition, he or she may not communicate in any way with the U.S. government on such matters if the communication is made with the intent to influence the receiver. Communications to Congress are generally not limited. This restriction does not bar involvement or assistance in any matter; it simply limits the former employee's communications with the U.S. government about the matter.

The lifetime bar only applies to particular matters involving specific parties. (The regulation defining this term is reprinted at Attachment C.) Such a matter is typically a specific proceeding affecting the legal rights of parties or an isolatable transaction or set of transactions between identifiable parties. Thus, a former employee's prior participation in government rulemaking, legislation, policy formulation, or other matters of general applicability, does not trigger this restriction.

The lifetime bar also applies only to matters in which the former employee was personally and substantially involved. (The regulatory definition of this term is reprinted at Attachment C.) Personal involvement may be direct or through the participation of a subordinate when directed by the employee. Substantial involvement requires involvement that is significant to the

matter or appears so, and that is more than official responsibility and more than perfunctory. Note that brief involvement at a critical stage in a matter may be highly influential and hence substantial, while lengthy peripheral involvement may be insubstantial. Participation in mere ancillary matters would not be substantial, unless the ancillary matter proved to be the subject of the later proposed representation.

In short, if an employee participated personally and substantially in a particular matter involving specific parties in which the U.S. government has a direct and substantial interest, he or she is forever precluded from representing anyone in any proceeding concerning that same matter.

2. The Two-Year Official Responsibility Bar

The Act also contains a two-year restriction on a former employee's representative involvement in any particular matter involving specific parties that was under his or her official responsibility during the last year of government service (or in some cases earlier, as described below). During that two-year period, the former employee may not act as attorney or other representative in the matter or otherwise communicate with the U.S. government with the intent to influence the recipient. As in the case of the lifetime bar, the two-year bar only applies to particular matters involving specific parties and does not prohibit behind-the-scenes advice or contact with Congress.

Matters covered by this two-year bar are those over which the former employee had official responsibility. (A definition of this term is reprinted at Attachment C.) In general, official responsibility encompasses matters for which an official had direct administrative or operating authority to approve, disapprove, or otherwise direct government actions. Ordinarily, the scope of the former employee's responsibility will be determined by his or her job description, regulation, or a relevant statute.

It is irrelevant whether the former employee actually knows that a matter was under his or her official responsibility. If an employee suspects that a matter may have been under his or her official responsibility, he or she must make further inquiries.

Currently the two-year bar is measured from the end of an official's responsibility for a given area. That is, as to matters within his or her area of responsibility during the year immediately prior to leaving Federal service, an official is barred from representation, for two years from the end of his or her Federal service. In addition, if a former official's

responsibilities changed some time before the end of his or her Federal service, he or she is also subject to the bar as to matters within the area of former responsibility, until two years after the former responsibility ended. (For example, if an individual switched jobs, spent six months in the new job, and then left the government, the individual would have to wait a year and a half before the bar expired as to the first job and six more months before the bar expired as to the second job.) As of January 1, 1991, this will change so that the two-year bar will only apply to matters over which the employee had official oversight during his or her last year of government service.

3. The One-Year Cooling-Off Period: Senior Employees Only

Senior Employees are also covered by a one-year "cooling-off" period following the termination of their government employment. During that year, under current law, a Senior Employee may not represent anyone before, nor communicate with an intent to influence anyone at, his or her former department or agency concerning any particular matter pending before that department or agency or in which the agency has a direct and substantial interest. The January 1, 1991 revisions expand the cooling-off period to cover contacts as to any matter on which the former employee seeks official action by an agency employee (regardless whether it is pending before the agency or whether the agency has a direct and substantial interest in it). All of the units within the Executive Office of the President are considered to be a single agency for the purpose of this restriction.

The cooling-off period applies regardless whether the employee previously participated in or had responsibility for the matter, and regardless whether the matter was pending when he or she was employed at the agency. Unlike the three preceding bars, this cooling-off period includes communications involving policy matters such as legislation or rulemaking; it is not limited to particular matters involving specific parties. As with the other bars, however, behind-the-scenes advice to an outside party is not prohibited.

By statute, the term Senior Employee currently includes: (1) any individual paid at the Executive Level; (2) certain high-level military officials; and (3) individuals in positions that are expressly designated as Senior Employees. (Designations may be made from among positions in the Senior Executive Service, those paid at the GS-17 level or higher, and those at certain military pay grades.) Almost all Presidential appointee positions are Senior Employee positions.

As of January 1, 1991, the pool of those subject to a one-year

cooling-off period will include: (a) anyone paid at the Executive Level or higher; (b) anyone paid at the GS-17 level or higher; (c) certain high-level military personnel; and (4) the Vice President. This classification replaces the prior system in which certain positions were "designated" as senior.

As of January 1, 1991, the most senior executive branch officials are subject to a broader one-year cooling-off period when they leave the government. Individuals at Executive Level I throughout the executive branch, individuals at or above Executive Level II within the Executive Office of the President (including the Vice President), and individuals above Executive Level III in the White House Office are defined as "Very Senior" Employees. During the cooling-off period, these individuals will not only be barred from lobbying anyone in their own agency, they will also be barred from lobbying anyone in an Executive Level position throughout the entire executive branch.

There are certain exemptions to these cooling-off periods. For example, the cooling-off periods do not apply to former employees who are subsequently elected to state or local office, or become employees of state and local government agencies or of certain institutions of higher education, hospitals, or medical research foundations, as to contacts on behalf of those new employers. The statute also does not prohibit communication with or representation before Congress, the public, or the press. The law does not preclude a former Senior Employee from contact with his or her former agency if the contact is required by law. In addition, the law sets forth methods by which the one-year bar may apply to less than the entirety of a department or agency. The law also contains numerous miscellaneous provisions for obtaining special exemptions, making certain exempt communications, testifying in court, and (until 1991) barring partners of current employees from certain activities.

4. Two-year Bar on Assisting in Representation by Personal Presence; Senior Employees Only

Currently a Senior Employee is also barred for two years after government employment from assisting by personal presence in representation of any person in a particular matter involving specific parties in which the former Senior Employee participated personally and substantially. Like the lifetime bar described above, this restriction covers only particular matters involving specific parties and only those in which the former Senior Employee was personally and substantially involved. (See definitions of those terms above and in Attachment C.)

The two-year bar on assisting by personal presence in

representation does not prevent Senior Employees from providing assistance in particular matters in which they were previously personally and substantially involved. They cannot, however, make a personal appearance before the U.S. government in such a matter. For example, if a former Senior Employee joined a law firm, he or she could advise his or her partners privately about a particular matter covered by this restriction, but he or she could not be a part of a law firm delegation visiting a Federal agency to discuss the issue. This would be true even if he or she did not speak to the Federal officials at the meeting but only provided silent assistance to another person from the firm.

This bar has been repealed for employees departing Federal service on or after January 1, 1991.

5. One-Year Bar on Representing a Foreign Entity; Senior Employees Only.

For Senior and (Very Senior) Employees leaving the government on or after January 1, 1991, there will be a new one-year bar on representing the interests of a foreign government or foreign political party and on aiding or advising such a foreign entity in any matter before an employee of any department or agency of the United States with the intent to influence a decision of the employee.

This bar applies regardless of the individual's prior involvement in any matter relating to the foreign entity. It applies to contacts with all agencies, not only the individual's former agency. Unlike the four preceding bars, it prohibits behind-the-scenes assistance as well as direct contacts with the United States Government on behalf of the foreign entity. Like the general one-year cooling off period, this bar covers policy matters such as legislation or rulemaking; it is not limited to particular matters involving specific parties.

6. New One-Year Cooling-Off Period on Aiding or Advising in a Trade or Treaty Negotiation

For employees leaving the government on or after January 1, 1991, a new cooling-off period will apply to individuals who have been personally and substantially involved in a trade or treaty negotiation within the one-year period before leaving Federal service and who have had access to specially designated non-public information about the negotiation.

Such individuals will be prohibited for one year after their departure from aiding or advising a party other than the United States on the basis of the designated information. This

restriction only applies if the former Senior Employee was personally and substantially involved in a trade or treaty negotiation. (See the definition of this term above and in Attachment C.) Unlike the four current law bars, this new restriction also prevents behind-the-scenes assistance to a party other than the United States, if such assistance is rendered on the basis of specially designated non-public government information about the trade or treaty negotiation to which the individual had access before leaving the government.

II. SPECIAL REQUIREMENTS FOR PROCUREMENT OFFICIALS

The Office of Federal Procurement Policy Act, which took effect in July 1989, imposes a number of requirements, including new restrictions on negotiations for employment and post-employment activities of procurement officials. In general, procurement officials are those who are personally and substantially involved in the conduct of an agency procurement, including those responsible for reviewing and approving the procurement.

The Administration had sought the repeal of these requirements on the ground that they were unduly burdensome and unnecessary in view of other existing safeguards. The Ethics Reform Act of 1989 suspended these requirements for one year (as of November 30, 1989), and in the interim the Administration will continue its effort to have these requirements repealed. If you believe that you would be acting as a procurement official in your prospective position and wish to have further information, additional materials are available.

* * *

Because 18 U.S.C. 207 covers such a broad range of conduct and carries such serious penalties for violation, it is imperative that a former employee carefully consult the law and the implementing regulations. Also attached for your reference is a more detailed memorandum on the subject (predating the recent changes), which was prepared by the Office of Government Ethics. (See Attachment D.)

Additional counseling is available on request from my office for individuals under consideration for Presidential appointments and for individuals in the White House Office and Office of Policy Development. Appointees in other federal agencies should feel free to contact the Designated Agency Ethics Official at their employing agencies, who can provide further advice.

Attachments

13 U.S.C. 207
(as applicable to employees leaving
the Federal government before
January 1, 1991)

§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(d) (1) Subsection (c) of this section shall apply to a person employed—

(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of O–9 or above as described in section 201 of title 37, United States Code; or

(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS–17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O–7 or O–8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

(A) an elected official of a State or local government, or

(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency

concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest, and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

(As amended Pub.L. 95-521, Title V, § 501(a), Oct. 26, 1978, 92 Stat. 1864; Pub.L. 96-28, §§ 1, 2, June 22, 1979, 93 Stat. 76.)

18 U.S.C. 207
(as amended by the Ethics Reform
Act of 1989; applicable to employees
leaving Federal service on or after
January 1, 1991

§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) RESTRICTIONS ON ALL OFFICERS AND EMPLOYEES OF THE EXECUTIVE BRANCH AND CERTAIN OTHER AGENCIES.—

(1) PERMANENT RESTRICTIONS ON REPRESENTATION ON PARTICULAR MATTERS.—Any person who is an officer or employee of the executive branch of the United States Government (including any independent agency of the United States and any special Government employee), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States Government or the District of Columbia, as the case may be, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, as the case may be, on behalf of any other person (except the United States) in connection with a particular matter—

(A) in which the United States is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

(2) TWO-YEAR RESTRICTIONS CONCERNING PARTICULAR MATTERS UNDER OFFICIAL RESPONSIBILITY.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States Government, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States), in connection with a particular matter—

(A) in which the United States is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States Government or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(b) ONE-YEAR RESTRICTIONS ON AIDING OR ADVISING.—

(1) IN GENERAL.—Any person who is a former officer or employee subject to the restrictions contained in subsection (a)(1), and any person described in subsection (e)(7), who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, and which is so designated by the appropriate department or agency, shall not, on the basis of that information, which the person knew or should have known was so designated, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for 1 year after his or her service or employment with the United States Government terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) DEFINITION.—For purposes of this paragraph—

(A) the term 'trade negotiation' means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term 'treaty' means an international agreement made by the President that requires the advice and consent of the Senate.

(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee of the executive branch (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) employed at a rate of pay fixed according to subchapter II of chapter 53 of title 5, or a comparable or greater rate of pay under other authority,

(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay is equal to or greater than the basic rate of pay payable for GS–17 of the General Schedule,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, or

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O–7 or above.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) Subparagraph (A)(ii) includes persons employed in the Senior Executive Service at the basic rate of pay specified in that subparagraph.

(D) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(d) RESTRICTIONS ON VERY SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who—

(A) serves in the position of Vice President of the United States,

(B) is employed in a position paid at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) ENTITIES TO WHICH RESTRICTIONS APPLY.—The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any other person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

(e) RESTRICTIONS ON MEMBERS OF CONGRESS AND OFFICERS AND EMPLOYEES OF THE LEGISLATIVE BRANCH.—

(1) MEMBERS OF CONGRESS AND ELECTED OFFICERS.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) PERSONAL STAFF.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

(ii) any employee of that Senator or Member of the House of Representatives.

(3) COMMITTEE STAFF.—Any person who is an employee of a committee of Congress and who, within 1 year after the termi-

nation of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) LEADERSHIP STAFF.—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) OTHER LEGISLATIVE OFFICES.—(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) LIMITATION ON RESTRICTIONS.—The restrictions contained in paragraphs (2), (3), (4), and (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid for such service at a basic rate of pay equal to or greater than the basic rate of pay payable for GS–17 of the General Schedule under section 5332 of title 5.

(7) DEFINITIONS.—As used in this subsection—

(Definitions applicable to the Legislative Branch have been omitted)

(f) RESTRICTIONS RELATING TO FOREIGN ENTITIES.—

(1) RESTRICTIONS.—Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in subsection (c), (d), or (e), as the case may be—

(A) represents the interests of a foreign entity before any officer or employee of any department or agency of the Government of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the Government of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

(2) DEFINITION.—For purposes of this subsection, the term 'foreign entity' means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) SPECIAL RULES FOR DETAILEES.—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) DESIGNATIONS OF SEPARATE STATUTORY AGENCIES AND BUREAUS.—

(1) DESIGNATIONS.—For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) INAPPLICABILITY OF DESIGNATIONS.—No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A) (i) or (iii).

(i) DEFINITIONS.—For purposes of this section—

(1) the term 'intent to influence' means the intent to affect any official action by a Government entity of the United States through any officer or employee of the United States, including Members of Congress;

(2) the term 'participated' means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) the term 'particular matter' includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) EXCEPTIONS.—

(1) OFFICIAL GOVERNMENT DUTIES.—The restrictions contained in subsections (a), (c), (d), and (e) shall not apply to acts done in carrying out official duties as an officer or employee of the United States Government or as an elected official of a State or local government.

(2) STATE AND LOCAL GOVERNMENTS AND INSTITUTIONS, HOSPITALS, AND ORGANIZATIONS.—The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—

(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

(B) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) INTERNATIONAL ORGANIZATIONS.—The restrictions contained in subsections (c), (d), and (e) shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization of which the United States is a member.

(4) PERSONAL MATTERS AND SPECIAL KNOWLEDGE.—The restrictions contained in subsections (c), (d), and (e) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibitions of those subsections prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(5) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION.—The restrictions contained in subsections (a), (c), (d), and (e) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(6) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent a former Member of Congress or officer or employee of the executive or legislative branch or an independent agency (including the Vice President and any special Government employee) from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence, a former officer or employee subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter.

EXCERPTS FROM REGULATIONS ON POST-EMPLOYMENT RESTRUCTIONS

PARTICULAR MATTER INVOLVING SPECIFIC PARTIES

Section 2637.5

(c) ***"Particular matter involving a specific party or parties"***—(1) ***Specific matters vs. policy matters.*** The prohibitions of subsections (a) and (b) of 18 U.S.C. 207, are based on the former Government employee's prior participation in or responsibility for a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an insolatable transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former Government employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding.

Example 1: A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

Example 2: A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that project.

Example 3: An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities does not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures, or regulations.

Example 4: An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the Government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

Example 5: An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts. He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a Government employee.

EXCERPTS FROM REGULATIONS

PERSONAL AND SUBSTANTIAL PARTICIPATION

Section 2637.5

(d) "*Participate personally and substantially*"—(1) *Basic requirements.* The restrictions of section 207(a) apply only to those matters in which a former Government employee had "personal and substantial participation," exercised "through decision, approval disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. "Substantially," means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular matter involving a specific party." (See paragraph (c) of this section.) (See also § 737.9(f) of this part.)

Example 1: If an officer personally approves the departmental budget, he does not participate substantially in the approval of all items contained in the budget. His participation is substantial only in those cases where a budget item is actually put in issue. Even then, the former Government employee is not disqualified with respect to an item if it is a general program rather than a particular matter involving a specific party. The former Government employee may, however, have official responsibility for such matters. (See § 737.7(b).)

Example 2: A Government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, discovery, and strategy. Such an individual has personally and substantially participated in the matter.

EXCERPTS FROM REGULATIONS

OFFICIAL RESPONSIBILITY

Section 2637.7 **Two-year restriction on any former Government employee's acting as representative as to a particular matter for which the employee had official responsibility.**

(b) *"Official responsibility"*—(1) *Definition.* "Official responsibility" is defined in 18 U.S.C. 202 as, "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions."

(2) *Determining official responsibility.* Ordinarily, the scope of an employee's "official responsibility" is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority. All particular matters under consideration in an agency are under the "official responsibility" of the agency head, and each is under that of any intermediate supervisor having responsibility for an employee who actually participates in the matter within the scope of his or her duties.

(3) *Ancillary matters and official responsibility.* "Administrative" authority as used in the foregoing definition means authority for planning, organizing and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter such as the regularity of budgeting procedures, public or community relations aspects, or equal employment opportunity considerations. Responsibility for such an ancillary consideration does not constitute responsibility for the particular matter, except when such a consideration is also the subject of the employee's proposed representation.

Example 1: An agency's comptroller would not have official responsibility for all programs in the agency, even though she must review the budget, and all such programs are contained in the budget.

Example 2: Within two years after terminating employment, an agency's former comptroller is asked to represent Q Company in a dispute arising under a contract which was in effect during the comptroller's tenure. The dispute concerns an accounting formula, under the contract, a matter as to which a subordinate division of the comptroller's office was consulted. She may not represent Q Company on this matter.

OGE Memorandum

TITLE V - PART 737 - FINAL REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

I. GENERAL

A. The Ethics in Government Act (Pub. L. 95-521) (the Act) broadened and added new restrictions to the existing provisions of 18 U.S.C. §207, which generally prohibit a former Government employee from acting as another person's representative to the Government in matters in which the employee had been involved while in the Government.

1. Post-Employment Generally. It is important to note that nothing in the Act requires a former employee to decline employment with any organization regardless of dealings with that organization while a Government employee.

2. Required Nexus. With the exception of the 207(c) bar, what is prohibited depends upon the former employee's degree of involvement in the matter while with the Government and whether he or she was one of a specified group of high-ranking employees ("Senior Employees").

II. GENERAL RESTRICTIONS APPLICABLE TO ALL FORMER EMPLOYEES

A. Permanent Bar. (5 C.F.R. 737.5) After leaving Government employment, a former employee may not serve as another person's representative to the Government on a case, contractual matter or other similar application or proceeding, formal or informal, in which he or she participated personally and substantially while a Government employee.

1. There are two important limitations to this prohibition which attacks "switching sides." First, the former employee is not restricted unless the matter in which he or she previously participated was (i) a "particular matter involving specific parties" and (ii) is the same matter in which he or she now attempts to represent another before the Government. Thus, where an employee's prior involvement was limited to, say, the design of a program policy, general rulemaking, or technical concepts, he or she is not restricted by this prohibition as to any specific matters which may involve his or her prior work. Second, this bar requires that the employees have been personally involved in the matter in a substantial way.

2. The kind of representation that is restricted includes not only acting as another's attorney or agent, but any other kind of representation or communication made with the intent to influence the United States. This includes promotional and contract representatives.

B. Two-Year Bar. (5 C.F.R. 737.7) This is basically the same bar as above, except that it applies for only two years and covers all particular matters which were actually pending under the former employees "official responsibility" in his or her last year of Government service. An employee's official responsibility is usually defined by statute, regulation, written delegation of authority or job description.

1. There may be times when a former employee is in doubt as to whether a matter was under his or her official responsibility, whether it is the same "particular matter" as that with which he or she was involved or whether the United States still has an interest in the matter. His or her former agency has an obligation to advise promptly

on those questions as provided in the regulations issued by the Office of Personnel Management (5 CFR 737).

III. RESTRICTIONS APPLICABLE ONLY TO SENIOR EMPLOYEES

A. Two-Year Bar on Assisting in Representing. (5 C.F.R. 737.9) For two years after leaving Government employment, a former Senior Employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which he or she could not act as the person's actual representative because of his or her substantial personal participation in the matter while in Government.

1. It is important to note that this restriction does not bar a Senior Employee from assisting on a matter in which he or she participated while in Government but only from assisting "in representing" while personally present at a formal or informal appearance. Thus, such employee could work on a contract with which he or she was involved while in Government and could manage a company, institution or university where such former employee's decisions determine the manner in which his or her organization will perform under a Government contract or grant.

B. One-Year Bar on Attempts to Influence Former Agency. (5 C.F.R. 737.11) For one year after leaving Government employment, a former Senior Employee may not represent anyone in an attempt to influence his or her former agency on a matter pending before, or of substantial interest to, such agency.

1. This "revolving door" provision is different from the previous restrictions in the following ways:

a. It does not require that the former employee have had any prior involvement in the matter.

b. The matters covered are broader; they need not involve specific parties, so the former employee could not, for example, attempt to influence rulemaking or policy formation.

c. It is limited to contact with his or her former agency; he or she may appear before, or act to influence, any other part of the Government in regard to a matter not otherwise covered.

d. The matter must be pending before, or of substantial interest to, his or her former agency.

e. The restriction covers the former employee's self-representation.

2. There are a number of matters to which the restriction does not apply—among these are:

a. Purely social or informational communications.

b. Transmission of filings which do not require Governmental action.

c. Personal matters.

d. Representing oneself in any judicial or administrative proceeding.

e. Any expression of personal views where the former employee has no pecuniary interest.

f. Response to the former agency's request for information.

g. Participation as the principal researcher under Government grants.

IV. WHAT IS A SENIOR EMPLOYEE? (5 C.F.R. 737.25)

A. There are four groups of Senior Employees, two are named automatically by statute: (i) civilians paid at the Executive Level and (ii) active duty uniformed service officers serving in grades 0-9 and above. Two other groups, (iii) civilians at or equivalent to GS-17 or above and (iv)

uniformed service officers in grades 0-7 and 0-8, having significant decision-making or supervisory responsibility, must first be designated by the Director of the Office of Government Ethics before they are chargeable as Senior Employees.

1. Those automatically covered by the statute were made subject to the Act's special restrictions on Senior Employees as of July 1, 1979.

2. Those designated by the Director, OGE, were covered as of February 28, 1980.

V. LIMITATION ON RESTRICTIONS OF 18 U.S.C. §207(c) (5 C.F.R. 737.13)

A. Methods. Two methods exist for limiting the application of 207(c) to less than the entirety of a department of agency.

1. Designation of separate statutory agencies or bureaus under the provisions of 18 U.S.C. §207(e).

2. Designation of non-statutory separate components under the provisions of 18 U.S.C. §207(dX1XC).

B. Designation Procedure. Designation of separate statutory agencies and bureaus as well as non-statutory components are to be made by the Director, Office of Government Ethics in consultation with the head of the agency concerned.

1. Agencies may recommend such designations to the Director, Office of Government Ethics.

2. Designations are discretionary.

3. Current designations are set forth in 45 Fed. Reg. 7407, 7419-7420 (1980).

C. Section 207(e) Designations. If a statutory component is designated as "separate," generally, Senior Employees of such component and Senior Employees of the parent agency are not subject to the 207(c) bar as to each others agency.

1. Caveat. The 207(c) bar remains applicable to the former head of a "separate" subordinate agency and to former "Senior Employees" of the parent agency whose official responsibility included supervision of the subordinate agency.

D. Section 207(d)(1)(C) Designations. If a non-statutory component is designated as "separate," then Senior Employees of such component are not subject to the 207(c) bar as to other agencies, bureaus or offices of the parent agency which have separate and distinct subject matter jurisdiction from the agency or bureau in which such Senior Employees served..

1. Caveat. The 207(c) bar remains applicable (i) to former Senior Employees designated by statute (207(d)(1)(A) and 207(d)(1)(B)), and (ii) to former Senior Employees of such component with respect to those bureaus and offices within the parent agency responsible for the supervision or control of such separate component.

2. Note additional qualifications in the designations set forth in §737.32.

3. Unlike separate agencies designated pursuant to §207(e), the limited application of §207(c) may be available for the head of a separate non-statutory component, as determined by the Director, Office of Government Ethics.

VI. EXEMPTIONS - GENERAL

A. Communications made solely for the purpose of furnishing scientific and technological information pursuant to agency procedures are exempt from the prohibition of §207 of title 18 U.S.C.

1. Agencies have the primary responsibility for developing acceptable procedures for such exemptions.

B. A former employee may personally be exempted from the restrictions on post employment activity if the agency head, in consultation with the

Director, Office of Government Ethics, executes a certification, published in the Federal Register, that such former employee:

1. Possesses outstanding qualifications in a scientific, technological, or other technical discipline;

2. Is acting in respect to a particular matter requiring such qualifications; and

3. That the national interest would be served by such former employees participation.

VII. EXEMPTIONS - SPECIFIC

A. The one-year bar found in §207(c) shall not apply to representations on new matters by a former Senior Employee who is:

1. An elected State or local government official, acting on behalf of such government, or

2. Regularly employed by (i) an agency or instrumentality of a State or local government (ii) an accredited degree granting institution of higher education, or (iii) a non-profit hospital or medical research organization, acting on behalf of such organization(s).

VIII. OTHER IMPORTANT FEATURES

A. Fair Notice. There is a "fair notice" provision which ensures that employees who continue in Government employment in reliance on the regulations will not suddenly be made subject to any future changes. Changes which create greater restrictions do not become applicable to an employee unless he or she remains with the Government longer than 5 months after the new rule is first published in final form.

B. Effective Dates. The broadening of the provisions applicable to all employees became effective July 1, 1979. The new provisions applicable to Senior Employees took effect as to Executive level civilian employees and uniformed service officers of the grade of O-9 and above on July 1, 1979.

Those civilians at GS-17 or above, or in the Senior Executive Service and uniformed service officers in grades O-7 and O-8 designated by the Director, OGE, are subject to the Senior Employee restrictions effective February 28, 1980.

Authority: Title V, Ethics in Government Act of 1978 (Pub. L. 95-521)
5 C.F.R. Part 737

THE WHITE HOUSE
WASHINGTON

23 May 1990

MEMORANDUM FOR JAMES W. CICCONI

FROM: Brent Scowcroft

SUBJECT: Presidential Commissions

The President has approved William F. Sittmann to replace Philip Hughes as Executive Secretary of the National Security Council. Would you please arrange his commission and appropriate privileges such as White House Staff Mess. Additionally, Condoleezza Rice has been promoted to Senior Director for Soviet Union Affairs on the National Security Council Staff. Would you please arrange for her commissioning as Special Assistant to the President, with associated privileges.

MAY 23 1990

THE WHITE HOUSE
WASHINGTON

May 23, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to Salt Lake City, Utah on Monday, May 28, 1990 and return to Washington on the same day. An aircraft is requested to depart Andrews on Monday, May 28 at 7:35 a.m. and return to Andrews approximately 7:00 P.M.

WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

Approved 5-23-90 J. Bonnie Newman

May 10, 1990

General --

When I talked with Laurie earlier she asked me about names for the coffee in the Residence for the Duke of Edinburgh on Friday, May 18. Remember, that is the day both you and Bob will be away -- Bob in Moscow with Baker; you giving a commencement address at the Medical University of South Carolina. Laurie thought the President might want to keep it small. Mrs. Bush will be there. Do you want to ask the President or suggest some names yourself that I can pass on to Laurie?

Scowcroft
Brady
LSE
VP
BLACKWILL

Florence

Passed to Laurie

THE WHITE HOUSE
WASHINGTON

May 23, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to Salt Lake City, Utah on Monday, May 28, 1990 and return to Washington on the same day. An aircraft is requested to depart Andrews on Monday, May 28 at 7:35 a.m. and return to Andrews approximately 7:00 P.M.

WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

THE WHITE HOUSE
WASHINGTON

MAY 14 1990

May 11, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to Charleston, South Carolina, departing on Friday, May 18, 1990. Schedule permitting, General Scowcroft will return to Washington on same date in time to board Air Force One and join the President on his trip to Texas and Oregon. If that does not work out, he will depart Charleston and head straight to Texas to await the President. An aircraft is requested to depart Andrews on Friday the 18th at 5:40 A.M. I will accompany General Scowcroft.

WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

Approved
5-14-90
J Bonnie Newman

THE WHITE HOUSE
WASHINGTON

May 10, 1990

To Whom It May Concern:

This is to certify that Master Chief Johnny M. Noblezada, Jr., is in the United States Navy and stationed at the White House Navy Mess. He works for the President, Vice President, Chief of Staff and Senior White House Staff.

Brent Scowcroft
Assistant to the President
for National Security Affairs

MAY 14 1990

THE WHITE HOUSE
WASHINGTON

May 11, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

Robert Gates is going to travel to India and Pakistan from Moscow on Saturday, May 19. An aircraft is requested to depart Andrews on Thursday the 17th at 6:00 P. M. Diane Edwards of the NSC staff and John Kelly of the State Department will depart Andrews on the 17th to rendezvous with Mr. Gates in Moscow. Richard Haass of NSC staff will join the party on the 19th. Estimated return will be Tuesday, May 22 at 2:55 p.m.

WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

Approved 5-14-90
J Bonnie Newman

THE WHITE HOUSE
WASHINGTON

May 11, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

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WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

THE WHITE HOUSE
WASHINGTON

May 11, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

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WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

NATIONAL SECURITY COUNCIL

May 10, 1990

Florence:

Your question re Blair Dorminey is a bit difficult to answer. I have attached a current bio on him, which should speak for itself.

One classic statement is he works on "foreign policy issues ACROSS THE BOARD."

His education seems impressive.

What else can I say? I assume he assists Peter Rodman in his speechwriting efforts and believes he is a specialist on blanket foreign policy. He certainly has had varied experiences in the government.

Does this help?

Helen

March 1, 1990

A. BLAIR DORMINEY

Since August 1988, A. Blair Dorminey has served on the National Security Council staff as Director for Policy Development, and following reappointment by President Bush, as Director of Policy Planning. In this capacity, he has worked principally with NSC Counselor and Special Assistant to the President for National Security Affairs, Peter W. Rodman, on foreign policy issues across the board.

From September 1987 to August 1988, Mr. Dorminey worked at the White House as Special Assistant to the Assistant to the President for Domestic Affairs, charged with domestic policy planning. From June 1985 to April 1987, he served as an attorney-advisor in the Department of Justice and Speechwriter for the Attorney General.

From October 1984 to May 1985, and from April 1987 to September 1987, Mr. Dorminey worked as a freelance journalist. From September 1979 to August 1980, he worked for Georgia Public Television.

Mr. Dorminey was born July 29, 1954 in Ocilla, Georgia. He was educated at the University of Georgia (A.B., 1976, summa cum laude), Eberhard-Karls Universitaet, Tuebingen, Federal Republic of Germany (Fulbright Scholar, 1976-77), Yale Law School (J.D., 1984), and Yale School of Organization and Management (Masters in Public and Private Management, 1984). He also lived and studied in Paris, France in 1978. He was admitted to the Georgia State Bar in 1984. Mr. Dorminey and his wife, Elizabeth, a senior attorney at the Department of Justice, live in Washington, D.C.

Appointment Schedule
Brent Scowcroft
02/17/90 - 02/17/90

January

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

March

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Saturday 02/17/90

7:30AM	Arrive in office
7:45AM	Andy Card
8:15AM	Depart Nonantum en route Walker's Point
8:30AM	P/NSB - President's Office
1:30PM	Lunch w/Charles Bierbauer/CNN - Windows on the Water Chase Hill (967-3313) (Turn left one block after you cross bridge in town - there is a sign)
7:00PM	P/Dinner - Drinks at Walker's Point Dinner at Arundel's Wharf
NOTES:	P/Kennebunkport - RON

Call Jody 872-0309 Done 3/9 (As a result of a Scowcroft/Kissinger conversation)

Rosemary Mikus
Security Clearance update

She has no clearances to update — they have expired....

MAR 7 1990

THE WHITE HOUSE
WASHINGTON

March 7, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to Ogden, Utah, departing on Saturday, March 10, 1990, and returning on Sunday, March 18, 1990. An aircraft is requested to depart Andrews on Saturday the 10th at 7:00 P.M. and return to Andrews Sunday the 18th.

WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

Approved
3-7-90
J Bonnie Newman

THE WHITE HOUSE

WASHINGTON

March 7, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to Ogden, Utah, departing on Saturday, March 10, 1990, and returning on Sunday, March 18, 1990. An aircraft is requested to depart Andrews on Saturday the 10th at 7:00 P.M. and return to Andrews Sunday the 18th.

WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

NATIONAL SECURITY COUNCIL

05-Mar-1990 11:14 EDT

UNCLASSIFIED

MEMORANDUM FOR: Florence E. Gantt (GANTT)

FROM: David Pacelli
(PACELLI)

SUBJECT: Appointment with Nicaraguans

5 pm
3/6 Tues

3:30

Francisco Mayorga is heading the small team that Mrs. Chamorro has sent to discuss the Nicaraguan economy. He is accompanied by Pedro Joaquin Chamorro (Mrs. Chamorro's son, and former Contra political director.) Alfredo Cesar may join the delegation later, but has not arrived yet.

The State Department informs me that the best time for the appointment is 3:15 or after on Thursday, March 8 (last State appointment is 2:30 -3:00 p.m.).

My point of contact at State is Chris McMullen (or Craig Kelly), Nicaraguan desk officers, 647-2205.

We will provide a paper for the General's background use.

CC: Wilma G. Hall (HALL)
CC: Diane L. Edwards (EDWARDS)
CC: Deborah Baker (BAKER)
CC: Mary K. Blair (BLAIR)

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20537

February 16, 1990

Letter to All Fingerprint Contributors

FBI IDENTIFICATION DIVISION SERVICES

I. DISTRICT OF COLUMBIA POLICE AUTHORIZATION AND EXPANSION ACT OF 1989 - PUBLIC LAW 101-223

As reported in Fingerprint Contributor Letter 86-3, the ruling rendered in UTZ v. CULLINANE, 172 U.S. APP. D.C. 67; 520 F.2d 467 (1975) ordered the District of Columbia Metropolitan Police Department (MPD) to cease its routine submission of arrest fingerprint cards to the FBI Identification Division (ID). The court also ordered the MPD to request the return of all arrest fingerprint cards submitted to the ID on or after January 30, 1968. The UTZ case was based upon restrictions imposed by an ordinance, locally known as the "Duncan Ordinance."

On December 12, 1989, the President signed legislation now referred to as Public Law (PL) 101-223. Section 7 of that law mandates that the MPD disseminate its unexpurgated adult arrest records to members of the court and law enforcement agents, including the FBI ID. In effect, Section 7 of PL 101-223 overturns the Duncan Ordinance. The MPD is now forwarding current arrest fingerprint cards to the ID for processing and retention in our Criminal File. This new law will benefit all users of ID services by making the national criminal history record system more complete.

II. REDESIGNED IDENTIFICATION ORDERS

FBI Identification Orders (IOs) are issued by FBI Headquarters on certain fugitives who have committed or have been charged with serious or violent crimes having considerable public interest. The IOs are distributed to all FBI Field Offices and to other major law enforcement agencies, including state identification bureaus (SIBs). Upon receipt of an IO, many SIBs and local law enforcement agencies place the fugitive's fingerprints and identifying information contained on the IO in their identification system so that the FBI can be expeditiously notified if the individual is arrested.

Many state and local law enforcement agencies have an Automated Fingerprint Identification System (AFIS). The storage of fingerprint minutia in the AFIS enables the agency to compare incoming fingerprint cards automatically with the computer's fingerprint minutia data base. In order to more fully utilize this technology, a SIB official suggested that the FBI redesign its IO format to conform to the design of the fingerprint card. The official noted that this would permit IO recipients to easily enter the fugitive's fingerprint minutia in their AFIS. Thereafter incoming fingerprint cards would be compared against a data base containing the IO information. Further, this would assist agencies in establishing stops so that the FBI would immediately be notified of any identifications.

The FBI thoroughly reviewed the suggestion and developed a redesigned IO with the fingerprint blocks in the same position as on a fingerprint card. A large city police department, the SIB that suggested the new IO format, and the ID participated in testing the redesigned IO. A sample IO using the new format was produced and successfully processed through each test agency's AFIS equipment. The testing and evaluation of the redesigned IO indicates that it meets the needs of our Fugitive Program and complies with the needs of IO recipients who have an AFIS. All IOs produced after January 1, 1990, will be printed using the new format.

III. PROMPT SUBMISSION OF FINGERPRINT CARDS

The ID's goal is to provide the best possible service to all contributors. To provide this service, we must have complete and accurate records on file. Our identification records are based entirely on voluntary contributions of arrest fingerprint cards and final disposition reports from criminal justice agencies worldwide. The importance of having the identification record show <u>all</u> serious and/or significant arrests and corresponding final dispositions associated with an individual cannot be overemphasized.

Each workday the ID matches current fingerprint card submissions with individuals indexed in our file who are the subjects of outstanding arrest warrants. When such a match occurs, the ID advises the wanting agency that the fugitive/wanted individual has been arrested by the contributor of the current fingerprint card. However, the fugitive may be released and avoid apprehension when your current fingerprint cards are not promptly forwarded to us. In cases where the fugitive has made bond soon after arrest, the leads from the arrest may become cold with delay. Prompt contributions are an essential element

of a complete and accurate criminal records system. Your card may be the one that enables a law enforcement agency to apprehend a badly wanted fugitive.

IV. RAILROAD POLICE AND PRIVATE COLLEGE OR UNIVERSITY POLICE DEPARTMENTS

Section 7333 of PL 100-690, which was enacted on November 18, 1988, amended Section 534 of Title 28 of the United States Code to enable nongovernmental railroad police departments and private college or university police departments to receive and exchange FBI criminal history record information if certain requirements are met. The police departments must perform the administration of criminal justice and have arrest powers pursuant to a state statute. The department must also meet training requirements established by law or ordinance for law enforcement officers and must allocate a substantial part of their annual budget to the administration of criminal justice. The FBI National Crime Information Center (NCIC) has established a new category of Originating Agency Identifiers (ORIs) to identify those nongovernmental campus and railroad police departments that meet this criteria. (Refer to NCIC Newsletter 89-2.)

The new category of ORIs is distinguished from other NCIC ORIs by the alphabetic "E" in the last position. Any nongovernmental campus or railroad police department may submit documentation supporting the above requirements to the NCIC via its NCIC Control Terminal Agency for the state. Upon review and approval of the documentation, the NCIC will assign an ORI to the department. Once a campus or railroad police department has been assigned an ORI ending in the alphabetic "E," the ID will deal with that agency as any other law enforcement agency.

V. HELPFUL HINTS

-- State and local contributors of user-fee applicant fingerprint cards are reminded that the fee for processing the cards is scheduled to increase from $14 to $20 effective for all submissions received on or after March 1, 1990. Refer to Fingerprint Contributor Letter 89-4 for more specific details.

-- Submit your "Requisition for Ordering Identification Supplies" (form 1-178) at least one month prior to the time your supplies will be exhausted. Also, your ORI number must be placed on the form. Advance planning will ensure an adequate inventory of forms and eliminate last-minute telephone requests. However, urgent requests for identification supplies should be directed to telephone number (202) 324-5059.

-- For faster service, the Interstate Identification Index should be used for authorized name check and/or criminal record requests. Refer to Fingerprint Contributor Letter 84-1 for more specific details.

-- Forward final dispositions.

Assistant Director in Charge
Identification Division

NOTE: Please direct any telephonic inquiries to (202) 324-2222.

FBINSC00 02
ASST TO PRESIDENT
FCR NATL SEC AFFAIRS
NATL SECURITY COUNCIL
WHITE HOUSE
WASHINGTON DC 20500-0001

U.S. Department of Justice
Federal Bureau of Investigation
Washington, D.C. 20537-9700

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Penalty for Private Use $300

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of Investigation
JUS-432

FIRST CLASS MAIL

THE WHITE HOUSE
WASHINGTON

February 20, 1990

MEMORANDUM FOR GENERAL SCOWCROFT
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS

FROM: J. BONNIE NEWMAN Bonnie
ASSISTANT TO THE PRESIDENT FOR MANAGEMENT AND ADMINISTRATION

SUBJECT: **Allocation of Full-time Permanent Positions**

Now that we have completed one full year of the Bush Administration, we have reviewed the number of full-time permanent positions and staffing levels in the White House Office.

Based on this review, we have determined that your office will remain at its current allocation of 2 full-time permanent positions on the White House Office payroll.

Thank you for your cooperation.

NATIONAL SECURITY COUNCIL

09-Feb-1990 15:57 EDT

UNCLASSIFIED

MEMORANDUM FOR: SEE BELOW

FROM: Daniel E. Vaughan
(VAUGHAN)

SUBJECT: Systems Duty Officer

I am the Systems Support Duty Officer for the period

10 - 16 February

If you require after hours assistance during this time, you may reach me via the following:

1) Call me at home (202) 388-1584

2) If I am not home, page me:
   a) Dial 223-7243
   b) When asked, enter 11127 as the PIN, followed by the # key.
   c) Then enter your phone number, followed by the # key.
   d) Hang up.
   e) I shall return your call immediately upon being paged.

3) If I do not call you back within 5 minutes, try paging me again.

Distribution:

FOR: Brad D. Andries	(ANDRIES)
FOR: Walter E. Avis	(AVIS)
FOR: Brock Ayers	(AYERS)
FOR: Deborah Baker	(BAKER)
FOR: Remote Addressee	(BAKERS AT A1 AT VAXE)
FOR: Adrian A. Basora	(BASORA)
FOR: Pat Battenfield	(BATTENFIELD)
FOR: Robert R. Beers	(BEERS)
FOR: Ralph Bellamy	(BELLAMY)
FOR: Stephen E. Benko	(BENKO)
FOR: Robert Blackwill	(BLACKWILL)
FOR: Mary K. Blair	(BLAIR)
FOR: Charlene C. Bolinski	(BOLINSKI)
FOR: Richard E. Broome	(BROOME)
FOR: Barbara Browne	(BROWNE)
FOR: Susan G. Bunch	(BUNCH)
FOR: George M. Caldwell	(CALDWELL)

THE WHITE HOUSE
WASHINGTON

February 8, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

Secretary General Manfred Woerner will meet with the President at Camp David on Saturday and Sunday, February 10 and 11. Participants in this meeting will travel via helicopter with the Vice President to Camp David on Saturday. A helicopter is requested to take Secretary General Woerner and others, to include General Scowcroft, from Camp David to Andrews AFB on Sunday, February 11. The Secretary General will board a C-9 (which is a joint JCS-DOD-State mission) en route to Ottawa.

Thank you.

February 2, 1990

General --

Bud Small of the FBI said they are going to hire Stacia Cropper in the Information Research Information Division in the Office of Administration and she has indicated she knows you.

She was formerly with the Eisenhower Centennial Foundation and American Agenda -- both here in Washington.

Do you know her? If so, are you willing to give her a recommendation?

OK

Florence

Fine person,
outstanding secretary
+ administrator.
Good planning skills

THE WHITE HOUSE

WASHINGTON

January 16, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to Munich, Germany to address the Wehrkunde Conference, departing on Friday, February 2, 1990, and returning on Sunday, February 4, 1990. An aircraft is requested to depart Andrews on Friday, late afternoon and return to Andrews Sunday evening.

Several staff members and government officials will travel with him. WHCA personnel will also travel to ensure secure communications at all times.

Thank you.

1/24

Approved P Baker

Withdrawal/Redaction Sheet
(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
02. Memo	Florence E. Gantt to J. Bonnie Newman Re: Request for Aircraft (1 pp.)	1/26/91	(b)(1)	S

Collection:

Record Group: Bush Presidential Records
Office: Scowcroft, Brent, Collection
Series: Administrative Files
Subseries:
WHORM Cat.:
File Location: Administrative, 1989 - 1991 [2]

Date Closed:	9/8/2010	**OA/ID Number:**	85033-002
FOIA/SYS Case #:	2009-0275-S[2]	**Appeal Case #:**	
Re-review Case #:		**Appeal Disposition:**	
P-2/P-5 Review Case #:		**Disposition Date:**	
AR Case #:		**MR Case #:**	
AR Disposition:		**MR Disposition:**	
AR Disposition Date:		**MR Disposition Date:**	

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
(b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

NATIONAL SECURITY COUNCIL

19-Jan-1990 14:46 EDT

UNCLASSIFIED

MEMORANDUM FOR: SEE BELOW

FROM: Bret T. Wilson
(WILSONB)

SUBJECT: Systems Duty Officer for 19-26 Jan

I will be the Systems Support duty officer for the week 19 Jan - 26 Jan. If you need after-hours assistance, page me using the following procedure:

- Dial 597-0780
- When you hear the beep, dial in your phone number (i.e. 395-5132) followed by the # symbol on your phone.
- Hang up.
- Call will be initiated to me within 5 min.
- My home phone number is 751-1778.

- Bret

Distribution:

FOR: Brad D. Andries	(ANDRIES)
FOR: Walter E. Avis	(AVIS)
FOR: Brock Ayers	(AYERS)
FOR: Deborah Baker	(BAKER)
FOR: Remote Addressee	(BAKERS AT A1 AT VAXE)
FOR: Adrian A. Basora	(BASORA)
FOR: Pat Battenfield	(BATTENFIELD)
FOR: Robert R. Beers	(BEERS)
FOR: Ralph Bellamy	(BELLAMY)
FOR: Stephen E. Benko	(BENKO)
FOR: Robert Blackwill	(BLACKWILL)
FOR: Mary K. Blair	(BLAIR)
FOR: Charlene C. Bolinski	(BOLINSKI)
FOR: Richard E. Broome	(BROOME)
FOR: Barbara Browne	(BROWNE)
FOR: Susan G. Bunch	(BUNCH)
FOR: George M. Caldwell	(CALDWELL)

THE WHITE HOUSE

WASHINGTON

January 9, 1990

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: C. BOYDEN GRAY CBG
COUNSEL TO THE PRESIDENT

SUBJECT: Political Activity

This memorandum is to advise you of certain legal and policy limitations on your political activity as a member of the White House staff.

Generally, only those Executive Office of the President ("EOP") employees who are in the White House Office ("WHO") itself or the Office of the Vice President may engage in political activity. All others, except those appointed by the President by and with the advice and consent of the Senate, are subject to the provisions of the Hatch Act and may not engage in any partisan political activities. A discussion of the permissible and impermissible activities of "hatched" and non-"hatched" employees is set forth below.

It is important that you adhere strictly to these guidelines. Please check with your supervising officer and with Counsel's Office to ascertain whether you are paid from White House Office appropriations and are exempt from certain of the Hatch Act restraints; do not assume that because you have a White House pass you are not "hatched."

I. HATCH ACT

All Hatch Act prohibitions, discussed below and found at 5 U.S.C. §§ 7321-7327, cover all EOP employees, with exceptions principally for employees:

(a) paid from the appropriations for the WHO, or from the EOP appropriation item for Special Assistance to the President in Connection with Specially Assigned Functions or the Senate appropriation for the Office of the Vice President; or

(b) appointed to their current positions by the President by and with the advice and consent of the Senate (provided that such officials have nationwide or foreign relations responsibilities, as all such officials within the EOP do); or

(c) serving as head or assistant head of an executive or military department.

These exceptions have not been interpreted to extend to other EOP employees; such other employees including Office of Management and Budget (OMB) staff, Office of Policy Development (OPD) staff, and all Schedule Cs and detailees should abide by all by Hatch Act prohibitions. The restrictions of the Hatch Act are applicable to employees 24 hours a day, regardless of whether such employees are on annual or sick leave or leave without pay; as long as a covered individual is on the employment rolls of the Government, he or she is subject to the restrictions of the Hatch Act.

Employees fully covered by the Hatch Act may not:

(1) take an active part in the management of a political campaign;

(2) be a partisan candidate in an election for State or national office;

(3) serve as an officer of a political party, a member of a national, State or local committee of a political party, or an officer or member of a committee of a partisan political club;

(4) organize a political organization or club;

(5) solicit, receive, handle, otherwise account for, or disburse political contributions;

(6) sell tickets to, organize or actively participate in any political fundraising activity;

(7) solicit votes for or against a candidate;

(8) serve as a party or candidate challenger or pollwatcher;

(9) drive voters to the polls for a candidate or party;

(10) endorse or oppose a candidate in a political advertisement, broadcast or campaign literature;

(11) serve as a delegate or alternate to a political convention;

(12) organize or actively participate in the activities of a political convention;

(13) serve on a standing committee of a political convention;

(14) circulate a candidate-nominating petition;

(15) address a convention, rally, caucus or similar gathering of a political party in support of or in opposition to a partisan candidate for public office.

Employees covered by the Hatch Act may:

(1) register and vote;

(2) make financial contributions to a party or candidate, except that 18 U.S.C. § 603 precludes Federal employees from contributing to their employer or "employing authority" (5 U.S.C. § 7323 imposes other restrictions on employees in Executive agencies);

(3) express their opinion on political subjects;

(4) wear campaign buttons or display bumper stickers;

(5) be a member (but not an officer or committee member) of a political party or organization, so long as they do not actively engage in campaign activities;

(6) attend (but not as a delegate) a political convention, fundraising function or other political gathering, so long as they do not organize or participate in the program of such an activity;

(7) sign a nominating petition.

Because the limitations of the Hatch Act apply 24 hours a day, a "hatched" employee may not participate in political activity, either on the job or off. That means, for example, that a "hatched" employee may not draft a political speech. Although it is possible for a "hatched" employee to draft a speech concerning Administration issues that may be presented in a political setting, the "hatched" employee may not prepare any material containing statements of political advocacy, nor any materials that will be used exclusively for a political purpose.

Similarly, "hatched" employees may not type or transcribe political speeches; rather, the resources of a political organization should support political undertakings. Very limited ministerial activities, such as the typing of a brief political endorsement in a speech that otherwise deals with official matters or collating the brief political portion with the remainder of the speech are not objectionable under the Hatch Act. Additionally, "hatched" employees may write briefing materials on official Administration activities for use by Administration officials, even when such materials will be included in partisan political statements; however, such employees may not write or prepare any materials that will be used only for political purposes (e.g.,

materials for the platform of the Republican Party), nor may they prepare any materials that contain statements of political advocacy.

Administration officials should be particularly sensitive to the limitations on "hatched" employees in instances of mixed political and official travel. Where a "hatched" employee accompanies an exempted official on a trip, it remains essential that no inappropriate political activities be performed by the employee.[1] The "hatched" support staff of an exempted Administration official may perform their normal clerical and ministerial functions in connection with the political travel and appearances or activities of their principal, provided that the functions they perform are related to their official responsibilities. Such employees, however, may not perform tasks that are purely political in nature and which relate solely to their principal's political activities. Logistical arrangements for an exempted official's purely political travel or appearances should be made where possible by the appropriate political organization, but a "hatched" employee customarily involved in such ministerial activities may make limited scheduling arrangements for his or her principal's political travel or appearances. Under no circumstances may a "hatched" employee engage in any of the "management" activities of a political event or convention (e.g., plan or sell tickets to a political event or work on the activities of a committee, such as the Platform or Rules Committees, of a political convention).

Again, if you have any questions with respect to these matters, please call the White House Counsel's Office before you act. In addition, you should be aware that the White House Office of Political Affairs (OPA) serves as the official liaison to the political community, including party officials, candidates, and campaign officials and staff. White House staff members exempt from the Hatch Act who desire (as an entirely voluntary matter) to participate in political activities should coordinate their activities with OPA. For example, a White House official might be asked to speak at a political party function or to appear at a political fundraiser. Staff members should therefore not only ascertain the legality of such actions, but should also consult with OPA.

Even staff members who are exempted from the Hatch Act's prohibitions on partisan political activities are subject to certain restrictions. For example, the Hatch Act prohibits all Federal employees from using their official authority or influence

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[1] Because the discharge of official duties is the only basis for a "hatched" employee to be accompanying his or her principal on a political trip, the travel expenses of such an employee must be paid from appropriated funds.

for the purpose of interfering with, or affecting, the results of an election. We have set forth below guidelines to help ensure that political activities undertaken by exempt personnel are within the limits prescribed by law and White House policy.

II. LIMITS ON POLITICAL ACTIVITIES OF EXEMPT PERSONNEL[2]

USE OF LEAVE

(1) Certain White House staff members are entitled to specific amounts of annual leave. As discussed below, such leave may be used for political purposes; however, one cannot take an "advance" on annual leave to engage in political activities. Those White House staff members not entitled to annual leave (e.g., commissioned officers) may use a ceiling of 15 days of compensatory leave (i.e., the equivalent of vacation time) for political purposes.

(2) Non-"hatched" White House staff members must perform their official duties for a minimum of 40 hours per week or 80 hours per two week pay period in order to receive their full Federal salary. If a staff member does not complete 40 hours of official duty in any week, the difference between the number of hours completed and 40 hours must be covered by annual leave, leave without pay, official holidays or made up in the second week of that pay period. The difference cannot be made up in a subsequent pay period.

(3) Those non-"hatched" White House staff members who complete a minimum of 40 hours of official duty during any full week (Monday-Sunday) may be absent from their official duty station for no more than one weekday (Monday-Friday) for the purpose of engaging in political activity without taking annual leave or leave without pay. If a staff member desires to be absent for political purposes for more than one weekday in any week, each additional weekday must be covered by annual leave or leave without pay, regardless of the number of official hours worked during that week. In other words, it is not permissible for a staff member to put in 40 hours of official duty in the first three days of the week and then take the remaining two weekdays off for campaigning without using annual leave or leave without pay.

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[2] It is important to understand that for purposes of this section, the official responsibilities that customarily have been performed by the Office of Political Affairs constitute "official" and not "political" activities, and the restraints cited here therefore do not in general affect activities and office maintenance or other costs undertaken or incurred in the discharge of such responsibilities.

(4) Sick leave cannot be used to cover an absence from official duty for the purpose of engaging in political activity.

(5) Any White House staff member not subject to the Hatch Act is permitted to take leave without pay to cover absence from official duties for the purpose of engaging in political activity.

(6) When annual leave, compensatory leave or leave without pay is used for political purposes:

(a) Staff members must submit a request for leave, in advance of the leave period, to their White House unit supervisor. Following approval by the supervisor, the request should be forwarded to the White House Personnel Office.

(b) Supervisors must forward to the White House Personnel Office, in advance of a leave period, a report of their intended use of leave for political purposes.

(7) Staff members may only use eight hours of compensatory leave for political activity during any 7-day period without approval of the White House Personnel Office.

USE OF VEHICLES AND MESSENGERS

White House vehicles may not be used for political purposes. This means that White House cars may not be used to transport staff members or materials to or from any political committee office or event. Nor may White House vehicles be used to transport staff members or political materials to airports or any other location if the purpose of the trip is primarily political.

Because of the special requirements surrounding departures and arrivals from Andrews Air Force Base, White House vehicles may be used to transport White House staff members to that facility when they are accompanying the President, Vice President or First Lady on a political trip. Additionally, where the President is participating in a political event in the Washington, D.C. area or other location where White House cars are available for official purposes, White House cars may be used for the Presidential motorcade to the extent essential to the security and support of the President.

White House messengers should not be used to deliver or pick up materials from the RNC or any other political committee.

USE OF COMMUNICATIONS SYSTEMS AND COPYING MACHINES

(1) In those limited circumstances in which government communication systems (telephone, telegraph, teletype, telecopy or radio) are used for campaign-related purposes, appropriate reimbursement or payment at the "usual and normal charge,"

15 C.F.R. § 100.7(a)(1)(B), must be made by a proper political campaign committee.

(2) Because of the need for liaison between limited numbers of White House staff members and a political committee, telephones may be used for local calls. However, White House telephones must not be used, even locally, for regular committee activities such as recruiting volunteers or fundraising.

(3) Government credit cards must not be used for campaign-related or other political calls, whether made from within or without the White House.

(4) Government operators should not be used to place campaign-related or other political long distance calls.

(5) Campaign-related or political long distance telephone calls made from the White House may be made only if charged to a credit card issued by the proper campaign or political committee or on telephones installed and maintained by such committee for exclusive use in dealing with campaign or political matters.

(6) The incoming WATS System (800 #) should not be used to call into the White House on campaign or political matters.

(7) White House Communications Agency (WHCA) facilities provided outside the White House in connection with travel may continue to be used during mixed and wholly political trips. These facilities must be used exclusively for communications relating to trip planning and arrangements and not for direct political purposes such as campaign fundraising and crowd-building. The Government will be reimbursed for the use of these facilities.

(8) Except in limited instances approved by the White House Counsel's Office, Government copying machines may not be used to reproduce materials for transmittal to a campaign or political committee.

TRAVEL

Government funds must not be used for the political travel of staff members. Principles governing the allocation of travel expenses are set forth elsewhere.

Any political or "mixed" official and political travel by White House staff must be approved in advance by the Special Assistant to the President and Director of White House Operations and by the Office of Political Affairs. No reimbursements will be made for non-approved travel expenses.

MEETINGS IN GOVERNMENT BUILDINGS

(1) Government buildings, including White House offices and meeting rooms, should not be used for meetings or events organized by a campaign or political committee. Informal meetings involving small numbers of campaign or political officials and White House staff members may occasionally be held in a White House staff member's office or, if it is a luncheon or breakfast meeting, in the White House Mess, provided that such meetings do not interfere with the conduct of Government business.

(2) Campaign fundraising activities of any kind are prohibited in or from Government buildings.

(3) Campaign-sponsored or other political activities (receptions, dinners, meetings, but not fundraisers) may be held in the Executive Residence at the White House, provided that either the President, Mrs. Bush, or some other family member attends the event. Campaign or other political events (other than fundraisers) may also be held at the Vice President's Residence so long as the Vice President, Mrs. Quayle, or some other family member attends the event. The cost of campaign or political events at either residence must be paid by the proper campaign or political committee in accordance with the guidelines which have been established for the use of these residences for nonofficial purposes.

USE OF PHOTOGRAPHS

(1) White House photographers may continue to photograph all Presidential, First Lady, and Vice Presidential activities for the purpose of creating an archival record of this Administration. However, as a general rule, photographs taken by White House photographers at political events may not be used for distribution to individuals attending such events or for any other political or campaign purpose.

(2) Photographs taken at events in the Executive Residence (other than political-sponsored events), at West Wing and East Wing meetings, and at non-political events outside the White House may be distributed as in the past.

(3) A campaign or political committee will be expected to provide a photographer at all campaign and political events for which it desires to distribute photographs to the participants. White House photographers will not photograph receiving lines or greetings at campaign or political events, except to the extent necessary for archival purposes.

(4) A campaign or political committee may purchase for its use photographs taken by White House photographers in those limited circumstances where those photographs provide the only source for

a particular picture. All photograph purchase requests from the campaign or political committee must be directed to the Director of the White House Photo Office. A record of all campaign photo requests will be maintained by the Director of the White House Photo Office, who will be responsible for billing the campaign or political committee for all photo orders on a monthly basis at the normal rate and according to the procedures established by the Government for the purchase of pictures.

CORRESPONDENCE

(1) Campaign and political correspondence must not be produced at the White House, nor can White House stationery, stamps or related supplies be used in the preparation of such correspondence at another location.

(2) Federal law prohibits the receipt of contributions in Federal buildings. Occasionally, contributions intended for a campaign committee may be addressed to the White House and delivered with other mail. Such contributions should be handled as they have been handled in the past, by returning the contributions to the sender with an explanation of the applicable Federal law and a statement of the appropriate recipient's address. (Appropriate language may be obtained from the White House Counsel's Office.) There should be no acknowledgement of receipt of a contribution from the White House to the contributor. If the contribution is accompanied by a letter that deals primarily with governmental issues, a response dealing with those issues may be prepared and sent from the White House; however, there must be no reference to the contribution.

CRIMINAL STATUTES

A number of criminal statutes prohibit the use of Federal programs, property, or employment for political purposes. Violation of these criminal statutes is punishable by imprisonment and/or the payment of a substantial fine. Certain staff members may also be subject to investigation and possible prosecution by an Independent Counsel in connection with alleged violations of these statutes.

Solicitation of Campaign Contributions: Solicitation of campaign contributions from or by Federal employees is prohibited, as is the solicitation or receipt of contributions in Federal buildings or on Federal property. Unless specifically approved by the White House Counsel's Office and the Office of Political Affairs, no White House staff member shall sign a fundraising letter on behalf of any Federal candidate.

Use of Official Authority: Criminal statutes prohibit any Federal employee, whether or not "hatched," from using his or her "official authority for the purpose of interfering with, or

affecting, the nomination or the election of any candidate." While there is no definitive statement by a court or other body of what activities constitute such improper interference with election results, the following types of activities are clearly prohibited:

-- One Federal employee directly or indirectly soliciting money from another Federal employee for a campaign contribution, or making a contribution to the official responsible for his or her employment.

-- Soliciting or receiving campaign contributions on Federal property or in Federal buildings. This means that fundraising events may not be held in the White House; that no fundraising phone calls or mail may emanate from the White House or any other Federal buildings; and that no campaign contributions may be received at the White House or any other Federal building.

-- Soliciting or accepting a campaign contribution or campaign support in exchange for a promise to appoint someone to a Federal job.

-- Promising or withholding Federal benefits (jobs, grants, contracts, etc.) based on political support or nonsupport.

-- Favoring or penalizing employees or withholding employment in order to induce someone to make a political contribution or otherwise participate in political activity.

Violations of these statutes can of course have serious consequences and I urge you, if you have any questions about the legality or propriety of a proposed action, to consult the White House Counsel's Office.

NATIONAL SECURITY COUNCIL

16-Jan-1990 09:09 EDT

UNCLASSIFIED

MEMORANDUM FOR: SEE BELOW

FROM: Daniel E. Vaughan
(VAUGHAN)

SUBJECT: Systems Duty Officer

Due to an inoperative pager which has been replaced, if you need after-hours assistance and cannot reach me at home (202) 388-1584, follow these steps to page me:

1) Dial 223-7243

2) When asked for the PIN of the Skypager to page, enter 11127 and hit the # key.

3) When asked, enter your phone number then hit the # key.

4) The number you entered will be read back for verification. If it is correct, hit the # key again; if incorrect, hit the * key.

5) You may hang up when told that the message has been sent.

Distribution:

FOR: Brad D. Andries	(ANDRIES)
FOR: Walter E. Avis	(AVIS)
FOR: Brock Ayers	(AYERS)
FOR: Deborah Baker	(BAKER)
FOR: Remote Addressee	(BAKERS AT A1 AT VAXE)
FOR: Adrian A. Basora	(BASORA)
FOR: Pat Battenfield	(BATTENFIELD)
FOR: Robert R. Beers	(BEERS)
FOR: Ralph Bellamy	(BELLAMY)
FOR: Stephen E. Benko	(BENKO)
FOR: Robert Blackwill	(BLACKWILL)
FOR: Mary K. Blair	(BLAIR)
FOR: Charlene C. Bolinski	(BOLINSKI)
FOR: Richard E. Broome	(BROOME)
FOR: Barbara Browne	(BROWNE)
FOR: Susan G. Bunch	(BUNCH)
FOR: George M. Caldwell	(CALDWELL)
FOR: Wendy J. Chamberlin	(CHAMBERLIN)

THE WHITE HOUSE
WASHINGTON

January 16, 1990

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

Robert Gates is going to travel to Manila, The Philippines on Wednesday, January 17, 1990, and return to Washington on Friday, January 19, 1990. An aircraft is requested to depart Andrews on Wednesday, January 17 at 12:30 A.M. and return to Andrews approx. 6:00 P.M. on the 19th.

Thank you.

THE WHITE HOUSE

WASHINGTON

December 5, 1989

MEMORANDUM FOR ANDREW H. CARD, JR.
JAMES W. CICCONI
DAVID Q. BATES, JR.
D. ALLAN BROMLEY
DAVID F. DEMAREST, JR.
MAX MARLIN FITZWATER
ROBERT M. GATES
C. BOYDEN GRAY
FREDERICK D. MCCLURE
ROGER B. PORTER
SIGMUND A. ROGICH
GENERAL BRENT SCOWCROFT
CHARLES G. UNTERMEYER
SUSAN PORTER ROSE

FROM: J. BONNIE NEWMAN Bonnie
ASSISTANT TO THE PRESIDENT FOR MANAGEMENT
AND ADMINISTRATION

SUBJECT: Travel by Government Officials in Support of Foreign Presidential Trips

The purpose of this memorandum is to remind you of the reporting requirements, for foreign presidential travel, issued by the Chief of Staff on October 30, 1989. Also, please refer to my previous memorandum, on this subject, of November 20, 1989, which outlined procedures for the White House staff.

In preparation for the President's trip to St. Martin, on December 16, 1989, all trip data was due to this office by close of business, December 4. If you have not already done so, please submit this trip data immediately.

Thank you for your cooperation.

THE WHITE HOUSE

WASHINGTON

October 24, 1989

MEMORANDUM FOR GEORGE P. COLE, JR., USAF
EXECUTIVE SECRETARY OF THE
DEPARTMENT OF DEFENSE

SUBJECT: Repainting of C-20 Aircraft

The total transition completed in 1987 from C-140s to C-20s in the 89th Military Airlift Wing (89 MAW) marked the end of our capability to operate highly sensitive missions in the most discreet manner possible.

White, unmarked, C-140s had traditionally been available, but with the inception of the C-20 fleet, all aircraft were painted blue and white, with standard 89 MAW markings. This continues to seriously impair our ability to provide discreet, short-notice airlift support for the highest priority national interest missions.

Request immediate action be taken to repaint two C-20 aircraft, one C-20B and one C-20C, at the earliest possible date. The aircraft should be white with no markings other than the tail number. Further, please advise as to the feasibility of repainting, in the same manner, one aircraft with greater range/crew compliment (e.g. C-135), to provide enhanced world-wide capability.

Please advise the White House Military Office as soon as possible concerning scheduled completion dates.

PAUL W. BATEMAN
Deputy Assistant to the President
for Management

THE WHITE HOUSE

WASHINGTON

December 7, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to Beijing, China and Tokyo, Japan on Friday, December 8, 1989 and return to Washington on Monday, December 11, 1989. An aircraft is requested to depart Andrews on the Friday, the 8th at 2:15 a.m. and return to Andrews approx. Noon on Monday, the 11th.

Thank you.

THE WHITE HOUSE

WASHINGTON

December 5, 1989

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: J. BONNIE NEWMAN Bonnie Newman
ASSISTANT TO THE PRESIDENT FOR MANAGEMENT
AND ADMINISTRATION

SUBJECT: Travel by Government Officials in Support of Foreign Presidential Trips

The purpose of this memorandum is to remind agencies of the reporting requirements, for foreign presidential travel, issued by the Chief of Staff on October 30, 1989.

In preparation for the President's trip to St. Martin, on December 16, 1989, all trip data was due to this office by close of business, December 4. If you have not already done so, please submit this data immediately.

Attached for your reference is a copy of the Chief of Staff's directive establishing these reporting requirements.

Thank you for your cooperation.

Attachment

THE WHITE HOUSE

WASHINGTON

October 30, 1989

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: JOHN H. SUNUNU
CHIEF OF STAFF

SUBJECT: Travel by Government Officials in Support of Foreign Presidential Trips

This memorandum establishes an administrative reporting system to enhance and strengthen the management of government resources expended in conjunction with foreign travel of the President.

Effective immediately, the procedures reflected in this directive should be observed by all executive departments and agencies which contribute resources or personnel to a foreign presidential trip.

A comprehensive review of selected foreign trips was recently performed in an effort to determine the overall level of government resources utilized during presidential travel. The analysis revealed that depending on the purpose and scope of each trip, it is not unusual for a substantial number of Federal agencies to provide support during a foreign trip of the President. Currently, however, there is no centralized entity exercising overall management, coordination, and accounting for the complete range of resources utilized on a foreign presidential trip. Consequently, a centralized administrative system would improve the overall resource management and cost efficiency associated with presidential travel.

The following information, where applicable, should be submitted to the Assistant to the President for Management and Administration at least ten working days prior to the day of departure:

1. Names of individuals traveling in advance of or accompanying the presidential visit on behalf of each respective department or agency. The travelers should be identified as either advance or accompaniment, and as either civilian, foreign service, or uniformed service personnel.

2. Anticipated cost of travel by individual

3. Purpose of travel.

4. Means of transit (e.g. via military or commercial air).

5. Anticipated arrival and departure dates for each traveler.

6. Number of department or agency personnel stationed abroad at the trip location who will be supporting the visit of the President.

7. Military assets, if any, (i.e. helicopter, aircraft, or ground transportation) to be utilized.

1. ~~Gates~~
2. Scowcroft

THE WHITE HOUSE
WASHINGTON

November 20, 1989

MEMORANDUM FOR GENERAL BRENT SCOWCROFT
USAF,(Ret.)
ASSISTANT TO THE PRESIDENT
FOR NATIONAL SECURITY AFFAIRS

FROM: J. BONNIE NEWMAN Bonnie
ASSISTANT TO THE PRESIDENT FOR MANAGEMENT
AND ADMINISTRATION

SUBJECT: Foreign Presidential Travel

The attached memorandum outlines new procedures issued by the Chief of Staff for reporting travel by government officials in support of foreign presidential trips. This information will greatly enhance our ability to plan and prepare for foreign presidential trips. These requirements apply equally to the White House staff.

Travel authorizations for White House staff must be submitted for approval at least 10 days in advance of the trip. For the purposes of the upcoming Malta summit meeting, the deadline for receiving travel data is close of business on Tuesday, November 21, 1989.

The Chief of Staff considers this travel management system to be a high priority. Your advance planning and the timely submission of this data will facilitate the effort involved in preparing for the upcoming presidential trip.

I appreciate your cooperation and assistance on this matter. Thank you.

Attachment

THE WHITE HOUSE

WASHINGTON

October 30, 1989

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: JOHN H. SUNUNU
CHIEF OF STAFF

SUBJECT: Travel by Government Officials in Support of Foreign Presidential Trips

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3. Purpose of travel.

4. Means of transit (e.g. via military or commercial air).

5. Anticipated arrival and departure dates for each traveler.

6. Number of department or agency personnel stationed abroad at the trip location who will be supporting the visit of the President.

7. Military assets, if any, (i.e. helicopter, aircraft, or ground transportation) to be utilized.

THE WHITE HOUSE

WASHINGTON

November 16, 1989

MEMORANDUM FOR GENERAL BRENT SCOWCROFT
ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS

FROM: JOHN H. SUNUNU
CHIEF OF STAFF TO THE PRESIDENT

SUBJECT: Applicant Testing under the Executive Office of the President Drug-Free Workplace Plan

On September 15, 1985 President Reagan issued an Executive Order (E.O. 12564) establishing the Drug-Free Federal Workplace Plan. In July, 1988 the Executive Office of the President (EOP) Drug-Free Workplace Plan was issued to provide a vehicle for EOP compliance with E.O. 12654. On September 6, 1989 I approved the initiation of applicant testing pursuant to the Plan. The EOP Plan vests responsibility for coordination with the Director of the Office of Administration (OA). In this capacity, he has recently taken a number of steps to prepare for the implementation of this important program.

Under the Plan there are two classes of EOP personnel subject to drug screening: (1) Those personnel who began employment on or after January 20, 1989 and are subject to "applicant" testing and (2) those personnel who, due to the sensitive nature of their duties or access to sensitive areas, are filling "testing designated positions" and are subject to random drug testing. As a result of a lawsuit filed by 30 members of the second class, we are currently enjoined from conducting random drug screening of personnel in testing designated positions. There is, however, no bar to conducting a comprehensive applicant testing program.

In recent weeks the Office of Administration completed the final steps to ensure that we are ready to implement a high quality drug screening program. A small group of key personnel voluntarily participated in a urinalysis collection procedure under conditions identical to those which will be experienced by all personnel tested. We are satisfied that the manner of collection and the integrity of the system provide the highest degree of confidence, reasonably attainable. Dr. Lawrence Mohr of the White House Medical Unit is the Plan's Medical Review Official and has the responsibility of reviewing test results.

Although in the last Administration there had been some voluntary participation by senior White House staff in drug screening, this is the first actual implementation of a formal program.

Attached, for your information, is a copy of the EOP Drug-Free Workplace Plan. Also, your staff who are subject to applicant testing will soon be receiving a copy of the attached memorandum advising them of the start of this program.

There may be some minor inconvenience for you and your staff; however, this is an important program which will need your full support.

Attachments

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR ALL EOP PERSONNEL

FROM: PAUL W. BATEMAN
DEPUTY ASSISTANT TO THE PRESIDENT FOR MANAGEMENT
AND DIRECTOR OF THE OFFICE OF ADMINISTRATION

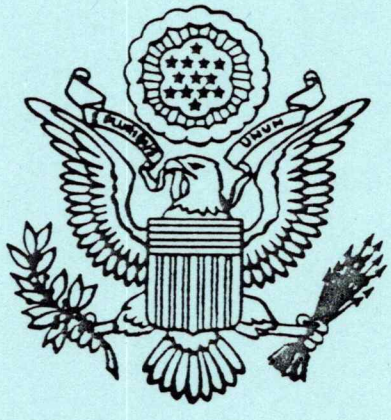
SUBJECT: Applicant Drug Testing Under the EOP Drug-Free Workplace Plan

The Chief of Staff has directed the implementation of the applicant testing component of the EOP Drug-Free Workplace Plan. Testing will commence during the month of November with those employees (or detailees) who entered on or after January 20, 1989 and who have signed an acknowledgement that their appointment was subject to applicant drug testing at a later date. Collection of specimens will be scheduled on the basis of an approximate chronological order within each agency, from the date of the commencement of employment (detail). In other words, those staff subject to applicant testing who have been on board the longest will be tested first. Each staff member subject to the plan will be contacted by a representative from our drug screening program to set up an appointment for testing. We anticipate that it may take several months to accomplish this phase of the overall plan.

There can be little doubt that this nation faces an enormous challenge in overcoming the problem of substance abuse. As members of the President's staff, it is important that we be in the forefront of a program which emphasizes the right of all Americans to work in a drug-free environment. For those personnel subject to applicant testing, please remember that it is a condition of employment.

This is an important initiative that requires support and assistance in assuring that it is successfully implemented.

Executive Office of the President
Drug-Free Workplace Plan



July 1988

ADDENDUM

The following amendments have been made to Part I.E. of the Drug-Free Workplace Plan for the Executive Office of the President. In addition to those agencies listed, the Plan now includes the Office of National Drug Control Policy, the President's Intelligence Oversight Board, and the President's Foreign Intelligence Advisory Board. For Fiscal Year 1990 only the Commission on the Bicentennial of the United States Constitution is included for purposes of the Employee Assistance Program, Supervisory Training and Employee Education. The White House Conference for a Drug-Free America is no longer a part of the Plan as that agency has expired.

EXECUTIVE OFFICE OF THE PRESIDENT
DRUG-FREE WORKPLACE PLAN

J. Office of Policy Development

K. Office of Science and Technology Policy

L. Office of the U. S. Trade Representative

M. White House Conference for a Drug-Free America

N. President's Foreign Intelligence Advisory Board (Staff)

O. President's Intelligence Oversight Board (Staff)

APPENDIX B

Mandatory Guidelines for Federal Workplace Drug Testing Programs
[Federal Register, Vol. 53, No. 69 (April 11, 1988)]

I. INTRODUCTION

A. Background

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off-duty. In a letter to all Executive Branch employees dated October 4, 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all federal workers.

The Executive Order recognized that illegal drug use is seriously impairing a portion of the national work force, resulting in the loss of billions of dollars each year. As the largest employer in the nation, the federal government has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The agencies of the Executive Office of the President (EOP) are concerned with the well-being of their employees, the successful accomplishment of agency missions, and the need to maintain employee productivity. The intent of the policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is, quite simply, incompatible with Federal service.

On July 11, 1987, Congress passed legislation affecting implementation of the Executive Order under Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987), (hereafter, the "Act"), in an attempt to establish uniformity among federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program.

The purpose of the Executive Office of the President Drug-Free Workplace Plan is to set forth objectives, policies, procedures, and implementation guidelines, to achieve a drug-free Federal workplace, consistent with the Executive Order and Section 503 of the Act.

B. Statement of Policy

The Executive Office of the President currently consists of the immediate White House Office and the Office of the Vice President, and eleven (11) other Federal agencies that bear a close relationship to the work of the President of the United States. These separate agencies form the President's staff institution, providing day-to-day operational support directly for the President and Vice President, as well as the following major activities:

- manage the budget and coordinate Administration positions on matters before the Congress;

- manage the Presidential decisionmaking processes, insuring that the President receives the widest possible range of options;

- help the President plan and set priorities, monitor and evaluate progress toward reaching the President's objectives, resolve conflicts among line subordinates, and assist in crisis management, especially in national security matters.

The EOP Drug-Free Workplace Plan recognizes the unique roles of the Executive Office of the President agencies and their staffs, as well as the compelling obligation to achieve a drug-free environment for the sensitive work that is performed by all of the EOP units. Public perception of the EOP as leadership agencies for the Executive Branch, as direct and close support to the incumbent President, and with access to the most sensitive matters that come before the President, requires assurance that this is a drug-free staff.

A successful drug-free workplace program also depends on how well the EOP can inform its agencies' employees of the hazards of drug use, and on how much assistance it can provide drug users. Equally important is the assurance to employees that personal dignity and privacy will be respected in reaching it's goal of a drug-free workplace. Therefore, this plan includes policies and procedures for: (1) employee assistance; (2) supervisory training; (3) employee education; and (4) identification of illegal drug use through drug testing on a carefully controlled and monitored basis.

C. Nature, Frequency and Type of Drug Testing to be Instituted

Section 503 of the Act requires the EOP Plan to specify the nature and type of drug testing to be instituted. The EOP Plan includes the following types of drug testing: (1) Applicant testing; (2) Random testing of sensitive employees in testing designated positions; (3) Reasonable suspicion testing; (4) Accident or unsafe practice testing; (5) Voluntary testing, and (6) Testing as part of or as a follow-up to counseling or rehabilitation. These are described in this plan.

The frequency of testing for random testing, voluntary testing, and follow-up testing is specified at Sections IX(D), XII(B), and XII(C) respectively. Each EOP agency head reserves the right to increase or decrease the frequency of testing based on the Agency's mission, need, availability of resources, and experience in the program, consistent with the duty to achieve a drug free workplace under the Executive Order.

D. Drugs for Which Individuals Are Tested

Section 503 of the Act requires the EOP Plan to specify the drugs for which individuals shall be tested. These are: Marijuana, Cocaine, Opiates, Amphetamines, and Phencyclidine (PCP).

E. Scope

When each Executive Branch agency as specified in Section 503(a)(2) of the Act has complied with the provisions of Section 503(a) of the Act, this order shall be effective immediately for:

The White House Office
Office of the Vice President
Council of Economic Advisers
Council on Environmental Quality
Executive Residence at the White House
National Critical Materials Council
National Security Council
Office of Administration
Office of Management and Budget
Office of Policy Development
Office of Science and Technology Policy
Office of the U.S. Trade Representative
White House Conference for a Drug-Free America

F. References

1. Authorities

a. Executive Order 12564;

b. Executive Order 10450;

c. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301 note (1987);

d. Scientific and Technical Guidelines For Drug Testing Programs, Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), Department of Health and Human Services (HHS), as amended;

e. Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies, Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), Department of Health and Human Services (HHS), as amended;

f. Civil Service Reform Act of 1978, P.L. 95-454;

g. 42 CFR Part 2, establishing requirements for assuring the confidentiality of alcohol and drug-abuse patient treatment records;

h. The Privacy Act of 1974 (5 U.S.C. Section 552a), prescribing requirements governing the maintenance of records by agencies pertaining to the individuals and access to these records by the individual(s) to whom they pertain;

i. Federal Employees Substance Abuse education and Treatment Act of 1986, P.L. 99-570;

2. Guidance

a. Office of Personnel Management (OPM), Federal Personnel Manual (FPM) Letters 792-16 (November 28, 1986), and 792-17 (March 9, 1987), setting forth guidelines for Federal civilian agencies in establishing a drug-free workplace pursuant to Executive Order 12564;

b. FPM Chapter 792, Federal Health and Counseling programs, providing guidance to Federal agencies in establishing alcoholism and drug abuse programs (subchapter 5) and employee counseling services programs (subchapter 6) for Federal employees with alcohol or drug problems;

c. FPM Supplement, Chapter 792-2, providing guidance for developing and maintaining appropriate prevention, treatment and rehabilitation programs and services for alcoholism and drug abuse among Federal employees;

G. Delegation of Authority

Except where specifically prohibited in this Plan, the responsibilities of an EOP agency head may be redelegated to another official/employee of the same EOP agency. The head of each EOP agency hereby delegates to the Director, Office of Administration, those operational responsibilities that will be performed on a centralized basis as a service to all EOP agencies.

II. DEFINITIONS

A. Applicant means any individual tentatively selected for employment with an EOP agency and includes any individual in an EOP agency who has tentatively been selected for a testing designated position and who has not, immediately prior to the selection, been subject to random testing.

B. Employee means any individual appointed in the civil service as described in 5 USC 2105 serving in a position in an Executive Office of the President agency except members of the uniformed services of the armed forces.

C. Employee Assistance Program (EAP) means the EOP-based counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

D. Employee Assistance Program Administrator means the individual responsible for ensuring the development, implementation and review of the agency EAP.

E. Employee Assistance Program Coordinator means the individual designated by the Employee Assistance Program Administrator responsible for implementing and operating the EAP for the EOP agencies, by providing counseling, treatment, and education services to employees and supervisors.

F. Medical Review Official (MRO) means the individual responsible for receiving laboratory results generated from the EOP Drug-Free Workplace Program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

G. Illegal Drugs means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

H. Management Official means an employee required or authorized by the EOP agency head to formulate, determine, or influence the policies of that Agency.

I. Random Testing means a system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be uniform-unannounced testing of testing designated employees occupying a specified area, element or position, or may be a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

J. Employees in Sensitive Positions means:

1. Employees in positions designated by the EOP agency head as Special Sensitive, Critical Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual, or employees in positions designated by the EOP agency head as sensitive in accordance with Executive Order No. 10450, as amended;

2. Employees granted access to classified information or who may be granted access to classified information pursuant to a determination of trustworthiness by the EOP agency head under Section 4 of Executive Order No. 12356;

3. Individuals serving under Presidential appointments;

4. Law enforcement officers as defined in 5 U.S.C. 8331(20) and 8401(17); or

5. Other positions that the EOP 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.

K. Supervisor means an employee having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove other employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgement. 5 U.S.C. 7103 (a)(10).

L. Testing Designated Positions means employment positions within each EOP agency which have been designated for random testing under Section IX B. of this plan.

M. Verified Positive Test Result means a test result that has been screened positive by an FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by HHS), evaluated by the Medical Review Official and determined by him to be unjustified under Section X of this plan.

III. EMPLOYEE ASSISTANCE PROGRAMS (EAP)

A. Function

The EOP EAP plays an important role in preventing and resolving employee drug use by: demonstrating a commitment to eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; assisting supervisors in confronting employees who have performance and/or conduct problems and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The EAP, however, shall not be involved in the collection of urine samples or the initial reporting of test results. Specifically, the EAP shall--

1. Provide counseling and assistance to employees who self-refer for treatment or whose drug tests have been confirmed positive, and monitor the employees' progress through treatment and rehabilitation;

2. Provide needed education and training to all levels of each EOP agency on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the EAP with the drug testing program, and related treatment, rehabilitation, and confidentiality issues;

3. Ensure that confidentiality of test results and related medical treatment and rehabilitation records is maintained in accordance with Section XIV.

B. Referral and Availability

Any employee found to be using drugs shall be referred to the EAP. The EAP shall be administered separately from the testing program, and shall be available to all employees without regard to a finding of drug use. The EAP shall provide counseling or rehabilitation for all referrals, as well as education and training regarding illegal drug use. The EAP is available not only to employees of the EOP agencies but, when feasible, to the families of employees with drug problems, and to employees with family members who have drug problems.

In the event the employee is not satisfied with the program of treatment or rehabilitation, such employee may seek review of the EAP Counselor's referral by notifying the EAP Administrator prior to completion of the program. The decision of the EAP Administrator shall be final and shall not be subject to further administrative review. Regardless of the treatment program

chosen, the employee remains responsible for successful completion of the treatment, and assertions that the counselor failed to consider one or more factors in making a referral shall not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment.

C. Leave Allowance

Employees shall be allowed up to one hour (or more as necessitated by travel time) of excused absence for each EAP counseling session, during the assessment/referral phase of rehabilitation. Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and leave regulations.

D. Records and Confidentiality

All EAP operations shall be confidential in accordance with Section XIV of the Plan relating to records and confidentiality.

E. Structure

The Director, Office of Administration shall be responsible for oversight and implementation of the EOP EAP, and will provide, with the support of the EOP agency heads, high level direction and promotion of the EAP. The Personnel Division, OA, shall ensure a comprehensive program by utilizing interagency agreements with other Federal agencies and/or contracts to acquire the professional staff and services to be provided by the EAP.

IV. SUPERVISORY TRAINING

A. Objectives

As supervisors have a key role in establishing and monitoring a drug-free workplace, the Office of Administration shall provide training to assist EOP agency supervisors and managers in recognizing and addressing illegal drug use by agency employees. The purpose of supervisory training is to understand--

1. Policies relevant to work performance problems, drug use, and the EOP EAP;

2. The responsibilities of offering EAP services;

3. How employee performance and behavioral changes should be recognized and documented;

4. The roles of the medical staff, supervisors, personnel, and EAP personnel;

5. The ways to use the EOP EAP;

6. How the EAP is linked to performance appraisal and disciplinary processes; and

7. The process of reintegrating employees into the workforce.

B. Implementation

The Office of Administration's Personnel Division shall be responsible for implementing supervisory training, and shall develop a training package to ensure that all employees and supervisors are fully informed of the EOP Drug-Free Workplace Plan.

C. Training Package

Supervisory training shall be provided to all supervisors and may be presented as a separate program, or be included as part of an ongoing supervisory training program. Training shall be provided as soon as possible after a person assumes supervisory responsibility. Training programs should include--

1. The Drug-Free Federal workplace policy;

2. The prevalence of various employee problems with respect to drugs and alcohol;

3. The EAP approach to handling problems;

4. How to recognize employees with possible problems;

5. Documentation of employee performance or behavior;

6. How to approach the employee;

7. How to use the EAP;

8. Disciplinary action, and removals from sensitive positions, as required by Section 5(c) of the Executive Order;

9. Reintegration of employees into the workforce; and

10. Written materials which the supervisor can use at the work site.

V. EMPLOYEE EDUCATION

A. Objectives

The Personnel Division, Office of Administration, shall offer drug education to all employees. Drug education should include education and training on--

1. Types and effects of drugs;

2. Symptoms of drug use, and the effects on performance and conduct;

3. The relationship of the EAP to the drug testing program; and

4. Other relevant treatment, rehabilitation, and confidentiality issues.

B. Means of Education

Drug education activities may include:

1. Distribution of written materials;

2. Videotapes; and/or

3. Employee forums.

VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. Drug Program Coordinator The Office of Administration shall have a Drug Program Coordinator (DPC) assigned to carry out the purposes of this plan. The DPC shall be responsible for implementing, directing, administering, and managing the drug program throughout the EOP. The DPC shall serve as the principal contact with the laboratory in assuring the effective operation of the testing portion of the program. In carrying out this responsibility, the DPC shall, among other duties:

1. Arrange for all testing authorized under this order;

2. Insure that all employees subject to random testing receive individual notice as described in Section VII B. of this Plan, prior to implementation of the program, and that such employees return a signed acknowledgment of receipt form;

3. Document, through written inspection reports, all results of laboratory inspections conducted;

4. Coordinate with and report to the Director, Office of Administration, on DPC activities and findings that may affect the reliability or accuracy of laboratory results; and

5. In coordination with the EAP Administrator/Coordinator, publicize and disseminate drug program educational materials, and oversee training and education sessions regarding drug use and rehabilitation.

B. Employee Assistance Program Administrator/Coordinator

The EAP Administrator shall:

1. Upon receipt of a verified positive test result from the MRO, transmit the test result to the appropriate management official in the EOP agency empowered to initiate disciplinary action;

2. Assume the lead role in the development, implementation, operation, and evaluation of the EAP;

3. Supervise the EAP counselors;

4. Prepares consolidated reports on the EOP's EAP activity;

5. Provide counseling and treatment services to all employees referred to the EAP by their supervisors or

on self-referral, and otherwise offer employees the opportunity for counseling and rehabilitation;

6. Work with the DPC to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace;

7. Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;

8. Monitor the progress of referred employees during and after the rehabilitation period;

9. Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs;

10. Maintain a list of rehabilitation or treatment organizations which provide counseling and rehabilitative programs, and include the following information on each such organization:

    a. Name, address, and phone number;

    b. Types of services provided;

    c. Hours of operation, including emergency hours;

    d. The contact person's name and phone number;

    e. Fee structure, including insurance coverage;

    f. Client specialization; and

    g. Other pertinent information.

11. Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and ascertain the experience, certification and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.

C. Employee Assistance Counselors

The Employee Assistance Counselors shall--

1. Serve as the initial point of contact for employees who ask or are referred for counseling;

2. Be familiar with all applicable law and regulations, including drug treatment and rehabilitation insurance

coverage available to employees through the Federal Employee Health Benefits Program;

3. Be qualified by the EAP Administrator and be trained in counseling employees in the occupational setting, and identifying drug use,

4. Document and sign the treatment plan prescribed for all employees referred for treatment, after obtaining the employee's signature on this document; and

5. In making referrals, consider the--

   a. Nature and severity of the problem;

   b. Location of the treatment;

   c. Cost of the treatment;

   d. Intensity of the treatment environment;

   e. Availability of inpatient/outpatient care;

   f. Other special needs, such as transportation and child care;

   g. The preferences of the employee.

D. Medical Review Official (MRO)

The Office of Administration shall have an MRO assigned to carry out the purposes of this Order. The MRO shall, among other duties:

1. Receive all laboratory test results;

2. Assure that an individual who has tested positive has been afforded an opportunity to justify the test result in accordance with Section XIII. D. of this Plan;

3. Consistent with confidentiality requirements, refer written determinations regarding all verified positive test results to the Employee Assistance Program Administrator/Coordinator, including a positive drug test result form indicating that the positive result is "unjustified," together with all relevant documentation and a summary of findings;

4. Notify the Director of Personnel, Office of Administration when an individual who has been tentatively selected for employment with an ECP agency has obtained a verified positive test result.

5. Coordinate with and report to the Director, Office of Administration, on all activities and findings on a regular basis.

E. Supervisors

Supervisors will be trained to recognize and address illegal drug use by employees, and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. First-line supervisors shall:

1. Attend training sessions on illegal drug use in the workplace;

2. Initiate through the Drug Program Coordinator a reasonable suspicion test, after first making appropriate factual observations and documenting those observations and obtaining approval from the higher-level supervisor; and/or other official designated to approve such testing of an EOP agency employee;

3. Refer employees to the EAP for assistance in obtaining counseling and rehabilitation, upon a finding of illegal drug use;

4. Initiate appropriate disciplinary action upon a finding of illegal drug use, and;

5. In conjunction with personnel specialists, assist higher-level supervisors and the EAP Administrator by evaluating employee performance and or personnel problems that may be related to illegal drug use.

A higher-level supervisor shall review and concur, in advance, with all reasonable suspicion tests ordered under their supervision, as indicated in Appendix A.

F. Implementation

At the direction of the Director, Office of Administration, each EOP agency head shall implement the Drug-Free Workplace Plan within their agency and ensure that the Plan is efficiently and effectively accomplished in accordance with this order and all other applicable regulations.

G. General Program/Structural Provisions

The Director, Office of Administration, shall develop implementation procedures to efficiently and swiftly implement all

aspects of this order, taking into account unique personnel, budgetary and other relevant factors.

H. Government Contractors

Wherever existing facilities are inadequate to implement this order, the Director, Office of Administration, shall:

1. Acquire needed services by contract or interagency agreement and insure the monitoring and successful performance of such arrangements.

2. Ensure that contractors chosen to perform the drug screening tests are duly certified pursuant to the HHS guidelines and that all contracts conform to the technical specifications of the HHS guidelines (see Appendix B); and

3. Establish, by contract or by interagency agreement as deemed appropriate, the positions and specific responsibilities of the MRO as required by the HHS guidelines (see Appendix B).

VII. NOTICE

A. General Notice

A general notice from the head of the EOP agency announcing the testing program, as required by the Executive Order Section 4(a), will be provided to all employees no later than sixty (60) days prior to the implementation date of the plan. The notices shall be provided immediately upon completion of the congressional certification procedures pursuant to 5 U.S.C. Sections 503 (a)(1)(A), 503(a)(1)(B), and 503 (a)(1)(C) of the Act, and shall explain:

1. The purpose of the Drug-Free Workplace Plan;

2. That the plan will include both voluntary and mandatory testing;

3. That those who hold positions selected for random testing will also receive an individual notice, prior to the commencement of testing, indicating that their position has been designated a testing designated position;

4. The availability and procedures necessary to obtain counseling and rehabilitation through the EAP;

5. The circumstances under which testing may occur;

6. That opportunity will be afforded to submit medical documentation of lawful use of an otherwise illegal drug;

7. That the laboratory assessment is a series of tests which are highly accurate and reliable, and that, as an added safeguard, laboratory results are reviewed by the MRO;

8. That positive test results verified by the MRO may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal in any adverse personnel action;

9. That all medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient.

B. Individual Notice

In addition to the general notice, an individual notice will be distributed to all employees in testing designated positions explaining, in addition to the information provided above:

1. That the employee's position has been designated a "testing designated position;"

2. That the employee will have the opportunity to voluntarily identify himself as a user of illegal drugs and to receive counseling or rehabilitation, in which case disciplinary action is not required.

3. That the employee's position will be subject to random testing no sooner than thirty days.

C. Signed Acknowledgement

Each employee in a testing designated position shall be asked to acknowledge in writing that --

" The employee has received and read the notice which states that the employee's position has been designated for random drug testing; and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal."

If the employee refuses to sign the acknowledgement, the employee's supervisor shall note on the acknowledgement form that the employee received the notice. This acknowledgement shall be centrally collected for easy retrieval, and is advisory only. An employee's failure to sign the notice shall not preclude testing that employee, or otherwise affect the implementation of this order since the general sixty-day notice will previously have notified all agency employees of the requirement to be drug-free.

D. Administrative Relief

If an employee believes that his or her position has been wrongly designated a test designated position (TDP) that employee may file an administrative appeal to the official designated in Appendix A who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing, to the designated official within 15 days of notification, setting forth all relevant information. The designated official shall review the appeal based upon the criteria applied in designating that employee's position as a TDP. The official's decision is final and is not subject to further administrative review.

VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

A. Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

1. Direct observation;

2. Evidence obtained from an arrest or criminal conviction;

3. A verified positive test result; or

4. An employee's voluntary admission.

B. Mandatory Administrative Actions

The EOP agency shall refer an employee found to use illegal drugs to the EAP, and, if the employee occupies a sensitive position, immediately remove the employee from that position without regard to whether it is a testing designated position. At the discretion of the head of the EOP agency, or his designee, however, and as part of an EAP, an employee may return to duty in a sensitive position if the employee's return would not endanger public health or safety or national security.

C. Range of Consequences

The severity of the disciplinary action taken against an employee found to use illegal drugs will depend on the circumstances of each case, and will be consistent with the Executive Order, and includes the full range of disciplinary actions, including removal. The EOP agency shall initiate disciplinary action against any employee found to use illegal drugs provided that such action is not required for an employee who voluntarily admits to illegal drug use, and obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.

Such disciplinary action may include any of the following measures but some disciplinary action must be initiated:

1. Reprimanding the employee in writing;

2. Suspending the employee for 14 days or less;

3. Suspending the employee for 15 days or more;

4 Suspending the employee until the employee successfully completes the EAP or until it is determined that action other than suspension is more appropriate;

5. Removing the employee from service.

D. Initiation of Mandatory Removal From Service

The EOP agency shall initiate action to remove an employee for:

1. Refusing to obtain counseling or rehabilitation through an Employee Assistance Program as required by the Executive Order after having been found to use illegal drugs;

2. Having been found not to have refrained from illegal drug use after a first finding of illegal drug use.

All letters to propose and decide on a disciplinary action should be developed in consultation with the Personnel Division, Office of Administration.

E. Refusal to Take Drug Test When Required

1. An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including dismissal.

2. No applicant who refuses to be tested shall be extended an offer of employment.

3. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary Referral

Under Executive Order 12564, the EOP agency is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except one. If an employee (1) voluntarily admits his or her drug use; (2) completes counseling or rehabilitation through an EAP; and (3) thereafter refrains from drug use, such discipline "is not required."

The decision whether to discipline a voluntary referral will be made by the EOP agency head on a case by case basis depending upon the facts and circumstances. Although an absolute bar to discipline cannot be provided for certain positions because of their extreme sensitivity, the Agency in determining whether to discipline, shall consider that the employee has come forward

voluntarily. In coming forward voluntarily, and consistent with Section XII(B), an employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such result shall not constitute a second finding of illegal drug use for purposes of considering the disciplinary consequences herein.

This self-identification option allows any employee to step forward and identify his/herself as an illegal drug user for the purpose of entering a drug treatment program under the EAP.

Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit his or her problem -- this provision will not be available to an employee who is asked to provide a urine sample when required, or who is found to have used illegal drugs pursuant to Sections VIII(A)(1), or VIII(A)(2) and who thereafter requests protection under this provision.

IX. RANDOM TESTING

A. Position Titles Designated for Random Drug Testing

The position titles designated for random drug testing are listed in Appendix A, along with the criteria and procedures applied in designating such positions for drug testing, including the justification for such criteria and procedures.

B. Sensitive Employees in Testing Designated Positions

The Executive Order requires random testing for employees in sensitive positions that have been designated as testing designated positions. As further specified in Appendix A, the EOP agency head has determined that these positions are testing designated positions that will be randomly tested. Accompanying the list of testing designated positions are the criteria and procedures used in designating such positions, pursuant to the Act, including the justification for such criteria and procedures.

C. Determining The Testing Designated Position

Among the factors that each EOP agency head has considered in determining a testing designated position, are the extent to which that agency---

1. Considers its mission inconsistent with illegal drug use;

2. Is engaged in law enforcement;

3. Must foster public trust by preserving employee reputation for integrity, honesty and responsibility;

4. Has national security responsibilities;

5. Has drug interdiction responsibilities; or

The extent to which the position considered--

1. Gives employees access to sensitive information;

2. Authorizes employees to engage in law enforcement;

3. Requires employees, as a condition of employment, to obtain a security clearance;

4. Requires employees to engage in activities affecting public health or safety.

These positions are characterized by critical safety or security responsibilities as related to the mission of their agency. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property, law enforcement, or national security. These positions are identified for random testing because they require the highest degree of trust and confidence.

Each EOP Agency head reserves the right to add or delete positions determined to be testing designated positions pursuant to the criteria established in the Executive Order and this plan. Moreover, pursuant to 42 U.S.C. 290ee-1(b) (2), and the pertinent provisions of the Federal Personnel Manual, the EOP agency head has determined that all positions which have been or will be designated as testing designated positions under this plan are "sensitive positions" and are therefore exempted from coverage under 42 U.S.C. 290ee-1(b) (1) which provides that no person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the basis of prior drug abuse.

D. Implementing Random Testing

In implementing the program of random testing the Drug Program Coordinator shall--

1. Ensure that the means of random selection remains confidential; and

2. Evaluate periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the EOP agencies duty to achieve a drug-free work force.

The testing designated positions in each EOP agency are specified in Appendix A. Twelve percent of the incumbents of these positions shall be tested annually, with unannounced testing to be held six times a year.

E. Notification of Selection

An individual selected for random testing, and the individual's first-line supervisor, shall be notified the same day the test is scheduled, preferably, within two hours of the scheduled testing. The supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employee's name was selected randomly.

F. Deferral of Testing

An employee selected for random drug testing may obtain a deferral of testing if the employee's first-line and second-line

supervisors concur that a compelling need necessitates a deferral on the grounds that the employee is:

1. In a leave status (sick, annual, administrative or leave without pay);

2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification;

An official of each EOP agency identified in Appendix A may authorize deferral of testing for an employee whose immediate work-demands require uninterrupted continuation. The decision to defer testing on this basis may not be delegated.

An employee whose random drug test is deferred will be included with the next group of employees selected for random testing occurring within the following 60 days.

X. REASONABLE SUSPICION TESTING

A. Grounds

Reasonable suspicion testing may be based upon, among other things:

1. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;

2. A pattern of abnormal conduct or erratic behavior;

3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;

4. Information provided either by reliable and credible sources or independently corroborated; or

5. Newly discovered evidence that the employee has tampered with a previous drug test.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

B. Procedures

If an employee is suspected of using illegal drugs, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion. This information will be reviewed by a higher-level supervisor for concurrence. The decision level for approval to proceed with testing is described in Appendix A.

When reasonable suspicion has been established, the appropriate supervisor will promptly detail, for the record and in writing, the circumstances which formed the basis to warrant the testing. A written report will be prepared to include, at a minimum, the appropriate dates and times of reported drug related incidents, reliable/credible sources of information, rationale leading to the test, findings of the test, and the action taken.

C. Obtaining the Sample

The employee may be asked to provide the urine sample under observation in accordance with the criteria in Section XIII B.

D. Supervisory Training

In accordance with Section IV, supervisors will be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion.

Failure to receive such training, however, shall not invalidate otherwise proper reasonable suspicion testing.

XI. APPLICANT TESTING

A. Objectives

To maintain the high professional standards of the EOP agency's workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed on the employment rolls of the agency. This procedure will have a positive effect on reducing instances of illegal drug use by employees working within the EOP, and will provide for a safer work environment.

B. Extent of Testing

Drug testing shall be required of applicants tentatively selected for employment with an EOP agency as indicated in Appendix A.

C. Vacancy Announcements

Every vacancy announcement issued for an EOP agency by the Office of Administration for positions designated for applicant testing shall state:

" All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment."

In addition, the applicant will be notified that appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement notice will not preclude applicant testing if advance written notice is provided applicants in some other manner.

D. Procedures

The DPC or other official designated by the DPC in each EOP agency shall direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours of notice to the applicant. Where appropriate, applicants may be reimbursed for reasonable travel expenses.

Applicants will be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be reviewed only by the MRO to determine whether the individual is licitly using an otherwise illegal drug.

E. Personnel Officials

Upon notification that an applicant has been tentatively selected for employment with an EOP agency the Director of Personnel, Office of Administration, shall assure, after consultation with the MRO, that a drug test has been conducted, if required by the EOP agency, on that individual and determine whether the test result is a verified positive result.

F. Consequences

The EOP agency will decline to extend a final offer of employment to any applicant with a verified positive test result, and such applicant may not reapply for employment for a period of six months. The EOP agency shall inform the applicant that a confirmed presence of drugs in the applicant's urine precludes the agency from hiring the applicant.

XII. ADDITIONAL TYPES OF DRUG TESTING

A. Accident or Unsafe Practice Testing

Each EOP agency is committed to providing a safe and secure work environment. Employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to others or the operation of the agency, may be subject to testing. Based on the circumstances of the accident or unsafe act, the supervisor with the concurrence of the second-level supervisor may initiate testing when the employee suffers personal injury requiring immediate hospitalization or there is damage to Government or personal property estimated to exceed $5000. The conditions and procedures of testing shall be as for random testing.

B. Voluntary Testing

In order to demonstrate their commitment to an EOP agency's goal of a drug-free workplace and to set an example for other federal employees, employees not in testing designated positions may volunteer for unannounced random testing by notifying the DPC. These employees will then be included in the pool of testing designated positions subject to random testing, and be subject to the same frequency of testing, conditions and procedures, including the provisions of Section VIII(F). Volunteers shall remain in the TDP pool for the duration of the position which the employee holds, or until the employee withdraws from participation by notifiying the DPC of such intent at least 48 hours prior to a scheduled test.

C. Follow-up Testing

All employees referred through administrative channels who undergo a counseling or rehabilitation program for illegal drug use through the EAP will be subject to unannounced testing following completion of such a program for a period of one year. Such employees shall be tested at the amount stipulated in the abeyance contract, or in the alternative, at an increased frequency twice the rate applicable to the pool of testing designated positions through placement in a separate random pool. Such testing is distinct from testing which may be imposed as a component of the EAP.

XIII. TEST PROCEDURES IN GENERAL

A. Technical Guidelines for Drug Testing

The EOP agencies shall adhere to all scientific and technical guidelines for drug testing programs promulgated by HHS consistent with the authority granted by Executive Order 12564, and to the requirements of Section 503 of the Act. The drug testing program shall have professionally trained collection personnel, a laboratory certification program, rigorous analytical standards and quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

B. Privacy Assured

Any individual subject to testing under this order, shall be permitted to provide urine specimens in private, and in a rest room stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided when --

1. The individual is being tested pursuant to Section X relating to reasonable suspicion testing;

2. Facts and circumstances suggest that the individual is an illegal drug user;

3. Facts and circumstances suggest that the individual is under the influence of drugs at the time of the test;

4. The individual has previously been found to be an illegal drug user;

5. Facts and circumstances suggest that the individual has equipment or implements capable of tampering or altering urine samples; or

6. The individual has previously tampered with a sample.

C. Failure to Appear for Testing

Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the DPC to obtain guidance on action to be taken.

D. Opportunity to Justify a Positive Test Result

When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the HHS Guidelines. For example, the MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include, but is not limited to:

1. A valid prescription; or

2. A verification from the individual's physician verifying a valid prescription.

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO shall immediately contact the EAP Administrator upon obtaining a verified positive test result.

E. Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, and at the request of the program, the employee may be exempted from the random testing designated position pool for a period not to exceed sixty days or, for a time period specified in an abeyance contract or rehabilitation plan approved by the EOP agency head. Upon completion of the program, the employee immediately shall be subject to follow-up testing pursuant to Section XII C.

F. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the Scientific and Technical Guidelines promulgated by the Department of Health and Human Services, or any subsequent amendment thereto, such HHS Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

XIV. RECORDS AND REPORTS

A. Confidentiality of Test Results

The laboratory may disclose confirmed laboratory test results only to the MRO. Any positive result which the MRO justifies by licit and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test Results will be protected under the provisions of the Privacy Act, 5 U.S.C. 552a, et seq., and Section 503(e) of the Act, and may not be released in violation of either Act. The MRO may maintain only those records necessary for compliance with this order. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, except that the disclosure of the results of any audit may not include personal identifying information on any employee.

In order to comply with Section 503(e) of the Act, the results of a drug test of an EOP agency employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be--

1. To the MRO;

2. To the EAP Administrator in which the employee is receiving counseling or treatment or is otherwise participating;

3. To any supervisory or management official within the EOP agency having authority to take adverse personnel action against such employee; or

4. Pursuant to the order of a court of competent jurisdiction or where required by the United States Government to defend against any challenge against any adverse personnel action.

For purposes of this Section, "management official" includes any management or government official whose duties necessitate review of the test results in order to process adverse personnel action against the employee. In addition, test results with all identifying information removed shall also be made available to other personnel, including the DPC, for data collection and other activities necessary to comply with Section 503(f) of the Act.

B. Employee Access to Records

Any employee who is the subject of a drug test shall, upon written request, have access to any records relating to--

1. Such employee's drug test; and

2. The results of any relevant certification, review, or revocation of proceedings, as referred to in Section 503(a)(1)(A)(ii)(III) of the Act.

Except as authorized by law, an applicant who is the subject of a drug test, however, shall not be entitled to this information.

C. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential and should be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this order and to make information readily retrievable, the DPC shall maintain all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this order.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the Personnel Division, Office of Administration. Such shall remain confidential, locked in a combination safe, with only authorized individuals who have a "need-to-know" having access to them.

D. Employment Assistance Program Records

The EAP Administrator shall maintain only those records necessary to comply with this order. After referral of an employee to an EAP, the EAP will maintain all records necessary to carry out its duties. All medical and or rehabilitation records concerning the employee's drug abuse, including EAP records of the identity, diagnosis, prognosis, or treatment are confidential and may be disclosed only as authorized by 42 C.F.R. Part 2, including the provision of written consent by the employee. With written consent, the patient may authorize the disclosure of those records to the patient's employer for verification of treatment or for a general evaluation of treatment progress. (42 C.F.R. 2.1 et seq. (1986), revised regulations promulgated at 52 F.R. 21796, June 9, 1987).

E. Maintenance of Records

The Office of Administration shall establish or amend a

recordkeeping system to maintain the records of the EOP Drug Free Workplace Program consistent with the Privacy Act System of Records and with all applicable federal laws, rules and regulations regarding confidentiality of records including the Privacy Act 5 U.S.C. 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the EOP agency head. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of this order, and include:

1. Notices of verified positive test results referred by the MRO;

2. Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;

3. Anonymous statistical reports; and

4. Other documents the DPC, MRO, or EAP Administrator deems necessary for efficient compliance with this order.

F. Records Maintained By Government Contractors

Any contractor hired to satisfy any part of this order shall comply with the confidentiality requirements of this order, and all applicable federal laws, rules, regulations and guidelines.

G. Statistical Information

The DPC shall collect and compile anonymous statistical data for reporting the number of--

1. Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered;

2. Verified positive test results;

3. Voluntary drug counseling referrals;

4. Involuntary drug counseling referrals;

5. Terminations or denial of employment offers resulting from refusal to submit to testing;

6. Terminations or denial of employment offers resulting from alteration of specimens;

7. Terminations or denial of employment offers resulting from failure to complete a drug abuse counseling program; and

8. Employees who successfully complete EAP.

This data, along with other pertinent information, shall be compiled for inclusion in the EOP's annual report to Congress required by Section 503 (f) of the Act. This data shall also be provided to HHS on a semi-annual basis to assist in overall program evaluation and to determine whether changes to the HHS Guidelines may be required.

APPENDIX A. EOP AGENCY SUPPLEMENTAL INFORMATION

Part A. The White House Office

Part B. Office of the Vice President

Part C. Council of Economic Advisers

Part D. Council on Environmental Quality

Part E. Executive Residence at the White House

Part F. National Critical Materials Council

Part G. National Security Council

Part H. Office of Administration

Part I. Office of Management and Budget

Part J. Office of Policy Development

Part K. Office of Science and Technology Policy

Part L. Office of the U. S. Trade Representative

Part M. White House Conference for a Drug-Free America

Part N. President's Foreign Intelligence Advisory Board

Part O. President's Intelligence Oversight Board

NOTE: Each EOP agency will have available its Part of Appendix A for distribution to its employees.

APPENDIX B

Monday
April 11, 1988

Part IV

Department of Health and Human Services

Alcohol, Drug Abuse, and Mental Health Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs; Final Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Final Guidelines.

SUMMARY: The Department of Health and Human Services (DHHS) adopts scientific and technical guidelines for Federal drug testing programs and establishes standards for certification of laboratories engaged in urine drug testing for Federal agencies.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Maureen Sullivan (301) 443–6780.

SUPPLEMENTARY INFORMATION: These Final Guidelines, titled "Mandatory Guidelines for Federal Workplace Drug Testing Programs" were developed in accordance with Executive Order No. 12564 dated September 15, 1986, and section 503 of Pub. L. 100–71, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. The statute specifically requires that notice of proposed mandatory guidelines be published in the **Federal Register**; that interested persons be given not less than 60 days to submit written comments; and that after review and consideration of written comments, final guidelines be published which:

I. Establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order No. 12564, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

II. Specify the drugs for which Federal employees may be tested; and

III. Establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order No. 12564.

Subpart A of this document contains general provisions. Subpart B, titled "Scientific and Technical Requirements," responds to the mandates in items I and II above. Subpart C, titled "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," responds to item III.

In substance, these Final Guidelines are very similar to those in the Notice of Proposed Guidelines published on August 14, 1987 (52 FR 30638). However, significant editorial and format changes have been made. The Guidelines have been edited as a single, integrated document organized in a more traditional format with subparts, numbered sections, and consistent paragraph designators. Definitions have been grouped together in Subpart A. Rather than repeat identical material, the document contains internal cross-references, particularly from Subpart C to Subpart B. This new organizational approach should add clarity to presentation of the material and aid the cross-referencing and citation of individual sections and paragraphs.

Prior to addressing comments on the specifics of the scientific and technical requirements and the certification program, it is worth noting that a number of commentors perceived the laboratory standards in these Guidelines as redundant, viewing existing regulations, guidelines, and certification/licensure mechanisms of the Medicare and Clinical Laboratory Improvement Act of 1967 (CLIA) interstate licensure program—also administered by DHHS—as sufficient to provide quality assurance for urine drug testing laboratories.

The Medicare and CLIA certification requirements apply to laboratories conducting a wide range of medical tests, having been designed for any medical testing laboratory receiving Medicare/Medicaid reimbursement or performing testing on specimens in interstate commerce, respectively.

The laboratory portion of the President's Drug-Free Federal Workplace Program can be distinguished from the Medicare/CLIA programs by important differences in policies, procedures, and personnel arising from standards appropriate to the application of analytical forensic toxicology for this program. Unique distinguishing features include:

- Rigorous chain of custody procedures for collection of specimens and for handling specimens during testing and storage.
- Stringent standards for making the drug testing site secure, for restricting access to all but authorized personnel, and providing an escort for any others who are authorized to be on the premises;
- Precise requirements for quality assurance and performance testing specific to urine assays for the presence of illegal drugs; and
- Specific educational and experience requirements for laboratory personnel to ensure their competence and credibility as experts on forensic urine drug testing, particularly to qualify them as witnesses in legal proceedings which challenge the finding of the laboratory.

Medicare and CLIA laboratory certification procedures do not provide for quality assurance and performance testing specific to urine drug testing laboratories. With few exceptions, the Medicare and CLIA certification programs do not have employees specifically trained in toxicology to perform the on-site surveys and evaluations of the laboratories and the technologies employed in the laboratories. The Medicare and CLIA standards do not address issues such as cutoff limits for drug detection, grading criteria for the performance testing programs, blind performance testing requirements, specifications for the analytical techniques to be employed, types of drugs to be detected (including metabolites), and detailed outcome measures of performance such as requiring assays of quality control samples and a large number of performance test samples as an initial and ongoing requirement for certification.

The need to assure the protection of individual rights within the context of a drug testing program—linked to both employee assistance programs and the management potential for taking adverse action against an employee—makes essential the development of a separate laboratory certification program to respond to the unique requirements of the program mandated by the President and the Congress. These Guidelines set standards for such a certification program.

The Final Guidelines make clear that they do not apply to drug testing under any legal authority other than E.O. 12564, including testing of persons under the jurisdiction of the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees (see § 1.1(e)). The testing of persons in the criminal justice system is different than testing under E.O. 12564 for several reasons: (1) The overriding purpose of the criminal justice system is to protect community safety through the apprehension, adjudication, and punishment of law violators; (2) the incidence of drug use among those under the jurisdiction of the criminal justice system is high; and (3) the legal interests at issue in the criminal justice system, including liberty, privacy, and property interests, are different and, therefore, are subject to established practices, constitutional protections, and evidentiary rules specific to the criminal

justice system. The Guidelines also do not apply to military testing of service personnel or applicants to the military.

Response to Comments

Written comments to the Notice of Proposed Guidelines published August 14, 1987, were received from approximately 150 individuals, organizations, and Federal agencies. All written comments were reviewed and taken into consideration in the preparation of the Final Guidelines. This section summarizes major comments and the Department's response to them. Similar comments are considered together.

1. Several commenters requested that the Guidelines require a split sample technique in which a second sample or a portion of a sample could be saved for further testing. Although this possibility was considered, it is viewed as a cumbersome and expensive process involving the collection of two separate sets of samples and the retention of one for an indefinite period of time in some type of secured long term refrigerated storage. The use of a split sample was suggested as a mechanism to overcome perceived problems arising out of situations such as sample mixups, erroneous identification of samples, and lost samples. The Department does not agree that split or additional sample proposal would have any scientific advantage over the current system nor would they increase reliability. In fact, such a system could increase the risk of administrative error by doubling the labeling, initialing, storage, and accountability requirements. Furthermore, the Guidelines already include sufficient safeguards to eliminate the problems the use of split or additional samples are thought to address; e.g., detailed safeguards for labeling and chain of custody of the urine sample. Accordingly, we do not project any real scientific, chain of custody, or reliability benefits sufficient to justify placing the added requirement of collection and storage of split samples of Federal agencies and have rejected the split sample requirement. Furthermore, these Guidelines specifically reject allowing the tested employee or anyone else from presenting to the Medical Review Officer a split sample or private sample that does not fully comply with these Guidelines.

2. A number of commentors said that specific educational and experience requirements for laboratory directors and supervisors were too restrictive and that specific board certifications, experience, and degree requirements were also too restrictive and did not provide any additional quality assurance. In many cases these individuals recommended that the current Medicare and CLIA personnel standards be used in place of the standards proposed in the Guidelines. Other individuals and organizations stated that the proposed personnel standards in the Guidelines were not stringent enough. Some recommended that specific standards also be adopted for the personnel performing the tests.

The Department carefully considered the comments about the personnel standards proposed in the Guidelines—most of which came from employees of clinical laboratories or organizations representing those employees—from the perspective of the intent of the Guidelines. It is not possible to reconcile the divergent viewpoint represented in the comments. In this connection it should be noted that credentialing standards for laboratory personnel have been an issue for a number of years in other laboratory programs administered by DHHS, as well as among those who commented on the Notice proposing these Guidelines.

The laboratory personnel requirements in the Guidelines are designated to assure that any individual responsible for test-review and result-reporting is qualified to perform the function and could appear as an expert witness in a court challenge of the results. This requires familiarity with a wide range of material related to test selection, quality assurance, interferences with various tests, maintenance of chain of custody, documentation of findings, interpretation of test results, validation and verfication of test results, and the ability to testify as an expert in legal proceedings. The Guidelines set personnel requirements for the individuals responsible for day-to-day management and operation of laboratories engaged in urine drug testing for Federal agencies aimed at ensuring those competencies.

While a consultant may be able to carry out some of these specialized functions, it is essential that comprehensive oversight and control of the responsibilities cited above be exercised by those who are directly responsible on a day-to-day basis for the laboratory, who are accountable for the test results, and who may be called on to consult with the agency for which testing is performed as well as to appear at any legal proceeding to defend the quality of testing in the laboratory. Therefore, the Guidelines set functional employee qualification standards which are essential to the mission of a drug testing laboratory and require that laboratory employees meet those standards. For the purpose of meeting laboratory personnel requirements, no provision is made for the use of consultants who are not involved in the day-to-day management or operation of the laboratory.

The Final Guidelines set functional requirements for individuals engaged in the day-to-day management and operation of laboratories engaged in urine drug testing for Federal agencies. They do not specify requirements for other personnel, including employees who perform the assays, but rather depend on the ability of those responsible individuals to select and oversee properly qualified employees in each specific laboratory, and they depend on outcome measures of laboratory performance such as performance testing. The individual responsible for day-to-day laboratory management is responsible for determining staffing needs and types of personnel required to perform particular functions in a specific facility. The individual responsible for day-to-day laboratory operations is responsible for supervision of analysts performing drug tests and related duties. Outcome measures will provide the responsible individual with feedback on the performance of laboratory employees. Within this framework, the Guidelines do not establish qualifications for additional laboratory positions.

The individuals who perform the tests are a vital part of any laboratory operation, and there is no intent to minimize their importance by omitting qualifications for them. However, by holding the appropriate laboratory officials responsible for review and certification of all test results before they are sent forward and by relying on various quality control and quality assurance measures, performance testing and on-site evaluations to provide direct measures of the quality of testing, the Department expects to ensure a standard of excellence in drug testing without setting additional personnel requirements. This reliance on the qualifications of the individuals responsible for the day-to-day management and operation of urine drug testing laboratories does not prohibit the laboratories themselves from setting additional employees standards which may include specific credentials, certifications, licenses, registries, etc., for specific functions.

However, once a laboratory is certified in accordance with these Guidelines, laboratory employees whose functions are prescribed by these

Guidelines are deemed qualified. These Guidelines establish the exclusive standards for qualifying or certifying these employees involved in urainalysis testing. Certification of a laboratory under these Guidelines shall be a determination that all appropriate qualification requirements have been met. Agencies may not establish or negotiate additional requirements for these laboratory personnel.

Some commentors felt that references to director, supervisor of analysts, certifying officials, and other analysts did not clearly distinguish between those positions. Other commentors criticized the establishment of specific position titles. We have clarified laboratory employee functions and dropped the use of specific position titles in 2.3 Laboratory Personnel. A laboratory engaged in urine drug testing for Federal agencies must have personnel to perform the following functions:

- Be responsible for the day-to-day management and for the scientific and technical performance of the drug testing laboratory (even where another individual has overall responsibility for an entire multispeciality laboratory).
- Attest to the validity of the laboratory's test reports. This individual may be any employee who is qualified to be responsible for the day-to-day management or operation of the drug testing laboratory.
- Be responsible for the day-to-day operation of the drug testing laboratory and for the direct supervision of analysts performing drug tests and related duties.

In response to those commentors who were concerned about the proposed requirement for a Ph.D. to qualify as a laboratory director, the Final Guidelines provide that the individual responsible for the day-to-day drug testing laboratory management may have education and experience in lieu of a Ph.D. to demonstrate an individual's scientific qualifications in analytical forensic toxicology (see 2.3(a)(2)(iii)). Together with the specific analytical forensic toxicology experience required in 2.3(a)(2)(iv), scientific qualifications may be demonstrated by showing "training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree and in addition have training and laboratory or research experience in biology, chemistry, and pharmacology or toxicology." This Ph.D. comparability provision eliminates the utility of the "grandfather" clause in the proposed guidelines, a clause which would have qualified incumbent laboratory directors who have a graduate degee in the natural sciences followed by extensive experience (6 years postgraduate), in analytical forensic toxicology. Thus, the Final Guidelines omit the "Grandfather" clause.

The Ph.D comparability provision, while not requiring specific research experience, recognizes research as one mechanism for demonstrating scientific competency to be responsible for day-to-day laboratory management. Lack of research experience does not disqualify an individual for that function if he or she has other appropriate training or experience. The Ph.D. comparability provision also makes explicit that a medical degree is an acceptable alternative to the Ph.D. for this purpose, provided, of course, that the M.D. has the other requisite training and experience.

The Final Guidelines do not require specific board certification for any laboratory employees. Some commentors were concerned particularly that individuals who supervise analysts would have to be on the registry of the American Society for Clinical Pathologists (ASCP). The proposed guidelines cited the ASCP registry, but only as an example of the type of experience and education that would qualify an individual to oversee the day-to-day operations of a urine drug testing laboratory, including the supervision of analysts. The important factors associated with day-to-day operation and supervision of analysts in a forensic toxicology laboratory are captured in 2.3(c). Therefore, the Final Guidelines omit any reference to a registry as a factor in qualifying an individual for this function. Likewise, the Guidelines do not refer to a registry for the individual responsible for day-to-day laboratory management or the individual responsible for attesting to the validity of the laboratory's test reports, but rely instead on education and experience qualifications set out in 2.3 (a) and (b), respectively.

Consistent with editorial revisions throughout the Final Guidelines, editorial changes in the personnel provisions are intended to clarify specific education, training, and experience requirements for individuals to carrying out vital laboratory functions, to simplify by adopting consistent terminology, and to eliminate the need to compare similar provisions by using identical provisions when appropriate. In this regard, the personnel provisions in Subpart B, which sets out the scientific and technical requirements, and in Subpart C, which sets out the standards for certification of laboratories, are identical: Subpart C simply cross-references the personnel provisions in Subpart B.

3. A number of commentors said that it was unnecessarily restrictive to require that the screening and confirmation tests be performed at the same site. They believed that the majority of tests would be negative and that would reduce the number of samples that must be shipped to another site and would, in turn, prevent sample mixup and loss.

After having carefully reviewed this issue, the Department has determined that both screening and confirmatory testing must be performed at the same time (3.5). Although use of separate screening and confirmation laboratories may produce adequate results, Pub. L. 100–71 mandates that the Secretary set standards which "require * * * strict procedures governing the chain of custody of specimens collected for drug testing." Same-site screening and confirmation is the best method for maintaining such strict control in the chain of custody.

Requiring the two tests to be performed in the same laboratory will reduce problems inherent in having two test sites, such as problems maintaining chain of custody forms at two test sites; need for having two separate laboratory forms; possible mix-ups and loss of samples in transit between sites; potential delays in reporting results; and potential for having results reported only on the basis of an initial screening test.

Several commentors indicated that if screening were done on-site this would reduce the number of subsequent requirements for rescreening and result in fewer samples being sent to another site. The Federal work force testing program does not envision performing initial tests at the collection site. Therefore, considerations concerning on-site initial screening tests are not relevant to the current Federal testing program.

4. Several commenters indicated that a number of terms were not defined or that there was no single section defining terms used in the Notice of Proposed Guidelines. The Final Guidelines include a section to centralize the definitions that appeared in the proposed document and add definitions to several previously undefined terms (1.2). The term "proficiency testing" has been edited throughout to read "performance testing" as a more precise reflection of the nature of the testing with which these Guidelines are concerned.

5. A number of commenters said that the cutoff limits for the reporting of positive results should be higher or

lower than those proposed (see 52 FR 30641). There also were commentors who believed that the cutoff limits for the screening and confirmation tests should be set at the same level.

The initial immunoassay test cutoff is established at levels generally similar to those used by the Department of Defense and available with commercial immunoassays. These levels are consistent with detection of recent drug use.

The second set of cutoff levels is for the gas chromatography/mass spectrometry (GC/MS) confirmatory test, chosen so that the specimens determined to be positive by the first technique (screening technique) could be confirmed at a reasonable level of analytical accuracy.

The Final Guidelines retain all the proposed initial test cutoff values (2.4(e)). Confirmation for marijuana is changed by 5 ng/ml in accordance with DOD experience. Likewise, confirmation for amphetamines reflects the cutoff intended for the notice of proposed guidelines consistent with DOD levels. Cutoffs for specific opiates (morphine and codeine) and amphetamines (amphetamine and methamphetamine) are delineated for clarity (2.4(f)).

In finalizing both screening and confirmation cutoffs, among the matters considered were prevalence rate; cross-reactivity; state of the art in drug detection; and the experience of the Department of Defense and other groups in large-volume drug testing programs.

6. Several commentors indicated that alcohol should be included among the substances to be tested. The Department acknowledges the significance of alcohol and its use as well as its potential impact on performance in the workplace. In any event, alcohol is not an illegal substance, and Executive Order 12564, which these Guidelines implement, only authorizes testing for illicit drugs listed in Schdule I and Schedule II of the Controlled Substances Act. However, nothing in these Guidelines restricts the authority of agencies to test for alcohol under authorities other than E.O. 12564.

7. Several commentors indicated that photo identifications should be required at the testing site to ensure that the tested individual is properly identified. We concur that proper identification should be provided by the individuals at the test site to assure that the correct individual will be tested. Since most Federal agencies already issue photo identification cards to their employees and most employees have a driver's license with photo identification, it is not unreasonable to require this form of identification for individuals presenting themselves for testing. In cases where the individual does not have a proper photo identification, the collection site person must get the employee's supervisor, coordinator of the drug testing program, or any other agency official who knows the employee to provide a positive identification (2.2(f)(2)).

8. Several commentors suggested that toilets, water faucets, and other sources of water which could be used as adulterants should be taped shut or sealed to prevent adulteration of the sample at the collection site. The Department acknowledges that sources of water should not be available which would enable an individual to adulterate the sample. However, there are also needs, such as hand washing, for a relatively convenient source of water. These Guidelines cannot anticipate the needs at each collection site and the hardship which would be imposed by sealing all sources of water at the site. However, the proposed and Final Guidelines do include in 2.2 precautions in specimen collection procedures to ensure the integrity and identity of the specimen. Because we have taken reasonable steps to ensure that specimens are not adulterated at the collection site and because there are practical reasons for having a convenient source of water, the Final Guidelines do not require that all sources of water be taped or sealed shut but rather require that precautions be taken to ensure that unadulterated specimens are obtained. Among the precautions included in 2.2(f) to ensure unadulterated specimens is a requirement to use a bluing agent so that the water in the toilet tank and bowl are colored blue and that there be no other source of water in the enclosure where the sampe is given.

9. Several commentors requested more specific guidelines to define "unusual behavior" at the urine collection site which would give reason to believe a particular individual may alter or substitute the specimen to be provided which, in turn, would trigger the requirement to obtain a second specimen under direct observation of a same gender collection site person (see 2.2(f)(16)). The guidelines focus on whether there is "reason to believe" (see 1.2 for definition) that a sample is adulterated. Observations of unusual behavior may bear on whether there is a "reason to believe" and for that reason the Guidelines require such observations to be documented in the permanent record book. While it may be desirable to provide specific descriptions of or guidelines to identify "unusual behavior," the Department cannot foresee or define every contingency which might occur. Thus, "unusual behavior" is not further defined in the Guidelines.

It should be noted, however, that other indicia of "reason to believe" are set out in 2.2(f). For example, 2.2(f)(12) and (13) require a temperature reading upon collection of the specimen and indicate those temperatures which would give rise to a reason to believe that a specimen may be altered or substituted. Elsewhere the Guidelines require the collection site person to inspect the sample for unusual color or other signs of contaminants (2.2(f)(14)). Likewise, if a collection site person sees unusual behavior which causes him or her to question the integrity of the sample such that it leads to a reason to believe that a particular individual may alter or substitute the specimen to be provided, the Guidelines require that such an observation be noted in writing in the permanent record book (2.2(f)(8)). The Final Guidelines also add a requirement that any "reason to believe" observation be concurred in by a higher level supervisor of the collection site person (2.2(f)(23).

With regard to reason to believe that a particular individual may alter or substitute the specimen based on the specimen's temperature falling outside the acceptable range, the Final Guidelines permit an individual to volunteer to have an oral temperature reading to provide evidence that the temperature of the specimen was consistent with the individual's body temperature, i.e., an individual's fever could cause an elevation in the temperature of the specimen (2.2(f)(13)).

10. Several commentors said that if the first specimen is subject to a reason to believe that the particular individual may alter or substitute the specimen which would require a second specimen to be collected, the second specimen should be collected immediately. The Department concurs that the second specimen should be collected as soon as the need for it is established. Therefore, the Guidelines provide that the second specimen shall be collected as soon as possible whenever there is reason to believe that the particular individual may alter or substitute the specimen. (2.2(f)(16)).

11. Several commentors wanted to know the basis for the choice of cocaine and marijuana as the drugs required to be screened by all agencies. The requirement that all agencies screen for cocaine and marijuana was based on the incidence and prevalence of their abuse in the general population and the experiences of the Department of

Defense and the Department of Transportation in screening their work forces. The choice of cocaine and marijuana as the only substances for which all agencies must test takes into account that the predictive value of any positive diagnostic test is a function of prevalence in the tested population. Agencies have also been authorized to test for phencyclidine, amphetamines, and opiates because their high incidence and prevalence in the general population may warrant testing of particular agency work forces for these illegal substances (2.1(a)).

Federal agency requests for screening drugs other than the five authorized in these Guidelines must be made in writing to the Secretary. The Secretary will review the requests on a case-by-case basis and make a determination of the acceptability of the plans, cutoff limits, and testing protocols. The Secretary's determination shall be limited to the use of appropriate science and technology and shall not otherwise restrict agency authority to test for drugs included in schedules I and II of the Controlled Substances Act (2.1(b)).

12. Several commentors wanted clarification of the procedures for the Medical Review Officer's (MRO's) protocols for performing the review function. They also wanted to know if individual employees would have an opportunity to discuss the Medical Review Officer's findings with him or her. Procedures for the conduct of the medical review function, including a handbook to cover the activities of the MRO, will be disseminated to all Federal agencies. While there is agreement that there should be an opportunity for some type of medical interview between the medical review officer and the employee prior to the MRO's final decision concerning a positive test result, a face-to-face interview may not always be feasible or possible. For example, they may be in widely distant geographic areas, and it may be more practical to arrange a telephone or teleconference interview than a direct meeting. Therefore, we have provided for flexibility in the mechanism for this communication and have stated at 2.7(c) that prior to making a final decision to verify a positive result, the MRO shall give the individual employee an opportunity to discuss the test result with him or her. The Medical Review Officer shall not, however, consider the results of urine samples that are not obtained or processed in accordance with these Guidelines.

13. Several commentors indicated that color blindness measurements for laboratory workers were not necessary since none of the currently approved methodologies involved the use of visual color measurements. The requirement that laboratories maintain files which include information on employee color vision was originally proposed because some immunoassay systems have color-coded components and the reliable manipulation of such systems requires good color vision. In view of the methodologies currently approved in the Guidelines, we agree that an across-the-board requirement to maintain files on color blindness is not warranted. However, the Department has a more general concern that laboratories employ individuals who have the ability to perform any necessary test procedures. Therefore, the Guidelines generally provide at 2.3(f) that laboratory personnel files shall include results of any tests which establish employee competency for the position he or she holds and provide, as a specific example, a test for color blindness if the employee will be using color coded analytical systems. Similarly, the final Guidelines do not require that laboratories maintain any other medical data about employees unless that data would be necessary to show the employee's competency to perform a specific job function.

While these Guidelines do not require laboratories to maintain general health or medical information in employee files, they do not preclude a laboratory from maintaining such files. What 2.3(f) is intended to do is require laboratories to maintain sufficient files to show employee competency for the position he or she holds.

14. One commentor requested that the laboratory notify agency management officials of a positive result at the same time the Medical Review Officer is notified, so that individuals in sensitive positions or in positions where they could pose a hazard to other individuals or the public could be temporarily removed from these positions, with no punitive action, until after the Medical Review Officer had completed the review process. After considering both the safety implications and the employee rights in this type of notification, the Department has determined that it would be inappropriate to report a result before the Medical Review Officer has the opportunity to review the facts and circumstances and make a decision on the meaning of the test results. In instances where an agency determines that it has a need for immediate action or might have such a need based on its mission, the agency should develop a mechanism to expedite the review process or allow the Medical Review Officer to require review of the individual's general fitness to continue performing a specific function. Circumventing the review system would abridge necessary protections for employees and could result in prejudging an individual employee's case (2.7).

15. Several commentors called for a medical review board instead of a single Medical Review Officer. A primary purpose of the Medical Review Officer position is to provide for the privacy and confidentiality of the employee's personal medical history during the course of reviewing positive test results. To call together a board which would be privy to that private information would increase the exposure of the employee's medical history to several other individuals. Furthermore, the Department views the physician in the Medical Review Officer's role in retaining overall responsibility for reviewing and interpreting positive test results. There is no restriction on the Medical Review Officer's seeking advice on an ad hoc or a continuous basis from an individual or group if he or she does not breach employee confidentiality during the course of the review and interpretation of the employee's test results. Because the Department is vitally concerned with maintaining confidentiality and privacy and because the Medical Review Officer is not now limited in seeking advice from persons who might have served on the proposed medical review board (e.g., the drug program coordinator, employee assistance program officials, or any other agency employee), the Guidelines will continue to call for review by a single medical officer rather than a board (2.7).

16. Several commentors requested that the term "inexpensive immunoassay" to describe the initial test be eliminated since cost should be left to the agency and the laboratory and techniques other than immunoassay should be used to test for certain drugs. The term "inexpensive" was not intended to set specifications for price; that is a matter for negotiation between the laboratory and the contracting Federal agency. It was meant to serve as part of a generic description of the procedure and purpose of a screening assay. The term "initial test" has been revised in 1.2 and does not use the word "inexpensive".

17. Several commentors indicated that more specific guidelines should be issued to assure the security of test results whether sent by mail or by electronic means. The Guidelines clarify

that the laboratory must ensure the security of data transmission and limit access to any data transmission, storage, and retrieval system (2.4(g)(4)).

18. Several commentors stated that individuals should have access to all records, data, and documents relating to their test results and the certification of the laboratory which performed the urine drug test: Section 503 of Pub. L. 100–71 provides that any Federal employee who is the subject of a drug test shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings. In response to this comment the provisions of the statute have been set out in a new paragraph at 2.9. The Department anticipates that individuals will be able to obtain information about their own test results from the agency's Medical Review Officer, employee assistance program, or other staff person designated by the agency. Any other relevant information will be made available in accordance with the statute.

19. Several laboratories indicated that the monthly statistical summary required of the testing laboratories would be costly and an excessive burden. The Department views the monthly data as necessary for several purposes including evaluating the laboratory testing program, gathering statistical data to evaluate the drug testing program's effectiveness, and providing demographic data on drug use by the Federal work force. The information will assist in making decisions concerning changes in policy or program implementation and identifying specific programs for attention. The Department anticipates that the cost of providing the data will be built into the contract the laboratory signs with each agency. Therefore, provision of the data will be a function for which the laboratory is duly compensated, not an undue cost or burden (2.4(g)(6)).

20. One commentor indicated that samples for which the initials on the specimen bottle and in the permanent record book do not match should not be rejected automatically, since that would provide an opportunity for individuals to attempt to have their specimens rejected when they knew the specimens would test positive. We have considered the fact that individuals might deliberately alter their initials in an attempt to have their samples rejected. However, we do not anticipate that samples should be thrown out solely on the basis of unmatched initials on the specimen bottle and in the permanent record book. If unmatched initials provide reason to believe that a particular individual may have altered or substituted the specimen, both the proposed and the Final Guidelines provide that the specimen be forwarded for testing along with a second sample obtained as soon as possible after reason to believe the individual may have altered or substituted the specimen is established (2.2(f) (15) and (16)). The Final Guidelines ensure the identification of the person from whom the specimen is collected through the requirement for photo identification (see 2.2(f)(2)). In addition, a principal responsibility of the collection site person is to gather and verify information on site and to detect any problems with the identification of the specimen. Until experience in the program indicates that misidentified samples arising out of unmatched initials is a significant problem, the Guidelines will require that the individual initial the specimen bottle and sign the permanent record book to certify that the identified sample is the one collected from the individual.

21. One commentor asked if the Guidelines apply to Federal contract employees. The Guidelines do not apply to Federal contract employees; however, any agency may require a contractor to test its own employees following the procedures in the Guidelines by making the requirement a term or condition of the contract.

22. One commentor indicated that the proposed requirement for signing a procedure manual on an annual basis was in conflict with current DHHS efforts in the Medicare and CLIA programs to delete the annual signing requirement and replace it with a requirement that the manual be signed initially and whenever changes are made. We concur with the comment that the important factor is that the manual be signed by the responsible individual whenever a procedure is instituted or changed or whenever a new individual becomes responsible for the day-to-day management of the drug testing laboratory. The Guidelines do not require annual signing of the procedure manual.

The on-site review of the laboratory together with the assignment to an individual of the overall responsibility for the testing will assure that the procedures in the manual are current and followed. If the procedures in the manual are not current or followed, it is an indication that the responsible individual is not performing the oversight function appropriate to the management of the laboratory.

We have also clarified that the individual responsible for the day-to-day management of the drug testing laboratory is the individual responsible for signing the manual (2.3(a)(5)). It is not appropriate for the individual who is responsible for day-to-day operations and supervision of analysts or for any other individual to be delegated this responsibility since the manual is the vehicle for selection of methodologies, and the approval of methodologies is a principal reason for requiring the individual responsible for day-to-day management of the drug testing laboratory to possess detailed knowledge in the area of toxicology.

23. One commentor indicated that laboratories should be notified when they may discard samples. We have reviewed the comment and concur that the agency should be able to notify the laboratory in writing if it determines that samples no longer need to be retained because no further action is pending which will require the samples. Both 2.4(g)(8) and 2.4(h) permit the agency to instruct or authorize storage for less than the period for which there is a storage requirement.

24. Several commentors indicated a discrepancy in the periods for maintenance of frozen samples in storage—1 year in the proposed guidelines and 6 months in Appendix B to the proposed guidelines. The time interval in the appendix was in error. The Final Guidelines consistently call for frozen storage of confirmed positive samples for 1 year (2.4(h)). Note that the Appendix has been omitted, although pertinent provisions from it are integrated in the Final Guidelines.

25. In response to concern that specimens may be misused to test for physiological states other than drug abuse (e.g., pregnancy), a provision has been added to the Final Guidelines to prohibit the specimens collected for urine drug testing from being used for any other types of analyses unless otherwise authorized by law. It is important to the integrity and goals of the President's program to achieve a drug-free work place that any specimens collected for that purpose not be analyzed or used for inappropriate purposes. To ensure that outcome, a paragraph has been added at 2.1(c) stating that specimens may be used only to test for those drugs included in the agency drug-free workplace plan and may not be used to conduct any other analysis or test unless the agency is authorized by law to perform other analyses.

26. One commentor indicated that the individuals permitted in the "secure test area" should include routine service and maintenance personnel and that these individuals should not require escorts. While providing escorts for all employees, including service and maintenance personnel, may cause considerable inconvenience, unless the facilities are secured at night and all materials locked away with no possible access, there is always the potential for tampering with the specimens or test results. The Guidelines make no provision for routine service and maintenance personnel to enter the secure test area without an escort (2.4(a)).

27. One commentor suggested that collection personnel be provided with gloves or other protective garments to prevent contamination of the personnel from the urine. The Department encourages a protected work environment for collection site personnel, including any necessary protective garments. Various State and Federal guidelines provide for the health and safety of employees. Collection agents are expected to be aware of and to comply with such provisions to safeguard their own health and the health and safety of employees. However, no requirement was added to the Guidelines to require provision of protective garments to collection personnel.

28. One commentor recommended that DHHS use its own personnel to investigate any quality assurance problems which arise with a particular laboratory instead of requiring each agency to have its own investigative staff. Other commentors viewed agencies as lacking the in-house expertise to perform this analysis, and it was not clear to them who in each agency should carry out such an investigation. The Final Guidelines reflect a decision that the Secretary (which might include a DHHS contractor or DHHS recognized certification program) shall assume this investigative responsibility and carry out the related coordinating activities. A coordinating mechanism within the National Institute on Drug Abuse (NIDA) will ensure that all agencies are aware of problems with any given laboratory. Conducting investigations and coordinating findings through DHHS will eliminate the need to provide a more complex mechanism for agencies to notify each other about laboratory performance (2.5(d)(4)).

29. Several commentors said that the format for reporting employee drug test results was not sufficiently clear and that while there was a discussion of the mechanism for reporting performance test results, there was no comparable discussion on reporting employee test results. 2.4(g), Reporting Results, clarifies that laboratories will not report quantitation on test results but will report whether a result is positive or negative and that this is indicative of a result being above or below a particular cutoff limit. A negative report does not signify the absence of a particular drug or metabolite but only that the particular drugs or metabolites screened for were not detected at a specified concentration (i.e., cutoff level).

Quantitation will not be reported to the agency for confirmed positive reports in order to provide for identical reporting by the laboratory of performance test specimens and employee specimens. However, quantitation may be obtained by the Medical Review Officer on request from the laboratory. In the case of the opiates, we have indicated that the particular opiate to be reported will depend on the amounts of morphine and codeine detected by the confirmation test. We have included the reporting scheme in the scientific and technical requirements as well as in the revision of the requirements for reporting performance test results (2.4(g), 3.11 which cross-references 2.4(g), and 3.17(f)).

30. The Final Guidelines attempt to clarify the purpose of the certification program, since the comments reflect uncertainty as to what certification implies and what would be surveyed in the process of certifying a laboratory. Subpart C permits DHHS to recognize certification programs run by other organizations. These programs may be private accrediting organizations that are recognized by the Secretary to determine whether laboratories meet the Guideline requirements. Any laboratory accredited by these organizations in accordance with these Guidelines is deemed to be a certified laboratory, thus making it eligible to perform urine drug testing for Federal agencies. DHHS is contemplating publishing standards for recognition of private accrediting organizations in the near future.

The provisions of Subpart C apply to any laboratory which has or seeks a contract to perform, or otherwise performs urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Only certified laboratories will be authorized to perform urine drug testing for Federal agencies. However, in order to create a pool of qualified laboratories to bid on agency contracts to perform such testing, the Secretary may certify laboratories as contract eligible that meet the requirements of Subpart C. This pool of qualified laboratories will lead to competitive pricing and better services for Federal agencies.

The certification process will be limited to the five classes of drugs (2.1)(a) (1) and (2)) and the methods (2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of drugs using the methods specified herein. The Guidelines require that a certified laboratory must inform its non-Federal clientele when testing procedures are to be those specified by these Guidelines. Non-Federal purchasers are free to bargain with a certified laboratory for any standards they may deem appropriate.

31. The Guidelines delete the checklist in Appendix B of the proposed certification standards. The checklist was initially intended to provide a tool for the inspectors of laboratories to use in conducting their on-site inspections and to enumerate the standards contained in the section on the certification program published in the **Federal Register.** However, there was confusion regarding whether the checklist represented an additional or different set of requirements. Relevant portions of the checklist have been integrated in the Guidelines. The checklist itself will be revised to correspond to the requirements in the Guidelines and will be made available to laboratories by the DHHS-recognized certification program(s).

32. Several commentors asked that the specific criteria used by the group(s) who will perform the certification function for the Department be detailed in these Guidelines. In response, the Guidelines include a new section explaining how performance testing will be evaluated for initial certification as well as for previously certified laboratories (3.19 (a) and (b)). All major aspects of the certification program, including personnel and quality assurance and quality control requirements, are included in Subpart C of these Guidelines. With the addition of 3.19 (a) and (b), we believe the Guidelines are appropriately specific and there is no need to include additional detail in the Guidelines concerning the certification process.

33. Some commentors indicated that the number of blind performance test samples required to be run by the

laboratories (i.e., 1,000) for initial certification and (i.e., 250 per quarter) for continuing certification was excessive and would be too costly. The commentors also indicated that it was not clear whether the laboratory or the submitting organization would bear the cost of the samples and if it were necessary for each submitting organization to submit this number of samples to each laboratory. In response to the comments, we have revised this section to indicate that each agency shall submit blind performance test specimens to each laboratory it contracts with in the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) during the initial 90-day period of program implementation and a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter thereafter. The Final Guidelines also clarify that approximately 80 percent of the blind performance test samples are to be blank (i.e., certified to be drug free) and the remaining samples are to be positives (2.52(d)(3) and 3.7). The cost of the blind performance test samples will be borne by the submitting agency.

34. Several commentors requested corrective action and reanalysis of previously run specimens in the case of discovered laboratory administrative error. They also requested that the union and all employees who tested positive be notified of the error in writing. The recommendation was to notify all employees with positive results who were tested between the time of resolution of the error and the preceding cycle of correct results. In the case of an administrative error, there are no plans to automatically have all specimens retested. The decision on whether to retest will be dependent on the type and extent of the error. For example, if a single employee's test results were transcribed incorrectly, nothing would be gained from rerunning all the specimens in a given timeframe since it would not change the values attributed to the specimens. If an error occurred such that it was not clear whose specimen was being tested and which results belonged to which specimen, this would require retesting of the group for which the values where uncertain and for those analytes for which the values were uncertain. However, it would be unproductive to require the automatic retesting of all specimens for any error.

Agency policy under which individuals are notified of errors will depend on the circumstances. If the error is corrected before the results are reported to any employee, it is unnecessary to notify each employee that an error was discovered and subsequently corrected. If a discovered error affects an employee after results have been reported, the Medical Review Officer will be notified and the affected employee will also be notified through the appropriate mechanisms established by each agency.

35. Several commentors indicated that the laboratory contract should be suspended if the laboratory committed the same administrative error twice and that the designated reviewing official's discretion to continue a laboratory in the program should be more limited or more clearly defined. The Department has reviewed the comments concerning the point at which a contract should be suspended because of an administrative error and submits that the current policy allows sufficient flexibility and protection to the employee and the laboratory and that it should not be changed. There are no circumstances under which administrative or human error can be entirely eliminated. The major assurance of accuracy in the overall program is the series of checks to assure that such errors are detected and corrected. The reviewing official has been given the necessary flexibility and definition of authority to make the appropriate technical and program judgments concerning the status of each facility and to assure that reasonable and responsible decisions are made. Nevertheless, the Final Guidelines add several features to put greater responsibility on the individual responsible for the day-to-day management of the drug testing laboratory for the quality assurance program and ensuring that quality assurance procedures are followed. These Guidelines also more clearly describe what constitutes a quality assurance and quality control program to detect and correct errors (2.5) and a program of performance testing (3.17–3.19).

We have chosen not to include a formal definition of administrative or clerical error in the Guidelines as was suggested. Among the errors to which either term refers are incorrect transcription of test results or errors in recording specimen identities, i.e., errors that are not due to the analysis of the specimens with regard to analytical accuracy, precision, interpretation of test results, or calibration of equipment. Clearly analytical errors are not considered "administrative." While it is not possible to write guidelines that cover every possibility, at no place in these Guidelines are incorrect analyses considered administrative error but rather are consistently treated as a basis for prompt action against the laboratory by the responsible officials.

36. Several commentors indicated that laboratory inspections should be conducted unannounced and that union representatives should be permitted to accompany the inspection teams. The Guidelines neither require nor prohibit unannounced inspections. They contemplate that agencies will, through their contract with a certified laboratory, specify the terms and conditions of inspections in accordance with the requirements in the Guidelines. If individuals other than members of the inspection team were entitled to accompany the inspectors, it would significantly complicate coordination and conduct of the inspections. More importantly, we see additional participants in the inspection as inhibiting the laboratory's freedom to provide complete cooperation out of concern for protecting proprietary information. While some laboratories may be willing to provide escorted tours to union officials to illustrate the quality of their processes, the Guidelines do not establish a right for union officials to participate in inspections incident to certification of laboratories under these Guidelines (2.4(1) and 3.20).

37. One commentor indicated that any of the five general factors indicated in 3.13(b) as a possible basis for revocation in the certification requirements should inevitably lead to revocation without any further determination that the revocation is "necessary." The issue of how many potential grounds for revocation are necessary to determine that revocation of a laboratory is necessary was considered when the list of grounds was developed. The Department views the nature and seriousness of the facts concerning the grounds for revocation as factors to be weighed in deciding to revoke a certification. It is difficult and would not contribute to the maintenance of high quality testing standards to develop *a priori* statements about the magnitude of an offense or a combination of violations and to formulate necessary actions in response to each possible violation of the provisions of 3.13. All five factors listed are considered serious violations of these certification criteria, and it is not necessary for more than one factor to be violated to take action against a laboratory. However, the Guidelines retain the flexibility for the Secretary to determine that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results (3.13(b)).

38. Several commentors indicated that when a laboratory fails a performance test it would be inordinately expensive (especially in high volume laboratories) to retest all samples since the last performance test the laboratory passed and to test for all analytes rather than for the one analyte for which the laboratory had failed performance testing. The reason for retesting all positive samples since the last successful performance test is that the quality of the test results has been called into question. In order to verify test results for the period between a successful performance testing and the failed testing, it will be necessary to retest all specimens tested positive for which an incorrect analysis may have been performed. It is not routinely necessary to retest for all analytes but only for those on which the laboratory failed its performance testing. However, the laboratory may be required to test for other analytes if the performance test failure reflects broader problems (3.19(b)(1)(v)).

39. Several commentors indicated that performance testing every other month is excessive and that quarterly testing would be sufficient to assure the quality of the testing. Others indicated that fewer challenges per shipment would be adequate to determine the quality of the laboratory. Still other individuals stated that the limits for acceptable performance on performance tests were too high in terms of the concentrations used. Others said that the grading criterion of failure based on one false positive was too strict. We have reviewed the concerns that bimonthly performance testing is excessive and maintain that the use of performance tests is a valid outcome measure of performance and will assist in the evaluation of quality of the laboratory performance. If future experience with the program indicates that a lesser frequency will assure the quality of the testing, we will revise the frequency and the number of specimens accordingly. Relatively frequent performance testing reduces the time period for which samples may have to be rerun in case of performance test failure (3.17).

To the extent that the Guidelines amended the cutoff limits for drugs for which employees may be tested for consistency with those currently used by the Department of Defense, it was necessary to modify the values of the various performance test samples correspondingly. We have clarified that a laboratory must achieve an overall grade of 90 percent on the first three cumulative shipments of performance tests and that if such a poor grade is obtained on the first or second challenge that a laboratory cannot achieve an overall grade of 90 percent on the three successive performance test challenges, then the laboratory will fail at that point. Laboratories already in the program must achieve a grade of 90 percent on each shipment of performance testing. It was unclear in the proposed notice whether the grade of 90 percent referred only to the positive samples. We intend that the 90 percent refer only to positive samples, since any negative sample giving rise to a false positive would be the basis for automatic disqualification for initial certification. It also was unclear whether the 90 percent referred to performance on all drugs in the shipment, not on each drug tested. We have clarified the Guidelines in both these areas. We adopted a strategy requiring 90 percent for all drugs because it is not always feasible to have a sufficient number of challenges for each drug in each shipment to avoid a single failure on a drug leading to a failing grade of less than 90 percent (3.19(b)(2)).

40. Some commentors thought laboratories should be required to notify all users if their certification was revoked. Since the requirements in these Guidelines only apply to certification for Federal drug testing programs, it would be inappropriate to require laboratories to notify non-Federal users of revocation or suspension.

41. We have not adopted the recommendations that any changes in the Guidelines be accomplished by publication of a notice, review of comments, and then publication of final changes. (Section 503 of Pub. L. 100–71 required such steps for initial development of these Guidelines.) The time required for this process would not permit rapid adjustment to changes in technology. Accordingly, the Guidelines retain the provision permitting final revision of these Guidelines by publication of a notice in the **Federal Register** (1.3).

42. One commentor suggested that only positive tests be certified as to accuracy and validity before reporting. Although this practice would reduce paperwork, it does not reflect the potential impact on public safety of false negative results. The Guidelines continue to require that negative results be reviewed carefully and attested to by the proper officials in the same way as positive results (2.4(g)).

43. One commentor wanted us to specify the time the individual responsible for day-to-day management must spend in the laboratory. No change has been made in the Guidelines. The critical factor here is the quality of the work and not the absolute number of hours spent. The Department views the use of outcome measures of performance for the laboratory as more effective in assuring accurate and reliable test results than attempting to set hours for the responsible individual particularly in view of the qualifications which the Guidelines set for the individual responsible for day-to-day management of the drug testing laboratory.

44. The criterion for retesting specimens (i.e., those being challenged) was clarified to indicate that in performing a retest the laboratory must confirm the presence of the substance but does not have to confirm that it is present above the cutoff level. Since the drug levels may deteriorate with time, it is only necessary to show that the drug (or its metabolite) is present to reconfirm its presence during retesting (2.4(i)).

45. A provision has been added to the Guidelines requiring that laboratories be capable of testing for at least the five classes of drugs specified in the Guidelines. The laboratories are being required to possess the flexibility to test for all the specified classes of drugs in order to assure that they have a sufficient range of capabilities to respond to the agencies' testing protocols, including testing for reasonable suspicion (3.4).

46. Several Federal agencies commenting on the proposed guidelines sought waivers of particular provisions in reliance on the original Scientific and Technical Guidelines issued February 13, 1987, which provided that, "Agencies may not deviate from the provisions of these Guidelines without the written approval of the Secretary, Health and Human Services or his designee." This waiver statement, which was not explicit in the proposed guidelines, is included at 1.1(f). Absent such a waiver, these Guidelines represent the exclusive standard for urinalysis testing and agencies may not deviate from these established procedures.

In order to clarify that the laboratory certification standards apply to laboratories which have or seek certification to perform urine drug testing for Federal agencies, a paragraph was added to the applicability section, 1.1(c), stating that Subpart C of the Guidelines applies to any laboratory which has or seeks such certification and that certification is required to perform urine drug testing for Federal agencies.

Section 4(d) of E.O. 12564 states that "agencies shall conduct their drug testing programs in accordance with * * * [scientific and technical] guidelines" promulgated by the Secretary of Health and Human Services. Since the Guidelines impose mandatory requirements on a Government-wide basis, they are exempt from the duty to bargain under section 7117(a)(1) of the Federal Service Labor-Management Relations Statute.

Information Collection Requirements

Information collection and recordkeeping requirements which would be imposed on laboratories engaged in urine drug testing for Federal agencies concern quality assurance and quality control; security and chain of custody; documentation; reports; performance testing; and inspections as set out in 3.7, 3.8, 3.10, 3.11, 3.17, and 3.20. To facilitate ease of use and uniform reporting, standard forms have been developed for chain of custody records and the permanent record books as referenced in 2.2(c) and (f).

The information collection and recordkeeping requirements contained in these Final Guidelines have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned control number 09300130, approved through April 30, 1989.

Date: April 1, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Date: April 1, 1988.

Otis R. Bowen,

Secretary.

These Final Mandatory Guidelines are hereby adopted in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71 as set forth below:

MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS

Authority: E.O. 12564 and sec. 503 of Pub. L. 100-71.

Subpart A—General

1.1 Applicability.

(a) These mandatory guidelines apply to:

(1) Executive Agencies as defined in 5 U.S.C. 105;

(2) The Uniformed Services, as defined in 5 U.S.C. 2101 (3) (but excluding the Armed Forces as defined in 5 U.S.C. 2101(2));

(3) And any other employing unit or authority of the Federal Government except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(b) Any agency or component of an agency with a drug testing program in existence as of September 15, 1986, and the Departments of Transportation and Energy shall take such action as may be necessary to ensure that the agency is brought into compliance with these Guidelines no later than 90 days after they take effect, except that any judicial challenge that affects these Guidelines shall not affect drug testing programs subject to this paragraph.

(c) Except as provided in 2.6, Subpart C of these Guidelines (which establishes laboratory certification standards) applies to any laboratory which has or seeks certification to perform urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Only laboratories certified under these standards are authorized to perform urine drug testing for Federal agencies.

(d) The Intelligence Community, as defined by Executive Order No. 12333, shall be subject to these Guidelines only to the extent agreed to by the head of the affected agency.

(e) These Guidelines do not apply to drug testing conducted under legal authority other than E.O. 12564, including testing of persons in the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees.

(f) Agencies may not deviate from the provisions of these Guidelines without the written approval of the Secretary. In requesting approval for a deviation, an agency must petition the Secretary in writing and describe the specific provision or provisions for which a deviation is sought and the rationale therefor. The Secretary may approve the request upon a finding of good cause as determined by the Secretary.

1.2 Definitions.

For purposes of these Guidelines the following definitions are adopted:

Aliquot A portion of a specimen used for testing.

Chain of Custody Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an approved agency chain of custody form be used from time of collection to receipt by the laboratory and that upon receipt of the laboratory an appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.

Collection Site A place designated by the agency where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals. A collection site person shall have successfully completed training to carry out this function.

Confirmatory Test A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the intitial test in order to ensure reliability

and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Initial Test (also known as Screening Test) An immunossay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer A licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

Permanent Record Book A permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection.

Reason to Believe Reason to believe that a particular individual may alter or substitute the urine specimen as provided in section 4(c) of E.O. 12564.

Secretary The Secretary of Health and Human Services or the Secretary's designee. The Secretary's designee may be contractor or other recognized organization which acts on behalf of the Secretary in implementing these Guidelines.

1.3 Future Revisions.

In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of Federal drug testing programs, the Secretary may make changes to these Guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the **Federal Register.**

Subpart B—Scientific and Technical Requirements

2.1 The Drugs.

(a) The President's Executive Order 12564 defines "illegal drugs" as those included in Schedule I or II of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law. Hundreds of drugs are covered under Schedule I and II and while it is not feasible to test routinely for all of them, Federal drug testing programs shall test for drugs as follows:

(1) Federal agency applicant and random drug testing programs shall at a minimum test for marijuana and cocaine;

(2) Federal agency applicant and random drug testing programs are also authorized to test for opiates, amphetamines, and phencyclidine; and

(3) When conducting reasonable suspicion, accident, or unsafe practice testing, a Federal agency may test for any drug listed in Schedule I or II of the CSA.

(b) Any agency covered by these guidelines shall petition the Secretary in writing for approval to include in its testing protocols any drugs (or classes of drugs) not listed for Federal agency testing in paragraph (a) of this section. Such approval shall be limited to the use of the appropriate science and technology and shall not otherwise limit agency discretion to test for any drugs covered under Schedule I or II of the CSA.

(c) Urine specimens collected pursuant to Executive Order 12564, Pub. L. 100–71, and these Guidelines shall be used only to test for those drugs included in agency drug-free workplace plans and may not be used to conduct any other analysis or test unless otherwise authorized by law.

(d) These Guidelines are not intended to limit any agency which is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees or employees in its regulated industries.

2.2 Specimen Collection Procedures.

(a) Designation of Collection Site. Each agency drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.

(b) Security Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(c) Chain of Custody. Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) Access to Authorized Personnel Only. No unauthorized personnel shall be permitted in any part of the designated collection site when urine specimens are collected or stored.

(e) Privacy. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(f) Integrity and Identity of Specimen. Agencies shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and in the record book can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(2) When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the supervisor of the individual, the coordinator of the drug testing program, or any other agency official who can positively identify the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or

any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(8) The collection site person shall note any unusual behavior or appearance in the permanent record book.

(9) In the exceptional event that an agency-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) Upon receiving the specimen from the individual, the collection site person shall determine that it contains at least 60 milliliters of urine. If there is less than 60 milliliters of urine in the container, additional urine shall be collected in a separate container to reach a total of 60 milliliters. (The temperature of the partial specimen in each separate container shall be measured in accordance with paragraph (f)(12) of this section, and the partial specimens shall be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 60 milliliters of urine, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.

(13) If the temperature of a specimen is outside the range of 32.5°–37.7°C/90.5°–99.8°F, that is a reason to believe that the individual may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a same gender collection site person and both specimens shall be forwarded to the laboratory for testing. An individual may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted in the permanent record book.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual shall be present at the same time during procedures outlined in paragraphs (f)((19)–(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the agency.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter in the permanent record book all information identifying the specimen. The collection site person shall sign the permanent record book next to the identifying information.

(22) The individual shall be asked to read and sign a statement in the permanent record book certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.

(23) A higher level supervisor shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based on a reason to believe that the individual may alter or substitute the specimen to be provided.

(24) The collection site person shall complete the chain of custody form.

(25) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.

(26) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the specimen and custody form shall be taken with him or her or shall be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he or she leaves the site.

(g) Collection Control. To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled. An approved chain of custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approved chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(h) Transportation to Laboratory. Collection site personnel shall arrange to ship the collected specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes or padded mailers; and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the

container, the collection site supervisor shall sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel shall ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

2.3 Laboratory Personnel.

(a) Day-to-Day Management.

(1) The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by the State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology, or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in (i), (ii), and (iii) above, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multispecialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in 2.4(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the tests results provided are accurate and reliable.

(b) Test Validation. The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) Day-to-Day Operations and Supervision of Analysts. The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) Other Personnel. Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) Training. The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) Files. Laboratory personnel files shall include: resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

2.4 Laboratory Analysis Procedures.

(a) Security and Chain of Custody. (1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of the Secretary, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) Receiving. (1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the agency's chain of custody forms attached to the shipment shall be immediately reported to the agency and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles will normally be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.

(c) Short-Term Refrigerated Storage. Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.

(d) Specimen Processing. Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) Initial Test. (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test level (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	[1] 300
Phencyclidine	25
Amphetamines	1,000

[1] 25ng/ml if immunoassay specific for free morphine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Initial test methods and testing levels for other drugs shall be submitted in writing by the agency for the written approval of the Secretary.

(f) Confirmatory Test. (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory test level (ng/ml)
Marijuana metabolite [1]	15
Cocaine metabolite [2]	150
Opiates:	
Morphine	* 300
Codeine	* 300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Confirmatory test methods and testing levels for other drugs shall be submitted in writing by the agency for the written approval of the Secretary.

(g) Reporting Results. (1) The laboratory shall report test results to the agency's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the agency, and the drug testing laboratory specimen identification number. The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the Medical Review Officer at the same time.

(2) The laboratory *shall report as negative* all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The Medical Review Officer may not disclose quantitation of test results to the agency but shall report only whether the test was positive or negative.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer a certified copy of the original chain of custody form signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports.

(6) The laboratory shall provide to the agency official responsible for coordination of the drug-free workplace program a monthly statistical summary of urinalysis testing of Federal employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

(i) Initial Testing:

(A) Number of specimens received;

(B) Number of specimens reported out; and

(C) Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamines

(ii) Confirmatory Testing:

(A) Number of specimens received for confirmation;

(B) Number of specimens confirmed positive for:

Marijuana metabolite

Cocaine metabolite
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

(7) The laboratory shall make available copies of all analytical results for Federal drug testing programs when requested by DHHS or any Federal agency for which the laboratory is performing drug testing services.

(8) Unless otherwise instructed by the agency in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) Long-Term Storage. Long-term frozen storage (−20 °C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Unless otherwise authorized in writing by the agency, drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1-year period an agency may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period.

(i) Retesting Specimens. Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) Subcontracting. Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment unless otherwise authorized by the agency. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in these Guidelines.

(k) Laboratory Facilities. (1) Laboratory facilities shall comply with applicable provisions of any State licensure requirements.

(2) Laboratories certified in accordance with Subpart C of these Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) Inspections. The Secretary, any Federal agency utilizing the laboratory, or any organization performing laboratory certification on behalf of the Secretary shall reserve the right to inspect the laboratory at any time. Agency contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the agency to conduct unannounced inspections. In addition, prior to the award of a contract the agency shall carry out preaward inspections and evaluation of the procedural aspects of the laboratory's drug testing operation.

(m) Documentation. The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2-year period may be extended upon written notification by DHHS or by any Federal agency for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall be required to maintain documents for any specimen under legal challenge for an indefinite period.

(n) Additional Requirements for Certified Laboratories.—(1) Procedure Manual. Each laboratory shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) Standards and Controls. Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in services; and expiration date.

(3) Instruments and Equipment. (i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance.

(4) Remedial Actions. There shall be written procedures for the actions to be taken when systems are out of accceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) Personnel Available To Testify at Proceedings. A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against a Federal employee when that proceeding is based on positive urinalysis results reported by the laboratory.

2.5 Quality Assurance and Quality Control.

(a) General. Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) Laboratory Quality Control Requirements for Initial Tests. Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the

testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) Laboratory Quality Control Requirements for Confirmation Tests. Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(d) Agency Blind Performance Test Procedures. (1) Agencies shall purchase drug testing services only from laboratories certified by DHHS or a DHHS-Recognized certification program in accordance with these Guidelines. Laboratory participation is encouraged in other performance testing surveys by which the laboratory's performance is compared with peers and reference laboratories.

(2) During the initial 90-day period of any new drug testing program, each agency shall submit blind performance test specimens to each laboratory it contracts with in the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) and thereafter a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter.

(3) Approximately 80 percent of the blind performance test samples shall be blank (i.e., certified to contain no drug) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the agency is testing.

(4) The Secretary shall investigate any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be make of the Secretary's investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individuals responsible for the day-to-day management and operation of the drug testing laboratory. Then the Secretary shall send the document to the agency contracting officer as a report of the unsatisfactory performance testing incident. The Secretary shall ensure notification of the finding to all other Federal agencies for which the laboratory is engaged in urine drug testing and coordinate any necessary action.

(5) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future; and, if there is reason to believe the error could have been systematic, the Secretary may also require review and reanalysis of previously run specimens.

(6) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the laboratory shall submit all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's urine drug testing. The Secretary may require an on-site review of the laboratory which may be conducted unannounced during any hours of operations of the laboratory. The Secretary has the option of revoking (3.13) or suspending (3.14) the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

2.6 Interim Certification Procedures.

During the interim certification period as determined under paragraph (c), agencies shall ensure laboratory competence by one of the following methods:

(a) Agencies may use agency or contract laboratories that have been certified for urinalysis testing by the Department of Defense; or

(b) Agencies may develop interim self-certification procedures by establishing preaward inspections and performance testing plans approved by DHHS.

(c) The period during which these interim certification procedures will apply shall be determined by the Secretary. Upon noticed by the Secretary that these interim certification procedures are no longer available, all Federal agencies subject to these Guidelines shall only use laboratories that have been certified in accordance with Subpart C of these Guidelines and all laboratories approved for interim certification under paragraphs (a) and (b) of this section shall become certified in accordance with Subpart C within 120 days of the date of this notice.

2.7 Reporting and Review of Results.

(a) Medical Review Officer Shall Review Results. An essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as an illegal drug user. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer prior to the transmission of results to agency administrative officials.

(b) Medical Review Officer—Qualifications and Responsibilities. The Medical Review Officer shall be a licensed physician with knowledge of substance abuse disorders and may be an agency or contract employee. The role of the Medical Review Officer is to review and interpret positive test results obtained through the agency's testing program. In carrying out this responsibility, the Medical Review Officer shall examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The Medical Review Officer shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The Medical Review Officer shall not, however, consider the results of urine samples that are not obtained or processed in accordance with these Guidelines.

(c) Positive Test Result. Prior to making a final decision to verify a positive test result, the Medical Review Officer shall give the individual an opportunity to discuss the test result

with him or her. Following verification of a positive test result, the Medical Review Officer shall refer the case to the agency Employee Assistance Program and to the management official empowered to recommend or take administrative action.

(d) Verification for opiates; review for prescription mediation. Before the Medical Review Officer verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of illegal use of any opium, opiate, or opium derivative (e.g., morphine/codeine) listed in Schedule I or II of the Controlled Substances Act. (This requirement does not apply if the agency's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) Reanalysis Authorized. Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified under these Guidelines.

(f) Result Consistent with Legal Drug Use. If the Medical Review Officer determines there is a legitimate medical explanation for the positive test result, he or she shall determine that the result is consistent with legal drug use and take no further action.

(g) Result Scientifically Insufficient. Additionally, the Medical Review Officer, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the Medical Review Officer may request reanalysis of the original sample before making this decision. (The Medical Review Officer may request that reanalysis be performed by the same laboratory or, as provided in 2.7(e), that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with these Guidelines.) The laboratory shall assist in this review process as requested by the Medical Review Officer by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the agency. The Medical Review Officer shall report to the Secretary all negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.

2.8 Protection of Employee Records.

Consistent with 5 U.S.C. 522a(m) and 48 CFR 24.101–24.104, all laboratory contracts shall require that the contractor comply with the Privacy Act, 5 U.S.C. 552a. In addition, laboratory contracts shall require compliance with the patient access and confidentiality provisions of section 503 of Pub. L. 100–71. The agency shall establish a Privacy Act System of Records or modify an existing system, or use any applicable Government-wide system of records to cover both the agency's and the laboratory's records of employee urinalysis results. The contract and the Privacy Act System shall specifically require that employee records be maintained and used with the highest regard for employee privacy.

2.9 Individual Access to Test and Laboratory Certification Results.

In accordance with section 503 of Pub. L. 100–71, any Federal employee who is the subject of a drug test shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

3.1 Introduction.

Urine drug testing is a critical component of efforts to combat drug abuse in our society. Many laboratories are familiar with good laboratory practices but may be unfamiliar with the special procedures required when drug test results are used in the employment context. Accordingly, the following are minimum standards to certify laboratories engaged in urine drug testing for Federal agencies. Certification, even at the highest level, does not guarantee accuracy of each result reported by a laboratory conducting urine drug testing for Federal agencies. Therefore, results from laboratories certified under these Guidelines must be interpreted with a complete understanding of the total collection, analysis, and reporting process before a final conclusion is made.

3.2 Goals and Objectives of Certification.

(a) Uses of Urine Drug Testing. Urine drug testing is an important tool to identify drug users in a variety of settings. In the proper context, urine drug testing can be used to deter drug abuse in general. To be a useful tool, the testing procedure must be capable of detecting drugs or their metabolites at concentrations indicated in 2.4 (e) and (f).

(b) Need to Set Standards; Inspections. Reliable discrimination between the presence, or absence, of specific drugs or their metabolites is critical, not only to achieve the goals of the testing program but to protect the rights of the Federal employees being tested. Thus, standards have been set which laboratories engaged in Federal employee urine drug testing must meet in order to achieve maximum accuracy of test results. These laboratories will be evaluated by the Secretary or the Secretary's designee as defined in 1.2 in accordance with these Guidelines. The qualifying evaluation will involve three rounds of performance testing plus on-site inspection. Maintenance of certification requires participation in an every-other-month performance testing program plus periodic, on-site inspections. One inspection following successful completion of a performance testing regimen is required for initial certification. This must be followed by a second inspection within 3 months, after which biannual inspections will be required to maintain certification.

(c) Urine Drug Testing Applies Analytical Forensic Toxicology. The possible impact of a positive test result on an individual's livelihood or rights, together with the possibility of a legal challenge of the result, sets this type of test apart from most clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the specimen must be treated as evidence, and all aspects of the testing procedure must be documented and available for possible court testimony. Laboratories engaged in urine drug testing for Federal agencies will require the services and advice of a qualified forensic toxicologist, or individual with equivalent qualifications (both training and experience) to address the specific needs of the Federal drug testing program, including the demands of chain of custody of specimens, security, property documentation of all records, storage of positive specimens for later or independent testing, presentation of evidence in court, and expert witness testimony.

3.3 General Certification Requirements.

A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for certification under these standards.

3.4 Capability to Test for Five Classes of Drugs.

To be certified, a laboratory must be capable of testing for at least the following five classes of drugs: Marijuana, cocaine, opiates, amphetamines, and phencyclidine, using the initial immunoassay and quantitative confirmatory GC/MS methods specified in these Guidelines. The certification program will be limited to the five classes of drugs (2.1(a) (1) and (2)) and the methods (2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of using the methods specified. Certified laboratories must clearly inform non-Federal clients when procedures followed for those clients conform to the standards specified in these Guidelines.

3.5 Initial and Confirmatory Capability at Same Site.

Certified laboratories shall have the capability, at the same laboratory site, of performing both initial immunoassays and confirmatory GC/MS tests (2.4 (e) and (f)) for marijuana, cocaine, opiates, amphetamines, and phencyclidine and for any other drug or metabolite for which agency drug testing is authorized (2.1(a) (1) and (2)). All positive initial test results shall be confirmed prior to reporting them.

3.6 Personnel.

Laboratory personnel shall meet the requirements specified in 2.3 of these Guidelines. These Guidelines establish the exclusive standards for qualifying or certifying those laboratory personnel involved in urinalysis testing whose functions are prescribed by these Guidelines. A certification of a laboratory under these Guidelines shall be a determination that these qualification requirements have been met.

3.7 Quality Assurance and Quality Control.

Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process, including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs as specified in 2.5 of these Guidelines.

3.8 Security and Chain of Custody.

Laboratories shall meet the security and chain of custody requirements provided in 2.4(a).

3.9 One-Year Storage for Confirmed Positives.

All confirmed positive specimens shall be retained in accordance with the provisions of 2.4(h) of these Guidelines.

3.10 Documentation.

The laboratory shall maintain and make available for at least 2 years documentation in accordance with the specifications in 2.4(m).

3.11 Reports.

The laboratory shall report test results in accordance with the specifications in 2.4(g).

3.12 Certification.

(a) General. The Secretary may certify any laboratory that meets the standards in these Guidelines to conduct urine drug testing. In addition, the Secretary may consider to be certified and laboratory that is certified by a DHHS-recognized certification program in accordance with these Guidelines.

(b) Criteria. In determining whether to certify a laboratory or to accept the certification of a DHHS-recognized certification program in accordance with these Guidelines, the Secretary shall consider the following criteria:

(1) The adequacy of the laboratory facilities;

(2) The expertise and experience of the laboratory personnel;

(3) The excellence of the laboratory's quality assurance/quality control program;

(4) The performance of the laboratory on any performance tests;

(5) The laboratory's compliance with standards as reflected in any laboratory inspections; and

(6) Any other factors affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

3.13 Revocation.

(a) General. The Secretary shall revoke certification of any laboratory certified under these provisions or accept revocation by a DHHS-recognized certification program in accordance with these Guidelines if the Secretary determines that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results.

(b) Factors to Consider. The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug tests; for example, a false positive error in reporting the results of an employee's drug test;

(2) Unsatisfactory participation in performance evaluations or laboratory inspections;

(3) A material violation of a certification standard or a contract term or other condition imposed on the laboratory by a Federal agency using the laboratory's services;

(4) Conviction for any criminal offense committed as an incident to operation of the laboratory; or

(5) Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

(c) Period and Terms. The period and terms of revocation shall be determined by the Secretary and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing of Federal employees.

3.14 Suspension.

(a) Criteria. Whenever the Secretary has reason to believe that revocation may be required and that immediate action is necessary in order to protect the interests of the United States and its employees, the Secretary may immediately suspend a laboratory's certification to conduct urine drug testing for Federal agencies. The Secretary may also accept suspension of certification by a DHHS-recognized certification program in accordance with these Guidelines.

(b) Period and Terms. The period and terms of suspension shall be determined by the Secretary and shall depend upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing of Federal employees.

3.15 Notice; Opportunity for Review.

(a) Written Notice. When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by personal service or registered or certified mail, return

receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and

(3) The period of suspension or proposed revocation.

(b) Opportunity for Informal Review. The written notice shall state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date of mailing or service of the notice. The review shall be by a person or persons designated by the Secretary and shall be based on written submissions by the laboratory and the Department of Health and Human Services and, at the Secretary's discretion, may include an opportunity for an oral presentation. Formal rules of evidence and procedures applicable to proceedings in a court of law shall not apply. The decision of the reviewing official shall be final.

(c) Effective Date. A suspension shall be effective immediately. A proposed revocation shall be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension shall terminate immediately and any proposed revocation shall not take effect.

(d) DHHS-Recognized Certification Program. The Secretary's responsibility under this section may be carried out by a DHHS-recognized certification program in accordance with these Guidelines.

3.16 Recertification.

Following the termination or expiration of any suspension or revocation, a laboratory may apply for recertification. Upon the submission of evidence satisfactory to the Secretary that the laboratory is in compliance with these Guidelines or any DHHS-recognized certification program in accordance with these Guidelines, and any other conditions imposed as part of the suspension or revocation, the Secretary may recertify the laboratory or accept the recertification of the laboratory by a DHHS-recognized certification program.

3.17 Performance Test Requirement for Certification.

(a) An Initial and Continuing Requirement. The performance testing program is a part of the initial evaluation of a laboratory seeking certification (both performance testing and laboratory inspection are required) and of the continuing assessment of laboratory performance necessary to maintain this certification.

(b) Three Initial Cycles Required. Successful participation in three cycles of testing shall be required before a laboratory is eligible to be considered for inspection and certification. These initial three cycles (and any required for recertification) can be compressed into a 3-month period (one per month).

(c) Six Challenges Per Year. After certification, laboratories shall be challenged every other month with one set of at least 10 specimens a total of six cycles per year.

(d) Laboratory Procedures Identical for Performance Test and Routine Employee Specimens. All procedures associated with the handling and testing of the performance test specimens by the laboratory shall to the greatest extent possible be carried out in a manner identical to that applied to routine laboratory specimens, unless otherwise specified.

(e) Blind Performance Test. Any certified laboratory shall be subject to blind performance testing (see 2.5(d)). Performance on blind test specimens shall be at the same level as for the open or non-blind performance testing.

(f) Reporting—Open Performance Test. The laboratory shall report results of open performance tests to the certifying organization in the same manner as specified in 2.4(g)(2) for routine laboratory specimens.

3.18 Performance Test Specimen Composition.

(a) Description of the Drugs. Performance test specimens shall contain those drugs and metabolites which each certified laboratory must be prepared to assay in concentration ranges that allow detection of the analyte by commonly used immunoassay screening techniques. These levels are generally in the range of concentrations which might be expected in the urine of recent drug users. For some drug analytes, the specimen composition will consist of the parent drug as well as major metabolites. In some cases, more than one drug class may be included in one specimen container, but generally no more than two drugs will be present in any one specimen in order to imitate the type of specimen which a laboratory normally encounters. For any particular performance testing cycle, the actual composition of kits going to different laboratories will vary but, within any annual period, all laboratories participating will have analyzed the same total set of specimens.

(b) Concentrations. Performance test specimens shall be spiked with the drug classes and their metabolites which are required for certifications: marijuana, cocaine, opiates, amphetamines, and phencyclidine, with concentration levels set at least 20 percent above the cutoff limit for either the initial assay or the confirmatory test, depending on which is to be evaluated. Some performance test specimens may be identified for GC/MS assay only. Blanks shall contain less than 2 ng/ml of any of the target drugs. These concentration and drug types may be changed periodically in response to factors such as changes in detection technology and patterns of drug use.

3.19 Evaluation of Peformance Testing.

(a) Initial Certification. (1) An applicant laboratory shall not report any false positive result during performance testing for initial certification. Any false positive will automatically disqualify a laboratory from further consideration.

(2) An applicant laboratory shall maintain an overall grade level of 90 percent for the three cycles of performance testing required for initial certification, i.e., it must correctly identify and confirm 90 percent of the total drug challenges for each shipment. Any laboratory which achieves a score on any one cycle of the initial certification such that it can no longer achieve a total grade of 90 percent over the three cycles will be immediately disqualified from further consideration.

(3) An applicant laboratory shall obtain quantitative values for at least 80 percent of the total drug challenges which are ±20 percent or ±2 standard deviations of the calculated reference group mean (whichever is larger). Failure to achieve 80 percent will result in disqualification.

(4) An applicant laboratory shall not obtain any quantitative values that differ by more than 50 percent from the calculated reference group mean. Any quantitative values that differ by more than 50 percent will result in disqualification.

(5) For any individual drug, an applicant laboratory shall successfully detect and quantitate in accordance with paragraphs (a)(2), (a)(3), and (a)(4) of this section at least 50 percent of the total drug challenges. Failure to successfully quantitate at least 50 percent of the challenges for any individual drug will result in disqualification.

(b) Ongoing Testing of Certified Laboratories.—(1) False Positives and Procedures for Dealing With Them. No

false drug identifications are acceptable for any drugs for which a laboratory offers service. Under some circumstances a false positive test may result in suspension or revocation of certification. The most serious false positives are by drug class, such as reporting THC in a blank specimen or reporting cocaine in a specimen known to contain only opiates. Misidentifications within a class (e.g., codeine for morphine) are also false positives which are unacceptable in an appropriately controlled laboratory, but they are clearly less serious errors than misidentification of a class. The following procedures shall be followed when dealing with a false positive:

(i) The agency detecting a false positive error shall immediately notify the laboratory and the Secretary of any such error.

(ii) The laboratory shall provide the Secretary with a written explanation of the reasons for the error within 5 working days. If required by paragraph (b)(1)(v) below, this explanation shall include the submission of all quality control data from the batch of specimens that included the false positive specimen.

(iii) The Secretary shall review the laboratory's explanation within 5 working days and decide what further action, if any, to take.

(iv) If the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary may direct the laboratory to take corrective action to minimize the occurence of the particular error in the future and, if there is reason to believe the error could have been systematic, may require the laboratory to review and reanalyze previously run specimens.

(v) If the error is determined to be technical or methodological error, the laboratory shall submit to the Secretary all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive by the laboratory from the time fo final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for the day-to-day management of the laboratory's urine drug testing. Depending on the type of error which caused the false positive, this retesting may be limited to one analyte or may include any drugs a laboratory certified under these Guidelines must be prepared to assay. The laboratory shall immediately notify the agency if any result on a retest sample must be corrected because the critieria for a positive are not satisfied. The Secretary may suspend or revoke the laboratory's certification for all drugs or for only the drug or drug class in which the error occurred. However, if the case is one of a less serious error for which effective corrections have already been made, thus reasonably assuring that the error will not occur again, the Secretary may decide to take no further action.

(vi) During the time required to resolve the error, the laboratory shall remain certified but shall have a designation indicating that a false positive result is pending resolution. If the Secretary determines that the laboratory's certification must be suspended or revoked, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or any recertification process is complete.

(2) Requirement to Identify and Confirm 90 Percent of Total Drug Challenges. In order to remain certified, laboratories must successfully complete six cycles of performance testing per year. Failure of a certified laboratory to maintain a grade of 90 percent on any required performance test cycle, i.e., to identify 90 percent of the total drug challenges and to correctly confirm 90 percent of the total drug challenges, may result in suspension or revocation of certification.

(3) Requirement to Quantitate 80 Percent of Total Drug Challenges at ±20 Percent or ±2 standard deviations. Quantitative values obtained by a certified laboratory for at least 80 percent of the total drug challenges must be ±20 percent or ±2 standard deviations of the calculated reference group mean (whichever is larger).

(4) Requirement to Quantitate within 50 Percent of Calculated Reference Group Mean. No quantitative values obtained by a certified laboratory may differ by more than 50 percent from the calculated reference group mean.

(5) Requirement to Successfully Detect and Quantitate 50 Percent of the Total Drug Challenges for Any Individual Drug. For any individual drug, a certified laboratory must successfully detect and quantitate in accordance with paragraphs (b)(2), (b)(3), and (b)(4) of this section at least 50 percent of the total drug challenges.

(6) Procedures When Requirements in Paragraphs (b)(2)–(b)(5) of this Section Are Not Met. If a certified laboratory fails to maintain a grade of 90 percent per test cycle after initial certification as required by paragraph (b)(2) of this section or if it fails to successfully quantitate results as required by paragraphs (b)(3), (b)(4), or (b)(5) of this section, the laboratory shall be immediately informed that its performance fell under the 90 percent level or that it failed to successfully quantitate test results and how it failed to successfully quantitate. The laboratory shall be allowed 5 working days in which to provide any explanation for its unsuccessful performance, including administrative error or methodological error, and evidence that the source of the poor performance has been corrected. The Secretary may revoke or suspend the laboratory's certification or take no further action, depending on the seriousness of the errors and whether there is evidence that the source of the poor performance has been corrected and that current performance meets the requirements for a certified laboratory under these Guidelines. The Secretary may require that additional performance tests be carried out to determine whether the source of the poor performance has been removed. If the Secretary determines to suspend or revoke the laboratory's certification, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or until any recertification process is complete.

(c) 80 Percent of Participating Laboratories Must Detect Drug. A laboratory's performance shall be evaluated for all samples for which drugs were spiked at concentrations above the specified performance test level unless the overall response from participating laboratories indicates that less than 80 percent of them were able to detect a drug.

(d) Participation Required. Failure to participate in a performance test or to participate satisfactorily may result in suspension or revocation of certification.

3.20 Inspections.

Prior to laboratory certification under these Guidelines and at least twice a year after certification, a team of three qualified inspectors, at least two of whom have been trained as laboratory inspectors, shall conduct an on-site inspection of laboratory premises. Inspections shall document the overall quality of the laboratory setting for the purposes of certification to conduct urine drug testing. Inspection reports may also contain recommendations to the laboratory to correct deficiencies noted during the inspection.

3.21 Results of Inadequate Performance.

Failure of a laboratory to comply with any aspect of these Guidelines may lead to revocation or suspension of certification as provided in 3.13 and 3.14 of these Guidelines.

[FR Doc. 88–7864 Filed 4–8–88; 8:45 am]

BILLING CODE 4160–20–M

NATIONAL SECURITY COUNCIL (STAFF)

A. Statement of Agency Mission

The National Security Council (NSC) advises the President with respect to the integration of domestic, foreign, and defense policies related to the national security. Subject to direction by the President, the NSC is to appraise and assess the objectives, commitments, and risks of the United States in relation to our actual and potential military, economic, and political power, in the interest of national security, and to consider policies on matters of common interest to the departments and agencies of the Government. The NSC makes recommendations and reports to the President as it deems appropriate and as the President directs. The Assistant to the President for National Security Affairs has primary responsibility for management of the NSC process and serves as the President's principal advisor on the President's immediate staff for national security matters.

The NSC staff, through the Executive Secretary, performs support services for the managerial and advisory roles that are described above. This includes ensuring the following: that matters submitted for consideration by the NSC cover the full range of issues on which the NSC's review is required; that those issues are fully analyzed; that a full range of options is considered; that the prospects and risks of each are examined; that all relevant intelligence and other information is available to NSC participants; that legal matters are addressed; that difficulties in implementation are considered; that the implementation of policies is monitored to ensure execution in conformity with the interests of Presidential decisions; that periodic reassessments of policies and operations are initiated, in light of changed circumstances or U. S. interests; that NSC participants are kept currently informed of Presidential decisions; that NSC consultations and Presidential decisions are adequately recorded; and that appropriate and timely preparations are made with respect to meetings convened under NSC auspices.

This requires access to highly sensitive national security information, direct access to the high level participants of this process, and to restricted locations. All staff positions to the NSC are sensitive as defined in Executive Order 12564.

B. Testing Designated Positions Listing and Justification Statement

All positions on the National Security Council staff have been determined to be testing designated positions because of the common characteristics that are required for job performance. These include access to highly classified and sensitive information with work locations in the Old Executive Office Building and/or White House West Wing. Impairment because of the use of illegal drugs by any member of the NSC staff has the potential for unauthorized access to sensitive national security information that could affect the military, economic, and political strength of the Nation.

Common position titles now in use include the following, subject to change as the NSC exercises its personnel authorities:

Executive Secretary
Special Assist.(s) to the President for National Security Affairs
Senior Director(s)
NSC Counselor
Legal Adviser
Deputy Legal Adviser
Assistant Legal Adviser
Director(s)
Deputy Director(s)
Deputy Executive Secretary
Freedom of Information Officer
Administrative Officer
Executive Assistant(s)
Secretary(s)
Staff Assistant(s)
Administrative Assistant(s)
Miscellaneous Support Personnel Titles

C. Administrative Relief

If an employee of the National Security Council believes that his or her position has been wrongly designated as a testing designated position, the employee may submit an administrative appeal through the Administrative Officer to the Executive Secretary in accordance with the provisions of section VII D of the EOP Plan.

D. Decision Level for Deferral of Testing Because of Work Demands

The Executive Secretary may authorize deferral of testing for an employee whose immediate work demands require uninterrupted

continuation. Approved requests for deferral shall be made through the Administrative Officer and shall be documented in writing by the Administrative Officer as soon as possible after decision to defer is made. Such reports shall be sent to the Drug Program Coordinator for follow-up action to schedule the employee for unannounced testing within sixty days.

E. Decision Level for Reasonable Suspicion Testing

If an employee is suspected of using illegal drugs based on conditions described in section X of the EOP Plan, the facts and circumstances of that case shall be presented through the Administrative Officer to the Executive Secretary who shall decide whether to proceed with testing.

F. Applicant Testing

Preappointment drug testing of applicants tentatively selected for all positions in the National Security Council is required pursuant to and in accord with section XI of the EOP Plan.

THE WHITE HOUSE
WASHINGTON

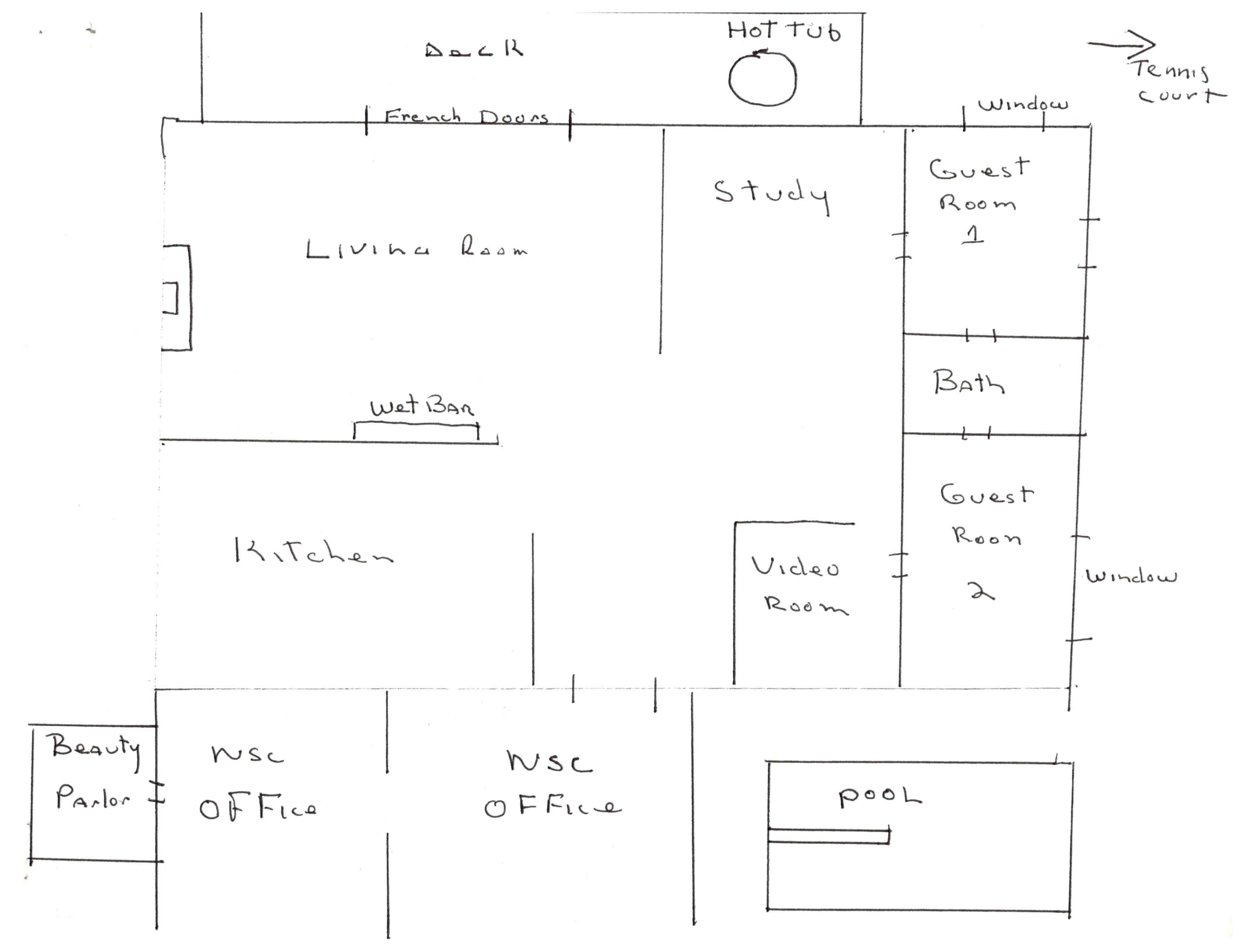
April 10, 1990

John --

You should not approve a single thing beyond our absolutely minimal request, attached.

Brent Scowcroft

Attachment


Deck
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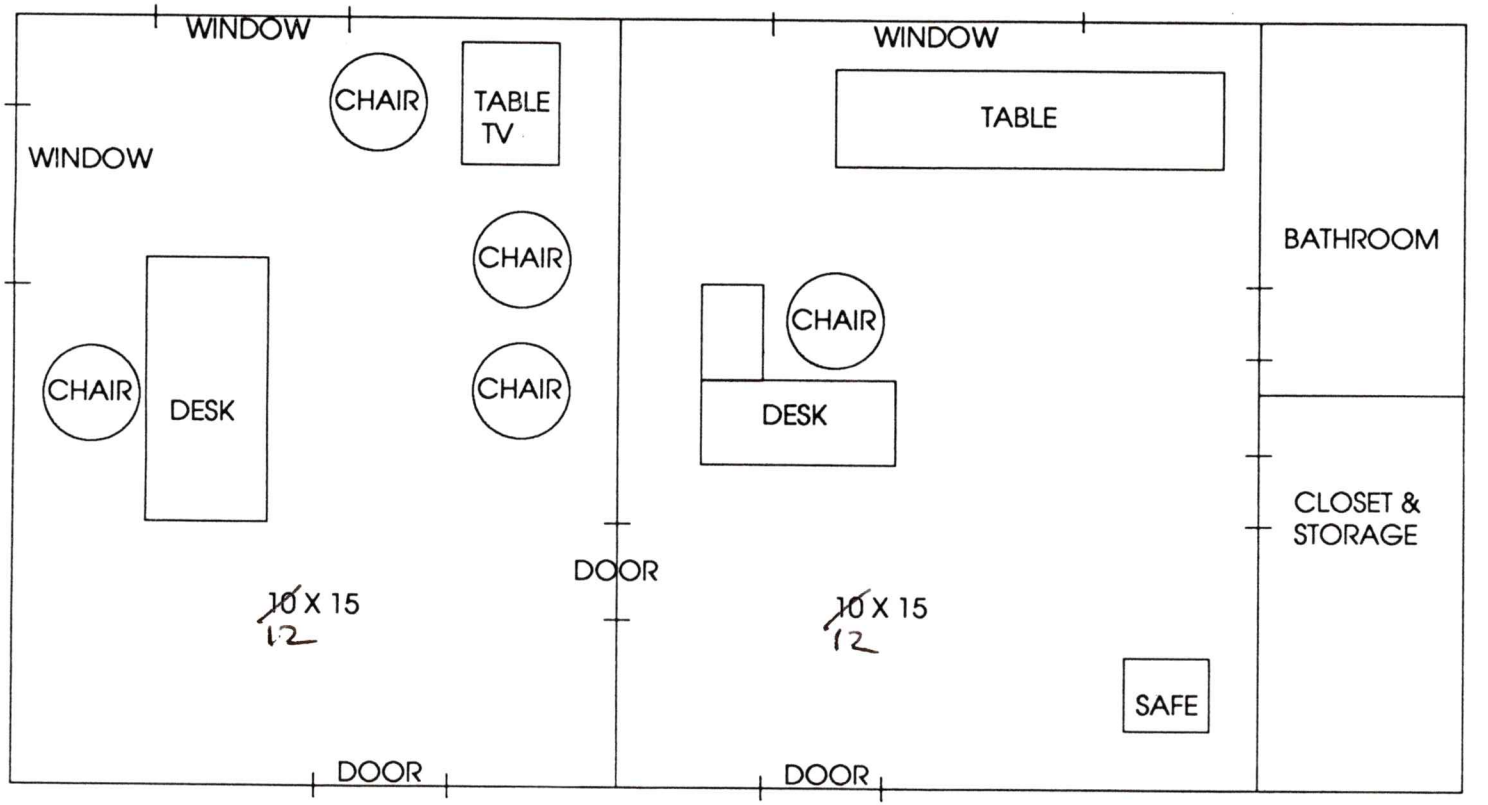
Tennis court
French Doors
Window
Study
Guest Room 1
Living Room
Bath
Wet Bar
Guest Room 2
Kitchen
Video Room
Window
Beauty Parlor
NSC Office
NSC Office
pool

DRAFT

NOTIONAL CONFIGURATION



- Two rooms (Connected)
- Entry door to each room
- Sufficient power for
  an office environment
- Telephone facilities
- Access to CATV (CNN, ABC, NBC, CBS) in offices

DRAFT

THE WHITE HOUSE

WASHINGTON

November 2, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT

SUBJECT: Request for Aircraft

Robert Gates is going to travel to Texas with the President on Friday, November 10, 1989 and then to Wichita, Kansas to deliver a speech after the President returns to Washington. The speech is scheduled for Monday evening, November 13. Mr. Gates must be in Washington for a meeting with the President on Tuesday morning at 11:00 AM. An aircraft is requested to depart Wichita at 7:00 A.M. on the 13th and arrive at Andrews at 10:30.

Thank you.

THE WHITE HOUSE
WASHINGTON

November 3, 1989

MEMORANDUM TO SENIOR STAFF

FROM: Shirley M. Green
Special Assistant to the President for
Presidential Messages and Correspondence

SUBJECT: The White House Booklet (Code #36)

Attached is a copy of the first White House Booklet of the Bush Administration which is sent to students requesting general information about the President, the Vice-President and the White House.

If you would like a few copies, please feel free to request them through the Student Correspondence Unit, Room 435, x7734 or 7735.

If you need larger quantities for groups, please send your request to Typing Unit, Room 60, x2304.

Ron Jackson will serve in ofc - in Exec Dining Room for Gates & Scowcroft.

THE WHITE HOUSE
WASHINGTON

October 12, 1989

MEMORANDUM FOR

WHITE HOUSE STAFF MESS MEMBERS

Effective immediately, when the President is not in residence, Saturday meal service will be limited to carry-out service for West Wing members only.

On those Saturdays the President is in residence, the Staff Mess dining rooms will be open for service to all dining room members with carry-out service limited to West Wing members.

This will enable us to operate the Staff Mess in a more cost effective manner. We appreciate your understanding and cooperation.

Paul Bateman

PAUL W. BATEMAN
Deputy Assistant to the President
for Management

THE WHITE HOUSE

WASHINGTON

September 26, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence E. Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to New York City on Tuesday, September 26. Roy Hamilton from WHCA will accompany the General on this trip. An aircraft has been requested to depart Andrews at 4:40 PM on Tuesday and return that same day around 10:30 p.m.

Thank you.

SEP 15

THE WHITE HOUSE

WASHINGTON

September 15, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to New York City on Monday, September 18. Someone from WHCA will accompany the General on this trip. An aircraft has been requested to depart Andrews at 12:00 Noon on Monday and return that same day around 4:25 p.m.

Thank you.

Approved
9-15-89
J Bonnie Newman

THE WHITE HOUSE

WASHINGTON

September 15, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to New York City on Monday, September 18. Someone from WHCA will accompany the General on this trip. An aircraft has been requested to depart Andrews at 12:00 Noon on Monday and return that same day around 4:25 p.m.

Thank you.

THE WHITE HOUSE

WASHINGTON

September 6, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to New York City on Tuesday, September 12. Someone from WHCA will accompany the General on this trip. An aircraft has been requested to depart Andrews at 4:00 p.m. on Tuesday and return that same day around 11:25 p.m.

Thank you.

Approved
9-11-89
J Bonnie Newman

THE WHITE HOUSE

WASHINGTON

September 6, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to New York City on Tuesday, September 12. Someone from WHCA will accompany the General on this trip. An aircraft has been requested to depart Andrews at 4:00 p.m. on Tuesday and return that same day around 11:25 p.m.

Thank you.

THE WHITE HOUSE

WASHINGTON

August 25, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence E. Gantt

SUBJECT; Request for Aircraft

General Scowcroft is going to travel to Salt Lake City, Utah, on Wednesday, August 30. No one will accompany the General on this short trip. An aircraft has been requested to depart Sanford Airport, Kennebunkport at 6:30 a.m. on Wednesday, and return that same day around 5:00 p.m.

THE WHITE HOUSE

WASHINGTON

August 9, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT; Request for Aircraft

General Scowcroft is going to travel to South Hampton, New York on Thursday, August 10 and returning on the same day. No one will accompany the General on this short trip. An aircraft has been requested to depart Andrews at 9:40 a.m. on Thursday, and return that same day around 1:00 p.m.

THE WHITE HOUSE

WASHINGTON

July 28, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence E. Gantt

SUBJECT; Request for Aircraft

General Scowcroft is going to travel to Vail, Colorado on Saturday, July 29 and returning to Washington on Wednesday, August 2. Keenan Frank and Bob Wood of WHCA will accompany the General to provide secure communication capability. An aircraft has been requested to depart Andrews at 10:30 a.m. on Saturday. Return will be sometime on Wednesday morning.

Approved 7/28/89 J. Bonnie Newman

THE WHITE HOUSE

WASHINGTON

July 28, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence E. Gantt

SUBJECT; Request for Aircraft

General Scowcroft is going to travel to Vail, Colorado on Saturday, July 29 and returning to Washington on Wednesday, August 2. Keenan Frank and Bob Wood of WHCA will accompany the General to provide secure communication capability. An aircraft has been requested to depart Andrews at 10:30 a.m. on Saturday. Return will be sometime on Wednesday morning.

THE WHITE HOUSE

WASHINGTON

June 22, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to Vail, Colorado to attend the AEI (American Enterprise Institute) World Forum on Friday and Saturday, June 23 and 24, 1989, David Munford and Emory Bey of WHCA will accompany the General to provide secure communication capability. Steve Studdert has requested to ride with the General both ways and Michael Boskin of CEA has requested to ride to Colorado. An aircraft is requested to depart Andrews at 1:35PM on Friday, June 23 and return approximately 9:00PM on Saturday, June 24, 1989.

file copy

THE WHITE HOUSE

WASHINGTON

June 9, 1989

MEMORANDUM FOR J. BONNIE NEWMAN
ASSISTANT TO THE PRESIDENT FOR
MANAGEMENT AND ADMINISTRATION

FROM: FLORENCE E. GANTT Florence Gantt

SUBJECT: Request for Aircraft

General Scowcroft is going to travel to White Plaines, New York on Saturday, June 10-11, 1989. Steve Parks and Ron Porter of WHCA will accompany the General to provide secure communication capability. An aircraft is requested to depart Andrews at 9:35 A.M. on June 10 and return at 5:25 on Sunday, June 11.

Thank you.

ROME - White House Military Office (Sgt Gary Scalzo)
Please pass to Colonel Krulak upon arrival.
Bobby Chunn

ARLINGTON CEMETERY

Requests for waivers are received from assorted sources:

Private citizens - telephone requests normally handled by WHMO and callers usually accept the fact that a waiver will not be granted. Written requests are normally turned down by letter from WHMO or direct from Army (who owns the cemetery).

Congressional (received directly from members or through Legislative Affairs).

- when asked, WHMO takes the position that we do not like to entertain such requests

- depending on the pressure from legislative affairs, we submit the request to West Wing for consideration. (we have not submitted any to West Wing in this Administration).

Third parties - for instance, the Matthew Henson case, which was sponsored by the Harvard professor, who approached from all angles, i.e. Congressional, Harvard, DoD, and ultimately to the White House Chief of Staff.

The bottom line is, waivers are based on:

- political pressure (volume of pressure and from what sources)

- the background of the individual (what contributions were made to the Nation)

Once a decision is made (normally somewhere in the West Wing -- Bonnie Newman as our boss, Chief of Staff, Congressional Affairs), WHMO is given a verbal OK and WHMO forwards a memo to Executive Secretary, DoD, that such a Presidential waiver has been granted. A courtesy telephone call is usually made to MDW (for Arl Cemetery purposes).

ATTACHMENTS: History of Arlington Cemetery - 1 pg
Arlington Eligibility - 4 pgs
Title 5, USC - 2pgs
Waivers - 7 pages
WHMO ltr dtd Mar 22, 89

ARLINGTON NATIONAL CEMETERY

Arlington is the only national cemetery under jurisdiction of the Department of Defense. It is administered by the Secretary of the Army. All other national cemeteries are under control of the Administrator of Veterans Affairs. Because of the limited number of gravesites available at Arlington, the Secretary of the Army has established restrictive criteria for interment. It is the policy of that office to make no exceptions to these criteria. As a result, it is not uncommon for requests to be addressed to the President from, or on behalf of, individuals seeking waivers of these standards for reasons which they deem to be especially unique and/or to merit this privilege.

Eligibility requirements, regulations and other pertinent information is attached. Similar data concerning other national cemeteries is also included.

Only one gravesite is authorized for the interment of an eligible individual and authorized member(s) of the family unit. If the spouse or eligible child of persons listed dies first, they may be buried in Arlington provided the service member signs an agreement before the burial that he/she elects to be buried in the same grave and cemetery to the exclusion of any other national cemetery.

Although waivers have been granted in the past, it is indicative of the care with which these requests should be examined that less than two dozen Presidential exceptions have been made in the years that restrictions have been in effect.

When requests are received, the Military Office should gather all available information, including: rationale presented by the requestor for the waiver; reasons for ineligibility; and, whether or not a new gravesite is involved. This should be accomplished in coordination with the OSD Executive Secretariat. A determination is then made by the Director of the Military Office that the request should, and can, be immediately denied by him; or, referred to a more senior Staff official for decision.

If approval is granted, the appropriate Military Assistant in the OSD Executive Secretariat should be notified immediately and a confirmation memorandum sent as soon thereafter as possible. The Executive Secretariat will notify the Secretary of the Army's staff who will, in turn, inform the Superintendent of Arlington National Cemetery.

(NOTE: Requirements for interment of cremated remains in the Columbarium at Arlington are less restrictive, generally conforming to those for other national cemetaries: honorably discharged veteran with active duty for other than strictly training purposes.)

CHAPTER 2

INTERMENTS AND DISINTERMENTS

2–1. Explanation of terms. For purposes of this regulation, the following apply:

a. Armed Forces. The Army, Navy, Air Force, Marine Corps, Coast Guard, and their Reserve Components. Reserve Components of the Armed Forces are—

(1) Army National Guard of the United States
(2) Army Reserve.
(3) Naval Reserve.
(4) Marine Corps Reserve.
(5) Air National Guard of the United States.
(6) Air Force Reserve.
(7) Coast Guard Reserve.

31st Dec 46

b. Active duty. Full-time duty in the active military service of the United States. This includes duty on the active list, full-time training duty, and attendance (while in the active military service) at a school designated as a Service school by law or by the secretary of the military service concerned.

c. Unmarried adult child. A natural, step, or adopted son or daughter of the eligible service-connected parent who is unmarried and who became permanently incapable of self-support because of physical or mental disability before attaining the age of 21 years and, up to the time of death, has been dependent for support upon the service-connected parent or surviving parent (or on others if both parents are deceased) because of his or her physical or mental condition.

d. Minor child. A natural, step, or adopted son or daughter of the eligible service-connected parent who is unmarried and is less than 21 years of age, or who, after attaining the age of 21 years and until completion of his or her education or training (but not after attaining the age of 23 years), is pursuing a course of instruction at an approved institution.

e. President or former President of the United States. The President or former President of the United States who, in his capacity as Commander in Chief of the Armed Forces, is a "member or former member of the Armed Forces who served . . ." (within the meaning of 24 USC 281).

2–2. Authority for interments. The Act of 14 May 1948 (62 Stat. 234), as amended by the Act of 14 September 1959 (73 Stat. 547; 24 USC 281), and other laws specifically cited in this regulation authorize burial in Arlington and Soldiers' Home National Cemeteries under such regulations as the Secretary of the Army may, with the approval of the Secretary of Defense, prescribe.

2–3. Persons eligible for burial in Arlington National Cemetary. *a.* Any active duty member of the Armed Forces (except those members serving on active duty for training only).

b. Any retired member of the Armed Forces. A retired member of the Armed Forces, in the context of this paragraph, is a retired member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or a Reserve Component who has served on active duty (other than training), is carried on an official retired list, and is entitled to receive retired pay stemming from service in the Armed Forces. If, at the time of death, a retired member of the Armed Forces is not entitled to receive retired pay stemming from his service in the Armed Forces until some future date, the retired member will not be eligible for burial.

c. Any former member of the Armed Forces separated for physical disability prior to 1 October 1949 who has served on active duty (other than for training) and who would have been eligible for retirement under the provisions of 10 USC 1201 had that statute been in effect on the date of his separation.

d. Any former member of the Armed Forces whose last active duty (other than for training) military service terminated honorably and who has been awarded one of the following decorations:

(1) Medal of Honor.
(2) Distinguished Service Cross (Air Force Cross or Navy Cross).
(3) Distinguished Service Medal.
(4) Silver Star.
(5) Purple Heart.

e. Persons who have held any of the following positions, provided their last period of active duty (other than for training) as a member of the Armed Forces terminated honorably—

(1) An elective office of the United States Government.

In Philippine Commonwealth Army in service to US Forces Southeast 16 Nov 41 to 1 Mar 46 as Intelligence officer. Highly decorated by US. 9 Apr 42 to Aug 42 was POW.

(2) Office of the Chief Justice of the United States or of an Associate Justice of the Supreme Court of the United States.

(3) An office listed in 5 USC 5312 or 5 USC 5313.

(4) The chief of a mission who was at any time during his tenure classified in class I under the provisions of 411 of the Act of 13 August 1946, 60 Stat. 1002, as amended (22 USC 866).

f. The spouse, widow or widower, minor child (para 2–1*d*) and, at the discretion of the Secretary of the Army, unmarried adult child of any of the persons listed in *a* through *e* above.

(1) The term "spouse" refers to a widow or widower of an eligible member, including the widow or widower of a member of the Armed Forces who was lost or buried at sea or officially determined to be permanently absent in a status of missing or missing in action. A surviving spouse who has remarried and whose remarriage is void, terminated by death, or dissolved by annulment or divorce by a court with basic authority to render such decrees regains eligibility for burial in Arlington National Cemetery unless it is determined that the decree of annulment or divorce was secured through fraud or collusion.

(2) An unmarried adult child may be interred in the same grave in which the parent has been or will be interred, provided that child was incapable of self-support up to the time of death because of physical or mental condition. At the time of death of an adult child, a request for interment will be submitted to the Superintendent of Arlington National Cemetery. The request must be accompanied by a notarized statement from an individual who has direct knowledge as to the marital status, degree of dependency of the deceased child, the name of that child's parent, and the military service upon which the burial is being requested. A certificate of a physician who has attended the decedent as to the nature and duration of the physical and/or mental disability must also be submitted for approval to HQDA (DAAG–PED), WASH, DC 20314, prior to interment.

g. Widows or widowers of service members who are interred in Arlington National Cemetery as part of a group burial may be interred in the same cemetery but not in the same grave.

h. The surviving spouse, minor child, and, at the discretion of the Secretary of the Army, unmarried adult child of any person already buried in Arlington.

i. The parents of a minor child, or unmarried adult child whose remains, based on the eligibility of a parent, are already buried in Arlington National Cemetery.

★**2–4. Special provisions.** *a.* All eligible persons will be assigned graves, without discrimination as to military rank, race, color, sex, religion, age or national origin.

b. No one will be buried in a memorial section. These sections are designated for the erection of memorial markers in memory of those individuals specified in paragraph 3–4.

★**2–5. Assignment of gravesites.** *a.* Under present policy of the Department of the Army, only one gravesite is authorized for the burial of a service member and eligible family members. This policy applies to Arlington National Cemetery except when the Director, Personal Affairs, specifically determines this is not feasible.

b. Gravesites will not be reserved.

c. Reservations made in writing for adjoining gravesites to next of kin previously interred, before the one-gravesite-per-family-unit policy was established, will remain in effect as long as the reservee remains eligible for burial in Arlington.

★**2–6. Persons eligible for inurnment of cremated remains in the Columbarium in Arlington National Cemetery.** *a.* Any member of the Armed Forces who dies on active duty.

b. Any former member of the Armed Forces who served on active duty (other than for training) and whose last service terminated honorably.

c. Any member of a Reserve Component of the Armed Forces whose death occurs under honorable conditions while he is—

(1) On active duty for training or performing full-time service under Title 32, USC;

(2) Performing authorized travel to or from that duty or service;

(3) On authorized inactive duty training including training performed as a member of the Army National Guard or the Air National Guard (Section 502 of Title 32, USC); or

(4) Hospitalized or undergoing treatment at the expense of the United States for injury or disease contracted or incurred under honorable conditions whole he is on that duty or service, performing that travel or inactive duty training,

or undergoing that hospitalization or treatment at the expense of the United States.

d. Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while he is attending an authorized training camp or on an authorized practice cruise, performing authorized travel to or from that camp or cruise, or hospitalized or undergoing treatment at the expense of the United States for injury or disease contracted or incurred under honorable conditions while attending that camp or cruise, performing that travel, or undergoing that hospitalization or treatment at the expense of the United States.

e. Any citizen of the United States who, during any war in which the United States has been or may hereafter be engaged, served in the Armed Forces of any government allied with the United States during that war, whose last active service terminated honorably by death or otherwise, and who was a citizen of the United States at the time of entry on such service and at the time of death.

f. Commissioned officers, United States Coast and Geodetic Survey (now National Oceanic and Atmospheric Administration), who die during and subsequent to the service specified in the following categories and whose last service terminated honorably are eligible for inurnment of their cremated remains in the Columbarium regardless of time of death—

(1) Commissioned officers assigned to areas of immediate military hazard described in the Act of 3 December 1942 (56 Stat. 1038; 33 USC 855*a*) as amended.

(2) Commissioned officers serving in the Philippine Islands on 7 December 1941.

(3) Commissioned officers actually transferred to the Department of the Army or the Department of the Navy under the provisions of the Act of 22 May 1917 (40 Stat. 87; 33 USC 855).

g. Any commissioned officer of the United States Public Health Service who served on full time duty on or after 29 July 1945, if the service falls within the meaning of active duty for training as defined in 38 USC 101(22) or inactive duty training as defined in 38 USC 101(23) and whose death resulted from a disease or injury incurred or aggravated in line of duty. Also, any commissioned officer of the Regular or Reserve Corps of the Public Health Service who performed active service prior to 29 July 1945 in time of war; on detail for duty with the Armed Forces; or while the service was part of the military forces of the United States pursuant to Executive Order of the President.

h. Spouses, minor children and dependent adult children as described in paragraph 2–3*f* or any of the persons listed in *a* through *f* above.

★**2–7. Selection of the Columbarium for inurnment.** *a.* Those persons eligible for interment in Arlington National Cemetery under paragraph 2–3 above are also eligible for inurnment in the Columbarium. However, once the initial interment is made in a gravesite, each additional interment in Arlington of eligible members of the family unit must be made in that gravesite.

b. In the event the Columbarium is selected for inurnment of a family member, the cremated remains of all eligible surviving members must be inurned in that facility if disposition of remains is in Arlington National Cemetery.

c. Those persons listed in paragraph 2–6 are eligible for inurnment in the Columbarium.

★**2–8. Persons eligible for burial in Soldiers' Home National Cemetary.** The Board of Commissioners of the US Soldiers' and Airmen's Home will prescribe rules governing burial in the Soldier's Home National Cemetery.

★**2–9. Persons ineligible for interment or inurnment in an Army national cemetery.** *a.* Fathers, mothers, brothers, sisters, and in-laws are not eligible for interment or inurnment by reason of relationship to an eligible service person even though he or she is dependent upon the service member for support and/or is a member of his/her household.

b. A person whose last separation from one of the Armed Forces was under other-than-honorable conditions is not eligible for interment or inurnment even though he/she may have received veterans benefits, treatment at a Veterans Administration hospital, or died in such a hospital.

c. A person who has volunteered for service with the Armed Forces but has not actually entered on active duty.

d. Non-service-connected spouses who have been divorced from the service-connected members or who have remarried after the interment or inurnment of the service-connected spouse and whose remarriage is still valid are not eligible because of the decedent's service.

e. Dependents are not eligible for interment or inurnment in Arlington National Cemetery unless the service-connected family member has been or will be interred or inurned in that cemetery. This does not apply to widows or widowers of members of the Armed Forces lost or buried at sea or officially determined to be permanently absent in a status of missing or missing in action.

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

§ 5311. The Executive Schedule

(a) The Executive Schedule, which is divided into five pay levels, is the basic pay schedule for positions, other than Senior Executive Service positions, to which this subchapter applies.

(b)(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director of the Office of Personnel Management shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

(2) For the purpose of this subsection, "executive level position" means—

(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position, as defined in section 3132(a) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 459; Pub. L. 95–454, title IV, §§ 408(b)(1), 414(b)(1), Oct. 13, 1978, 92 Stat. 1173, 1178; Pub. L. 96–54, § 2(a)(24), Aug. 14, 1979, 93 Stat. 382.)

§ 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.
Secretary of the Treasury.
Secretary of Defense.
Attorney General.
Secretary of the Interior.
Secretary of Agriculture.
Secretary of Commerce.
Secretary of Labor.
Secretary of Health and Human Services.
Secretary of Housing and Urban Development.
Secretary of Transportation.

United States Trade Representative.
Secretary of Energy.
Secretary of Education.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 460; Pub. L. 89-670, § 10(d)(1), Oct. 15, 1966, 80 Stat. 948; Pub. L. 91-375, § 6(c)(12), Aug. 12, 1970, 84 Stat. 776; Pub. L. 93-618, title I, § 141(b)(3)(A), Jan. 3, 1975, 88 Stat. 1999; Pub. L. 94-82, title II, § 202(b)(1), Aug. 9, 1975, 89 Stat. 419; Pub. L. 95-91, title VII, § 710(c), Aug. 4, 1977, 91 Stat. 609; Pub. L. 96-54, § 2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96-88, title V, § 508(c), (g), Oct. 17, 1979, 93 Stat. 692; Pub. L. 97-456, § 3(d)(1), (5), Jan. 12, 1983, 96 Stat. 2505.)

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.
Deputy Secretary of State.
Administrator, Agency for International Development.
Administrator of the National Aeronautics and Space Administration.
Administrator of Veterans' Affairs.
Deputy Secretary of the Treasury.
Deputy Secretary of Transportation.
Chairman, Nuclear Regulatory Commission.
Chairman, Council of Economic Advisers.
Chairman, Board of Governors of the Federal Reserve System.
Director of the Office of Management and Budget.
Director of the Office of Science and Technology.
Director of the United States Arms Control and Disarmament Agency.
Director of the United States Information Agency.
Director of Central Intelligence.
Secretary of the Air Force.
Secretary of the Army.
Secretary of the Navy.
Administrator, Federal Aviation Administration.
Director of the National Science Foundation.
Deputy Attorney General.
Deputy Secretary of Energy.
Deputy Secretary of Agriculture.
Director of the Office of Personnel Management.
Ambassadors at Large.
Administrator, Federal Highway Administration.
Administrator of the Environmental Protection Agency.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 460; Pub. L. 89-670, § 10(d)(2), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90-83, § 1(13), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90-407, § 15(a)(1), July 18, 1968, 82 Stat. 366; Pub. L. 91-644, title I, § 8(b), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 92-255, title II, § 212(a), Mar. 21, 1972, 86 Stat. 69; Pub. L. 92-302, § 2(a),

→ Chairman, Council on Environmental Quality.

FILE 7D

NAME	BASIS FOR AUTHORIZATION	DATE OF DEATH
Donald R. Fortier	Deputy Assistant to the President for National Security Affairs	23 August 1986
Daniel Henken	Former Deputy Assistant Secretary Secretary of Defense (PAO) (1969 - 1973)	7 April 1987
Matthew A. Henson (reinterment)	Co-discoverer, with Admiral Peary, of the North Pole	1955
Edward V. Hickey, Jr.	Director, White House Military Office (1981 - 1985)	9 January 1988
Ernest L. Cuneo	WW II official of the OSS	1 March 1988
Charlton W. Doyle	WW II Army Air Corps Bombadier (Per request of Jeremiah O'Leary)	7 July 1988
Arnold L. Raphel	U.S. Ambassador to Pakistan. Killed in Pakistani aircraft crash with President of Pakistan aboard.	17 August 1988

NAME	BASIS FOR AUTHORIZATION	DATE OF DEATH
Evan Howell	Mr. Howell was a former Member of of Congress. Interment authorized in the Columbarium.	(unknown) Authorized 9 Apr 8
William Hartnett Assistant Clerk of the House of Representatives Former member of WHCA	Interment authorized by the White House	30 Oct 19
Mrs. Samuel Waybright	Interment authorized by the White House in the same grave space as her former husband, Gerald Cherry, USN, and their grandson.	24 December 1980
Michael Hammer Officer with AFL-CIO	Interment authorized by the White House. Mr. Hammer was on contract with AID at the time of his assassination in San Salvador.	4 January 1981
Robert Harmon Taylor	Interment authorized by Edward V. Hickey, Jr. Mr. Taylor was a former Special Agent in Charge, White House Detail, U. S. Secret Service.	12 March 1981
Joe Louis	Interment authorized by the President	13 April 1981
Marshall Francis McComb		Unknown
James Patrick Francis May	Interment authorized by Edward V. Hickey, Jr.	Unknown Authorized 11 Jun
Paul Robert Boucher	Inspector General of the Small Business Administration	5 July 1982
Robert Clayton Ames Kenneth Eugene Haas Frank John Johnston	Department of State. Killed in the Beirut Embassy bombing.	18 April 1983
J. Bernard West	Former White House Chief Usher	18 July 1983
[redacted]	[redacted]	[redacted]
Leamon R. Hunt	Director General of the Multinational Force and Observers (MFO). Assassinated in Rome.	15 February 1984
Dennis Keogh	Head, U.S. Liaison Office, Namibia. Killed in bomb explosion.	15 April 1984
William Stanford	A.I.D. official killed on board a Kuwait Airline aircraft in Tehran during a hi-jacking by Arab terrorists	9 December 1984
Dr. Luther Terry	Former Surgeon General	29 March 1985
Timothy J. Reardon	Former senior White House Staff official. Interment approved by the President on recommendation of the SecArmy.	Unknown (terminally ill)

NAME	BASIS FOR AUTHORIZATION	DATE OF DEATH
William Magruder Special Consultant to former President Nixon	Mr. Magruder's interment in the same grave site as his father Major General Bruce M. Magruder, was authorized by the White House	10 September 1977
F. Joseph Donohue Senator McIntyre's campaign manager	Interment authorized by the White House	4 April 1978
Norman O. Wynkoop, Jr. LCDR, USNR (Ret.)	Because he had not reached age 60 before his death and was not receiving retired pay, Mr. Wynkoop was not eligible for interment in Arlington. Burial in the same grave as his mother, and alloted to his father, was authorized by the White House.	(unknown) Authorized 2 May 1978
Lorimer Rich Architect	Because of his work in designing the Memorial and the Tomb of the Unknown Soldier, authorization was granted by the White House for his interment at Arlington.	2 June 1978
Joseph R. Raymond Deputy Auditor General Agency for International Development	Interment authorized by the White House	3 July 1978
William Parish White House Photographer's Office	Interment authorized by the White House	8 July 1978
Charles Blair	Interment authorized by the White House	(unknown) Authorized 7 Sept 78
Adolph Dubs Ambassador to Afghanistan	Ambassador Dubs was assassinated in Afghanistan. Interment authorized by the White House	(unknown) Authorized 20 Feb 79
Berkeley Graham Burrell	Burial in the same grave space in which his father, Heywood Graham Burrell, is interred was authorized by the White House	(unknown) Authorized 4 Sept 78
	Authorization also granted for burial of Mrs. Berkeley Graham Burrell in same grave space upon her demise.	4 September 78
Harold Leventhal U.S Court of Appeals for the District of Columbia	Interment authorized by the White House due to his distinguished governmental and judicial service.	(unknown) Authorized 21 Nov 79

EXCEPTIONS MADE TO ELIGIBILITY CRITERIA FOR INTERMENT IN ARLINGTON NATIONAL CEMETERY

NAME	BASIS FOR AUTHORIZATION	DATE OF DEATH
Fisher, Michael B.	On 21 December 1976, Michael B. Fisher was killed in an automobile accident. He was a veteran of the Vietnam era, having been honorably discharged from the Marine Corps in March 1968. His military service did not meet the restrictive eligibility criteria for interment in Arlington National Cemetery. The wife and sister of the deceased requested that an exception to the eligibility criteria be granted to permit interment of his cremated remains in the same grave with his father, Robert F. Fisher, a former retired Air Force Major. An exception was granted by White House direction on 28 February 1977 and Michael B. Fisher was interred in Section 51, Grave 22, on 9 March 1977 in the same grave with his father.	21 Dec 1976
Kurta, Linda P.	On 31 January 1977, Mrs. Estelle Kurta, wife of retired SGT Charles B. Kurta and his daughter-in-law, Linda P. Kurta, were involved in a car accident. As a result, Estelle died immediately and Linda died on 4 February. Estelle was interred in Arlington on the basis of her husband's retirement from the Air Force, but Linda was not eligible on the basis of her husband's service as an honorably discharged veteran. An exception was granted on 5 Feb 1977 by White House direction for humanitarian reasons. Mrs. Linda P. Kurta was interred in the same grave with her mother-in-law. Retired SGT Charles B. Kurta's future interment is to be made in the same grave.	9 Feb 1977

3 Jun 89

Nelson

1 Aug 89

Powell

EXCEPTIONS MADE TO ELIGIBILITY CRITERIA FOR INTERMENT IN ARLINGTON NATIONAL CEMETERY

NAME	BASIS FOR AUTHORIZATION	DATE OF DEATH
Philip K. Crowe LTC, USAAF Former Ambassador	Mr. Philip K. Crowe served in WWII as a Lieutenant Colonel with the Army Air Corps from February 1942 to November 1945. Although he was eligible for burial in a national cemetery on the basis of honorable active military service, Mr. Crowe did not meet the restrictive requirments for interment in Arlington. Mr. Crowe, in addition to serving as Ambassador to Denmark, also served as Ambassador to Ceylon, Union of South Africa, and Norway, none of which are rated as Class I Missions by the State Department. The request for exception to the policy was made by the family through the State Department to the White House. The White House directed an exception to criteria to permit the burial of Mr. Philip K. Crowe in Arlington National Cemetery. Mr. Crowe was interred in Arlington on 22 October 1976.	17 Oct 1976
Peter Irvin Lisagor Chief, Washington Bureau of the Chicago Daily News Sgt, USA	On 10 December 1976, President Ford authorized, as an exception to eligibility requirements, the burial of Mr. Peter I. Lisagor in Arlington National Cemetery. Mr. Lisagor was a veteran of World War II serving honorably with the United States Army. As Chief of the Washington Bureau of the Chicago Daily News, he was a highly respected journalist who was widely known for his humanitarian qualities. Mr. Lisagor was interred in Arlington on 14 December.	10 Dec 1976

EXCEPTIONS MADE TO ELIGIBILITY CRITERIA FOR INTERMENT IN ARLINGTON NATIONAL CEMETERY

NAME	BASIS FOR AUTHORIZATION	DATE OF DEATH
Richard S. Welch, age 46 Special Assistant to U.S. Embassy, Athens, Greece (agent of Central Intelligence Agency) No prior military service	Mr. Welch was assassinated by Greek terrorists on 23 December 1975 as he was returning to his home in Athens, Greece. The Athens News and other publications had reported a short time earlier that Mr. Welch was an agent of the U.S. Central Intelligence Agency, although he served officially as a Special Assistant of the U.S. Embassy, Athens, Greece. President Ford granted the exception to permit interment of Mr. Welch in Arlington National Cemetery. Burial was made on Friday, 2 January 1976. Presidential Press Secretary Ronald Nessen stated that President Ford had decided to waive restrictions limiting burial at Arlington at the request of Senators Claiborne Pell of Rhode Island and Gamry Hart of Colorado in that Welch had died in the service of his country.	23 Dec 1975
Robert O. Waring Economic Attache (Foreign Service Officer) State Department	Mr. Waring, Economic Attache was shot and killed along with U.S. Ambassador to Lebanon, Francis E. Meloy. Mr. Waring entered the Foreign Service in 1944 where he remained until his death. He had performed no military service. His interment in Arlington National Cemetery on 21 June 1976 was authorized by White House direction on 17 June 1976. Mr. Francis E. Meloy was buried in his family plot in a private cemetery.	16 Jun 1976
Frank Anthony Mariano Chief, ABC News Saigon Bureau, Major, US Army	Mr. Mariano was Chief, ABC News Saigon Bureau at the time of his death. He died at age 45 as a result of complications from heart surgery. Mr. Mariano served honorably in the United States Army as a Captain on active duty and a Major in the Reserves. He enlisted 10 March 1953 and was discharged 9 October 1968. Mr. Mariano received the Distinguished Flying Cross, Bronze Star Medal, and the Vietnam Cross of Gallantry. His interment was authorized as an exception at White House direction.	9 Aug 1976

EXCEPTIONS MADE TO ELIGIBILITY CRITERIA FOR INTERMENT IN ARLINGTON NATIONAL CEMETERY

NAME	BASIS FOR AUTHORIZATION	DATE OF DEATH
William R. Rivkin, 01533183 Major, U. S. Army	Major Rivkin was Ambassador to Senegal and Gambia and formerly to Luxembourg. Interment was authorized by the White House.	19 Mar 1967
Paul J. Kilday Judge, U.S. Court of Military Appeals, Former Congressman	The burial of Judge Kilday was based on White House direction and the unique role that he played as Judge of the U.S. Court of Appeals. He was also a former elected official of the United States. Judge Kilday had no military service.	12 Oct 1968
Merriman Smith White House Reporter	Merriman Smith was a well known United Press International White House Reporter, who had also won the Pulitzer Prize for one of his books. By direction of the White House, VOCO, Chief of Staff, MDW, authorized the interment of Mr. Smith's cremated remains in grave of son, Albert, who died in Vietnam in Feb 1966. Mr. Smith had no military service.	13 Apr 1970
Cleo A. Noel, Jr., 118866 Lt. CMDR, USN George C. Moore, 39721501 T/4, US Army	Mr. Noel was the U.S. Ambassador to Sudan and Mr. Moore was the Deputy Chief of Mission, Sudan. Both were held hostage and slain by Black September Terrorists in Khartoum, Sudan on 2 March 1973. Both were eligible for burial in a National Cemetery based on honorable active military service but neither met the limited requirements for burial in Arlington National Cemetery. Burial was authorized by President Nixon.	2 Mar 1973
Thomas L. C. Vail, 256894 Fireman 1st Class, USNR (active)	At time of death, Mr. Vail was Chief Counsel of the Senate Committee on Finance, a position which he held for eight years. His wife requested burial in Arlington National Cemetery. This request was supported by Senator Russell B. Long, Senator Clifford P. Hansen, and Senator Harry F. Byrd, Jr. Mr. Vail was eligible for burial in a National Cemetery based on honorable active military service, but did not meet the limited requirements for burial in Arlington National Cemetery. An exception to permit burial in the same grave with his brother was granted by direction of the White House.	18 Sep 1973

File 7D

THE WHITE HOUSE

WASHINGTON

March 22, 1989

Dear Dr. Saunders:

I received your letter of March 14th on behalf of Mr. Donald G. Farrell, requesting a waiver be granted for his interment at Arlington National Cemetery. Quite frankly, I find that this is not likely; nor, will my present position permit me, in conscience, to recommend it. These decisions are made by the President personally, with each case carefully examined for merit before submission to him.

The limited space available at Arlington has made it necessary to adapt a restrictive eligibility criteria which permits burial only of: members of the Armed Forces on active duty; retired members receiving retired pay; veterans who were awarded or received high personal decorations; former members of the Armed Forces who have held high elective or appointed offices of the Federal Government; and, wives and dependent children of the above. To deviate from these regulations in this instance would be unfair to the many others who have sought similar consideration and had to be denied. For these reasons, I regret that an exception cannot be made.

However, from the information provided, Mr. Farrell does appear to qualify for interment in a national cemetery under jurisdiction of the Department of Veterans Affairs. If interested, the arrangements can be made with the Superintendent of the national cemetery in which burial is desired. Based on his honorable military service, he is authorized to be inurned at the Columbarium at Arlington.

Your interest and concern in this matter are certainly appreciated and I regret that my reply could not have been more favorable.

Sincerely,

Antonio Lopez

ANTONIO LOPEZ
Director
White House Military Office

Dr. John R. Saunders
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