

RESOLUTION NO. R 92-4

DRUG FREE WORKPLACE RESOLUTION

CITY OF CONWAY

WHEREAS, the 100th Congress of the United States of America has declared the Drug Free Workplace Act of 1988 to be the law of the land:

NOW, THEREFORE, BE IT RESOLVED by the City of Conway, Arkansas as follows:

Section 1: It is hereby declared that the policy of the City of Conway, Arkansas is to adhere to and comply with all provisions of the law relating to the Drug Free Workplace Act of 1988.

Section 2: It is further herewith resolved that the City of Conway will establish a Drug Free Workplace Policy, a Drug Free Workplace Statement and Drug Free Workplace Policy Certification in accordance with the Drug Free Workplace Act of 1988.

Adopted and Approved by the City Council of Conway, Arkansas this 25th day of February, 1992.

Signature: _____

Name: David G. Kinley

Title: Mayor of Conway

Attested: _____

DRUG FREE WORKPLACE STATEMENT

Drug abuse in the workplace is an extremely complex problem, one for which no easy solutions exist. As more research uncovers the dangers involved with drug abuse, a heightened awareness on this issue has evolved. This has led the Federal Government to implement the Drug-Free Workplace Act of 1988 which is an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, a higher absenteeism and are more likely to misappropriate funds or services. From a safety perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a "responsible source" for government contracts, the following guidelines have been adopted.

1. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace.
2. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
3. Employees must notify their employer of any conviction of a criminal drug statute no later than five (5) working days after such conviction.
4. Although alcohol is not a controlled substance, it is none the less a drug. It is the policy of the City of Conway that abuse of this drug will also not be tolerated in the workplace.

**DRUG FREE WORKPLACE POLICY
CERTIFICATION**

The undersigned certifies, to the best of his/her knowledge and belief, that:

1. The undersigned has read and understands the drug free workplace statement.
2. The undersigned will endeavor, to the best of his/her ability, to maintain a drug free working environment.
3. The undersigned agrees not to violate the drug free workplace policy as outlined in the "Drug Free Workplace Statement".
4. The undersigned understands that a violation of the Drug Free Workplace policy may result in termination of employment or admission to an approved Drug Rehabilitation Program.

The undersigned has agreed to the above conditions of the Drug Free Workplace Policy Certification and is fully aware of all ramifications involved in violating said policy.

Employee Signature

Date

the enactment of this Act by a national training unit established by the Secretary.

SEC. 5145. DEFINITIONS.

For purposes of this chapter:

(1) **CONTROLLED SUBSTANCE.**—The term “controlled substance” has the meaning given such term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(2) **SECRETARY.**—The term “Secretary” means the Secretary of Housing and Urban Development.

SEC. 5146. REGULATIONS.

Not later than 6 months after the date of the enactment of this Act, the Secretary shall issue any regulations necessary to carry out this chapter.

Subtitle D—Drug-Free Workplace Act of 1988

SEC. 5151. SHORT TITLE.

This subtitle may be cited as the “Drug-Free Workplace Act of 1988”.

SEC. 5152. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL CONTRACTORS.

(a) DRUG-FREE WORKPLACE REQUIREMENT.—

(1) **REQUIREMENT FOR PERSONS OTHER THAN INDIVIDUALS.**—No person, other than an individual, shall be considered a responsible source, under the meaning of such term as defined in section 4(8) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(8)), for the purposes of being awarded a contract for the procurement of any property or services of a value of \$25,000 or more from any Federal agency unless such person has certified to the contracting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

- (i) the dangers of drug abuse in the workplace;
- (ii) the person's policy of maintaining a drug-free workplace;
- (iii) any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment on such contract, the employee will—

- (i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5154; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

(2) **REQUIREMENT FOR INDIVIDUALS.**—No Federal agency shall enter into a contract with an individual unless such contract includes a certification by the individual that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE CONTRACTOR.—

(1) **GROUND FORS FOR SUSPENSION, TERMINATION, OR DEBARMENT.**—Each contract awarded by a Federal agency shall be subject to suspension of payments under the contract or termination of the contract, or both, and the contractor thereunder or the individual who entered the contract with the Federal agency, as applicable, shall be subject to suspension or debarment in accordance with the requirements of this section if the head of the agency determines that—

(A) the contractor or individual has made a false certification under subsection (a);

(B) the contractor violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

(C) such a number of employees of such contractor have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) **CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.**—(A) If a contracting officer determines, in writing, that cause for suspension of payments, termination, or suspension or debarment exists, an appropriate action shall be initiated by a contracting officer of the agency, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures.

(B) The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and such other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual in such proceeding.

(3) **EFFECT OF DEBARMENT.**—Upon issuance of any final decision under this subsection requiring debarment of a contractor or individual, such contractor or individual shall be ineligible for award of any contract by any Federal agency, and for

42 USC 11924.

42 USC 11925.

Drug-Free
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41 USC 701 note.

41 USC 701.

participation in any future procurement by any Federal agency, for a period specified in the decision, not to exceed 5 years.

SEC. 5153. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL GRANT RECIPIENTS.

(a) DRUG-FREE WORKPLACE REQUIREMENT.—

(1) PERSONS OTHER THAN INDIVIDUALS.—No person, other than an individual, shall receive a grant from any Federal agency unless such person has certified to the granting agency that it will provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5154; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

(2) INDIVIDUALS.—No Federal agency shall make a grant to any individual unless such individual certifies to the agency as a condition of such grant that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting any activity with such grant.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE GRANTEE.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Each grant awarded by a Federal agency shall be subject to suspension of payments under the grant or termination of the grant, or both, and the grantee thereunder shall be subject to

of this section if the agency head of the granting agency or his official designee determines, in writing, that—

(A) the grantee has made a false certification under subsection (a);

(B) the grantee violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or

(C) such a number of employees of such grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding Executive order and any regulations promulgated to implement such law or Executive order.

(3) EFFECT OF DEBARMENT.—Upon issuance of any final decision under this subsection requiring debarment of a grantee, such grantee shall be ineligible for award of any grant from any Federal agency and for participation in any future grant from any Federal agency for a period specified in the decision, not to exceed 5 years.

SEC. 5154. EMPLOYEE SANCTIONS AND REMEDIES.

41 USC 703.

A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to section 5152(a)(1)(D)(ii) or 5153(a)(1)(D)(ii)—

(1) take appropriate personnel action against such employee up to and including termination; or

(2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

SEC. 5155. WAIVER.

41 USC 704.

(a) IN GENERAL.—A termination, suspension of payments, or suspension or debarment under this subtitle may be waived by the head of an agency with respect to a particular contract or grant if—

(1) in the case of a waiver with respect to a contract, the head of the agency determines under section 5152(b)(1), after the issuance of a final determination under such section, that suspension of payments, or termination of the contract, or suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or

(2) in the case of a waiver with respect to a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) EXCLUSIVE AUTHORITY.—The authority of the head of an

14 USC 705.

SEC. 5156. REGULATIONS.

Not later than 90 days after the date of enactment of this subtitle, the governmentwide regulations governing actions under this subtitle shall be issued pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

41 USC 706.

SEC. 5157. DEFINITIONS.

For purposes of this subtitle—

(1) the term “drug-free workplace” means a site for the performance of work done in connection with a specific grant or contract described in section 5152 or 5153 of an entity at which employees of such entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Act;

(2) the term “employee” means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract described in section 5152 or 5153;

(3) the term “controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812);

(4) the term “conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(5) the term “criminal drug statute” means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;

(6) the term “grantee” means the department, division, or other unit of a person responsible for the performance under the grant;

(7) the term “contractor” means the department, division, or other unit of a person responsible for the performance under the contract; and

(8) the term “Federal agency” means an agency as that term is defined in section 552(f) of title 5, United States Code.

1 707.

SEC. 5158. CONSTRUCTION OF SUBTITLE.

Nothing in this subtitle shall be construed to require law enforcement agencies, if the head of the agency determines it would be inappropriate in connection with the agency's undercover operations, to comply with the provisions of this subtitle.

SEC. 5159. REPEAL OF LIMITATION ON USE OF FUNDS.

Section 628 of Public Law 100-440 (relating to restrictions on the use of certain appropriated amounts) is amended—

- (1) by striking “(a)” after “Sec. 628.”; and
- (2) by striking subsection (b).

note. p. 1758.

USC 701 note.

SEC. 5160. EFFECTIVE DATE.

Sections 5152 and 5153 shall be effective 120 days after the date of the enactment of this subtitle.

Subtitle E—President's Media Commission on Alcohol and Drug Abuse Prevention

SEC. 5201. AUTHORIZATION OF APPROPRIATIONS FOR PRESIDENT'S MEDIA COMMISSION ON ALCOHOL AND DRUG ABUSE PREVENTION.

There are authorized to be appropriated for the President's Media Commission on Alcohol and Drug Abuse Prevention—

- (1) \$1,000,000 for the fiscal year ending September 30, 1989;
 - (2) \$1,000,000 for the fiscal year ending September 30, 1990;
- and
- (3) \$1,000,000 for the fiscal year ending September 30, 1991.

Subtitle F—Drug-Free America Policy

SEC. 5251. UNITED STATES POLICY FOR A DRUG-FREE AMERICA BY 1995.

21 USC 151 note.

(a) FINDINGS.—The Congress finds that—

(1) approximately 37 million Americans used an illegal drug in the past year and more than 23 million Americans use illicit drugs at least monthly, including more than 6 million who use cocaine;

(2) half of all high school seniors have used illegal drugs at least once, and over 25 percent use drugs at least monthly;

(3) illicit drug use adds enormously to the national cost of health care and rehabilitation services;

(4) illegal drug use can result in a wide spectrum of extremely serious health problems, including disruption of normal heart rhythm, small lesions of the heart, high blood pressure, leaks of blood vessels in the brain, bleeding and destruction of brain cells, permanent memory loss, infertility, impotency, immune system impairment, kidney failure, and pulmonary damage, and in the most serious instances, heart attack, stroke, and sudden death;

(5) approximately 25 percent of all victims of AIDS acquired the disease through intravenous drug use;

(6) over 30,000 people were admitted to emergency rooms in 1986 with drug-related health problems, including nearly 10,000 for cocaine alone;

(7) there is a strong link between teenage suicide and use of illegal drugs;

(8) 10 to 15 percent of all highway fatalities involve drug use;

(9) illegal drug use is prevalent in the workplace and endangers fellow workers, national security, public safety, company morale, and production;

(10) it is estimated that 1 of every 10 American workers have their productivity impaired by substance abuse;

(11) it is estimated that drug users are 3 times as likely to be involved in on-the-job accidents, are absent from work twice as often, and incur 3 times the average level of sickness costs as non-users;

(12) the total cost to the economy of drug use is estimated to be over \$100,000,000,000 annually;

(13) the connection between drugs and crime is also well-proven;