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Counsel's Office, White House

Newstead, Jennifer (Jen)

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W	20	20	5	2	9825	22688	2230	2318

Folder Title:

Sarbanes Passed Bill [5]

Withdrawn/Redacted Material

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Report	Senate Floor Action on Corporate Responsibility	3	07/10/2002	P5;
002	Report	Corporate Governance	2	07/03/2002	P5;
003	Handwritten Note	[Handwritten Notes]	1	N.D.	P5;
004	Report	Chairman Leahy's S.2010...	2	N.D.	P5;
005	Memorandum	Corporate Responsibility Speech - To: Joshua Bolten - From: Marc Sumerlin	3	07/02/2002	P5;
006	Report	Obstruction of Justice	5	07/02/2002	P5;
007	Draft	[Legislation with Notes]	3	N.D.	P5;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Newstead, Jennifer (Jen)

FOLDER TITLE:

Sarbanes Passed Bill [5]

FRC ID:

9825

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Release to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

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

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JW Chart - internal only

Board Action	Confidentiality Provisions	Disclosure to the SEC and State regulators	Disclosure to the Public	Other
Acts or practices of accounting firms discovered during Board inspections (Sec. 104(c))	None	"If appropriate," the Board reports acts or omissions of audit firms to the SEC and "each appropriate state regulatory authority (104(c)(2))"	None	Note that this information will likely be included in the written report on an inspection (see next row)
Written reports of findings of inspections by the Board of audit firms, and related underlying material provided to the Board in conducting inspections (Sec. 104)	(i) Reports of inspections are made public subject to the protection of confidential and proprietary information as the Board deems appropriate, or as required by law; except that criticisms in the Report that are addressed by the Firm to the Board's satisfaction within 12 months are not made public. (104(g)(2)) (ii) Documents and information prepared or received by or specifically for the Board in performing an inspection and deliberations of the Board, are privileged against disclosure in any court or administrative proceeding, and from agency disclosure under FOIA or otherwise, until (a) "presented in connection with a public proceeding" or (b) released in a public hearing in a disciplinary action (which requires consent of the parties) (104(g)(2) (x-ref 105(b)(5)(A))) (iii) Firm's response to draft report (which is automatically attached to the report) will be redacted for contents "reasonably identified by the accounting firm as confidential" (104(f))	Report transmitted to the Commission and appropriate State regulatory authorities, together with Board comments and Firm response (104(g)(1)); however, this is "subject" to the provisions for interim Commission review of Firm disagreements with the report under 104(h). It is not clear whether interim Commission review operates to stay state or public disclosure of the report.	Reports are made available "in appropriate detail" to the public, subject to the confidentiality provisions described at left.	Scope of inspection authority includes compliance by the firm in connection with "this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers." 104(a).

Information received by the Board in conducting investigations of audit firms (Sec. 105)	(i) Documents and information prepared or received by or specifically for the Board in performing an investigation [this can include information and testimony from the Firm and its clients] and deliberations of the Board, are privileged against disclosure in any court or administrative proceeding, and from agency disclosure under FOIA or otherwise, until (a) “presented in connection with a public proceeding” or (b) released in a public hearing in a disciplinary action (which requires consent of the parties) (105(b)(5)(A)). [Though the drafting is not clear, the import of the “public proceeding” language seems to be that the Board and other Federal agencies may not be forced to produce the information pursuant to FOIA and that the firm or any associated person to whom the documents and information belong may assert its confidentiality and privilege in any third party proceeding in which a third party attempts to subpoena or otherwise force production of the material; however, it also may mean that the information’s confidential status is lost if the material is used by the Board or another government agency in the course of any public proceeding (and that they are free to do that).] (ii) Notwithstanding the above, in the Board’s discretion, when necessary to accomplish the purposes of the Act and without losing its confidential and privileged status, such information can be made available to the Commission, the Attorney General, federal regulators, State attorneys general in connection with criminal investigations, and state regulators, (one or all of which – drafting is unclear -- must maintain its privileged status).	Board can refer investigations to (i) the Commission, (ii) other Federal regulators, and (iii) at the Commission’s direction, U.S. or state attorneys general and state regulatory authorities. 105(b)(4) Special provisions (described at left) apply to retain the confidentiality of information provided to the AG or state AGs and regulators (105(b)(5)(B))	Information described at left can be made public through (i) presentation in a “public proceeding” or (ii) through a public disciplinary hearing which requires consent of the parties (105(b)(5)(A), (c)(2))	(i) Note that the Subpoena provision (105(b)(2)(D)) is ambiguous with respect to the degree of SEC discretion to refuse to subpoena information (including client information) sought by the Board; the Board may only “seek” a Commission subpoena, but the Commission may only determine “the manner” by which subpoenas can be sought.
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Sanctions imposed by the Board following investigations of Firms (105(d))	Sanctions imposed by the Board are disclosable as set forth at right. Disclosure includes the party's name, the nature of the sanction and "such other information as the Board deems appropriate." (105(d)(2)) Public disclosure is subject to any stay on imposition of the sanction, in the Commission's discretion.	Sanctions imposed are reported to the Commission and any appropriate State regulatory authority or foreign licensing board. (105(d)(2))	Sanctions are publicly reportable once any stay on the sanction has been lifted. (105(d)(1). Stays are automatic on application to the Commission for review of a sanction. The Commission has discretion to determine the length of the stay (and thus the timing of public release). (105(e)(1)).	
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Source: [All Sources > Federal Legal - U.S. > USCS - United States Code Service; Code, Const, Rules, Conventions & Public Laws](#) **i**

TOC: [United States Code Service; Code, Const, Rules, Conventions & Public Laws > /.../ > CHAPTER 31. THE ATTORNEY GENERAL > § 509. Functions of the Attorney General](#)

Terms: "special counsel" and "financial institutions fraud" ([Edit Search](#))

28 USCS § 509

UNITED STATES CODE SERVICE
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*** CURRENT THROUGH P.L. 107-178, APPROVED 5/17/02 ***
*** WITH GAPS OF 107-171 and 107-173 ***

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE PART II. DEPARTMENT OF JUSTICE CHAPTER 31. THE ATTORNEY GENERAL

♦ GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

28 USCS § 509 (2002)

§ 509. Functions of the Attorney General

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions--

- (1) vested by subchapter II of chapter 5 of title 5 [[5 USCS §§ 551 et seq.](#)] in administrative law judges employed by the Department of Justice;
- (2) of the Federal Prison Industries, Inc.; and
- (3) of the Board of Directors and officers of the Federal Prison Industries, Inc.[.]

HISTORY:

(Sept. 6, 1966, P.L. 89-554, § 4(c), 80 Stat. 612; March 27, 1978, P.L. 95-251, § 2(a)(6), 92 Stat. 183; Oct. 12, 1984, P.L. 98-473, Title II, Ch II, § 228(a), 98 Stat. 2030.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	[Uncodified].	1950 Reorg. Plan No. 2, S 1, eff. May 24, 1950, 64 Stat. 1261.

The section is restated to allow incorporation into this chapter.

For Reviser's Note covering former section 507, upon which this section is partially derived, see Reviser's Note set out under section 547 of this title.

Explanatory notes:

A prior § 509 (Act June 25, 1948, ch 646, § 1, 62 Stat. 910) was repealed by Act Sept. 6, 1966, P.L. 89-554, § 8, 80 Stat. 663. It provided for expenses of United States attorneys. For similar provisions, see 28 USCS § 549.

The second period in para. (3) has been enclosed in brackets to indicate the probable intention of Congress to omit such punctuation in the 1984 amendment of such paragraph.

Amendments:

1978. Act March 27, 1978, purported to amend "section 509(i) of title 28" by substituting "administrative law judges" for "hearing examiners"; however, such amendment was executed to para. (1) of this section to reflect the probable intent of Congress.

1984. Act Oct. 12, 1984 (effective as provided by § 235 of such Act, which appears as 18 USCS § 3551 note), in para. (2), inserted "and", in para. (3), substituted a period for "; and"; and deleted para. (4), which read: "of the Board of Parole."

Other provisions:

Ex. Or. No. 11310. Ex. Or. No. 11310 of Oct. 11, 1966, 31 Fed. Reg. 13199, was revoked by Ex. Or. No. 11490 of Oct. 28, 1969, 34 Fed. Reg. 17567, which appears as 50 USCS Appx. 2251 note. Such Ex. Or. provided for the emergency preparedness functions of the Attorney General.

REORGANIZATION PLAN NO. 1 of 1968

Effective April 8, 1968, 33 Fed. Reg. 6511, 82 Stat. 1367; as amended Reorg. Plan No. 2 of 1973, § 3, eff. July 1, 1973, 38 Fed. Reg. 15932, 87 Stat. 1091.

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled Feb. 7, 1968, pursuant to the provisions of chapter 9 of title 5 of the United States Code [5 USCS §§ 901 et seq.].

Narcotics; Drug Abuse Control

Section 1. Transfer of functions from Treasury Department.

There are hereby transferred to the Attorney General:

(a) Those functions of the Secretary of the Treasury which are administered through or with respect to the Bureau of Narcotics.

(b) All functions of the Bureau of Narcotics, of the Commissioner of Narcotics, and of all other officers, employees and agencies of the Bureau of Narcotics.

(c) So much of other functions or parts of functions of the Secretary of the Treasury and the Department of the Treasury as is incidental to or necessary for the performance of the functions transferred by paragraphs (a) and (b) of this section.

Sec. 2. Transfer of functions from the Department of Health, Education, and Welfare.

There are hereby transferred to the Attorney General:

(a) The functions of the Secretary of Health, Education, and Welfare under the Drug Abuse Control Amendments of 1965 (Public Law 89-74; 79 Stat. 226) [generally amending 21 USCS §§ 301 et seq.; for full classification consult USCS Tables volumes] except the function of regulating the counterfeiting of those drugs which are not controlled "depressant or stimulant" drugs.

(b) So much of other functions or parts of functions of the Secretary of Health, Education, and Welfare, and of the Department of Health, Education, and Welfare, as is incidental to or necessary for the performance of the functions transferred by paragraph (a) of this section.

Sec. 3. Bureau of Narcotics and Dangerous Drugs.

(a) [Repealed]

(b) There are hereby established in the Department of Justice, in addition to the positions transferred to that Department by this Plan, four new positions, appointment to which shall be made by the Attorney General in the competitive service. Two of those positions shall have compensation at the rate now or hereafter provided for GS-18 positions of the General Schedule and the other two shall have compensation at the rate now or hereafter provided for GS-16 positions of the General Schedule (5 U.S.C. 5332). Each such position shall have such title and duties as the Attorney General shall prescribe.

Sec. 4. Abolition.

The Bureau of Narcotics in the Department of the Treasury, including the office of Commissioner of Narcotics (21 U.S.C. 161) [former 21 USCS § 161], is hereby abolished. The Secretary of the Treasury shall make such provision as he may deem necessary with respect to terminating those affairs of the Bureau of Narcotics not otherwise provided for in this reorganization plan.

Sec. 5. Performance of transferred functions.

The Attorney General may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any officer, employee, or organizational entity of the Department of Justice.

Sec. 6. Incidental transfers.

(a) There are hereby transferred to the Department of Justice all of the positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds, available or to be made available, (1) of the Bureau of Narcotics, and (2) of the Bureau of Drug Abuse Control of the Department of Health, Education, and Welfare.

(b) There shall be transferred to the Department of Justice, at such time or times as the Director of the Bureau of the Budget shall direct, so much as the Director shall determine of other positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds of the Department of the Treasury and of the Department of Health, Education, and Welfare employed, used, held, available or to be made available in connection with functions transferred by the provisions of this reorganization plan.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided in this section shall be carried out in such manner as he may direct and by such agencies as he shall designate.

Message of the President. To the Congress of the United States:

In my first Reorganization Plan of 1968, I call for the creation of a new and powerful Bureau of Narcotics and Dangerous Drugs.

With this action, America will serve notice to the pusher and the peddler that their criminal acts must stop.

No matter how well organized they are, we will be better organized. No matter how well they have concealed their activities, we will root them out.

Today, Federal investigation and enforcement of our narcotics laws are fragmented. One major element--the Bureau of Narcotics--is in the Treasury Department and responsible for the control of marihuana and narcotics such as heroin. Another--the Bureau of Drug Abuse Control--is in the Department of Health, Education, and Welfare, and is responsible for the control of dangerous drugs including depressants, stimulants, and hallucinogens such as LSD.

Neither is located in the agency which is primarily concerned with Federal law enforcement--the Department of Justice.

This separation of responsibilities--despite the relentless and dedicated efforts of the agents of each Bureau--has complicated and hindered our response to a national menace.

For example, more than nine out of ten seizures of LSD made by the Bureau of Drug Abuse Control have also turned up marihuana--but that Bureau has no jurisdiction over marihuana.

In many instances, we are confronted by well organized disciplined and resourceful criminals who reap huge profits at the expense of their unfortunate victims.

The response of the Federal Government must be unified. And it must be total.

Today, in my Message on Crime, I recommended strong new laws to control dangerous drugs. I also recommended an increase of more than thirty percent in the number of Federal agents enforcing the narcotic and dangerous drug laws.

I now propose that a single Bureau of Narcotics and Dangerous Drugs be established in the Department of Justice to administer those laws and to bring to the American people the most efficient and effective Federal enforcement machinery we can devise.

Under this Reorganization Plan the Attorney General will have full authority and responsibility for enforcing the Federal laws relating to narcotics and dangerous drugs. The new Bureau of Narcotics and Dangerous Drugs, to be headed by a Director appointed by the Attorney General, will:

. consolidate the authority and preserve the experience and manpower of the Bureau of

Narcotics and the Bureau of Drug Abuse Control.

- . work with states and local governments in their crackdown on illegal trade in drugs and narcotics, and help to train local agents and investigators.

- . maintain worldwide operations, working closely with other nations, to suppress the trade in illicit narcotics and marihuana.

- . conduct an extensive campaign of research and a nationwide public education program on drug abuse and its tragic effects.

The Plan I forward today moves in the direction recommended by two distinguished groups: . 1949 Hoover Commission. . the 1963 Presidential Advisory Commission on Narcotic and Drug Abuse.

This Administration and this Congress have the will and the determination to stop the illicit traffic in drugs.

But we need more than the will and the determination. We need a modern and efficient instrument of Government to transform our plans into action. That is what this Reorganization Plan calls for.

The Plan has been prepared in accordance with chapter 9 of title 5 of the United States Code.

I have found, after investigation, that each reorganization included in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code.

I have also found that, by reason of these reorganizations, it is necessary to include in the accompanying plan provisions for the appointment and compensation of the five new positions as specified in section 3 of the plan. The rates of compensation fixed for these new positions are those which I have found to prevail in respect of comparable positions in the Executive Branch of the Government.

Should the reorganization I propose take effect, they will make possible more effective and efficient administration of Federal law enforcement functions. It is not practicable at this time, however, to itemize the reduction in expenditures which may result.

I recommend that the Congress allow this urgently needed and important Reorganization Plan to become effective.

Lyndon B. Johnson.

REORGANIZATION PLAN NO. 2 of 1973

Effective July 1, 1973, 38 Fed. Reg. 15932, 87 Stat. 1091; as amended Act March 16, 1974, P.L. 93-253, § 1, 99 Stat. 50.

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 28, 1973, pursuant to the provisions of chapter 9 of title 5 of the United States Code [5 USCS §§ 901 et seq.].

Law Enforcement in Illicit Drug Activities

Section 1. Transfers to the Attorney General.

There are hereby transferred from the Secretary of the Treasury, the Department of the Treasury, and any other officer or any agency of the Department of the Treasury, to the Attorney General all intelligence, investigative, and law enforcement functions, vested by law in the Secretary, the Department, officers, or agencies which relate to the suppression of illicit traffic in narcotics, dangerous drugs, or marihuana, except that the Secretary shall retain, and continue to perform, those functions, to the extent that they relate to searches and seizures of illicit narcotics, dangerous drugs, or marihuana or to the apprehension or detention of persons in connection therewith, at regular inspection locations at ports of entry or anywhere along the land or water borders of the United States: Provided, that any illicit narcotics, dangerous drugs, marihuana, or related evidence seized, and any person apprehended or detained by the Secretary or any officer of the Department of the Treasury, pursuant to the authority retained in them by virtue of this section, shall be turned over forthwith to the jurisdiction of the Attorney General: Provided further, that nothing in this section shall be construed as limiting in any way any authority vested by law in the Secretary of the Treasury, the Department of the Treasury, or any other officer or any agency of that

Department on the effective date of this Plan with respect to contraband other than illicit narcotics, dangerous drugs, and marihuana: and Provided further, that nothing in this section shall be construed as limiting in any way any authority the Attorney General, the Department of Justice, or any other officer or any agency of that Department may otherwise have to make investigations or engage in law enforcement activities, including activities relating to the suppression of illicit traffic in narcotics, dangerous drugs, and marihuana, at ports of entry or along the land and water borders of the United States.

Sec. 2. [Repealed]

Sec. 3. Abolition.

The Bureau of Narcotics and Dangerous Drugs, including the Office of Director thereof, is hereby abolished, and section 3(a) of Reorganization Plan No. 1 of 1968 [note to this section] is hereby repealed. The Attorney General shall make such provision as he may deem necessary with respect to terminating those affairs of the Bureau of Narcotics and Dangerous Drugs not otherwise provided for in this Reorganization Plan.

Sec. 4. Drug Enforcement Administration.

There is established in the Department of Justice an agency which shall be known as the Drug Enforcement Administration, hereinafter referred to as "the Administration."

Sec. 5. Officers of the Administration.

(a) There shall be at the head of the Administration the Administrator of Drug Enforcement, hereinafter referred to as "the Administrator." The Administrator shall be appointed by the President by and with the advice and consent of the Senate, and shall receive compensation at the rate now or hereafter prescribed by law for positions of level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). He shall perform such functions as the Attorney General shall from time to time direct.

(b) There shall be in the Administration a Deputy Administrator of the Drug Enforcement Administration, hereinafter referred to as "the Deputy Administrator," who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions as the Attorney General may from time to time direct, and shall receive compensation at the rate now or hereafter prescribed by law for positions of level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(c) The Deputy Administrator or such other official of the Department of Justice as the Attorney General shall from time to time designate shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

Sec. 6. Performance of transferred functions.

The Attorney General may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this Reorganization Plan by any officer, employee, or agency of the Department of Justice.

Sec. 7. Coordination.

The Attorney General, acting through the Administrator and such other officials of the Department of Justice as he may designate, shall provide for the coordination of all drug law enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among the Administration, the Federal Bureau of Investigation, and other units of the Department involved in the performance of these and related functions.

Sec. 8. Incidental transfers

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Attorney General and to the Secretary of the Treasury by this Reorganization Plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Department of Justice and to the Department of the Treasury, respectively, at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such Federal agencies as he shall designate.

Sec. 9. Interim Officers.

(a) The President may authorize any person who, immediately prior to the effective date of this Reorganization Plan, held a position in the Executive Branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect to which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

Sec. 10. Effective date.

The provisions of this Reorganization Plan shall take effect as provided by section 906(a) of title 5 of the United States Code or on July 1, 1973, whichever is later.

Message of the President. To the Congress of the United States:

Drug abuse is one of the most vicious and corrosive forces attacking the foundations of American society today. It is a major cause of crime and a merciless destroyer of human lives. We must fight it with all of the resources at our command.

This Administration has declared all-out, global war on the drug menace. As I reported to the Congress earlier this month in my State of the Union message, there is evidence of significant progress on a number of fronts in that war.

Both the rate of new addiction to heroin and the number of narcotic-related deaths showed an encouraging downturn last year. More drug addicts and abusers are in treatment and rehabilitation programs than ever before.

Progress in pinching off the supply of illicit drugs was evident in last year's stepped-up volume of drug seizures worldwide--which more than doubled in 1972 over the 1971 level.

Arrests of traffickers have risen by more than one-third since 1971. Prompt Congressional action on my proposal for mandatory minimum sentences for pushers of hard drugs will help ensure that convictions stemming from such arrests lead to actual imprisonment of the guilty.

Notwithstanding these gains, much more must be done. The resilience of the international drug trade remains grimly impressive--current estimates suggest that we still intercept only a small fraction of all the heroin and cocaine entering this country. Local police still find that more than one of every three suspects arrested for street crimes is a narcotic abuser or addict. And the total number of Americans addicted to narcotics, suffering terribly themselves and inflicting their suffering in countless others, still stands in the hundreds of thousands.

A Unified Command for Drug Enforcement

Seeking ways to intensify our counter-offensive against this menace, I am asking the Congress today to join with this Administration in strengthening and streamlining the Federal drug law enforcement effort.

Funding for this effort has increased sevenfold during the past five years, from \$ 36 million in fiscal year 1969 to \$ 257 million in fiscal year 1974--more money is not the most pressing enforcement need at present. Nor is there a primary need for more manpower working on the problem, over 2100 new agents having already been added to the Federal drug enforcement agencies under this Administration, an increase of more than 250 percent over the 1969 level.

The enforcement work could benefit significantly, however, from consolidation of our anti-drug forces under a single unified command. Right now the Federal Government is fighting the war on drug abuse under a distinct handicap, for its efforts are those of a loosely confederated alliance facing a resourceful, elusive, worldwide enemy. Admiral Mahan, the master naval strategist, described this handicap precisely when he wrote that "Granting the same aggregate of force, it is never as great in two hands as in one, because it is not perfectly concentrated."

More specifically, the drug law enforcement activities of the United States now are not merely in two hands but in half a dozen. Within the Department of Justice, with no overall direction below the level of the Attorney General, these fragmented forces include the Bureau

of Narcotics and Dangerous Drugs, the Office for Drug Abuse Law Enforcement, the Office of National Narcotics Intelligence, and certain activities of the Law Enforcement Assistance Administration. The Treasury Department is also heavily engaged in enforcement work through the Bureau of Customs.

This aggregation of Federal activities has grown up rapidly over the past few years in response to the urgent need for stronger anti-drug measures. It has enabled us to make a very encouraging beginning in the accelerated drug enforcement drive of this Administration.

But it also has serious operational and organizational shortcomings. Certainly the cold-blooded underworld networks that funnel narcotics from suppliers all over the world into the veins of American drug victims are no respecters of the bureaucratic dividing lines that now complicate our anti-drug efforts. On the contrary, these modern-day slave traders can derive only advantage from the limitations of the existing organizational patchwork. Experience has now given us a good basis for correcting those limitations, and it is time to do so.

I therefore propose creation of a single, comprehensive Federal agency within the Department of Justice to lead the war against illicit drug traffic.

Reorganization Plan No. 2 of 1973, which I am transmitting to the Congress with this message, would establish such an agency, to be called the Drug Enforcement Administration. It would be headed by an Administrator reporting directly to the Attorney General.

The Drug Enforcement Administration would carry out the following anti-drug functions, and would absorb the associated manpower and budgets:

- . All functions of the Bureau of Narcotics and Dangerous Drugs (which would be abolished as a separate entity by the reorganization plan);

- . Those functions of the Bureau of Customs pertaining to drug investigations and intelligence (to be transferred from the Treasury Department to the Attorney General by the reorganization plan).

- . All functions of the Office of Drug Abuse Law Enforcement; and

- . All functions of the Office of National Narcotics Intelligence.

Merger of the latter two organizations into the new agency would be effected by an executive order dissolving them and transferring their functions, to take effect upon approval of Reorganization Plan No. 2 by the Congress. Drug law enforcement research currently funded by the Law Enforcement Assistance Administration and other agencies would also be transferred to the new agency by executive action.

The major responsibility of the Drug Enforcement Administration would thus include:

- . development of overall Federal drug law enforcement strategy, programs, planning, and evaluation;

- . full investigation and preparation for prosecution of suspects for violations under all Federal drug trafficking laws;

- . full investigation and preparation for prosecution of suspects connected with illicit drugs seized at U.S. ports-of-entry and international borders;

- . conduct of all relations with drug law enforcement officials of foreign governments, under the policy guidance of the Cabinet Committee on International Narcotics Control;

- . full coordination and cooperation with State and local law enforcement officials on joint drug enforcement efforts; and

- . regulation of the legal manufacture of drugs and other controlled substances under Federal regulations.

The Attorney General, working closely with the Administrator of this new agency, would have authority to make needed program adjustments. He would take steps within the Department of Justice to ensure that high priority emphasis is placed on the prosecution and sentencing of drug traffickers following their apprehension by the enforcement organization. He would also have the authority and responsibility for securing the fullest possible cooperation-particularly with respect to collection of drug intelligence--from all Federal departments and agencies which can contribute to the anti-drug work, including the Internal Revenue Service and the Federal Bureau of Investigation.

My proposals would make possible a more effective antidrug role for the FBI, especially in dealing with the relationship between drug trafficking and organized crime. I intend to see that the resources of the FBI are fully committed to assist in supporting the new Drug Enforcement Administration.

The consolidation effected under Reorganization Plan No. 2 would reinforce the basic law enforcement and criminal justice mission of the Department of Justice. With worldwide drug law enforcement responsibilities no longer divided among several organizations in two different Cabinet departments, more complete and cumulative drug law enforcement intelligence could be compiled. Patterns of international and domestic illicit drug production, distribution, and sale could be more directly compared and interpreted. Case-by-case drug law enforcement activities could be more comprehensively linked, cross-referenced, and coordinated into a single, organic enforcement operation. In short, drug law enforcement officers would be able to spend more time going after the traffickers and less time coordinating with one another.

Such progress could be especially helpful on the international front. Narcotics control action plans, developed under the leadership of the Cabinet Committee on International Narcotics Control, are now being carried out by U.S. officials in cooperation with host governments in 59 countries around the world. This wide-ranging effort to cut off drug supplies before they ever reach U.S. borders or streets is just now beginning to bear fruit. We can enhance its effectiveness, with little disruption of ongoing enforcement activities, by merging both the highly effective narcotics force of overseas Customs agents and the rapidly developing international activities of the Bureau of Narcotics and Dangerous Drugs into the Drug Enforcement Administration. The new agency would work closely with the Cabinet Committee under the active leadership of the U.S. Ambassador in each country where anti-drug programs are underway.

Two years ago, when I established the Special Action Office for Drug Abuse Prevention within the Executive Office of the President, we gained an organization with the necessary resources, breadth, and leadership capacity to begin dealing decisively with the "demand" side of the drug abuse problem--treatment and rehabilitation for those who have been drug victims, and preventive programs for potential drug abusers. This year, by permitting my reorganization proposals to take effect, the Congress can help provide a similar capability on the "supply" side. The proposed Drug Enforcement Administration, working as a team with the Special Action Office, would arm Americans with a potent one-two punch to help us fight back against the deadly menace of drug abuse. I ask full Congressional cooperation in its establishment.

Improving Port-of-Entry Inspections

No heroin or cocaine is produced within the United States; domestic availability of these substances results solely from their illegal importation. The careful and complete inspection of all persons and goods coming into the United States is therefore an integral part of effective Federal drug law enforcement.

At the present time, however, Federal responsibility for conducting port-of-entry inspections is awkwardly divided among several Cabinet departments. The principal agencies involved are the Treasury Department's Bureau of Customs, which inspects goods, and the Justice Department's Immigration and Naturalization Service, which inspects persons and their papers. The two utilize separate inspection procedures, hold differing views of inspection priorities, and employ dissimilar personnel management practices.

To reduce the possibility that illicit drugs will escape detection at ports-of-entry because of divided responsibility, and to enhance the effectiveness of the Drug Enforcement Administration, the reorganization plan which I am proposing today would transfer to the Secretary of the Treasury all functions currently vested in Justice Department officials to inspect persons, or the documents of persons.

When the plan takes effect, it is my intention to direct the Secretary of the Treasury to use the resources so transferred--including some 1,000 employees of the Immigration and Naturalization Service--to augment the staff and budget of the Bureau of Customs. The Bureau's primary responsibilities would then include:

- . inspection of all persons and goods entering the United States;
- . valuation of goods being imported, and assessment of appropriate tariff duties;
- . interception of contraband being smuggled into the United States;
- . enforcement of U.S. laws governing the international movement of goods, except the investigation of contraband drugs and narcotics; and

turning over the investigation responsibility for all drug law enforcement cases to the Department of Justice.

The reorganization would thus group most port-of-entry inspection functions in a single Cabinet department. It would reduce the need for much day-to-day interdepartmental coordination, allow more efficient staffing at some field locations, and remove the basis for damaging interagency rivalries. It would also give the Secretary of the Treasury the authority and flexibility to meet changing requirements in inspecting the international flow of people and goods. An important by-product of the change would be more convenient service for travellers entering and leaving the country.

For these reasons, I am convinced that inspection activities at U.S. ports-of-entry can more effectively support our drug law enforcement efforts if concentrated in a single agency. The processing of persons at ports-of-entry is too closely interrelated with the inspection of goods to remain organizationally separated from it any longer. Both types of inspections have numerous objectives besides drug law enforcement, so it is logical to vest them in the Treasury Department, which has long had the principal responsibility for port-of-entry inspection of goods, including goods being transported in connection with persons. As long as the inspections are conducted with full awareness of related drug concerns it is neither necessary nor desirable that they be made a responsibility of the primary drug enforcement organization.

Declarations

After investigation, I have found that each action included in Reorganization Plan No. 2 of 1973 is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. In particular, the plan is responsive of the intention of the Congress as expressed in Section 901(a)(1): "to promote better execution of the laws, more effective management of the executive branch and of its agencies and functions, and expeditious administration of the public business;" Section 901(a)(3): "to increase the efficiency of the operations of the Government to the fullest extent practicable;" Section 901(a)(5) "to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions as may not be necessary for the efficient conduct of the Government;" and Section 901(a)(6): "to eliminate overlapping and duplication of effort."

As required by law, the plan has one logically consistent subject matter: consolidation of Federal drug law enforcement activities in a manner designed to increase their effectiveness.

The plan would establish in the Department of Justice a new Administration designated as the Drug Enforcement Administration. The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in Section 5 of the plan. The rates of compensation fixed for these officers would be comparable to those fixed for officers in the executive branch who have similar responsibilities.

While it is not practicable to specify all of the expenditure reductions and other economies which may result from the actions proposed, some savings may be anticipated in administrative costs now associated with the functions being transferred and consolidated.

The proposed reorganization is a necessary step in upgrading the effectiveness of our Nation's drug law enforcement effort. Both of the proposed changes would build on the strengths of established agencies, yielding maximum gains in the battle against drug abuse with minimum loss of time and momentum in the transition.

I am confident that this reorganization plan would significantly increase the overall efficiency and effectiveness of the Federal Government. I urge the Congress to allow it to become effective.

Richard Nixon.

Transfer of functions to Drug Enforcement Administration. Ex. Or. No. 11727 of July 6, 1973, 38 Fed. Reg. 18357, provided:

Reorganization Plan No. 2 of 1973, which becomes effective on July 1, 1973, among other things establishes a Drug Enforcement Administration in the Department of Justice. In my message to the Congress transmitting that plan, I stated that all functions of the Office for Drug Abuse Law Enforcement (established pursuant to Executive Order No. 11641 of January

28, 1972) and the Office of National Narcotics Intelligence (established pursuant to Executive Order No. 11676 of July 27, 1972) would, together with other related functions, be merged in the new Drug Enforcement Administration.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and laws of the United States, including section 5317 of title 5 of the United States Code, [5 USCS § 5317] as amended, it is hereby ordered as follows:

Section 1. The Attorney General, to the extent permitted by law, is authorized to coordinate all activities of executive branch departments and agencies which are directly related to the enforcement of laws respecting narcotics and dangerous drugs. Each department and agency of the Federal Government shall, upon request and to the extent permitted by law, assist the Attorney General in the performance of functions assigned to him pursuant to this order, and the Attorney General may, in carrying out those functions, utilize the services of any other agencies, Federal and State, as may be available and appropriate.

Sec. 2. Executive Order No. 11641 of January 28, 1972, is revoked and the Attorney General shall provide for the reassignment of the functions of the Office for Drug Abuse Law Enforcement and for the abolishment of that Office.

Sec. 3. Executive Order No. 11676 of July 27, 1972, is hereby revoked and the Attorney General shall provide for the reassignment of the functions of the Office of National Narcotics Intelligence and for the abolishment of that Office.

Sec. 4. Section 1 of Executive Order No. 11708 of March 23, 1973, as amended, placing certain positions in level IV of the Executive Schedule is hereby further amended by deleting-

- (1) "(6) Director, Office for Drug Abuse Law Enforcement, Department of Justice."; and
- (2) "(7) Director, Office of National Narcotics Intelligence, Department of Justice."

Sec. 5. The Attorney General shall provide for the winding up of the affairs of the two offices and for the reassignment of their functions.

Sec. 6. This order shall be effective as of July 1, 1973.

Positions in Drug Enforcement Administration; grades excepted from competitive service; vacancies; removal, suspension, or reduction in rank or pay; rate of pay. Act Oct. 15, 1976, P.L. 94-503, Title II, § 201, 90 Stat. 2425, provided:

"(a) Effective beginning one year after date of the enactment of this Act [enacted Oct. 15, 1976], the following positions in the Drug Enforcement Administration (and individuals holding such positions) are hereby excepted from the competitive service:

"(1) positions at GS-16, 17, and 18 of the General Schedule under section 5332(a) of title 5, United States Code, and

"(2) positions at GS-15 of the General Schedule which are designated as--

"(A) regional directors,

"(B) office heads, or

"(C) executive assistants (or equivalent positions) under the immediate supervision of the Administrator (or the Deputy Administrator) of the Drug Enforcement Administration.

"(b) Effective during the one year period beginning on the date of the enactment of this Act [enacted Oct. 15, 1976], vacancies in positions in the Drug Enforcement Administration (other than positions described in subsection (a)) at a grade not lower than GS-14 shall be filled--

"(1) first, from applicants who have continuously held positions described in subsection (a) since the date of the enactment of this Act [enacted Oct. 15, 1976] and who have applied for, and are qualified to fill, such vacancies, and

"(2) then, from other applicants in the order which would have occurred in the absence of this subsection.

Any individual placed in a position under paragraph (1) shall be paid in accordance with subsection (d).

"(c)

(1) Effective beginning one year after the date of the enactment of this Act [enacted Oct. 15, 1976], an individual in a position described in subsection (a) may be removed, suspended for more than 30 days, furloughed without pay, or reduced in rank or pay by the Administrator of the Drug Enforcement Administration if--

"(A) such individual has been employed in the Drug Enforcement Administration for

less than the one-year period immediately preceding the date of such action, and

"(B) the Administrator determines, in his discretion, that such action would promote the efficiency of the service.

"(2) Effective beginning one year after the date of the enactment of this Act [enacted Oct. 15, 1976], an individual in a position described in subsection (a) may be reduced in rank or pay by the Administrator within the Drug Enforcement Administration if--

"(A) such individual has been continuously employed in such position since the date of the enactment of this Act [enacted Oct. 15, 1976], and

"(B) the Administrator determines, in his discretion, that such action would promote the efficiency of the service.

Any individual reduced in rank or pay under this paragraph shall be paid in accordance with subsection (d).

"(3) The provisions of sections 7512 and 7701 of title 5, United States Code, and otherwise applicable Executive orders, shall not apply with respect to actions taken by the Administrator under paragraph (1) or any reduction in rank or pay (under paragraph (2) or otherwise) of any individual in a position described in subsection (a).

"(d) Any individual whose pay is to be determined in accordance with this subsection shall be paid basic pay at the rate of basic pay he was receiving immediately before he was placed in a position under subsection (b)(1) or reduced in rank or pay under subsection (c)(2), as the case may be, until such time as the rate of basic pay he would receive in the absence of this subsection exceeds such rate of basic pay. The provisions of section 5337 of title 5, United States Code, shall not apply in any case in which this subsection applies."

Federal Legal Council. Ex. Or. No. 12146 of July 18, 1979, 44 Fed. Reg. 42657; Ex. Or. No. 12608 of Sept. 9, 1987, § 15, 52 Fed. Reg. 34617, provided:

"1.1. Establishment of the Federal Legal Council.

"1-101. There is hereby established the Federal Legal Council, which shall be composed of the Attorney General and the representatives of not more than 15 other agencies. The agency representative shall be designated by the head of the agency.

"1-102. The initial membership of the Council, in addition to the Attorney General, shall consist of representatives designated by the heads of the following agencies:

"(a) The Department of Commerce.

"(b) The Department of Defense.

"(c) The Department of Energy.

"(d) The Environmental Protection Agency.

"(e) The Equal Employment Opportunity Commission.

"(f) The Federal Trade Commission.

"(g) The Department of Health and Human Services.

"(h) The Interstate Commerce Commission.

"(i) The Department of Labor.

"(j) The National Labor Relations Board.

"(k) The Securities and Exchange Commission.

"(l) The Department of State.

"(m) The Department of the Treasury.

"(n) The United States Postal Service and

"(o) the Veterans Administration.

"1-103. The initial members of the Council shall serve for a term of two years. Thereafter, the agencies which compose the membership shall be designated annually by the Council and at least five positions on the Council, other than that held by the Attorney General, shall rotate annually.

"1-104. In addition to the above members, the Directors of the Office of Management and Budget and the Office of Personnel Management, or their designees, shall be advisory members of the Council.

"1-105. The Attorney General shall chair the Council and provide staff for its operation. Representatives of agencies that are not members of the Council may serve on or chair subcommittees of the Council.

"1-2. Functions of the Council.

"1-201. The Council shall promote:

- "(a) coordination and communication among Federal legal offices;
- "(b) improved management of Federal lawyers, associated support personnel, and information systems;
- "(c) improvements in the training provided to Federal lawyers;
- "(d) the facilitation of the personal donation of pro bono legal services by Federal attorneys;
- "(e) the use of joint or shared legal facilities in field offices; and
- "(f) the delegation of legal work to field offices.

"1-202. The Council shall study and seek to resolve problems in the efficient and effective management of Federal legal resources that are beyond the capacity or authority of individual agencies to resolve.

"1-203. The Council shall develop recommendations for legislation and other actions: (a) to increase the efficient and effective operation and management of Federal legal resources, including those matters specified in Section 1-201, and (b) to avoid inconsistent or unnecessary litigation by agencies.

"1-3. Litigation Notice System.

"1-301. The Attorney General shall establish and maintain a litigation notice system that provides timely information about all civil litigation pending in the courts in which the Federal Government is a party or has a significant interest.

"1-302. The Attorney General shall issue rules to govern operation of the notice system. The rules shall include the following requirements:

"(a) All agencies with authority to litigate cases in court shall promptly notify the Attorney General about those cases that fall in classes or categories designated from time to time by the Attorney General.

"(b) The Attorney General shall provide all agencies reasonable access to the information collected in the litigation notice system.

"1-4. Resolution of Interagency Legal Disputes.

"1-401. Whenever two or more Executive agencies are unable to resolve a legal dispute between them, including the question of which has jurisdiction to administer a particular program or to regulate a particular activity, each agency is encouraged to submit the dispute to the Attorney General.

"1-402. Whenever two or more Executive agencies whose heads serve at the pleasure of the President are unable to resolve such a legal dispute, the agencies shall submit the dispute to the Attorney General prior to proceeding in any court, except where there is specific statutory vesting of responsibility for a resolution elsewhere.

"1-5. Access to Legal Opinions.

"1-501. In addition to the disclosure now required by law, all agencies are encouraged to make available for public inspection and copying other opinions of their legal officers that are statements of policy or interpretation that have been adopted by the agency, unless the agency determines that disclosure would result in demonstrable harm.

"1-502. All agencies are encouraged to make available on request other legal opinions, when the agency determines that disclosure would not be harmful.

"1-6. Automated Legal Research and Information Systems.

"1-601. The Attorney General, in coordination with the Secretary of Defense and other agency heads, shall provide for a computerized legal research system that will be available to all Federal law offices on a reimbursable basis. The system may include in its data base such Federal regulations, case briefs, and legal opinions, as the Attorney General deems appropriate.

"1-602. The Federal Legal Council shall provide leadership for all Federal legal offices in establishing appropriate word processing and management information systems.

"1-7. Responsibilities of the Agencies.

"1-701. Each agency shall (a) review the management and operation of its legal activities and report in one year to the Federal Legal Council all steps being taken to improve those operations, and (b) cooperate with the Federal Legal Council and the Attorney General in the performance of the functions provided by this Order.

"1-702. To the extent permitted by law, each agency shall furnish the Federal Legal Council and the Attorney General with reports, information and assistance as requested to carry out

the provisions of this Order."

Change of name. For change of name of the Department of Health, Education, and Welfare to the Department of Health and Human Services, see 20 USCS § 3508 and notes.

Environmental or natural resource laws. Act Nov. 30, 1979, P.L. 96-132, § 12, 93 Stat. 1048, provided: "The Attorney General may, with the concurrence of any agency or Department with primary enforcement responsibility for an environmental or natural resource law, investigate any violation, of an environmental or natural resource law of the United States, and bring such actions as are necessary to enforce such laws. This section does not affect the criminal law enforcement authority of the Attorney General."

Department of Justice Civil Enforcement Enhancement. Act Nov. 18, 1988, P.L. 100-690, Title I, Subtitle B, §§ 1051-1055, 102 Stat. 4189, provide:

"Sec. 1051. Short title.

"This subtitle may be cited as the 'Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1988'.

"Sec. 1052. Findings.

"The Congress finds that--

"(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

"(2) trends in drug trafficking patterns necessitate a response that gives appropriate weight to--

"(A) the prosecution of drug-related crimes; and

"(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and organized crime groups;

"(3) law enforcement components of the Department of Justice should give high priority to the enforcement of civil sanctions against drug networks and organized crime groups; and

"(4) the structure of the Department of Justice Criminal Division needs to be reviewed in order to determine the most effective structure to address such drug-related problems.

"Sec. 1053. Civil enforcement report.

"(a) Report. Not later than 1 year after the date of the enactment of this title, the Director of National Drug Control Policy (the Director) in consultation with the Attorney General, shall report to the Congress on the necessity to establish a new division or make other organizational changes within the Department of Justice in order to promote better civil and criminal law enforcement. In preparing such report, the Director shall consider restructuring and consolidating one or more of the following divisions and programs--

"(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

"(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

"(3) the Asset Forfeiture Office of the Criminal Division; and

"(4) the Organized Crime Drug Enforcement Task Force Program;

"(b) Legislative recommendations. The report submitted under subsection (a) shall include appropriate legislative recommendations for the Congress.

"Sec. 1054. Civil enforcement enhancement.

"(a) Duty of Attorney General. The Attorney General shall insure that each component of the Department of Justice having criminal law enforcement responsibilities with respect to the prosecution of organized crime and controlled substances violations, including each United States Attorney's Office, attaches a high priority to the enforcement of civil statutes creating ancillary sanctions and remedies for such violations, such as civil penalties and actions, forfeitures, injunctions and restraining orders, and collection of fines.

"(b) Duty of Associate Attorney General. The Associate Attorney General shall be responsible for implementing the policy set forth in this subsection.

"(c) Authorization of appropriations.

(1) There are authorized to be appropriated \$ 3,000,000 for salaries and expenses to the Department of Justice General Legal Activities Account and \$ 3,000,000 for salaries and expenses for United States Attorneys for fiscal year 1989.

"(2) Any appropriation of funds authorized under paragraph (1) shall be--

"(A) in addition to any appropriations requested by the President in the 1989 fiscal year budget submitted by the President to the Congress on February 18, 1988, or provided in

regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989; and

"(B) used to increase the number of field attorneys and related support staff over such personnel levels employed at the Department of Justice on September 30, 1988.

"(3) Any increase in full-time equivalent positions described under paragraph (2)(B) shall be exclusively used for asset forfeiture and civil enforcement and be assigned to appropriate field offices of the Organized Crime and Racketeering Section and the Organized Crime Drug Enforcement Task Forces.

"(d) Reporting requirement. The Attorney General, at the end of each such fiscal year, shall file a report with the Congress setting forth the extent of such enforcement efforts, as well as the need for any enhancements in resources necessary to carry out this policy.

"Sec. 1055. Expenses of task forces.

"(a) Appropriations and reimbursements procedure. Beginning in fiscal year 1990, the Attorney General in his budget shall submit a separate appropriations request for expenses relating to all Federal agencies participating in the Organized Crime Drug Enforcement Task Forces. Such appropriations shall be made to the Department of Justice's Interagency Law Enforcement Appropriation Account for the Attorney General to make reimbursements to the involved agencies as necessary.

"(b) Enhancement of field activities. The appropriations and reimbursements procedure described under subsection (a) shall--

"(1) provide for the flexibility of the Task Forces which is vital to success;

"(2) permit Federal law enforcement resources to be shifted in response to changing patterns of organized criminal drug activities;

"(3) permit the Attorney General to reallocate resources among the organizational components of the Task Forces and between regions without undue delay; and

"(4) ensure that the Task Forces function as a unit, without the competition for resources among the participating agencies that would undermine the overall effort."

[Termination of certain reporting requirements in § 1054(d) of Act Nov. 18, 1988, P.L. 100-690 (note above). For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under § 1054(d) of Act Nov. 18, 1988, P.L. 100-690 (note above), is listed on page 118), see § 3003 of Act Dec. 21, 1995, P.L. 104-66, which appears as 31 USCS § 1113 note.]

Comptroller General study. Act Nov. 18, 1988, P.L. 100-690, Title IX, Subtitle C, § 9201, 102 Stat. 4535, provides:

"(a) Study. The Comptroller General of the United States shall conduct a study--

"(1) to determine the impact of additional resources to certain components of the Federal criminal justice system on other components of the system and of enhanced or new Federal criminal penalties or laws on the agencies and offices of the Department of Justice, the Federal courts, and other components of the Federal criminal justice system; and

"(2) use the data derived from the impact analysis to develop a model that can be applied by Congress and Federal agencies and departments to help determine appropriate staff and budget responses in order to maintain balance in the Federal criminal justice system and effectively implement changes in resources, laws, or penalties.

"(b) Report to Congress. The Comptroller General shall report the results and recommendations derived from the study required by subsection (a) no later than 1 year after the date of enactment of this Act."

Emergency preparedness functions. For assignment of certain emergency preparedness functions to the Attorney General, ass Ex. Or. No. 12656 of Nov. 18, 1988, 53 Fed. Reg. 47941, which appears as 42 USCS § 5195 note.

Salaries and expenses, general legal activities. Act Nov. 21, 1989, P.L. 101-162, Title II, 103 Stat. 995, provides: "For fiscal year 1990 and hereafter the Chief, United States National Central Bureau, INTERPOL, may establish and collect fees to process name checks and background records for noncriminal employment, licensing, and humanitarian purposes and, notwithstanding the provisions of 31 U.S.C. 3302, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services[.]"

Reimbursable fees and expenses of witnesses. Act Nov. 21, 1989, P.L. 101-162, Title II,

103 Stat. 997, provides: "For fiscal year 1990 and hereafter the Attorney General may enter into reimbursable agreements with other Federal Government agencies or components within the Department of Justice to pay expenses of private counsel to defend Federal Government employees sued for actions while performing their official duties: Provided further, That for fiscal year 1990 and hereafter the Attorney General, upon notification to the Committees on Appropriations of the House of Representatives and the Senate in compliance with provisions set forth in section 606 of this Act [unclassified], may authorize litigating components to reimburse this account for expert witness expenses when it appears current allocations will be exhausted for cases scheduled for trial in the current fiscal year."

Appropriations available for uniforms and allowances. Act Nov. 21, 1989, P.L. 101-162, Title II, § 203, 103 Stat. 1002, provides: "For fiscal year 1990 and hereafter, appropriations for 'Salaries and expenses, General Administration', 'Salaries and expenses, United States Marshals Service', 'Salaries and expenses, Federal Bureau of Investigation', 'Salaries and expenses, Drug Enforcement Administration', 'Salaries and expenses, Immigration and Naturalization Service', and 'Salaries and expenses, Federal Prison System', shall be available for uniforms and allowances therefor as authorized by law (5 U.S.C. 5901-5902)."

Assistance to the Department of Justice for criminal investigation; reimbursement. Act Nov. 5, 1990, P.L. 101-509, Title V, § 1528, 104 Stat. 1427; Sept. 13, 1994, P.L. 103-322, Title XXXII, Subtitle I, § 320923, 108 Stat. 2131, provides:

"(a) Notwithstanding any other law and in any fiscal year--

"(1) The Attorney General shall accept, and Federal departments and agencies, including the United States Secret Service, the Internal Revenue Service, the Resolution Trust Corporation, and the appropriate Federal banking agency, may provide, without reimbursement, the services of attorneys, law enforcement personnel, and other employees of any other departments or agencies of the Federal Government to assist the Department of Justice, subject to the supervision of the Attorney General, in the investigation and prosecution of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation;

"(2) any attorney of a department or agency whose services are accepted pursuant to paragraph (1) may, subject to the supervision of the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, and perform any other investigative or prosecutorial function, which United States attorneys are authorized by law to conduct or perform whether or not the attorney is a resident of the district in which the proceeding is brought; and

"(3) law enforcement personnel of the United States Secret Service are authorized, subject to the supervision of the Attorney General, to conduct or perform any kind of investigation, civil or criminal, related to fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, which the Department of Justice law enforcement personnel are authorized by law to conduct or perform: Provided, That the Secret Service shall not initiate investigations pursuant to this section independent of the supervision of the Attorney General.

"(b) This section--

"(1) shall not, except as expressly provided herein, alter the authority of any Federal law enforcement agency; and

"(2) shall expire on December 31, 2004.

"(c) This section applies notwithstanding any other provision of law enacted by the 101st Congress after October 15, 1990, that by its terms would grant authority to, or otherwise affect the authority of the Secret Service or other departments or agencies of the Federal Government to conduct or to assist the Department of Justice in conducting investigations or prosecutions of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, and any other such provision shall not be effective in granting or otherwise affecting any such authority."

Structural reforms to improve the Federal response to crimes affecting financial institutions. Act Nov. 29, 1990, P.L. 101-647, Title XXV, Subtitle D, §§ 2536-2539, 104 Stat. 4883, provides:

"Sec. 2536. Establishment of financial institutions crime unit and office of **special counsel** for financial institutions crime unit.

"(a) Establishment. There is established within the Office of the Deputy Attorney General in the Department of Justice a **Financial Institutions Fraud** Unit to be headed by a **special counsel** (hereafter in this title [subtitle; this note and 12 USCS §§ 1441a(b)(12)(G)] referred to as the '**Special Counsel**').

"(b) Responsibility. The **Financial Institutions Fraud** Unit and the **Special Counsel** shall be responsible to and shall report directly to the Deputy Attorney General.

"(c) Sunset. The provisions of this section shall cease to apply at the end of the 5-year period beginning on the date of the enactment of this Act.

"Sec. 2537. Appointment responsibilities and compensation of the **Special Counsel**.

"(a) Appointment. The **Special Counsel** shall be appointed by the President, by and with the advice and consent of the Senate.

"(b) Responsibilities. The **Special Counsel** shall--

"(1) supervise and coordinate investigations and prosecutions within the Department of Justice of fraud and other criminal activity in and against the financial services industry, including, to the extent consistent with the independent counsel provision of chapter 40 of title 28, United States Code [28 USCS § 591 et seq.], any such activity by any current or former elected official or high-level executive branch official or any member of the immediate family of any such official;

"(2) ensure that Federal law relating to civil enforcement, asset seizure and forfeiture, money laundering, and racketeering are used to the fullest extent authorized to recover the proceeds of unlawful activities from persons who have committed crimes in and against the financial services industry; and

"(3) ensure that adequate resources are made available for the investigation and prosecution of fraud and other criminal activity in and against the financial services industry.

"(c) Compensation. The **Special Counsel** shall be paid at the basic pay payable for level V of the Executive Schedule [see 5 USCS § 5332].

"Sec. 2538. Assignment of personnel.

"There shall be assigned to the **Financial Institutions Fraud** Unit such personnel as the Attorney General deems necessary to provide an appropriate level of enforcement activity in the area of fraud and other criminal activity in and against the financial services industry.

"Sec. 2539. **Financial institutions fraud** task forces.

"(a) Establishment. The Attorney General shall establish such **financial institutions fraud** task forces as the Attorney General deems appropriate to ensure that adequate resources are made available to investigate and prosecute crimes in or against financial institutions and to recover the proceeds of unlawful activities from persons who have committed fraud or have engaged in other criminal activity in or against the financial services industry.

"(b) Supervision. The Attorney General shall determine how each task force shall be supervised and may provide for the supervision of any task force by the **Special Counsel**.

"(c) Senior interagency group.

(1) Establishment. The Attorney General shall establish a senior interagency group to assist in identifying the most significant **financial institution fraud** cases and in allocating investigative and prosecutorial resources where they are most needed.

"(2) Membership. The senior interagency group shall be chaired by the **Special Counsel** and shall include senior officials from--

"(A) the Department of Justice, including representatives of the Federal Bureau of Investigation, the Advisory Committee of United States Attorneys, and other relevant entities;

"(B) the Department of the Treasury;

"(C) the Office of Thrift Supervision;

"(D) the Resolution Trust Corporation;

"(E) the Federal Deposit Insurance Corporation;

"(F) the Office of the Comptroller of the Currency;

"(G) the Board of Governors of the Federal Reserve System; and

"(H) the National Credit Union Administration.

"(3) Duties. This senior interagency group shall enhance interagency coordination and assist in accelerating the investigations and prosecution of **financial institutions fraud**."

Authorization of appropriations for humanitarian expenses. Act Nov. 29, 1990, P.L. 101-

647, Title XXXII, § 3201, 104 Stat. 4916; Oct. 21, 1998, P.L. 105-277, Div A, § 101(b) [Title I, § 109(a)], 112 Stat. 2681-67, provides: "Appropriations in this or any other Act hereafter for the Federal Bureau of Investigation, the Drug Enforcement Administration, or the Immigration and Naturalization Service are available, in an amount of not to exceed \$ 25,000 each per fiscal year, to pay humanitarian expenses incurred by or for any employee thereof (or any member of the employee's immediate family) that results from or is incident to serious illness, serious injury, or death occurring to the employee while on official duty or business."

Procurement of expert witnesses without regard to competitive procurement procedures. Act Oct. 28, 1991, P.L. 102-140, Title VI, § 611(a), 105 Stat. 832, provides:

"Notwithstanding any other provision of law:

"(a) For fiscal year 1992 and thereafter, the Department of Justice may procure the services of expert witnesses for use in preparing or prosecuting a civil or criminal action, without regard to competitive procurement procedures, including the Commerce Business Daily publication requirements: Provided, That no witness shall be paid more than one attendance fee for any calendar day."

Weed and seed programs; use of Federal funds for neighborhood revitalization. Act Oct. 6, 1992, P.L. 102-395, Title I, 106 Stat. 1830, provides: "For fiscal year 1993 and thereafter the Attorney General shall (1) promote neighborhood revitalization by developing a plan for the use of Federal funds appropriated for selected activities in the Departments of Labor, Education, Health and Human Services, Transportation, Agriculture, and Housing and Urban Development; (2) the Attorney General shall solicit from State and local governments plans to revitalize neighborhoods using programs administered by such agencies; and (3) the Attorney General shall review and approve such plans in consultation with the Federal agency to which funds are appropriated".

Reimbursement of Department of Justice for unusually high litigation costs. Act Aug. 26, 1994, P.L. 103-317, Title I, § 109, 108 Stat. 1735, provides: "Notwithstanding 31 U.S.C. 3302 or any other law, in litigation involving unusually high costs, the Department of Justice may receive and retain reimbursement for salaries and expenses, for fiscal year 1995 and thereafter, from any other governmental component being represented in the litigation."

Overseas law enforcement training activities. Act April 24, 1996, P.L. 104-132, Title VIII, Subtitle A, § 801, 110 Stat. 1304, provides: "The Attorney General and the Secretary of the Treasury are authorized to support law enforcement training activities in foreign countries, in consultation with the Secretary of State, for the purpose of improving the effectiveness of the United States in investigating and prosecuting transnational offenses."

Reimbursement of Department of Justice employees for taxes resulting from reimbursement of travel expenses. Act Sept. 30, 1996, P.L. 104-208, Div A, Title I, § 101(a) [Title I, § 115], 110 Stat. 3009-22, provides: "Effective with the enactment of this Act and in any fiscal year hereafter, under policies established by the Attorney General, the Department of Justice may reimburse employees who are paid by an appropriation account within the Department of Justice and are traveling on behalf of the United States in temporary duty status to investigate, prosecute, or litigate (including the provision of support therefor) a criminal or civil matter, or for other similar special circumstances, for Federal, State, and local taxes heretofore and hereafter resulting from any reimbursement of travel expenses from an appropriation account within the Department of Justice: Provided, That such reimbursement may include an amount equal to all income taxes for which the employee would be liable due to such reimbursement."

Development and support of cybersecurity forensic capabilities. Act Oct. 26, 2001, P.L. 107-56, Title VIII, § 816, 115 Stat. 385, provides:

"(a) In general. The Attorney General shall establish such regional computer forensic laboratories as the Attorney General considers appropriate, and provide support to existing computer forensic laboratories, in order that all such computer forensic laboratories have the capability--

"(1) to provide forensic examinations with respect to seized or intercepted computer evidence relating to criminal activity (including cyberterrorism);

"(2) to provide training and education for Federal, State, and local law enforcement personnel and prosecutors regarding investigations, forensic analyses, and prosecutions of

computer-related crime (including cyberterrorism);

"(3) to assist Federal, State, and local law enforcement in enforcing Federal, State, and local criminal laws relating to computer-related crime;

"(4) to facilitate and promote the sharing of Federal law enforcement expertise and information about the investigation, analysis, and prosecution of computer-related crime with State and local law enforcement personnel and prosecutors, including the use of multijurisdictional task forces; and

"(5) to carry out such other activities as the Attorney General considers appropriate.

"(b) Authorization of appropriations.

(1) Authorization. There is hereby authorized to be appropriated in each fiscal year \$ 50,000,000 for purposes of carrying out this section.

"(2) Availability. Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended."

Training of Government officials regarding identification and use of foreign intelligence. Act Oct. 26, 2001, P.L. 107-56, Title IX, § 908, 115 Stat. 120, provides:

"(a) Program required. The Attorney General shall, in consultation with the Director of Central Intelligence, carry out a program to provide appropriate training to officials described in subsection (b) in order to assist such officials in--

"(1) identifying foreign intelligence information in the course of their duties; and

"(2) utilizing foreign intelligence information in the course of their duties, to the extent that the utilization of such information is appropriate for such duties.

"(b) Officials. The officials provided training under subsection (a) are, at the discretion of the Attorney General and the Director, the following:

"(1) Officials of the Federal Government who are not ordinarily engaged in the collection, dissemination, and use of foreign intelligence in the performance of their duties.

"(2) Officials of State and local governments who encounter, or may encounter in the course of a terrorist event, foreign intelligence in the performance of their duties.

"(c) Authorization of appropriations. There is hereby authorized to be appropriated for the Department of Justice such sums as may be necessary for purposes of carrying out the program required by subsection (a)."

First Responders Assistance Act. Act Oct. 26, 2001, P.L. 107-56, Title X, § 1005, 115 Stat. 393, provides:

"(a) Grant authorization. The Attorney General shall make grants described in subsections (b) and (c) to States and units of local government to improve the ability of State and local law enforcement, fire department and first responders to respond to and prevent acts of terrorism.

"(b) Terrorism prevention grants. Terrorism prevention grants under this subsection may be used for programs, projects, and other activities to--

"(1) hire additional law enforcement personnel dedicated to intelligence gathering and analysis functions, including the formation of full-time intelligence and analysis units;

"(2) purchase technology and equipment for intelligence gathering and analysis functions, including wire-tap, pen links, cameras, and computer hardware and software;

"(3) purchase equipment for responding to a critical incident, including protective equipment for patrol officers such as quick masks;

"(4) purchase equipment for managing a critical incident, such as communications equipment for improved interoperability among surrounding jurisdictions and mobile command posts for overall scene management; and

"(5) fund technical assistance programs that emphasize coordination among neighboring law enforcement agencies for sharing resources, and resources coordination among law enforcement agencies for combining intelligence gathering and analysis functions, and the development of policy, procedures, memorandums of understanding, and other best practices.

"(c) Antiterrorism training grants. Antiterrorism training grants under this subsection may be used for programs, projects, and other activities to address--

"(1) intelligence gathering and analysis techniques;

"(2) community engagement and outreach;

"(3) critical incident management for all forms of terrorist attack;

- "(4) threat assessment capabilities;
- "(5) conducting followup investigations; and
- "(6) stabilizing a community after a terrorist incident.

"(d) Application.

(1) In general. Each eligible entity that desires to receive a grant under this section shall submit an application to the Attorney General, at such time, in such manner, and accompanied by such additional information as the Attorney General may reasonably require.

"(2) Contents. Each application submitted pursuant to paragraph (1) shall--

"(A) describe the activities for which assistance under this section is sought; and

"(B) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements of this section.

"(e) Minimum amount. If all applications submitted by a State or units of local government within that State have not been funded under this section in any fiscal year, that State, if it qualifies, and the units of local government within that State, shall receive in that fiscal year not less than 0.5 percent of the total amount appropriated in that fiscal year for grants under this section.

"(f) Authorization of appropriations. There are authorized to be appropriated \$ 25,000,000 for each of the fiscal years 2003 through 2007."

NOTES:

CODE OF FEDERAL REGULATIONS

Immigration and Naturalization Service, Department of Justice--Definitions, 8 CFR Part 1.
Immigration and Naturalization Service, Department of Justice--Authority of the Commissioner, 8 CFR Part 2.

Immigration and Naturalization Service, Department of Justice--Executive Office for Immigration Review, 8 CFR Part 3.

Immigration and Naturalization Service, Department of Justice--Immigration regulations, statement of organization, 8 CFR Part 100.

Drug Enforcement Administration, Department of Justice--Administrative functions, practices, and procedures, 21 CFR Part 1316.

Department of Justice--Gambling devices, 28 CFR Part 3.

Department of Justice--Administration and enforcement of Foreign Agents Registration Act of 1938, as amended, 28 CFR Part 5.

Department of Justice--FBI forfeiture authority for certain statutes, 28 CFR Part 8.

Department of Justice--Regulations governing the remission or mitigation of civil and criminal forfeitures, 28 CFR Part 9.

Department of Justice--Debt collection, 28 CFR Part 11.

Department of Justice--Administrative claims under Federal Tort Claims Act, 28 CFR Part 14.

Department of Justice--Defense of certain suits against Federal employees: certification and defense of certain suits against program participants under the National Swine Flu Immunization Program of 1976; and certification and decertification of certain suits based upon acts or omissions of contractors in carrying out an atomic weapons testing program under a contract with the United States, 28 CFR Part 15.

Department of Justice--Production or disclosure of material or information, 28 CFR Part 16.

Department of Justice--Classified national security information and access to classified information, 28 CFR Part 17.

Department of Justice--Implementation of death sentences in Federal cases, 28 CFR Part 26.

Department of Justice--Motor Vehicle Theft Prevention Act regulations, 28 CFR Part 29.

Department of Justice--Nondiscrimination on the basis of disability in State and local government services, 28 CFR Part 35.

Department of Justice--Nondiscrimination on the basis of disability by public accommodations and in commercial facilities, 28 CFR Part 36.

Department of Justice--Procedures for coordinating the investigation of complaints or

charges of employment discrimination based on disability subject to the Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 28 CFR Part 37.

Department of Justice--Nondiscrimination; equal employment opportunity; policies and procedures, 28 CFR Part 42.

Department of Justice--Protection of human subjects, 28 CFR Part 46.

Department of Justice--Right to Financial Privacy Act, 28 CFR Part 47.

Department of Justice--Newspaper Preservation Act, 28 CFR Part 48.

Department of Justice--Statements of policy, 28 CFR Part 50.

Department of Justice--Procedures for the administration of section 5 of the Voting Rights Act of 1965, as amended, 28 CFR Part 51.

Department of Justice--Implementation of the provisions of the Voting Rights Act regarding language minority groups, 28 CFR Part 55.

Department of Justice--Regulations relating to the Bankruptcy Reform Acts of 1978 and 1994, 28 CFR Part 58.

Department of Justice--Procedures for implementing the National Environmental Policy Act, 28 CFR Part 61.

Department of Justice--Designation of officers and employees of the United States for coverage under section 1114 of Title 18 of the United States Code, 28 CFR Part 64.

Department of Justice--Implementation of the provisions of the Program Fraud Civil Remedies Act of 1986, 28 CFR Part 71.

Department of Justice--Notification to the Attorney General by agents of foreign governments, 28 CFR Part 73.

Department of Justice--Rules of procedure for assessment of civil penalties for possession of certain controlled substances, 28 CFR Part 76.

Department of Justice--Foreign Corrupt Practices Act opinion procedure, 28 CFR Part 80.

Department of Justice--Child abuse reporting designations and procedures, 28 CFR Part 81.

Bureau of Prisons, Department of Justice--General definitions, 28 CFR Part 500.

Bureau of Prisons, Department of Justice--Scope of rules, 28 CFR Part 501.

Bureau of Prisons, Department of Justice--Bureau of Prisons central office, regional offices, institutions, and staff training centers, 28 CFR Part 503.

Bureau of Prisons, Department of Justice--Acceptance of donations, 28 CFR Part 504.

Bureau of Prisons, Department of Justice--General management policy, 28 CFR Part 511.

Bureau of Prisons, Department of Justice--Research, 28 CFR Part 512.

Bureau of Prisons, Department of Justice--Access to records, 28 CFR Part 513.

Bureau of Prisons, Department of Justice--Admission to institution, 28 CFR Part 522.

Bureau of Prisons, Department of Justice--Computation of sentence, 28 CFR Part 523.

Bureau of Prisons, Department of Justice--Classification of inmates, 28 CFR Part 524.

Bureau of Prisons, Department of Justice--Transfers, 28 CFR Part 527.

Bureau of Prisons, Department of Justice--Contact with persons in the community, 28 CFR Part 540.

Bureau of Prisons, Department of Justice--Inmate discipline and special housing units, 28 CFR Part 541.

Bureau of Prisons, Department of Justice--Administrative remedy, 28 CFR Part 542.

Bureau of Prisons, Department of Justice--Legal matters, 28 CFR Part 543.

Bureau of Prisons, Department of Justice--Education, 28 CFR Part 544.

Bureau of Prisons, Department of Justice--Work and compensation, 28 CFR Part 545.

Bureau of Prisons, Department of Justice--Food service, 28 CFR Part 547.

Bureau of Prisons, Department of Justice--Religious programs, 28 CFR Part 548.

Bureau of Prisons, Department of Justice--Medical services, 28 CFR Part 549.

Bureau of Prisons, Department of Justice--Drug programs, 28 CFR Part 550.

Bureau of Prisons, Department of Justice--Custody, 28 CFR Part 552.

Bureau of Prisons, Department of Justice--Inmate property, 28 CFR Part 553.

Bureau of Prisons, Department of Justice--Community programs, 28 CFR Part 570.

Bureau of Prisons, Department of Justice--Release from custody, 28 CFR Part 571.

Bureau of Prisons, Department of Justice--Parole, 28 CFR Part 572.

Offices of Independent Counsel, Department of Justice--General powers of Independent

Counsel, 28 CFR Part 600.

Offices of Independent Counsel, Department of Justice--Jurisdiction of the Independent Counsel: Iran/Contra, 28 CFR Part 601.

Offices of Independent Counsel, Department of Justice--Jurisdiction of the Independent Counsel: In re Franklyn C. Nofziger, 28 CFR Part 602.

Offices of Independent Counsel, Department of Justice--Jurisdiction of the Independent Counsel: In re Madison Guaranty Savings & Loan Association, 28 CFR Part 603.

Department of Justice--Organization of the Department of Justice, 28 CFR Part 0.

Department of Justice--Small and disadvantaged business concerns, 48 CFR Part 2819.

CROSS REFERENCES

Bureau of Justice Assistance within Department of Justice, 42 USCS § 3741.

This section is referred to in 20 USCS § 1082; 42 USCS § 12651d.

RESEARCH GUIDE

Federal Procedure:

5A Fed Proc L Ed, Bonds, Civil Fines, and Forfeitures § 10:110.

16 Fed Proc L Ed, Government Officers and Employees § 40:747.

Am Jur:

7 Am Jur 2d, Attorney General § 48.

70 Am Jur 2d, Sheriffs, Police, and Constables § 37.

Annotations:

Sufficiency of United States Attorney General's appointment of special attorney under 28 USCS § 515(a). 36 ALR Fed 371.

Treatment of juvenile alleged to have violated law of United States under Federal Juvenile Delinquency Act (18 USCS §§ 5031-5042). 58 ALR Fed 232.

Who may apply or authorize application for order to intercept wire or oral communications under Title III of Omnibus Crime Control and Safe Streets Act of 1968 (18 USCS §§ 2510 et seq.). 64 ALR Fed 115.

Texts:

Yannacone, Cohen and Davison, Environmental Rights and Remedies.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Authority to delegate
3. Authority to give opinion
4. Attorney General as amicus curiae
5. Limits on authority
6. Authority of Drug Enforcement Administration

1. Generally

Attorney general is officer in charge of institution and conduct of litigation necessary to establish rights of government; thus he could determine whether suit should be brought to cancel land patent where it was obtained by fraud or mistake. United States v San Jacinto Tin Co. (1888) 125 US 273, 31 L Ed 747, 8 S Ct 850.

Executive Order No. 12146 (7/18/79, which appears as 28 USCS § 509 note), which requires that interagency legal disputes be submitted to Attorney General for resolution prior to bringing court proceeding, applies to Tennessee Valley Authority when it has dispute under 42 USCS §§ 7413 and 7477 with Environmental Protection Agency (EPA) regarding orders issued to it by EPA pursuant to Clean Air Act (42 USCS §§ 7401 et seq.). TVA v United States EPA (2002, CA11) 278 F3d 1184, 53 Env't Rep Cas 1865, 15 FLW Fed C 203.

Although Executive Order No. 12146 (7/18/79, appearing as 28 USCS § 509 note and which requires that interagency legal disputes be submitted to Attorney General for resolution prior to bringing court proceeding) and Executive Order No. 12088 (10/13/78,

appearing as 42 USCS § 4321 note and which requires that interagency legal disputes be submitted to Office of Management and Budget for resolution) both apply to Tennessee Valley Authority (TVA) when it has dispute under 42 USCS §§ 7413 and 7477 with Environmental Protection Agency (EPA) regarding orders issued to it by EPA pursuant to Clean Air Act (42 USCS §§ 7401 et seq.), when EPA fails to properly submit such dispute for resolution and instead petitions court of appeals for judicial review of EPA orders, Executive Orders do not operate to deprive court of appeals of subject matter jurisdiction over action; in such case, EPA may seek remedy within executive branch for TVA's failure to comply. TVA v United States EPA (2002, CA11) 278 F3d 1184, 53 Env't Rep Cas 1865, 15 FLW Fed C 203.

Attorney general has authority to bring actions in name of United States. Cohen v United States (1912) 38 App DC 123.

Attorney General possessed statutory authority to create Office of Independent Counsel: Iran/Contra and to convey to it same investigative and prosecutorial functions and powers provided to an independent counsel by the Ethics Act. In re Sealed Case (1987, App DC) 264 US App DC 265, 829 F2d 50, cert den (1988) 484 US 1027, 98 L Ed 2d 765, 108 S Ct 753.

Contract dispute between Tennessee Valley Authority and Department of Energy should be submitted to Attorney General for resolution of interagency disputes pursuant to Executive Order 12,146 before court would address claim. Tennessee Valley Authority v United States (1987) 13 Cl Ct 692.

In any case where United States has justiciable interest, general grant of authority to Attorney General contains power to institute suit to redress that right despite absence of specific act of Congress authorizing suit. United States v Rock Island Centennial Bridge Com. (1964, SD Ill) 230 F Supp 654.

Attorney General has authority under 28 USCS § 509 to perform functions of United States Marshal. Bruzzone v Hampton (1977, SD NY) 433 F Supp 92.

Attorney General has authority to seek assistance from independent counsel in function of his official duties, as decided in Nixon v. United States, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974), under 28 USCS §§ 509, 510 and 515, and 5 USCS § 301. In re Sealed Case (1987, DC Dist Col) 666 F Supp 231, aff'd (1987, App DC) 264 US App DC 265, 829 F2d 50, cert den (1988) 484 US 1027, 98 L Ed 2d 765, 108 S Ct 753.

Applicability of Executive Order No. 12,146 (7/18/79, which appears as 28 USCS § 509 note), which directs two executive agencies, when their heads serve at pleasure of President, to submit unresolved legal disputes to Attorney General for resolution, is subject to traditional considerations of futility. TVA v United States (2001) 51 Fed Cl 284.

2. Authority to delegate

Ability to delegate functions with respect to advance authorization for consensual monitoring of conversations during criminal investigations is exclusive to Attorney General under 28 USCS § 509. United States v Caceres (1976, CA9 Cal) 545 F2d 1182, 77-1 USTC P 9226, 38 AFTR 2d 6215, rev'd on other grounds (1979) 440 US 741, 59 L Ed 2d 733, 99 S Ct 1465, 79-1 USTC P 9294, 43 AFTR 2d 872.

Attorney General is vested with functions of all agencies, employees and officers of Department, and may delegate to any employee, officer or agency of Department any of Attorney General's functions. United States v Weiner (1975, ND Ill) 392 F Supp 81.

It can be seen from chapter of United States statutes which establishes and regulates Department of Justice and from various provisions of Judicial Code that Attorney General has general control and supervision of all criminal prosecutions or civil suits in which United States is interested, whether such interest be subject of attack or defense; and that he is at liberty to call upon district attorney in any district as official representative of United States to appear and protect interests of government in any civil suit in which those interests are involved or jeopardized. People ex rel. Woll v Graber (1946) 394 Ill 362, 68 NE2d 750.

3. Authority to give opinion

It is not within province of Attorney General to render opinions for the guidance of persons who engage in transactions with government. [1937] 39 Ops Atty Gen 11, 39 Ops Atty Gen 67.

It is not within scope of authority of Attorney General to give opinion on constitutionality of

statute after it has become law or to declare Act of Congress unconstitutional. (1937) 39 Ops Atty Gen 11; (1942) 40 Ops Atty Gen 158.

It has long been established position of Attorney General not to render opinions to Congress or to its members or committees. (1939) 39 Ops Atty Gen 343.

When agency is required by law to proceed before Executive Department and does not do so, questions concerning that obligation may be said to arise in administration of that Department for purposes of requesting opinion of Attorney General under 28 U.S.C. § 512. Secretary of Treasury, and not Postal Service, has exclusive authority to determine particular issues of obligations of or guaranteed by United States to be purchased. 43 Ops Atty Gen 7.

4. Attorney General as amicus curiae

Federal court may call upon attorney general to serve as amicus curiae and to petition for injunction against governor of state who is engaged in obstructing federal courts' orders. (1957) 41 Ops Atty Gen 313.

5. Limits on authority

Congress has invested Attorney General with power to conduct criminal litigation of United States government and has also vested in him power to appoint subordinate officers to assist in discharge of his duties; where Attorney General has delegated authority to represent United States to Special Prosecutor, so long as delegation remains in force United States is bound to respect and enforce Special Prosecutor's authority. United States v Nixon (1974) 418 US 683, 41 L Ed 2d 1039, 94 S Ct 3090 (superseded by statute on other grounds as stated in Bourjaily v United States (1987) 483 US 171, 97 L Ed 2d 144, 107 S Ct 2775, 22 Fed Rules Evid Serv 1105) and (superseded by statute on other grounds as stated in People v Montoya (1988, Colo) 753 P2d 729) and (superseded by statute on other grounds as stated in United States v Hooks (1988, CA7 Ill) 848 F2d 785, 88-1 USTC P 13771, 25 Fed Rules Evid Serv 1298, 62 AFTR 2d 5949).

Attorney General lacked statutory authority to promulgate rule prohibiting communication with current employee of represented organization only if that person is "controlling individual" with respect to organization's legal position in proceeding or investigation of subject matter, since none of statutes defining Attorney General's duties or U.S. Attorneys' role give Attorney General authority to exempt lawyers representing United States from local court rules of ethics binding other lawyers who appear in those courts. United States ex rel. O'Keefe v McDonnell Douglas Corp. (1998, CA8 Mo) 132 F3d 1252, 13 BNA IER Cas 990, 42 CCF P 77235, reh, en banc, den (1998, CA8) 1998 US App LEXIS 8219.

Since Attorney General derived his authority to hire Watergate Special Prosecutor from Congress, Congress therefore had power to limit circumstances in which Special Prosecutor could be discharged; in this case Attorney General chose to limit his own authority by promulgating formal Department of Justice regulation giving Special Prosecutor broad powers of investigation and prosecution, and providing that Special Prosecutor would not be removed from his duties except for extraordinary improprieties, and it is well settled that in such circumstances agency regulation has force and effect of law; existence of agency regulation thus made the discharge of Special Prosecutor for insisting upon executive compliance with final court order illegal. Nader v Bork (1973, DC Dist Col) 366 F Supp 104.

Attorney general could not be required, by executive order, to act in his official capacity in approving exercise of authority by administrator for industrial recovery, as his duties cannot be enlarged except by Congress. (1934) 37 Ops Atty Gen 576.

Applicability of Executive Order No. 12,146 (7/18/79, which appears as 28 USCS § 509 note), which directs two executive agencies, when their heads serve at pleasure of President, to submit unresolved legal disputes to Attorney General for resolution, is subject to traditional considerations of futility. TVA v United States (2001) 51 Fed Cl 284.

6. Authority of Drug Enforcement Administration

Involvement of Drug Enforcement Agency agent with customs inspectors in conducting search of defendant's luggage, belongings, and effects was proper under Reorganization Plan No. 2 of 1973 (28 USCS § 509 note) where DEA agent was primarily onlooker until tinfoil packet of heroin was found in defendant's pocket, whereupon agent's participation became

somewhat more active, and after sizable quantity of drugs was discovered, agent made arrest and evidence was turned over forthwith to him by customs inspector. United States v Carter (1979, CA7 Ill) 592 F2d 402, cert den (1979) 441 US 908, 60 L Ed 2d 378, 99 S Ct 2001.

Executive Order No. 11727 does not delegate to Drug Enforcement Administration authority to schedule controlled substances but effectuated reorganization of parts of executive branch dealing with drug enforcement and gives attorney general supervisory powers over new drug enforcement machinery. United States v Lippner (1982, CA11 Ga) 676 F2d 456, 10 Fed Rules Evid Serv 836.

Under Reorganization Plan No. 2 of 1973, 28 USCS § 509, customs retained supportive role in intelligence, investigation and enforcement of laws relating to suppression of illegal drugs; hence, customs, in notifying Drug Enforcement Administration of possible smuggling operation and again notifying drug enforcement administration when trucks suspected of carrying illegal drugs were in motel parking lot, did not usurp functions of Drug Enforcement Administration or otherwise act beyond its authority. United States v Finch (1982, CA4 SC) 679 F2d 1083.

Even though Drug Enforcement Administration is vested, under 28 USCS § 509, with exclusive responsibility for inland drug investigations, evidence of drug trafficking seized by customs officer under valid search warrant is not subject to exclusionary rule as means of deterring noncompliance on part of customs agents with 28 USCS § 509; court should not automatically suppress evidence seized by officer who, for some technical reason, should not have conducted search. United States v Harrington (1982, CA9 Cal) 681 F2d 612, cert den (1985) 471 US 1015, 85 L Ed 2d 300, 105 S Ct 2018.

Action of Customs officials in turning seized cocaine over to DEA, pursuant to provisions of Reorganization Plan No. 2 of 1973, does not violate 19 USCS § 482, and Reorganization Plan is neither inconsistent with nor contrary to that statute. United States v Collins (1985, CA9 Cal) 764 F2d 647, 18 Fed Rules Evid Serv 283.

Officers of Drug Enforcement Administration, which administration came into being as result of President's Reorganization Plan No. 2 of 1973, have authority to search vehicles at port of entry. United States v Bates (1975, SD Tex) 398 F Supp 731, affd on other grounds (1976, CA5 Tex) 526 F2d 966.

Neither Justice Department Special Attorney nor Special Agent of Drug Enforcement Administration has power to bind Bureau of Prisons or Marshals Service as to disposition of prisoner in Federal Witness Protection Program. Roe v United States Attorney (1979, ED NY) 489 F Supp 4, affd (1980, CA2 NY) 618 F2d 980, cert den (1980) 449 US 856, 66 L Ed 2d 70, 101 S Ct 152.

Agents-in-charge of criminal investigation conducted by Drug Enforcement Administration may be authorized to issue subpoenas in course of their investigation under power granted by Comprehensive Drug Abuse Control and Prevention Act (21 USCS § 876). United States v Hossbach (1980, ED Pa) 518 F Supp 759.

Reorganization Plan No. 2 of 1973 deprives agents of Customs Service of responsibility or authority for enforcement of drug laws of United States and vests authority in Drug Enforcement Administration. United States v Harrington (1981, ED Cal) 520 F Supp 93.

Source: All Sources > Federal Legal - U.S. > USCS - United States Code Service; Code, Const, Rules, Conventions & Public Laws ⓘ

TOC: United States Code Service; Code, Const, Rules, Conventions & Public Laws > /.../ > CHAPTER 31. THE ATTORNEY GENERAL > § 509. Functions of the Attorney General

Terms: "special counsel" and "financial institutions fraud" (Edit Search)

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67 FR 7259, *

FEDERAL REGISTER

Vol. 67, No. 33

Presidential Documents

PRESIDENT OF THE UNITED STATES

Executive Order 13257 of February 13, 2002

Title 3 -

The President

President's Interagency Task Force To Monitor and Combat Trafficking in Persons

67 FR 7259

DATE: Tuesday, February 19, 2002

To view the next page, type .np* TRANSMIT.

To view a specific page, transmit p* and the page number, e.g. p*1

[*7259]

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Trafficking Victims Protection Act of 2000, (22 U.S.C. 7103) (the "Act"), and in order to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims, it is hereby ordered as follows:

Section 1. (a) The President's Interagency **Task Force** to Monitor and Combat Trafficking in Persons is hereby established.

(b) The **Task Force** shall consist of:

- (i) the Secretary of State;
- (ii) the Attorney General;
- (iii) the Secretary of Labor;
- (iv) the Secretary of Health and Human Services;
- (v) the Director of Central Intelligence;

- (vi) the Director of the Office of Management and Budget;
- (vii) the Administrator of the United States Agency for International Development; and
- (viii) any additional officers or employees of the United States as may be designated by the President.

(c) The **Task Force** shall be chaired by the Secretary of State.

Sec. 2. Activities. The **Task Force** shall, consistent with applicable law and the constitutional authorities and duties of the President, carry out the following activities:

- (a) coordinate the implementation of the Act;
- (b) measure and evaluate progress of the United States and other countries in the areas of trafficking in persons prevention, protection, and assistance to victims of trafficking in persons, and prosecutions and other enforcement efforts against traffickers, including the role of public corruption in facilitating trafficking in persons;
- (c) assist the Secretary of State in the preparation of the annual reports described in section 110 of the Act;
- (d) expand interagency procedures to collect and organize data, including significant research and resource information on domestic and international trafficking in persons, while ensuring that any data collection procedures involved, respect the confidentiality of victims of trafficking in persons;
- (e) engage in efforts to facilitate cooperation among countries of origin, transit, and destination, and such efforts shall aim to strengthen local and regional capacities to prevent trafficking in persons, prosecute traffickers and assist trafficking victims; shall include initiatives to enhance cooperative efforts between destination countries, transit countries, and countries of origin; and shall assist in the appropriate reintegration of stateless victims of trafficking in persons; **[*7260]**
- (f) examine the role of the international "sex tourism" industry in the trafficking of persons and in the sexual exploitation of women and children around the world;
- (g) engage in consultation and advocacy with governmental and nongovernmental organizations, among other entities, to advance the purposes of the Act; and
- (h) address such other matters related to the purposes of the Act as the President may determine.

Sec. 3. Administration. (a) The Department of State shall provide funding and administrative support for the **Task Force**, except as otherwise provided by the Act.

(b) At the call of the Chair, the **Task Force** shall meet as necessary to accomplish its mission.

(c) **Task Force** members may designate representatives from their respective agencies to represent them at **Task Force** meetings.

(d) Whenever the work of the **Task Force** involves a matter committed by law or Presidential directive to the consideration of the National Security Council, or by Executive Order 13228 of October 8, 2001, to the consideration of the Homeland Security Council, that work shall be undertaken, and any communication by the Secretary of State to the President shall be

undertaken, in a manner consistent with such law, Presidential directive, or Executive Order.

(e) The **Task Force** shall have no directive authority or other substantial independent authority.

(f) As necessary and appropriate, the **Task Force** shall report to the President, through the Secretary of State, the following:

(i) progress on the implementation of the Act; and

(ii) recommendations for United States policy to monitor and eliminate trafficking in persons and to protect the victims of trafficking in persons.

Sec. 4. Judicial Review. This order does not create any rights or benefits, enforceable at law or equity, against the United States, its departments, its agencies, or other entities, its officers or employees, or any other person.

S George W. **Bush**

THE WHITE HOUSE,

February 13, 2002.

[FR Doc. 02-4071 Filed 2-15-02; 8:45 am]

Billing code 3195-01-P

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Calendar No. 366

107TH CONGRESS
2D SESSION**S. 2010****[Report No. 107-146]**

To provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2002

Mr. LEAHY (for himself, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Ms. STABENOW, Mr. CLELAND, and Mr. EDWARDS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 6, 2002

Reported by Mr. LEAHY, from the Committee on the Judiciary, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Corporate and Crimi-
5 nal Fraud Accountability Act of 2002”.

6 **SEC. 2. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.**

7 (a) IN GENERAL.—Chapter 73 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 **“§ 1519. Destruction, alteration, or falsification of**
11 **records in Federal investigations and**
12 **bankruptcy**

13 “Whoever knowingly alters, destroys, mutilates, con-
14 ceals, covers up, falsifies, or makes a false entry in any
15 record, document, or tangible object with the intent to im-
16 pede, obstruct, or influence the investigation or proper ad-
17 ministration of any matter within the jurisdiction of any
18 department or agency of the United States or any case
19 filed under title 11, or in relation to or contemplation of
20 any such matter or case, shall be fined under this title,
21 imprisoned not more than 5 years, or both.

22 **“§ 1520. Destruction of corporate audit records**

23 “(a) Any accountant who conducts an audit of an
24 issuer of securities to which section 10A(a) of the Securi-
25 ties Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies,

1 shall maintain all documents (including electronic docu-
 2 ments) sent, received, or created in connection with any
 3 audit, review, or other engagement for such issuer for a
 4 period of 5 years from the end of the fiscal period in which
 5 the audit, review, or other engagement was concluded.

6 “(b) Whoever knowingly and willfully violates sub-
 7 section (a) shall be fined under this title, imprisoned not
 8 more than 5 years, or both.

9 “(c) Nothing in this section shall be deemed to dimin-
 10 ish or relieve any person of any other duty or obligation,
 11 imposed by Federal or State law or regulation, to main-
 12 tain, or refrain from destroying, any document.”

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 at the beginning of chapter 73 of title 18, United States
 15 Code, is amended by adding at the end the following new
 16 items:

“1519. Destruction, alteration, or falsification of records in Federal investiga-
 tions and bankruptcy.
 “1520. Destruction of corporate audit records.”

17 **SEC. 3. ENHANCED ENFORCEMENT OF LAWS AFFECTING**
 18 **RACKETEER-INFLUENCED AND CORRUPT OR-**
 19 **GANIZATIONS.**

20 Section 1964 of title 18, United States Code, is
 21 amended—

22 (1) in subsection (b), by inserting after “The
 23 Attorney General” the following: “, the Attorney

1 General of any State, or the Securities and Ex-
 2 change Commission"; and

3 (2) in subsection (d), by inserting before the pe-
 4 riod the following: "or any State".

5 **SEC. 4. DEBTS NONDISCHARGEABLE IF INCURRED IN VIO-**
 6 **LATION OF SECURITIES FRAUD LAWS.**

7 Section 523(a) of title 11, United States Code, is
 8 amended—

9 (1) in paragraph (17), by striking "or" after
 10 the semicolon;

11 (2) in paragraph (18), by striking the period at
 12 the end and inserting "; or"; and

13 (3) by adding at the end, the following:

14 "(19) that—

15 "(A) arises under a claim relating to—

16 "(i) the violation of any of the Fed-
 17 eral securities laws (as that term is defined
 18 in section 3(a)(47) of the Securities Ex-
 19 change Act of 1934 (15 U.S.C.
 20 78c(a)(47)); any State securities laws; or
 21 any regulations or orders issued under
 22 such Federal or State securities laws; or

23 "(ii) common law fraud, deceit, or
 24 manipulation in connection with the pur-
 25 chase or sale of any security; and

“(B) results, in relation to any claim described in subparagraph (A), from—

“(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

“(ii) any settlement agreement entered into by the debtor; or

“(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.”.

SEC. 5. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting “(a)” before “Except”; and

(2) by adding at the end the following:

“(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

1 “(1) 5 years after the date on which the alleged
2 violation occurred; or

3 “(2) 3 years after the date on which the alleged
4 violation was discovered.”.

5 (b) EFFECTIVE DATE.—The limitations period pro-
6 vided by section 1658(b) of title 28, United States Code,
7 as added by this section, shall apply to all proceedings ad-
8 dressed by this section that are commenced on or after
9 the date of enactment of this Act.

10 **SEC. 6. REVIEW OF FEDERAL SENTENCING GUIDELINES**
11 **FOR OBSTRUCTION OF JUSTICE AND EXTEN-**
12 **SIVE CRIMINAL FRAUD.**

13 Pursuant to section 994 of title 28, United States
14 Code, and in accordance with this section, the United
15 States Sentencing Commission shall review and amend, as
16 appropriate, the Federal Sentencing Guidelines and re-
17 lated policy statements to ensure that—

18 (1) the guideline offense levels and enhance-
19 ments for an obstruction of justice offense are ade-
20 quate in cases where documents or other physical
21 evidence are actually destroyed or fabricated;

22 (2) the guideline offense levels and enhance-
23 ments for violations of section 1519 or 1520 of title
24 18, United States Code, as added by this Act, are
25 sufficient to deter and punish that activity;

1 (3) the guideline offense levels and enhance-
 2 ments under United States Sentencing Guideline
 3 2B1.1 (as in effect on the date of enactment of this
 4 Act) are sufficient for a fraud offense when the
 5 number of victims adversely involved is significantly
 6 greater than 50; and

7 (4) a specific offense characteristic enhancing
 8 sentencing is provided under United States Sen-
 9 tencing Guideline 2B1.1 (as in effect on the date of
 10 enactment of this Act) for a fraud offense that en-
 11 dangers the solvency or financial security of 1 or
 12 more victims.

13 **SEC. 7. PROTECTION FOR EMPLOYEES OF PUBLICLY TRAD-**
 14 **ED COMPANIES WHO PROVIDE EVIDENCE OF**
 15 **FRAUD.**

16 (a) **IN GENERAL.**—Chapter 73 of title 18, United
 17 States Code, is amended by inserting after section 1514
 18 the following:

19 **“§ 1514A. Civil action to protect against retaliation in**
 20 **fraud cases**

21 “(a) **WHISTLEBLOWER PROTECTION FOR EMPLOY-**
 22 **EES OF PUBLICLY TRADED COMPANIES.**—No company
 23 with securities registered under section 6 of the Securities
 24 Act of 1933 (15 U.S.C. 77f) or section 12 or 15(d) of
 25 the Securities Exchange Act of 1934 (15 U.S.C. 78l,

1 78o(d)), or any officer, employee, contractor, subcon-
2 tractor, or agent of such company, may discharge, demote,
3 suspend, threaten, harass, or in any other manner dis-
4 criminate against an employee in the terms and conditions
5 of employment because of any lawful act done by the
6 employee—

7 “(1) to provide information, cause information
8 to be provided, or otherwise assist in an investiga-
9 tion regarding any conduct which the employee rea-
10 sonably believes constitutes a violation of section
11 1341, 1343, 1344, or 1348, any rule or regulation
12 of the Securities and Exchange Commission, or any
13 provision of Federal law relating to fraud against
14 shareholders, when the information or assistance is
15 provided to or the investigation is conducted by—

16 “(A) a Federal regulatory or law enforce-
17 ment agency;

18 “(B) any Member of Congress or any com-
19 mittee of Congress; or

20 “(C) a person with supervisory authority
21 over the employee (or such other person work-
22 ing for the employer who has the authority to
23 investigate, discover, or terminate misconduct);
24 or

1 “(2) to file, cause to be filed, testify, participate
 2 in, or otherwise assist in a proceeding filed or about
 3 to be filed (with any knowledge of the employer) re-
 4 lating to an alleged violation of section 1341, 1343,
 5 1344, or 1348, any rule or regulation of the Securi-
 6 ties and Exchange Commission, or any provision of
 7 Federal law relating to fraud against shareholders.

8 “(b) ELECTION OF ACTION.—

9 “(1) IN GENERAL.—A person who alleges dis-
 10 charge or other discrimination by any person in vio-
 11 lation of subsection (a) may seek relief under sub-
 12 section (c), by—

13 “(A) filing a complaint with the Secretary
 14 of Labor; or

15 “(B) bringing an action at law or equity in
 16 the appropriate district court of the United
 17 States.

18 “(2) PROCEDURE.—

19 “(A) IN GENERAL.—An action under para-
 20 graph (1)(A) shall be governed under the rules
 21 and procedures set forth in section 42121(b) of
 22 title 49, United States Code.

23 “(B) EXCEPTION.—Notification made
 24 under section 42121(b)(1) of title 49, United

1 States Code, shall be made to the person named
2 in the complaint and to the employer.

3 ~~“(C) BURDENS OF PROOF.—~~An action
4 brought under paragraph (1)(B) shall be gov-
5 erned by the legal burdens of proof set forth in
6 section 42121(b) of title 49, United States
7 Code.

8 ~~“(D) STATUTE OF LIMITATIONS.—~~An ac-
9 tion under paragraph (1) shall be commenced
10 not later than 180 days after the date on which
11 the violation occurs.

12 ~~“(e) REMEDIES.—~~

13 ~~“(1) IN GENERAL.—~~An employee prevailing in
14 any action under subsection (b)(1) (A) or (B) shall
15 be entitled to all relief necessary to make the em-
16 ployee whole.

17 ~~“(2) COMPENSATORY DAMAGES.—~~Relief for any
18 action under paragraph (1) shall include—

19 ~~“(A) reinstatement with the same seniority~~
20 ~~status that the employee would have had, but~~
21 ~~for the discrimination;~~

22 ~~“(B) 2 times the amount of back pay, with~~
23 ~~interest; and~~

24 ~~“(C) compensation for any special damages~~
25 ~~sustained as a result of the discrimination, in-~~

cluding litigation costs, expert witness fees, and
reasonable attorney fees.

~~“(3) PUNITIVE DAMAGES.—~~

~~“(A) IN GENERAL.—~~In a case in which the
finder of fact determines that the protected
conduct of the employee under subsection (a)
involved a substantial risk to the health, safety,
or welfare of shareholders of the employer or
the public, the finder of fact may award punit-
ive damages to the employee.

~~“(B) FACTORS.—~~In determining the
amount, if any, to be awarded under this para-
graph, the finder of fact shall take into
account—

~~“(i) the significance of the informa-
tion or assistance provided by the employee
under subsection (a) and the role of the
employee in advancing any investigation;
proceeding, congressional inquiry or action;
or internal remedial process, or in pro-
tecting the health, safety, or welfare of
shareholders of the employer or of the pub-
lic;~~

~~“(ii) the nature and extent of both the
actual and potential discrimination to~~

1 which the employee was subjected as a re-
 2 sult of the protected conduct of the em-
 3 ployee under subsection (a); and

4 “(iii) the nature and extent of the risk
 5 to the health, safety, or welfare of share-
 6 holders or the public under subparagraph
 7 (A).

8 “(d) RIGHTS RETAINED BY EMPLOYEE.—

9 “(1) OTHER REMEDIES UNAFFECTED.—Noth-
 10 ing in this section shall be deemed to diminish the
 11 rights, privilege, or remedies of any employee under
 12 any Federal or State law, or under any collective
 13 bargaining agreement.

14 “(2) VOLUNTARY ADJUDICATION.—No em-
 15 ployee may be compelled to adjudicate his or her
 16 rights under this section pursuant to an arbitration
 17 agreement.”

18 (b) CLERICAL AMENDMENT.—The table of sections
 19 at the beginning of chapter 73 of title 18, United States
 20 Code, is amended by inserting after the item relating to
 21 section 1514 the following new item:

“1514A. Civil action to protect against retaliation in fraud cases.”

1 **SEC. 8. CRIMINAL PENALTIES FOR DEFRAUDING SHARE-**
 2 **HOLDERS OF PUBLICLY TRADED COMPANIES.**

3 (a) **IN GENERAL.**—Chapter 63 of title 18, United
 4 States Code, is amended by adding at the end the fol-
 5 lowing:

6 **“§ 1348. Securities fraud**

7 **“Whoever knowingly executes, or attempts to execute,**
 8 **a scheme or artifice—**

9 **“(1) to defraud any person in connection with**
 10 **any security registered under section 12 or 15(d) of**
 11 **the Securities Exchange Act of 1934 (15 U.S.C. 78l,**
 12 **78o(d)) or section 6 of the Securities Act of 1933**
 13 **(15 U.S.C. 77f); or**

14 **“(2) to obtain, by means of false or fraudulent**
 15 **pretenses, representations, or promises, any money**
 16 **or property in connection with the purchase or sale**
 17 **of any security registered under section 12 or 15(d)**
 18 **of the Securities Exchange Act of 1934 (15 U.S.C.**
 19 **78l, 78o(d)) or section 6 of the Securities Act of**
 20 **1933 (15 U.S.C. 77f);**

21 **shall be fined under this title, or imprisoned not more than**
 22 **10 years, or both.”.**

23 (b) **CLERICAL AMENDMENT.**—The table of sections
 24 at the beginning of chapter 63 of title 18, United States
 25 Code, is amended by adding at the end the following new

1 ~~item:~~

~~"1848. Securities fraud."~~

2 **SECTION 1. SHORT TITLE.**

3 *This Act may be cited as the "Corporate and Criminal*
4 *Fraud Accountability Act of 2002".*

5 **SEC. 2. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.**

6 (a) *IN GENERAL.*—Chapter 73 of title 18, United
7 States Code, is amended by adding at the end the following:

8 **"§ 1519. Destruction, alteration, or falsification of**
9 **records in Federal investigations and**
10 **bankruptcy**

11 *"Whoever knowingly alters, destroys, mutilates, con-*
12 *ceals, covers up, falsifies, or makes a false entry in any*
13 *record, document, or tangible object with the intent to im-*
14 *pede, obstruct, or influence the investigation or proper ad-*
15 *ministration of any matter within the jurisdiction of any*
16 *department or agency of the United States or any case filed*
17 *under title 11, or in relation to or contemplation of any*
18 *such matter or case, shall be fined under this title, impris-*
19 *oned not more than 10 years, or both.*

20 **"§ 1520. Destruction of corporate audit records**

21 *"(a)(1) Any accountant who conducts an audit of an*
22 *issuer of securities to which section 10A(a) of the Securities*
23 *Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies, shall*
24 *maintain all audit or review workpapers for a period of*

1 5 years from the end of the fiscal period in which the audit
2 or review was concluded.

3 “(2) The Securities and Exchange Commission shall
4 promulgate, within 180 days, after adequate notice and an
5 opportunity for comment, such rules and regulations, as are
6 reasonably necessary, relating to the retention of relevant
7 records such as workpapers, documents that form the basis
8 of an audit or review, memoranda, correspondence, commu-
9 nications, other documents, and records (including elec-
10 tronic records) which are created, sent, or received in con-
11 nection with an audit or review and contain conclusions,
12 opinions, analyses, or financial data relating to such an
13 audit or review, which is conducted by any accountant who
14 conducts an audit of an issuer of securities to which section
15 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C.
16 78j-1(a)) applies.

17 “(b) Whoever knowingly and willfully violates sub-
18 section (a)(1), or any rule or regulation promulgated by
19 the Securities and Exchange Commission under subsection
20 (a)(2), shall be fined under this title, imprisoned not more
21 than 5 years, or both.

22 “(c) Nothing in this section shall be deemed to dimin-
23 ish or relieve any person of any other duty or obligation,
24 imposed by Federal or State law or regulation, to maintain,
25 or refrain from destroying, any document.”.

1 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
 2 *the beginning of chapter 73 of title 18, United States Code,*
 3 *is amended by adding at the end the following new items:*

“1519. Destruction, alteration, or falsification of records in Federal investigations
 and bankruptcy.

“1520. Destruction of corporate audit records.”.

4 **SEC. 3. DEBTS NONDISCHARGEABLE IF INCURRED IN VIO-**
 5 **LATION OF SECURITIES FRAUD LAWS.**

6 Section 523(a) of title 11, United States Code, is
 7 amended—

8 (1) in paragraph (17), by striking “or” after the
 9 semicolon;

10 (2) in paragraph (18), by striking the period at
 11 the end and inserting “; or”; and

12 (3) by adding at the end, the following:

13 “(19) that—

14 “(A) arises under a claim relating to—

15 “(i) the violation of any of the Federal
 16 securities laws (as that term is defined in
 17 section 3(a)(47) of the Securities Exchange
 18 Act of 1934 (15 U.S.C. 78c(a)(47)), any
 19 State securities laws, or any regulations or
 20 orders issued under such Federal or State
 21 securities laws; or

22 “(ii) common law fraud, deceit, or ma-
 23 nipulation in connection with the purchase
 24 or sale of any security; and

1 “(B) results, in relation to any claim de-
2 scribed in subparagraph (A), from—

3 “(i) any judgment, order, consent
4 order, or decree entered in any Federal or
5 State judicial or administrative proceeding;

6 “(ii) any settlement agreement entered
7 into by the debtor; or

8 “(iii) any court or administrative
9 order for any damages, fine, penalty, cita-
10 tion, restitutionary payment, disgorgement
11 payment, attorney fee, cost, or other pay-
12 ment owed by the debtor.”.

13 **SEC. 4. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.**

14 (a) *IN GENERAL*.—Section 1658 of title 28, United
15 States Code, is amended—

16 (1) by inserting “(a)” before “Except”; and

17 (2) by adding at the end the following:

18 “(b) Notwithstanding subsection (a), a private right
19 of action that involves a claim of fraud, deceit, manipula-
20 tion, or contrivance in contravention of a regulatory re-
21 quirement concerning the securities laws, as defined in sec-
22 tion 3(a)(47) of the Securities Exchange Act of 1934 (15
23 U.S.C. 78c(a)(47)), may be brought not later than the ear-
24 lier of—

1 “(1) 5 years after the date on which the alleged
2 violation occurred; or

3 “(2) 2 years after the date on which the alleged
4 violation was discovered.”.

5 (b) *EFFECTIVE DATE.*—The limitations period pro-
6 vided by section 1658(b) of title 28, United States Code,
7 as added by this section, shall apply to all proceedings ad-
8 dressed by this section that are commenced on or after the
9 date of enactment of this Act.

10 (c) *NO CREATION OF ACTIONS.*—Nothing in this sec-
11 tion shall create a new, private right of action.

12 **SEC. 5. REVIEW OF FEDERAL SENTENCING GUIDELINES**
13 **FOR OBSTRUCTION OF JUSTICE AND EXTEN-**
14 **SIVE CRIMINAL FRAUD.**

15 Pursuant to section 994 of title 28, United States Code,
16 and in accordance with this section, the United States Sen-
17 tencing Commission shall review and amend, as appro-
18 priate, the Federal Sentencing Guidelines and related pol-
19 icy statements to ensure that—

20 (1) the base offense level and existing enhance-
21 ments contained in United States Sentencing Guide-
22 line 2J1.2 relating to obstruction of justice are suffi-
23 cient to deter and punish that activity;

1 (2) the enhancements and specific offense charac-
2 teristics relating to obstruction of justice are adequate
3 in cases where—

4 (A) documents and other physical evidence
5 are actually destroyed, altered or fabricated;

6 (B) the destruction, alteration, or fabrica-
7 tion of evidence involves—

8 (i) a large amount of evidence, a large
9 number of participants, or is otherwise ex-
10 tensive;

11 (ii) the selection of evidence that is
12 particularly probative or essential to the in-
13 vestigation; or

14 (iii) more than minimal planning; or

15 (C) the offense involved abuse of a special
16 skill or a position of trust;

17 (3) the guideline offense levels and enhancements
18 for violations of section 1519 or 1520 of title 18,
19 United States Code, as added by this Act, are suffi-
20 cient to deter and punish that activity;

21 (4) the guideline offense levels and enhancements
22 under United States Sentencing Guideline 2B1.1 (as
23 in effect on the date of enactment of this Act) are suf-
24 ficient for a fraud offense when the number of victims
25 adversely involved is significantly greater than 50;

1 (5) a specific offense characteristic enhancing
 2 sentencing is provided under United States Sen-
 3 tencing Guideline 2B1.1 (as in effect on the date of
 4 enactment of this Act) for a fraud offense that endan-
 5 gers the solvency or financial security of a substantial
 6 number of victims; and

7 (6) the guidelines that apply to organizations in
 8 United States Sentencing Guidelines, Chapter 8, are
 9 sufficient to deter and punish organizational criminal
 10 misconduct.

11 **SEC. 6. PROTECTION FOR EMPLOYEES OF PUBLICLY TRAD-**
 12 **ED COMPANIES WHO PROVIDE EVIDENCE OF**
 13 **FRAUD.**

14 (a) *IN GENERAL.*—Chapter 73 of title 18, United
 15 States Code, is amended by inserting after section 1514 the
 16 following:

17 **“§ 1514A. Civil action to protect against retaliation in**
 18 **fraud cases**

19 “(a) *WHISTLEBLOWER PROTECTION FOR EMPLOYEES*
 20 *OF PUBLICLY TRADED COMPANIES.*—No company with a
 21 class of securities registered under section 12 of the Securi-
 22 ties Exchange Act of 1934 (15 U.S.C. 78l), or that is re-
 23 quired to file reports under section 15(d) of the Securities
 24 Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer,
 25 employee, contractor, subcontractor, or agent of such com-

1 pany, may discharge, demote, suspend, threaten, harass, or
2 in any other manner discriminate against an employee in
3 the terms and conditions of employment because of any law-
4 ful act done by the employee—

5 “(1) to provide information, cause information
6 to be provided, or otherwise assist in an investigation
7 regarding any conduct which the employee reasonably
8 believes constitutes a violation of section 1341, 1343,
9 1344, or 1348, any rule or regulation of the Securities
10 and Exchange Commission, or any provision of Fed-
11 eral law relating to fraud against shareholders, when
12 the information or assistance is provided to or the
13 investigation is conducted by—

14 “(A) a Federal regulatory or law enforce-
15 ment agency;

16 “(B) any Member of Congress or any com-
17 mittee of Congress; or

18 “(C) a person with supervisory authority
19 over the employee (or such other person working
20 for the employer who has the authority to inves-
21 tigate, discover, or terminate misconduct); or

22 “(2) to file, cause to be filed, testify, participate
23 in, or otherwise assist in a proceeding filed or about
24 to be filed (with any knowledge of the employer) relat-
25 ing to an alleged violation of section 1341, 1343,

1 1344, or 1348, any rule or regulation of the Securities
2 and Exchange Commission, or any provision of Fed-
3 eral law relating to fraud against shareholders.

4 “(b) *ENFORCEMENT ACTION.*—

5 “(1) *IN GENERAL.*—A person who alleges dis-
6 charge or other discrimination by any person in vio-
7 lation of subsection (a) may seek relief under sub-
8 section (c), by—

9 “(A) filing a complaint with the Secretary
10 of Labor; or

11 “(B) if the Secretary has not issued a final
12 decision within 180 days of the filing of the com-
13 plaint and there is no showing that such delay
14 is due to the bad faith of the claimant, bringing
15 an action at law or equity for de novo review in
16 the appropriate district court of the United
17 States, which shall have jurisdiction over such
18 an action without regard to the amount in con-
19 troversy.

20 “(2) *PROCEDURE.*—

21 “(A) *IN GENERAL.*—An action under para-
22 graph (1)(A) shall be governed under the rules
23 and procedures set forth in section 42121(b) of
24 title 49, United States Code.

1 “(B) *EXCEPTION.*—Notification made under
2 section 42121(b)(1) of title 49, United States
3 Code, shall be made to the person named in the
4 complaint and to the employer.

5 “(C) *BURDENS OF PROOF.*—An action
6 brought under paragraph (1)(B) shall be gov-
7 erned by the legal burdens of proof set forth in
8 section 42121(b) of title 49, United States Code.

9 “(D) *STATUTE OF LIMITATIONS.*—An action
10 under paragraph (1) shall be commenced not
11 later than 90 days after the date on which the
12 violation occurs.

13 “(c) *REMEDIES.*—

14 “(1) *IN GENERAL.*—An employee prevailing in
15 any action under subsection (b)(1) shall be entitled to
16 all relief necessary to make the employee whole.

17 “(2) *COMPENSATORY DAMAGES.*—Relief for any
18 action under paragraph (1) shall include—

19 “(A) reinstatement with the same seniority
20 status that the employee would have had, but for
21 the discrimination;

22 “(B) the amount of back pay, with interest;
23 and

24 “(C) compensation for any special damages
25 sustained as a result of the discrimination, in-

1 cluding litigation costs, expert witness fees, and
2 reasonable attorney fees.

3 “(d) *RIGHTS RETAINED BY EMPLOYEE.*—Nothing in
4 this section shall be deemed to diminish the rights, privilege,
5 or remedies of any employee under any Federal or State
6 law, or under any collective bargaining agreement.”.

7 (b) *CLERICAL AMENDMENT.*—The table of sections at
8 the beginning of chapter 73 of title 18, United States Code,
9 is amended by inserting after the item relating to section
10 1514 the following new item:

“1514A. Civil action to protect against retaliation in fraud cases.”.

11 **SEC. 7. CRIMINAL PENALTIES FOR DEFRAUDING SHARE-**
12 **HOLDERS OF PUBLICLY TRADED COMPANIES.**

13 (a) *IN GENERAL.*—Chapter 63 of title 18, United
14 States Code, is amended by adding at the end the following:

15 **“§ 1348. Securities fraud**

16 “Whoever knowingly executes, or attempts to execute,
17 a scheme or artifice—

18 “(1) to defraud any person in connection with
19 any security of an issuer with a class of securities
20 registered under section 12 of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78l) or that is required to file
22 reports under section 15(d) of the Securities Exchange
23 Act of 1934 (15 U.S.C. 78o(d)); or

24 “(2) to obtain, by means of false or fraudulent
25 pretenses, representations, or promises, any money or

1 *property in connection with the purchase or sale of*
2 *any security of an issuer with a class of securities*
3 *registered under section 12 of the Securities Exchange*
4 *Act of 1934 (15 U.S.C. 78l) or that is required to file*
5 *reports under section 15(d) of the Securities Exchange*
6 *Act of 1934 (15 U.S.C. 78o(d));*

7 *shall be fined under this title, or imprisoned not more than*
8 *10 years, or both.”.*

9 **(b) CLERICAL AMENDMENT.**—*The table of sections at*
10 *the beginning of chapter 63 of title 18, United States Code,*
11 *is amended by adding at the end the following new item:*

“1348. Securities fraud.”.

Calendar No. 366

107TH CONGRESS
2D SESSION

S. 2010

[Report No. 107-146]

A BILL

To provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers, and for other purposes.

MAY 6, 2002

Reported with an amendment.

Withdrawal Marker

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Memorandum	Corporate Responsibility Speech - To: Joshua Bolten - From: Marc Sumerlin	3	07/02/2002	P5;

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COLLECTION:
Counsel's Office, White House

SERIES:
Newstead, Jennifer (Jen)

FOLDER TITLE:
Sarbanes Passed Bill [5]

FRC ID:
9825

OA Num.:
2318

NARA Num.:
2230

FOIA IDs and Segments:
2014-0373-F

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

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]
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- 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 concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	Obstruction of Justice	5	07/02/2002	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Draft	[Legislation with Notes]	3	N.D.	P5;

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