

~~ADMINISTRATIVE~~ INTERNAL USE ONLY

29 June 1987  
OCA 87-2713

MEMORANDUM FOR THE RECORD

FROM: [redacted] Legislation Division  
Office of Congressional Affairs

SUBJECT: Drug Testing Provision in FY87 Supplemental  
Appropriations Bill

1. On 23 June 1987, [redacted] of the Office of General Counsel (OGC) and [redacted] of the Office of Personnel accompanied [redacted] and myself to the office of Bob Mills, a staff member of the Treasury, Postal Service and General Government Subcommittee of the Senate Appropriations Committee. The topic of discussion was the drug testing provision for Federal employees which appears in the FY87 Supplemental Appropriations Bill. After learning that, contrary to prior assurances, the Agency was not considered to have a drug testing plan in effect on 15 September 1986, but appeared on a list of agencies which cannot perform testing until certain criteria are met, we sought to secure an exemption and were told it was quite unlikely such would be granted.

2. Upon returning to the office, I explained what had occurred to [redacted] Deputy Director for Legislation, and (with [redacted]) to Dave Gries, Director of Congressional Affairs. Mr. Gries stated that the Agency did wish to continue its plan and wanted to be exempt from all requirements of the bill. I explained to him that the Agency was currently on a list of agencies which cannot perform testing until certain requirements have been met and the only other list in existence was one which named agencies with a plan in existence on 15 September 1986 and required compliance with the requirements of the bill and Executive order 12564 within six months. I then gave Mr. Gries the language which [redacted] had stated had been cleared by the administration and which we had earlier presented to Mr. Mills, as well as some language which could be inserted into the statement of managers and was designed to accomplish the same goal. Mr. Gries made several phone calls and learned that the bill would not interfere with the Director's authorities and that it was likely the Agency could secure an exemption.

~~ADMINISTRATIVE~~ - INTERNAL USE ONLY

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

STAT 3. Mr. Gries tasked me to coordinate with OGC to have the  
STAT Department of Justice, explained by Mr. Mills to be the lead  
agency in terms of exempting agencies, place the Agency on such  
a list. [ ] Chief of the Administrative Law  
Division/OGC, contacted Richard Willard of the Department of  
Justice who informed him that they were willing to place the  
Agency on the list. [ ] then called back to tell me that  
the Office of Management and Budget (OMB) must first contact  
the Department of Justice to grant it permission to do so. I  
informed Mr. Gries who spoke with his counterpart in OMB with  
regard to contacting the Department of Justice.

STAT 4. After another exchange of telephone calls with  
[ ] late in the day, I learned that it was his  
understanding that management did not wish to perform drug  
testing and that what the Agency currently does in this area  
may not rise to the level of a drug testing plan. I informed  
STAT him that [ ] and I were of the opinion that the Agency  
STAT does have such a plan and had informed Congress of this. I  
reported this conversation to [ ] who told me to meet  
with Mr. Gries the next day. I spoke with Mr. Gries on 24 June  
1987, and he said he would take care of the matter. Mr. Gries  
later called to tell me that the confusion had been resolved.

STAT 5. On 23 June 1987, I also told Messrs. [ ]  
STAT Gries and [ ] that the problems in not exempting the Agency  
from the requirements of the bill involved more than an erosion  
of the Director's authorities with respect to the termination  
of personnel. I pointed out that there remained the matter of  
having the Secretary of Health and Human Services and the  
Director of OMB analyze the Agency's plan, as well as having  
employees gain access to records relating to their drug tests.  
STAT On 26 June 1987, I also informed [ ] that I was concerned  
that the Agency would be placed on a list of agencies which  
must comply with the requirements of the bill and Executive  
order 12564 within six months of passage of the bill and,  
therefore, would not be viewed as totally exempt from the  
STAT bill's requirements.

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

SUBJECT: Drug Tesing Provision in FY87 Supplemental  
Appropriations Bill

Distribution:

Original - OCA Registry

1 - [ ] Signer

1 - [ ] Extra Copy

1 - OCA/LEG SUBJECT FILE: Miscellaneous Personnel

OCA/LEG: [ ] :rw (29 June 1987)

~~ADMINISTRATIVE - INTERNAL USE ONLY~~