

PUBLIC LAW 100-71 July 11, 1987

APPENDIX B

101 STAT. 468

TITLE V
GENERAL PROVISIONS

Sec. 501.

No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 502.

Except where specifically increased or decreased elsewhere in this Act, the restrictions contained within appropriations, or provisions affecting appropriations or other funds, available during fiscal year 1987, limiting the amount which may be expended for personal services, or for purposes involving personal services, or amounts which may be transferred between appropriations or authorizations available for or involving such services, are hereby increased to the extent necessary to meet increased pay costs authorized by or pursuant to law.

Sec. 503.

(Drugs and drug abuse. Government organization and employees. 5 USC 7301 note. 3 CFR, 1986 Comp., p. 224.)

(a)

(1) Except as provided in subsection (b) or (c), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564 (dated September 15, 1986), or any subsequent order, unless and until--

(A) the Secretary of Health and Human Services certifies in writing to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, that-

(i) (3 CFR, 1986 Comp., p. 224.)
each agency has developed a plan for achieving a drug-free workplace in accordance with Executive Order Numbered 12564 and applicable provisions of law (including applicable provisions of this section);

(ii) the Department of Health and Human Services, in addition to the scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, has, in accordance with paragraph (3), published mandatory guidelines which—

(I) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order Numbered 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 Numbered 12564; and

(iii) all agency drug-testing programs and plans established pursuant to Executive Order Numbered 12564 comply with applicable provisions of law, including applicable provisions of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), title 5 of the United States Code, and the mandatory guidelines under clause (ii);

(B) the Secretary of Health and Human Services has submitted to the Congress, in writing, a detailed, agency-by-agency analysis relating to—

(i) the criteria and procedures to be applied in designating employees or positions for drug testing, including the justification for such criteria and procedures;

(ii) the position titles designated for random drug testing; and

(iii) the nature, frequency, and type of drug testing proposed to be instituted; and

(C) the Director of the Office of Management and Budget has submitted in writing to the Committees on Appropriations of the House of Representatives and the Senate a detailed, agency-by-agency analysis (as of the time of certification under subparagraph (A)) of the anticipated annual costs associated with carrying out Executive Order Numbered 12564 and all other requirements under this section during the 5-year period beginning on the date of the enactment of this

Act.

(2) Notwithstanding subsection (g), for purposes of this subsection, the term "agency" means—

- (A) the Executive Office of the President;
- (B) an Executive department under section 101 of title 5, United States Code;
- (C) the Environmental Protection Agency;
- (D) the General Services Administration;
- (E) the National Aeronautics and Space Administration;
- (F) the Office of Personnel Management;
- (G) the Small Business Administration;
- (H) the United States Information Agency; and
- (I) the Veteran's Administration;

except that such term does not include the Department of Transportation or any other entity (or component thereof) covered by subsection (b).

(3)

(Federal Register, publication. 5 USC 500 et seq.)

Notwithstanding any provision of chapter 5 of title 5, United States Code, the mandatory guidelines to be published pursuant to subsection (a)(I)(A)(ii) shall be published and made effective exclusively according to the provisions of this paragraph. Notice of the mandatory guidelines proposed by the Secretary of Health and Human Services shall be published in the Federal Register, and interested persons shall be given not less than 60 days to submit written comments on the proposed mandatory guidelines. Following review and consideration of written comments, final mandatory guidelines shall be published in the Federal Register and shall become effective upon publication.

(b)

(1) Nothing in subsection (a) shall limit or otherwise affect the availability of funds for drug testing by—

(A) the Department of Transportation;

(B) Department of Energy, for employees specifically involved in the handling of nuclear weapons or nuclear materials;

(C) any agency with an agency-wide drug-testing program in existence as of September 15, 1986; or

(D) any component of an agency if such component had a drug-testing program in existence as of September 15, 1986.

(2) The Departments of Transportation and Energy and any agency or component thereof with a drug-testing program in existence as of September 15, 1986—

(A) (3 CFR, 1986 Comp., p. 324.)

shall be brought into full compliance with Executive Order Numbered 12564 no later than the end of the 6-month period beginning on the date of the enactment of this Act; and

(B) shall take such actions as may be necessary to ensure that their respective drug-testing programs or plans are brought into full compliance with the mandatory guidelines published under subsection (a)(1)(A)(ii) no later than 90 days after such mandatory guidelines take effect, except that any judicial challenge that affects such guidelines should not affect drug-testing programs or plans subject to this paragraph.

(c) In the case of an agency (or component thereof) other than an agency as defined by subsection (a)(2) or an agency (or component thereof) covered by subsection (b), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564, or any subsequent order, unless and until—

(1) the Secretary of Health and Human Services provides written certification with respect to that agency (or component) in accordance with clauses (i) and (iii) of subsection (a)(1)(A);

(2) the Secretary of Health and Human Services has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(B); and

(3) the Director of the Office of Management and Budget has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(C).

(d) Any Federal employee who is the subject of a drug test under any program or plan shall, upon written request, have access to—

- (1) any records relating to such employee's drug test; and
- (2) any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings, as referred to in subsection (a)(1)(A)(ii)(III).

(e) (Classified information.)

The results of a drug test of a Federal employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be—

- (1) to the employee's medical review official (as defined in the scientific and technical guidelines referred to in subsection (a)(1)(A)(ii));
- (2) to the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;
- (3) to any supervisory or management official within the employee's agency having authority to take the adverse personnel action against such employee; or
- (4) pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

(f) (Reports. 3 CFR, 1986 Comp., p. 224.)

Each agency covered by Executive Order Numbered 12564 shall submit to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, an annual report relating to drug-testing activities conducted by such agency pursuant to such executive order. Each such annual report shall be submitted at the time of the President's budget submission to the Congress under section 1105(a) of title 31, United States Code.

(g) For purposes of this section, the terms "agency" and "Employee Assistance Program" each has the meaning given such term under section 7(b) of Executive Order Numbered 12564, as in effect on September 15, 1986.

Sec. 504. None of the funds appropriated by this Act may be obligated for the centralization, consolidation, or redeployment of the Customs Service Air Operations unless the Secretary of the Treasury submits a report to the Committees on Appropriations which sets forth specific details for the use of such funds thirty days in advance of such implementation.

Sec. 505. (Vessels.)

None of the funds appropriated or made available by this or any other Act or otherwise appropriated or made available to the Secretary of Transportation or the Maritime Administrator for purposes of administering the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et seq.), shall be used by the United States Department of Transportation or the United States Maritime Administration to propose, promulgate, or implement any rule or regulation, or, with regard to vessels which repaid subsidy pursuant to the rule promulgated by the Secretary May 3, 1985 and vacated by Order of the U.S. Court of Appeals for the D.C. Circuit January 16, 1987, conduct any adjudicatory or other regulatory proceeding, execute or perform any contract, or participate in any judicial action with respect to the repayment of construction differential subsidy for the permanent release of vessels from the restrictions in section 506 of the Merchant Marine Act, 1936, as amended: Provided, That such funds may be used to the extent such expenditure relates to a rule which conforms to statutory standards hereafter enacted by Congress. (46 USC 1156.)

Sec. 506. Notwithstanding any other provision of this Act, appropriations made by the title I of this Act for the following account shall be as follows