OFFICE OF THE GOVERNOR
Commonwealth of Kentucky
100 Capitol Building
Frankfort, Kentucky 40601-3492
Phone: 502-564-2611
Fax: 502-564-0437

GOVERNOR PAUL E. PATTON
Lt. Governor Stephen L. Henry

tobacco

FAX TRANSMITTAL

TO: Tom Freedman

FROM: John-Mark Hack

DATE: 8/12/99

FAX #: 202 456 7431

OF PAGES: 11
(including cover sheet)

301 548 9433

MESSAGE:

Thanks! We'd love something public if it could be worked out. Looking forward to hearing from you.

COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR

PAUL E. PATTON
GOVERNOR

700 CAPITOL AVENUE
SUITE 100
FRANKFORT, KY 40601
(502) 564-2611
FAX: (502) 564-2517

August 12, 1999

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

I write to request your immediate attention to a matter of utmost importance to the Commonwealth of Kentucky. As Governor, I chair the Board of the Kentucky Tobacco Settlement Trust Corporation. This corporation is the state entity overseeing the distribution of the National Tobacco Growers Settlement Trust, the $5.15 billion fund established to help offset income losses incurred by tobacco farmers as a result of the Master Settlement Agreement between the major cigarette companies and the states.

A bill (S.1481) to allow the United States Department of Agriculture to release certain information to the state certification entities of the national growers trust was passed by unanimous consent last week. Senator Mitch McConnell was key to its quick and timely passage. The bill enables our corporation to electronically process the 180,000 applications we expect to receive and insures prompt and timely compensation to the growers who need it. Without this bill, we face the manual review of these applications and a significant delay in our processing of payments.

The White House recently received the bill, and I respectfully request your prompt approval of this legislation. It will have an immediate positive impact on our ability to efficiently administer the National Tobacco Growers Settlement Trust. Thank you for your consideration.

Sincerely,

Paul E. Patton

Paul E. Patton

Kentucky Tobacco Settlement Trust Corporation
P. O. Box 2025
Frankfort, Kentucky 40602-2025

August 12, 1999

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

I write on behalf of the Kentucky Tobacco Settlement Trust Corporation Board of Directors, chaired by the Honorable Paul E. Patton, Governor of the Commonwealth of Kentucky, to request your immediate attention to a matter of utmost importance to us. This corporation is the state entity overseeing the distribution of the National Tobacco Growers Settlement Trust, the $5.15 billion fund established to help offset income losses incurred by tobacco farmers as a result of the Master Settlement Agreement between the major cigarette companies and the states.

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Sincerely,

John-Mark B. Hack
President

EDUCATION PAYS

Kentucky Pressing for minor revision to the 1938 Agricultural Adjustment Act to ensure equitable distribution of the National Tobacco Growers Settlement Trust

- In determining the fairest and most equitable distribution of the proceeds from the National Tobacco Settlement Trust, the Kentucky Tobacco Settlement Trust Corporation adopted a formula which averages effective quota and actual marketings to arrive at what we call *payment pounds*.

- The KTSTC has constructed an administrative system which would pre-calculate and pre-print payment pounds and electronically process the 180,000 applications the Corporation expects to receive.

- USDA can make available to KTSTC basic and effective quota, but were restricted by a provision in the 1938 Agricultural Adjustment Act from releasing actual tobacco marketings.

- KTSTC requested that this information be made available to the Corporation, a governmental entity, only for internal calculations of payment pounds, and that marketings information would never be made available for public review.

- A legislative solution allowing USDA to release the crop year 1998 marketings information to state governmental entities has been passed by unanimous consent in Congress last week.

- We need the signature of the President as soon as possible to facilitate the administration of the Trust Fund.

- The timeline imposed by the Trust Agreement on the KTSTC and like organizations in other tobacco states necessitates immediate consideration of this provision.

II

106TH CONGRESS
1ST SESSION

S. 1481

To amend the Agricultural Adjustment Act of 1938 to release and protect the release of tobacco production and marketing information.

IN THE SENATE OF THE UNITED STATES

AUGUST 4, 1999

Mr. MCCONNELL (for himself, Mr. HELMS, Mr. BUNNING, Mr. COVERDELL, Mr. EDWARDS, Mr. ROBB, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Agricultural Adjustment Act of 1938 to release and protect the release of tobacco production and marketing information.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TOBACCO PRODUCTION AND MARKETING INFORMATION.

Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is amended by adding at the end the following:

"SEC. 320D. TOBACCO PRODUCTION AND MARKETING INFORMATION.

"(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may, subject to subsection (b), release marketing information submitted by persons relating to the production and marketing of tobacco to State trusts or similar organizations engaged in the distribution of national trust funds to tobacco producers and other persons with interests associated with the production of tobacco, as determined by the Secretary.

"(b) LIMITATIONS.—

"(1) IN GENERAL.—Information may be released under subsection (a) only to the extent that—

"(A) the release is in the interest of tobacco producers, as determined by the Secretary; and

"(B) the information is released to a State trust or other organization that is created to, or charged with, distributing funds to tobacco producers or other parties with an interest in tobacco production or tobacco farms under a national or State trust or settlement.

"(2) EXEMPTION FROM RELEASE.—The Secretary shall, to the maximum extent practicable, in advance of making a release of information under subsection (a), allow, by announcement, a period of at least 15 days for persons whose consent would otherwise be required by law to effectuate the release, to elect to be exempt from the release.

"(c) ASSISTANCE.—

"(1) IN GENERAL.—In making a release under subsection (a), the Secretary may provide such other assistance with respect to information released under subsection (a) as will facilitate the interest of producers in receiving the funds that are the subject of a trust described in subsection (a).

"(2) FUNDS.—The Secretary shall use amounts made available for salaries and expenses of the Department to carry out paragraph (1).

"(d) RECORDS.—

"(1) IN GENERAL.—A person that obtains information described in subsection (a) shall maintain records that are consistent with the purposes of the release and shall not use the records for any purpose not authorized under this section.

"(2) PENALTY.—A person that knowingly violates this subsection shall be fined not more than $10,000, imprisoned not more than 1 year, or both.

"(e) APPLICATION.—This section shall not apply to—

"(1) records submitted by cigarette manufacturers with respect to the production of cigarettes;

"(2) records that were submitted as expected purchase intentions in connection with the establishment of national tobacco quotas; or

"(3) records that aggregate the purchases of particular buyers.".

○

To amend the Agricultural Adjustment Act of 1938 to release and protect the release of tobacco production and marketing information. (Introduced in the Senate)

S 1481 IS

106th CONGRESS

1st Session

S. 1481

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7,000 →

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[illegible] -

[illegible]

Faith based

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Bradley [illegible] → 9/9 medicare

9/9 taxes

guns

9/9 - New Zealand

9/11 -

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9/7 - School

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9/9

o [illegible]

o PBOR

o guns

→

AB [illegible]

Environ

Educ.

[illegible]

OFFICE OF THE GOVERNOR
Commonwealth of Kentucky
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GOVERNOR PAUL E. PATTON
Lt. Governor Stephen L. Henry

FAX TRANSMITTAL

TO: Tom Freedman

FROM: John-Mark Hack

DATE: 8/13/99

FAX #: 202 456-7431

OF PAGES: (including cover sheet)

MESSAGE:

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700 CAPITOL AVENUE
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Paul E. Patton

Paul E. Patton

EDUCATION PAYS
AN EQUAL OPPORTUNITY EMPLOYER M/F/D

CAMPAIGN for TOBACCO-FREE Kids

for [illegible]

February 1, 1999

Mr. Tom Freedman
Special Assistant to the President &
Senior Director for Policy
Executive Office of the President
Old Executive Office Building, Room 213
Washington, DC 20501

Dear Tom:

This is to let you know of our plans for the **1999 Youth Advocates of the Year Awards gala**, which will be held on **April 29 at 6:30 p.m. at Washington's National Building Museum**.

We will once again honor the outstanding work of young advocates who have distinguished themselves as leaders among thousands of kids working to protect their peers, their communities and the nation from tobacco addiction and tobacco-caused disease.

The CAMPAIGN honors a national winner, five regional winners and one group winner. They are among the most impressive young people any of us will ever meet. Our winners receive scholarships and program funds to help them continue their leadership work, and they remain engaged with the CAMPAIGN as local and national spokespersons.

Please mark your calendar for our April 29, 1999 Youth Advocates of the Year Awards event. We would like you to attend as our guest.

Last year's event was a great success, and the gala this coming April promises to be the best ever. **Producer/director Rob Reiner is serving as chair of the event.** He is already a success in the Tobacco Wars, having led the fight last November in California on a ballot initiative that raised the price of cigarettes by 50¢ per pack. Rob succeeds two distinguished chairmen: Vice President Al Gore, who served as chair in 1997, and Ben Cohen, co-founder of Ben & Jerry's Homemade, who was our 1998 chair.

We expect more than 500 people to attend, including members of Congress, the Administration, public health leaders, business and civic leaders, and of course – kids.

We hope that you will be able to join us. Your presence will mean a great deal to our winners and to all those in attendance. An invitation will be sent to you soon.

Please call Tonya Buford or me if you have any questions or would like further information.

Sincerely,

Bill

William D. Novelli
President

Tom – It is a great night. Hope to see you. Matt

NATIONAL CENTER FOR TOBACCO-FREE KIDS
1707 L STREET, NW • SUITE 800 • WASHINGTON, DC 20036
PHONE (202) 296-5469 • FAX (202) 296-5427
www.tobaccofreekids.org

Tobacco

3/1/01

DRAFT 2/28

Medicaid Recoupment

1. Settle the federal claim (57% of the tobacco settlement funds) in exchange for a commitment that states spend the funds on shared national and state priorities to prevent youth smoking, protect tobacco farmers, improve public health, and assist children. This commitment, defined in legislation, would apply to all years of tobacco settlement (not just the five year budget window).

2. Define shared national and state priorities in legislation as:

   a. Tobacco prevention -- prevention, education, enforcement, cessation, evaluation

      → Floor of 15, 20, 25%? (15%=$720 mi/yr; 20%=$960 mi/yr; 25%=$1.2 bi/yr)
      → Require Secretary to certify tobacco plan which must include certain elements?

   b. Tobacco farmers -- direct payments to quota owners and active producers; career development, financial planning, or educational assistance; economic development grants

   c. Public health: community health centers and other providers of health care for the uninsured, CHIP outreach, maternal and child health, and mental health

      → Should CHIP presumptive eligibility language be included? (was in McCain)

   d. Anti-drug efforts -- safe and drug free schools, substance abuse treatment

   e. Child care -- child care block grant and early learning fund

3. Maintenance of effort: state spending on specified uses must be in addition to historic spending.

4. States would remit to the federal treasury the $2.9 billion CBO-scored cost.

   → Do states get credit for this $2.9 bi payment, e.g., is the federal share they must spend on specified purposes lowered by the amount of the payment? If so, a given percentage set-aside for tobacco prevention would be smaller through 2004.
   15% = $600 mi/yr through 2004, then rising to $720 mi/yr;
   20% = $800 mi/yr through 2004, then rising to $960 mi/yr;
   25% = $1 bi/yr through 2004, then rising to $1.2 bi/yr.

USDA TOBACCO USER FEE

Question: Explain the new tobacco "tax", and what does the Budget do for tobacco farmers?

Answer: The FY 2000 Budget proposes to cover the taxpayers' costs incurred by USDA for activities related to the growing and marketing of tobacco by expanding the expiring assessment on marketings of tobacco. This "user fee" would increase from 1 percent of tobacco marketings (including imports) to two percent. The portion levied on farmers (0.5 percent) would remain the same as at present, while the charge to cigarette manufacturers would increase from 0.5 percent to 1.5 percent. The fee would raise about $60 million in FY 2000.

The Budget does not propose direct assistance for tobacco growers, pending other proposals such as the recent industry agreement to provide a $5 billion fund for tobacco growers. The Administration remains committed to protecting tobacco farmers and those communities dependant on tobacco.

Background: USDA incurs about $60 million in costs for programs that assist tobacco growers, including administering price support loans to tobacco grower cooperatives, crop insurance, and marketing oversight. The 1993 OBRA imposed a marketing assessment for deficit reduction on the tobacco program, which is required to operate at "no net cost" to the taxpayer anyway (ensured through a different assessment on cooperatives to cover any losses on their price-support loans). The deficit reduction fee is set to expire with the 1998 crop (with the final collection in FY 1999). The Budget proposal would extend and expand the fee, on a fiscal year basis, and provide discretionary savings. These savings helped to offset higher funding for USDA count-based office staff.

Prepared by: Daniel Heath (x53645)

Edwards

Cleland or Contracts

TOBACCO

Ridge - 4 separate pieces

FDA

Farmers

Price

HCFA

— ok

Cleland

Victoria Bassett

664934

cell 270 1244

Flur

Bruce F - OK, good to have vehicle

Off 24/4 3/5

Rod - bucks - OK, good to negotiate but should have fairness w/in 55¢

Dallas - Glad we have some backstop language

— message w/ Patton

Agency wants to expand definition of 0127 to go from hamburger to all beef. Plan on leaking releasing Friday.

EW Copy for MS Cynthia + 2 extra's

Jolynn LD — nicotine

FEDERAL TRADE COMMISSION

OFFICE OF CONGRESSIONAL RELATIONS
Sixth and Pennsylvania Ave, NW
Washington, DC 20580
(202) 326-2195

FAX TRANSMITTAL

to: Tom Freedman
White House Policy Advisor
FAX: 456-7431

from: Carol Ann Kando-Pineda
Legislative Counsel
Fax: (202) 326-3585

date: **November 24, 1998**
time: **4:13 pm**
pages: ______ pages (including cover sheet)
re: Tar & nicotine testing

note: FYI -- the letter to HHS seeking their assistance with the review of the tar& nicotine testing system.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

Donald S. Clark
Secretary

Direct Dial
(202) 326-2514

November 19, 1998

The Honorable Donna E. Shalala
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Shalala:

We are writing to request the assistance of the Department of Health and Human Services in developing specific recommendations on the future of the Federal Trade Commission's program for testing the tar, nicotine and carbon monoxide content of cigarettes.

As you know, cigarette ratings for tar, nicotine, and carbon monoxide are currently determined by machine testing conducted in accordance with a method originally adopted by the Federal Trade Commission in 1967. Both the accuracy and continued validity of this method have come under question. In particular, the National Cancer Institute conducted a review of the method and concluded that significant changes should be made to the FTC testing protocol. The NCI found, among other things, that the existing system does not accurately reflect actual human smoking behavior, which varies widely among smokers, and that smokers who switch to lower tar and nicotine cigarettes may change their smoking behavior in ways that negate potential health benefits.

Following the NCI review, the FTC in September 1997 proposed revisions to the test method. The comments we received in response to our proposal raised a number of significant technical and health policy issues, including whether the findings of more recent studies question the presumed relationship between lower tar and nicotine cigarettes and reduced health risks. Because of their scientific nature, these issues fall more within the expertise of HHS rather than the FTC. For this reason, the Commission is requesting that your Department initiate a further review into FTC's cigarette testing method, and include recommendations on whether the system should be continued, and, if it should be continued, what specific changes should be made to the testing methodology to correct the limitations identified by the NCI. We would hope that such work could be completed in 18 months.

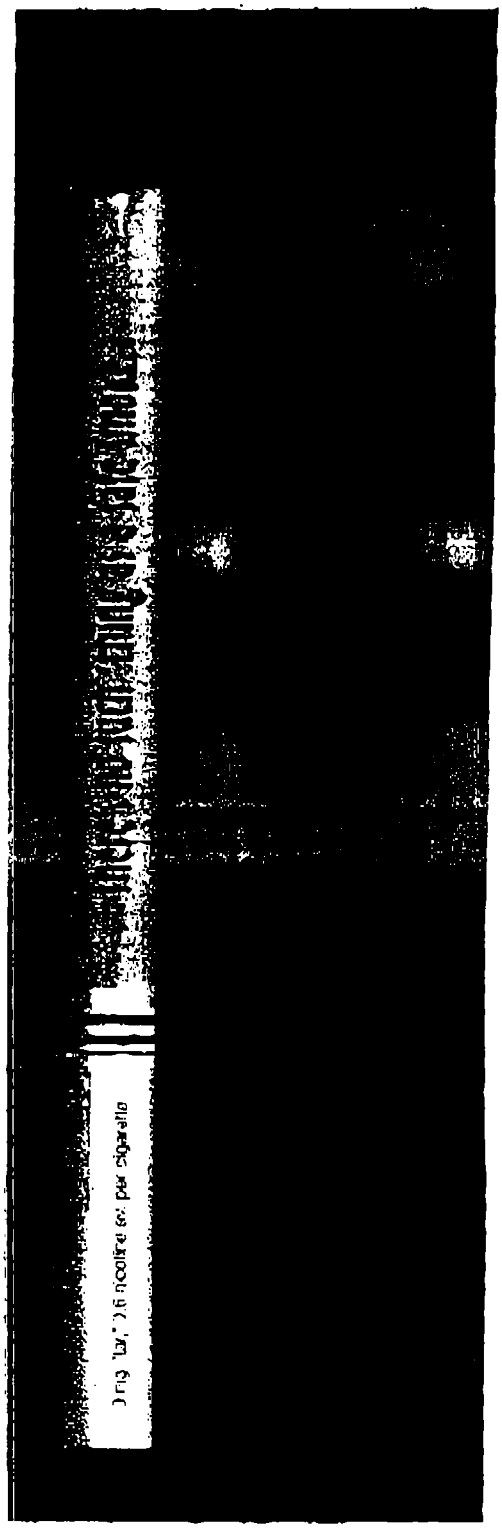
If HHS can assist us in this matter, the Commission will announce that it will participate in the joint review of the test methodology with the goal of arriving at specific recommendations within 18 months. In the interim, we would begin a consumer education program designed to alert consumers to the significant limitations in existing tar and nicotine numbers. Some samples of consumer education materials our staff has developed are enclosed for your review. We would welcome HHS assistance in this effort as well.

We look forward to working with you to improve this system so that it will provide consumers with accurate and useful information.

By direction of the Commission.

Donald S. Clark

Donald S. Clark
Secretary



The story on tar and nicotine?

Don't Count on the numbers.

There's no such thing as a safe smoke.

EW copy for ms Lynthia + 2 others

FEDERAL TRADE COMMISSION

OFFICE OF CONGRESSIONAL RELATIONS
Sixth and Pennsylvania Ave, NW
Washington, DC 20580
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tobacco - FTC

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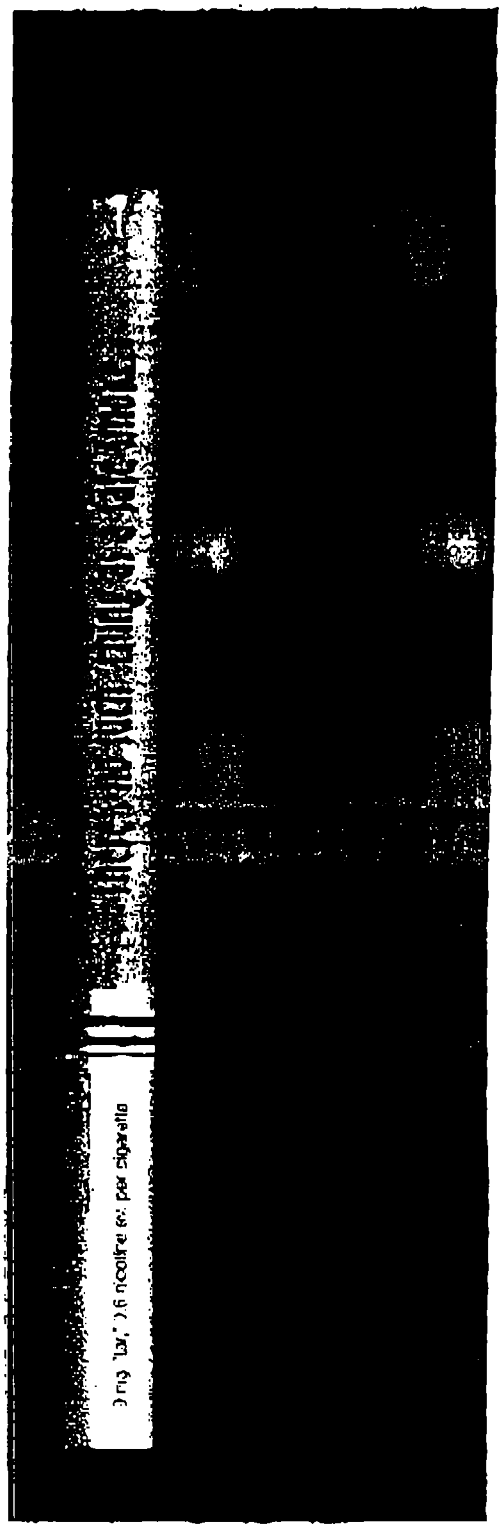

The story on tar and nicotine?

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There's no such thing as a safe smoke.

TN 312 464 - 554

Tobyallo

Scott D. Ballin JD
Tobacco and Health Policy Consultant
6220 30th Street NW
Washington DC 20015
Tel: 202 686-8898
Fax: 202 244-0698
e-mail: s.ballin@ix.netcom.com

~~CONFIDENTIAL~~

November 16,1998

TO: Public Health Advocates Interested in FDA Regulation of Tobacco Products

FROM: Scott D. Ballin
Consultant for the ALA

SUBJECT: Legislation and Strategies to Ensure Full FDA Authorities Over Tobacco Products---A Proposal

Over the last several months, on behalf of the American Lung Association but in the interests of the entire public health community, I have spent time talking with a number of people about what FDA tobacco legislation should look like as well as strategies that might be employed to accomplish implementation of this goal. These individuals were approached, not on the basis of the organizations they represent but rather based on their expertise and past experiences on the issue. Their involvement has been invaluable in attempting to develop a piece of legislation that ensures that all of the 'I's' have been dotted and all of the 'T's' have been crossed, and to sort out and devise some suggested strategies. What came across loud and clear is that a legislative proposal needs to be comprehensive and at the same time simple; that the FDA should be given the authorities it needs to get the job accomplished and that Congress should not "micromanage" the agency. (i.e. medical and scientific decisions should be left to experts and not politicians). What also came across loud and clear was the view that we should not give up on the notion that tobacco products are and should be treated as the drugs and devices they are.....recognizing however, that we may have to consider a 'separate chapter' approach. Their advice was also invaluable in trying to focus on how the public health community might be united and coordinated more effectively, not just in Washington but across the country and at the grassroots level.

The Honorable Bob Etheridge
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Etheridge:

Thank you for your letter of August 3, 1999, to the President, regarding possible litigation by the Department of Justice to recover the costs imposed on the federal government by tobacco-related illnesses. Your letter was forwarded to me for response.

In December of 1998, the Attorney General decided that there was a sufficient basis to begin preparation of a potential case to recover these costs. Since the decision to pursue recovery was made, the Department has established a tobacco litigation team within the Civil Division. The Department is currently in active preparation for this potential litigation, including making decisions on whether it will be filed, and, if so, based upon what legal theories.

We understand your concern about the impact that this litigation may have on tobacco farmers. I can assure you that the Administration shares your concern for tobacco farmers, their families, and their communities, and it is fully committed to working with all parties, as needed, to ensure their financial well-being. As you may recall, the Administration supported the $5 billion agreement recently produced by the States and representatives of farmers and the tobacco industry to provide financial assistance to tobacco farmers and their communities. Similarly, the Administration believes that in connection with any judgment or settlement of Federal claims against the tobacco companies, there should be established a fund, via legislation or other appropriate means, to protect farmers from the unintended consequences of that litigation.

With respect to your concern about the potential appointment of Mississippi Attorney General Michael Moore to serve as the Associate Attorney General of the Department, the current occupant of that position -- Associate Attorney General Raymond Fisher -- is still awaiting confirmation by the full Senate to serve on the Ninth Circuit Court of Appeals. Should Associate

Attorney General Fisher be confirmed, the decision as to whom to appoint to fill the vacancy belongs to the President. It is our understanding that the President has made no decision as to whom he will appoint to fill this position.

Thank you very much for your letter. If we can assist your further with this or any other matter, please do not hesitate to contact me directly.

Sincerely,

Jon P. Jennings
Acting Assistant Attorney General

U. S. Department of Justice

Civil Division

Tobacco

Office of the Assistant Attorney General *Washington, D.C. 20530*

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 9-23-99

TO: Cynthia Rice

FACSIMILE NO.: 456-7431

TELEPHONE NO.:

FROM: Pamela Smith

FACSIMILE NO.: (202) 305-3138

TELEPHONE NO.: (202) 514-3309

NO. OF PAGES:

COMMENTS: Robb letter & current draft of Etheridge are attached. We will obviously need to update Etheridge to reflect the fact that we've filed.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 9 1999

The Honorable Charles S. Robb
United States Senate
Washington, D.C. 20510

Dear Senator Robb:

Thank you for your letter to President Clinton regarding his announcement in the State of the Union address that the Justice Department is preparing a litigation plan for the Federal Government to sue the tobacco industry to recover Federal expenditures caused by tobacco use. Your letter was forwarded to me for response. We apologize for any inconvenience our delay in responding may have caused.

In December of 1998, the Attorney General concluded that there were viable bases for the Department of Justice to pursue recovery of the Federal Government's tobacco-related health care costs through litigation. This decision did not represent a change in policy for the Department. Despite reports to the contrary, the Department has never concluded nor taken the position that the United States has no authority to sue tobacco manufacturers to recover Medicare and other costs, apart from Medicaid.

Since the decision to pursue recovery was made, the Department has established a tobacco litigation team within the Civil Division. At present, the litigation team is continuing to study all aspects of potential litigation against the tobacco companies, including reviewing past litigation against tobacco companies by private litigants and State attorneys general, and considering factual material concerning the conduct of the tobacco companies, and the nature and scope of damages that may be recovered.

In your letter, you express concern about the impact that this litigation may have on tobacco farmers. I can assure you that the Administration shares your concern for tobacco farmers, their families, and their communities, and it is fully committed to working with all parties, as needed, to ensure their financial well-being. The Administration supports the $5 billion agreement recently produced by the States and representatives of farmers and the tobacco industry to provide financial assistance to tobacco farmers and their communities. In addition, the Administration would support legislation to settle the Federal claims to the State tobacco settlement funds in exchange for a commitment by the States to use the Federal share on those priorities shared by the States and Federal Government, including protecting tobacco farmers, preventing youth smoking, improving public health, and assisting children. Similarly, the Administration believes that in connection with any judgment or settlement of other (non-Medicaid) Federal claims there should be established a fund, via legislation or other appropriate means, to protect farmers from the unintended consequences of that litigation.

You also request copies of internal Department of Justice memoranda on this subject, along with a memorandum that was referenced in a New York Times article of January 21, 1999. The memorandum referenced in the New York Times article, "The Case for a Federal Tobacco Lawsuit," was provided to the Department by G. Robert Blakey, Professor of Law, University of Notre Dame; Laurence Tribe, Professor of Law, Harvard University; Einer Elhauge, Professor of Law, Harvard University; and Richard Scruggs, Scruggs, Millette, Bozeman & Dent, P.A.; a copy of the memorandum is enclosed. Internal Department analyses prepared in anticipation of litigation are not being provided because to do so could be damaging to the United States in any litigation that the Department may initiate. Such materials would not be available to the other parties in the litigation.

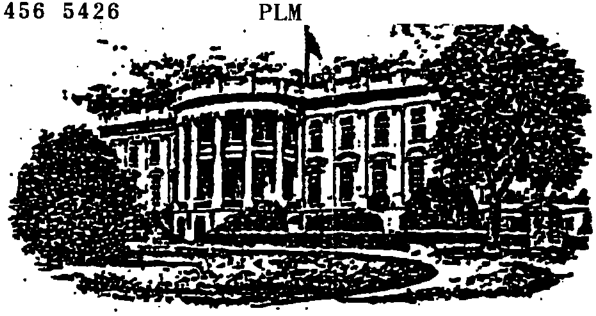
Thank you very much for your letter. If we can assist you further with this or any other matter, please do not hesitate to contact me directly.

Sincerely,

Jon P. Jennings

Jon P. Jennings
Acting Assistant Attorney General

Enclosure



Tobacco

THE WHITE HOUSE

WASHINGTON

FACSIMILE / MEMO FROM: John Corcoran

OFFICE OF PRESIDENTIAL LETTERS AND MESSAGES

OLD EXECUTIVE OFFICE BUILDING, ROOM 93

VOICE: (202) 456-5515 FAX: (202) 456-5426

NUMBER OF PAGES (INCLUDING COVER):

DATE: 9/8/99

TO: Tom Freedman

VOICE:

FAX: 6-7431

- ☐ FOR YOUR ACTION
- ☐ INCOMING LETTER(S) FROM: Gov. Patton
  RE: Tobacco
- ☐ FOR YOUR REVIEW / APPROVAL
- ☐ PER MY E-MAIL OR VOICE-MAIL MESSAGE TO YOU
- ☐ PER YOUR REQUEST

ADDITIONAL COMMENTS: Thank you

JC

Neil Hoover

4463637
#314581

COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR

PAUL E. PATTON
GOVERNOR

700 CAPITOL AVENUE
SUITE 100
FRANKFORT, KY 40601
(502) 564-2611
FAX: (502) 564-2517

August 12, 1999

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

I write to request your immediate attention to a matter of utmost importance to the Commonwealth of Kentucky. As Governor, I chair the Board of the Kentucky Tobacco Settlement Trust Corporation. This corporation is the state entity overseeing the distribution of the National Tobacco Growers Settlement Trust, the $5.15 billion fund established to help offset income losses incurred by tobacco farmers as a result of the Master Settlement Agreement between the major cigarette companies and the states.

A bill (S.1481) to allow the United States Department of Agriculture to release certain information to the state certification entities of the national growers trust was passed by unanimous consent last week. Senator Mitch McConnell was key to its quick and timely passage. The bill enables our corporation to electronically process the 180,000 applications we expect to receive and insures prompt and timely compensation to the growers who need it. Without this bill, we face the manual review of these applications and a significant delay in our processing of payments.

The White House recently received the bill, and I respectfully request your prompt approval of this legislation. It will have an immediate positive impact on our ability to efficiently administer the National Tobacco Growers Settlement Trust. Thank you for your consideration.

Sincerely,

Paul E. Patton

Paul E. Patton

AUG 13 1999

RICK BOUCHER
9TH DISTRICT, VIRGINIA

COMMITTEES:

COMMERCE
SUBCOMMITTEES:
TELECOMMUNICATIONS, TRADE AND CONSUMER PROTECTION
ENERGY AND POWER

JUDICIARY
SUBCOMMITTEE:
COURTS AND INTELLECTUAL PROPERTY

ASSISTANT WHIP

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e-mail: NINTHNET@MAIL.HOUSE.GOV
WWW: http://www.house.gov/boucher/

CONSTITUENT SERVICE OFFICES:
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ABINGDON, VIRGINIA 24210
(540) 628-1145

311 SHAWNEE AVENUE EAST
BIG STONE GAP, VIRGINIA 24219
(540) 523-5450

106 NORTH WASHINGTON AVENUE
P.O. BOX 1268
PULASKI, VIRGINIA 24301
(540) 980-4310

Fr Tob. tax

Congress of the United States
House of Representatives

copy to EW-Mary

Tom, CR

October 20, 1999

The Honorable Bill Archer, Chairman
House Ways and Means Committee
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Charles Rangel, Ranking Member
House Ways and Means Committee
1102 Longworth House Office Building
Washington, DC 20515

Dear Bill and Charlie:

As the House Ways and Means Committee considers the adoption of a tax measure, we are writing to request that you include a provision exempting from federal income tax any funds received by tobacco growers and tobacco allotment holders following the settlement between the states and the tobacco product manufacturers.

In the near future, tobacco growers and allotment holders will begin receiving payments. They will be compensated for their quota losses resulting from the expected downturn in the demand for tobacco. The farmers will be compensated from two established sources and a potential third source. The first source is funds the states are establishing for them. The second is the $5.15 billion trust established at the national level by the tobacco product manufacturers to compensate farmers directly. In addition, an appropriation of approximately $300 million, which would be added to the national trust to compensate farmers for their economic loss, is also pending as part of the Agriculture Appropriations bill for FY 2000. In our view, farmers will not receive sufficient compensation from these sources to equal the quota losses they will face as a result of the settlement.

We have introduced H.R. 2748, the Tobacco Farmers' Relief Act. This legislation, which has 20 co-sponsors, would exempt from federal tax any payments received from these sources. The legislation is needed to clarify that the compensation is for the loss of a marketing asset, the federally assigned quota, and consequently is analogous to a return of capital, traditionally a non-taxable event.

The inclusion of this legislation as part of any tax measure the Committee may consider would further the original intent of those establishing compensation for tobacco growers by ensuring that the monies are received in their entirety by the tobacco farmers and quota holders.

Reps. Archer and Rangel
October 20, 1999
– Page Two –

Since the federal government is not receiving any revenue from these payments presently, the inclusion of this measure would not have an adverse revenue effect.

We would appreciate your favorable consideration of this request. If you have questions, please contact Laura Vaught in Congressman Boucher's office at 225-3861 or Brenda Janowiak in Congressman Fletcher's office at 225-4706.

With kind regards and best wishes, we remain

Rick Boucher
Ernie Fletcher

Virgil Goode, Jr.
Bart Gordon

[signature]
Van Hilleary

Owen Pickett
Mike McIntyre

Sanford D. Bishop Jr. Ken Lucas

Ed Whitfield Saxby Chambliss

Hal Rogers

(Original Signature of Member)

106TH CONGRESS
1ST SESSION

H. R. 2748

Tobacco Farmer Relief Act

IN THE HOUSE OF REPRESENTATIVES

Mr. FLETCHER introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1986 to exclude from gross income payments made to tobacco quota and allotment holders and tobacco growers pursuant to Phase I or II of the Master Settlement Agreement between a State and tobacco product manufacturers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSION FROM GROSS INCOME FOR PAYMENTS MADE TO TOBACCO QUOTA AND ALLOTMENT HOLDERS AND TOBACCO GROWERS PURSUANT TO PHASE I OR II OF THE MASTER SETTLEMENT AGREEMENT.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 139 as section 140 and by inserting after section 138 the following new section:

"SEC. 139. CERTAIN PAYMENTS TO TOBACCO QUOTA AND ALLOTMENT HOLDERS AND TOBACCO GROWERS.

"(a) IN GENERAL.—Gross income shall not include any tobacco settlement payment.

"(b) TOBACCO SETTLEMENT PAYMENT.—For purposes of subsection (a), the term 'tobacco settlement payment' means any payment to any person if—

"(1) the payment is made to such person by reason of—

"(A) such person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938, or

"(B) such person having the right to grow tobacco pursuant to such a quota or allotment, and

"(2) such payment is received directly or indirectly pursuant to Phase I or II of the Master Settlement Agreement between a State and tobacco product manufacturers."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following:

"Sec. 139. Certain payments to tobacco quota and allotment holders and tobacco growers.
"Sec. 140. Cross references to other Acts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

CHARLES S. ROBB
VIRGINIA

WASHINGTON OFFICE:
Russell Senate Office Building
First and Constitution Avenue, NE, Room 154
Washington, DC 20510
(202) 224-4024
Email: senator@robb.senate.gov
http://robb.senate.gov

United States Senate

WASHINGTON, DC 20510-4603

XDS Int

COMMITTEES
ARMED SERVICES
FINANCE
INTELLIGENCE
JOINT ECONOMIC COMMITTEE
Democratic Policy Committee

OFFICE OF SENATOR CHARLES ROBB

FAX: 202/224-8689

FASCIMILE TRANSMITTAL

DATE:

TIME:

TO: Tom Freedman

FIRM:

FAX: 456-7431

PHONE:

FROM: Rodgi Schuyler

 # OF PAGES INCLUDING COVER:

COMMENTS: This article ran today in the largest paper in the state. Front page, above the fold, huge headline. Not good. If the Administration insists on raising the tobacco tax we will need something for farmers. What about the attached House bill? If it's possible, then we will introduce companion legislation in the Senate. Let me know ASAP. Rodgi

If you have any problems with the receipt of this transmissi[illegible], please call the sender listed above immediately, 202/224-4024. Thank you.

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1011 East Main Street
Richmond, VA 23219
(804) 771-2221

Regional Offices:
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999 Waterside Drive
Norfolk, VA 23510
(757) 441-313[illegible]

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Main Street
[illegible]
(540) 636-[illegible]

[illegible]
520 Main Street
Danville, VA 245[illegible]
(804) 791-0330

[illegible]
310 First Street [illegible]
Roanoke, VA 240[illegible]
(540) 985-[illegible]

2002 cigarette tax may come early / Adding that five cents to Jan. 1's dime raise said to be part of federal budget talks

BY DAVID RESS
Times-Dispatch Staff Writer

Friday, November 5, 1999

Smokers may be paying to help the White House and Congress put together a federal budget for next year.

A nickel-a-pack tax increase planned for 2002 could be pushed up to take effect next year, some congressional, tobacco control and financial sources say.

The idea of adding that increase to a dime-a-pack increase already set for Jan. 1 has emerged as the White House and Congress jostle for position in budget negotiations, the sources said.

The White House has rejected congressional Republicans' idea of a 1 percent across-the-board cut in spending to help protect Social Security's finances. Earlier this year, Congress rejected a White House proposal to

more than double cigarette taxes to 55 cents a pack.

If the White House and Congress agree to move the 2002 increase forward, it would generate roughly $1 billion a year, the sources said.

"They're talking about it," said Joel Spivak of the Campaign for Tobacco Free Kids, a Washington-based tobacco

control group that has urged steep increases in excise taxes as a way of pricing cigarettes out of the reach of teen-agers.

Another nickel a pack would cut further into sagging cigarette sales, said Ann Gurkin, the analyst who follows tobacco for the Richmond-based brokerage Davenport & Co.

"It would just add to the sticker shock," she said.

Moving forward the 2002 tax increase would boost wholesale cigarette prices by 7 percent Jan. 1. That would come on the heels of a 9 percent wholesale price increase in August and a 30 percent wholesale price increase a year ago.

Higher prices have sped up a long-term slide in cigarette sales: Philip Morris Cos. Inc., the nation's largest cigarette-maker, has reported that U.S. shipments are down more than 10 percent from last year's levels.

Until last year's big price increase, imposed to pay for the tobacco industry's $206 billion settlement with attorneys general from more than 40 states, sales had been declining by 1 percent to 2 percent a year.

The White House yesterday stuck to its policy of refraining from commenting on specific proposals during budget negotiations but confirmed that President Clinton has not given up on raising cigarette prices as a means of discouraging youthful smoking.

"The president continues to believe that it is good health policy for our country to raise the cost of a pack of cigarettes to children," White House spokesman Barry Toiv said.

Gurkin and congressional sources said that, while the idea of moving the tax increase forward is under discussion, it is not enough in itself to close the gap between what the White House and Congress propose spending.

That could mean it would become a bargaining chip, or that the whole idea would simply be dropped, they said.

But the proposal may be attractive to the White House and Congress because it would generate revenue while allowing both sides to say they hadn't really raised taxes, said one congressional aide, who asked not to be identified.

White House spokesman Toiv noted that, while the GOP had rejected the administration's proposed 55-cents-a-pack tax increase, "We think there are other ideas that would be acceptable."

Accelerating the tax is one way the price could be raised to discourage smoking, but he said, "I'm not sure which ideas are the most current."

The federal excise tax stands at 24 cents a pack. It was increased to that level in 1993. States levy an average tax of 34 cents a pack, with Virginia charging the lowest rate in the nation, of 2.5 cents a pack.

Marsha Mercer, a Washington correspondent for Media General News Service, contributed to this report.

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Tobacco Farmers' Relief Act (Introduced in the House)

HR 2748 IH

106th CONGRESS

1st Session

H. R. 2748

To amend the Internal Revenue Code of 1986 to exclude from gross income payments made to tobacco quota and allotment holders and tobacco growers pursuant to Phase I or II of the Master Settlement Agreement between a State and tobacco product manufacturers.

IN THE HOUSE OF REPRESENTATIVES

August 5, 1999

Mr. FLETCHER (for himself, Mr. BOUCHER, Mr. HAYES, Mr. GOODE, Mr. LUCAS of Kentucky, Mr. CLEMENT, Mr. MCINTYRE, Mr. BURR of North Carolina, Mr. RAHALL, Mr. BISHOP, Mr. GORDON, Mr. CLYBURN, Mr. PICKETT, Mr. ETHERIDGE, Mr. ROGERS, Mr. HILLEARY, Mr. WHITFIELD, Mr. CHAMBLISS, and Mr. LEWIS of Kentucky) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend the Internal Revenue Code of 1986 to exclude from gross income payments made to tobacco quota and allotment holders and tobacco growers pursuant to Phase I or II of the Master Settlement Agreement between a State and tobacco product manufacturers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Tobacco Farmers' Relief Act'.

SEC. 2. EXCLUSION FROM GROSS INCOME FOR PAYMENTS MADE TO TOBACCO QUOTA AND ALLOTMENT HOLDERS AND TOBACCO GROWERS PURSUANT TO PHASE I OR II OF THE MASTER SETTLEMENT AGREEMENT.

(a) IN GENERAL- Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 139 as section 140 and by inserting after section 138 the following new section:

`SEC. 139. CERTAIN PAYMENTS TO TOBACCO QUOTA AND ALLOTMENT HOLDERS AND TOBACCO GROWERS.

`(a) IN GENERAL- Gross income shall not include any tobacco settlement payment.

`(b) TOBACCO SETTLEMENT PAYMENT- For purposes of subsection (a), the term `tobacco settlement payment' means any payment to any person if--

`(1) the payment is made to such person by reason of--

`(A) such person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938, or

`(B) such person having the right to grow tobacco pursuant to such a quota or allotment, and

`(2) such payment is received directly or indirectly pursuant to Phase I or II of the Master Settlement Agreement between a State and tobacco product manufacturers.'

(b) CLERICAL AMENDMENT- The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following:

`Sec. 139. Certain payments to tobacco quota and allotment holders and tobacco growers.

`Sec. 140. Cross references to other Acts.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

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CHARLES S. ROBB
VIRGINIA

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United States Senate

WASHINGTON, DC 20510-4603

COMMITTEES:
ARMED SERVICES
FINANCE
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JOINT ECONOMIC COMMITTEE
Democratic Policy Committee

Tobacco

OFFICE OF SENATOR CHARLES ROBB

FAX: 202/224-8689

FASCIMILE TRANSMITTAL

DATE:

TIME:

TO: Tom Freedman

FIRM:

FAX: 456-7731

PHONE:

FROM: Ridg Schuyler

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CHUCK ROBB

U.S. Senator Virginia

154 Russell Senate Office Building • Washington, D.C. 20510 • (202) 224-4024 • Contact: John DiBiase
http://www.senate.gov/~robb • e-mail: news@robb.senate.gov

FOR IMMEDIATE RELEASE **OCTOBER 13, 1999**

ROBB PROVISION FOR TOBACCO FARMERS PASSED BY SENATE

Bill Making Growers Eligible for $328 Million Expected to be Signed Into Law Later This Week

WASHINGTON (Oct. 13) -- The U.S. Senate, by a vote of 74-26, today approved the agriculture disaster relief bill. The bill contains a provision advanced by U.S. Senator Charles S. Robb (D-VA) to assist tobacco farmers facing a decline in quota. The provision, which sets aside $328 million for tobacco growers, was first included by Senator Robb in a disaster relief package offered on August 2, 1999.

"Tobacco growers face a disaster no different than the disasters faced by farmers in the Midwest, suffering a loss of income and assets due to forces beyond their control," Senator Robb said. "We've included these funds to help address the concerns of those families who rely on tobacco farming to make a living."

The disaster relief bill containing the $328 million for tobacco growers was adopted by the Senate last August. The disaster relief bill was then included in the Senate Agriculture Appropriations bill, which has been in conference to resolve differences between the Senate bill and one passed by the House of Representatives. The bill that emerged from conference contained the provision for tobacco farmers, and passed the House of Representatives on October 6, 1999 by a vote of 240-175. The bill now awaits President Clinton's signature. The president is expected to the sign the bill in the next several days.

"I'm extremely pleased that this measure has now reached the President for signature into law," Senator Robb said. "When these funds are combined with those the state is scheduled to receive from the Master Settlement Agreement between the tobacco companies and tobacco-producing states, we may be able to address the long-term needs of Virginia's tobacco farmers. While these funds won't eliminate the uncertainty these farm families face, it may help somewhat to ease their concerns."

Under the bill passed today provision adopted by the Senate, the funds for tobacco farmers are likely to be distributed later this year. The funds would be allocated to tobacco growers and tobacco quota holders using the formulas adopted by the Virginia committee that will determine how the National Tobacco Grower Settlement Trust funds are allocated. The National Tobacco Grower Settlement Trust is the trust that will distribute the funds owed to growers under the Master Settlement between tobacco states and tobacco companies.

The disaster relief bill also contained funds for cotton growers, peanut growers, and $400 million to help farmers purchase additional crop insurance for the 2000 crop year. "Despite the additional help now available for some farmers in Virginia, I am disappointed that relief bill did not contain more resources for drought and hurricane recovery," Sen. Robb said. "The severity of the effects of Hurricane Floyd and the drought in Virginia and the Mid-Atlantic region requires additional action from the federal government. The disaster relief loans now available are simply not enough to sustain farmers during this particularly difficult time. I will continue to push for additional resources for hurricane and drought recovery."

\# \# \#

This is a time of uncertainty for America's tobacco growers. To some degree, uncertainty is part of a farmer's daily life. A farm family's livelihood is inextricably linked with the weather, which no one can predict accurately. In fact, right now we have farmers in Virginia who have had to endure a growing season without enough rain, and others who've had to endure too much rain.

Farmers who already face uncertainty from forces they cannot control should not be faced with more uncertainty at the hands of their own government. I believe the federal government should end its assault on American tobacco farmers.

We should not increase the federal tax on tobacco, as some in Washington have recently suggested. A few weeks ago, North Carolina Senator John Edwards and I wrote the President urging him not to pursue another tax on tobacco products. There is no question that we need to strengthen our military, invest in our schools and improve our roads. The price for these national needs, however, should be shared by all Americans, and not disproportionately by those who farm, process or use tobacco. In addition, it would be very unfair to promote a tax which would destroy communities that are already reeling from quota cuts and natural disasters that are almost beyond comprehension. So far, we've been able to block any further increase.

In addition, the federal government should not sue the tobacco companies. In the last few years, the government has tried to regulate tobacco use, and the courts did not support that effort. Then the Congress tried to legislate tobacco use, and the people did not support that effort. Now the government is trying to litigate. We seem to be trying to accomplish through the back door what we could not accomplish through the front door. That is not the way to make public policy.

To address the crisis now facing our tobacco growers, I'm once again developing legislation that would put quota in the hands of actual producers, and give quota holders the value of their asset before it disappears. During the debate over comprehensive tobacco legislation last year, we put together a pretty good package for farmers. As too often happens in Washington, however, politics prevailed over common sense, and the Senate passed amendments that were designed to punish tobacco companies rather than protect children, which was supposed to be the goal.

In the end, the bill became so loaded down with punitive measures and excessive taxes that I could no longer support it. I know many growers and Southside communities were disappointed, and so was I.

It is important to remember, however, that the futures of tobacco companies and tobacco growers are undeniably linked. Killing the companies, as some in Washington wanted to do, would be devastating to American tobacco growers. But I can assure you the opposite is also true--without American tobacco growers, there won't be many to protect the tobacco companies. With that reality in mind, I hope the companies will abandon the threat of direct contracting and buy more domestic tobacco.

I'm committed to fighting for tobacco growers and their communities, which is why I pressed so hard to include $328 million for tobacco farmers in the disaster relief bill that just passed the Congress. I believe the work Southside tobacco growers have done to reach out to the public health community and anti-tobacco legislators has made it much more likely that we can pass legislation to help. The many visits to Washington by citizens of Southside over the last few years has convinced many in Washington what we've always known--the American tobacco grower is an honest, hard-working, God-fearing, law-abiding citizen who should be permitted to grow a legal product in peace.

JOE WRIGHT, PRESIDENT
RAY BRANSTETTER, VICE PRESIDENT

DANNY McKINNEY, CHIEF EXEC. OFFICER
ALLEN T. HARMAN, VP & ASST. SECY-TRE
SCOTT ALTHAUSER, LEAF PROCESSING

Burley Tobacco Growers Cooperative Association
P. O. BOX 860
PHONES: (606) 252-3561 - 252-3563
FAX: (606) 231-9804
Lexington, Kentucky 40587

Tobacco

October 13, 1994

Ms. Anne K. Bingaman
Assistant Attorney General
Antitrust Division
U. S. Department of Justice
Tenth and Constitution Avenue, N.W.
Room 3107
Washington, DC 20530

Dear Ms. Bingaman:

We are writing on behalf of the Burley Tobacco Growers Cooperative Association to request a business review letter pursuant to 28 C.F.R. § 50.6. The Association is proposing a course of action which will result in the sale of its inventories of tobacco to domestic cigarette manufacturers and merchants.

A similar course of action was followed in 1985. The Department issued a business review letter on January 23, 1985 which stated that it had no enforcement intentions with respect to the development of an agreement to offer the inventories which existed at that time to domestic purchasers. A subsequent series of negotiations led to an agreement which included legislative, administrative, and contractual actions.

The need for a similar solution exists today. It has been recommended to the Association that we seek a business review letter at this time as a means of facilitating such a solution. It is my understanding that the office of Senator Wendell Ford has initiated contact with Mr. John Filipini and Mr. Neil Roberts of the Antitrust Division with respect to the development of a similar agreement. It is expected that Members of Congress will directly participate in this process, which may involve the sale of the current inventories in a manner similar to that provided in 1985, and potential legislative changes in the federal tobacco program.

Burley Tobacco Growers Co-operative Association

INCORPORATED

Lexington, Kentucky

Ms. Anne K. Bingaman
October 13, 1994
Page two

We respectfully request a review of this proposed course of action and a business review letter relating to any enforcement intentions which the Department may have. Any correspondence may be directed to either of us - however Mr. McKinney is usually more accessible.

Sincerely,

Joe Wright

Joe Wright
President

Danny McKinney

Danny McKinney
Chief Executive Officer

JW/DMcK/ks

R-97%

DEPARTMENT OF JUSTICE
Antitrust Division

ANNE K. BINGAMAN
Assistant Attorney General

Main Justice Building
10th & Constitution Ave., NW
Washington, DC 20530
(202) 514-2401/(202) 616-2645 (f)

Mr. Fred G. Bond
Chief Executive Officer
Flue-Cured Tobacco Cooperative
Stabilization Corporation
P.O. Box 12300
Raleigh, North Carolina 27605

NOV 14 1994

Dear Mr. Bond:

This letter responds to your request dated October 18, 1994, for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's present enforcement intentions with respect to a plan of the Flue-Cured Tobacco Cooperative Stabilization Corporation ("the cooperative") to offer for sale all or a substantial portion of its inventory stock of flue-cured tobacco to United States cigarette manufacturers.

We understand that all domestic growers of flue-cured tobacco are members of the cooperative. The cooperative, by contract with the Commodity Credit Corporation ("CCC"), administers the tobacco loan program of the United States Department of Agriculture ("USDA") for flue-cured tobacco. Under the program, tobacco not purchased on the open market at or above the government support price is automatically consigned to the cooperative, and the grower is paid the support price by the cooperative from funds loaned by the CCC. These loans plus interest are repaid to the CCC when the cooperative resells the tobacco that it has purchased from its members. Pursuant to the No Net Cost Tobacco Program Act of 1982, losses incurred on the sale of tobacco held by the cooperative are borne by the growers and tobacco purchasers, each of whom pays an assessment for each pound of tobacco sold, whether on the open market or to the cooperative. These assessed funds are held by the CCC as a reserve fund to cover losses and carrying charges for tobacco inventory of the cooperative.

You have told us that inventory stocks held by the cooperative have risen dramatically in the recent past. This is because the government support price is higher than the world price of tobacco. Thus, the cooperative is holding a great deal of surplus tobacco and paying very significant carrying charges. In addition, you have informed us that the failure of your cooperative to sell a substantial portion of its inventory within the next few weeks would have the effect under the current statutory framework of reducing the quota for flue-cured tobacco for next year, thereby imposing significant losses on growers. Sale of the surplus at a price lower than the support price, as contemplated by the cooperative, thus will eliminate both the high carrying charges presently borne by the tobacco growers and the risk of a reduced quota for next year.

We understand the cooperative's plan to be as follows. The cooperative will meet individually with each of the domestic cigarette manufacturers in an attempt to sell them a pro rata portion of the tobacco inventory, based on their respective shares of the domestic cigarette market. The cooperative will attempt to negotiate with the manufacturers separately to establish a price for the inventory. Its willingness to offer the tobacco at a price lower than the support price will be contingent on its ability to dispose of the entire stock. You believe that it will be necessary to sell the tobacco to the cigarette manufacturers at the same price to each, and we understand that the cooperative's decision to sell its inventory at a uniform price was reached unilaterally.

After discussing the proposal with you and consulting with USDA about the tobacco program, and absent any evidence that the program is a product of any agreement among cigarette manufacturers, we have concluded that the Department has no present intention of challenging your offer of the inventory to the cigarette manufacturers. This conclusion is based on your representations that you have decided that disposal of the inventory in its entirety is in the best interest of your members and that the cooperative is most likely to achieve its goal if it offers the inventory for sale at the same price to all of the manufacturers on a pro rata basis.

Pursuant to 28 C.F.R. § 50.6, this letter and your business review request will be made publicly available immediately and any supporting materials will be made publicly available within 30 days of the date of this letter, unless you request that any part of the material you submitted be withheld in accordance with paragraph 20(c) of the business review procedure.

Sincerely,

Anne K. Bingaman

Anne K. Bingaman
Assistant Attorney General

them agreed with Gingrich on every misstep—from the government shutdown of 1995 through the Lewinsky strategy of 1998—until it became obvious each had failed. His petulant and paranoid attitude towards the President is a faithful reflection of Republican inability to accept or understand the New Democrat transformation of the Democratic Party and the Clinton Administration's responsibility for policy successes Republicans want to exclusively claim. As for his terrible public image, we think it is clear by now that Gingrich's status as the most unpopular politician in America owed more to his embodiment of the deeply unpopular Republican Revolution than to his lack of telegenic qualities or poise under fire.

In the end, Speaker Gingrich was done in by high expectations and low appreciation for his party's enduring divisions and shortcomings. He *will not* be remembered as the architect of a Republican Revolution, as the slayer of the Liberal Welfare State, or as President of the United States. He *will be* remembered not only as a partisan, but as an intellectual who changed his Party and demonstrated the political power of ideas. Furthermore, he should also be remembered as a national leader in a time of enormous global change who consistently forced Republicans to subject partisan interests to the national interest in a strong U.S. role in international affairs.

Is "The Body" A New Democrat?

The victory of Reform Party candidate **Jesse "The Body" Ventura** in the Minnesota governor's race was a jarring exception to the pro-incumbency story of election night.

The media image of Ventura's campaign as a late-blooming populist uprising based on televised debates and access to public financing misses its Information Age roots. Ventura got into the position to take advantage of public money and public television by a pioneering effort to build a core constituency by e-mail—hundreds, then thousands, then tens of thousands of supporters got regular communications on issues and events via list-serve bulletins on their PCs.

Information-age politicking is just one of Ventura's natural affinities with New Democrats. The most important is his resolute rejection of interest-group shaping of public policy. His specific message—a quasi-libertarian hostility to high taxes and government bureaucracies, a tolerant attitude on social issues, and an aggressive willingness to listen to the public on how to shape use of their tax dollars—was probably less important than his meta-message of total determination to shake up state government and total openness to new ideas as to how to do it.

The political environment of Minnesota had a lot to do with making that message appealing. Once widely admired for fostering high-minded politics and strong citizen participation, Minnesota's two major parties have now become playgrounds for narrow interest groups and single-issue ideologues. The Democratic-Farmer-Labor (DFL) Party's caucus process for the party's endorsement makes the state about the only place in America where Democratic candidates routinely position themselves well to the left of the electorate. (This year's Republican candidate for governor, St. Paul Mayor **Norm Coleman**, was all but booted out of the DFL for displeasing public employee unions.) Meanwhile, the state's Republican Party is dominated by social conservative activists who as recently as 1994 tried to purge a successful, and popular, incumbent GOP governor for insufficient fealty to their agenda.

Instead of engaging citizens, Minnesota's major parties have increasingly tended to lock them out. Ventura successfully invited them back in. As governor, this means Ventura will have no natural allies in the political establishment, no party supporting him in the legislature, and no built-in infrastructure for staffing his Administration. He must continue to appeal to the people directly. It's a difficult challenge, but also a great opportunity to pursue critical reforms opposed by entrenched bureaucracies and powerful factions in the major parties.

Ventura would be well advised to make radical reform of public schools his signature initiative. Minnesota is already a pioneering state in creating charter schools. Why not take the next step of creating *charter districts*, in which public authorities focus on high common standards for schools rather than operating them according to a fixed model? Having trounced the candidate of the educational establishment and the teachers' unions, DFL nominee **"Skip" Humphrey**, Ventura is in a strong position to push for reforms stalled by their opposition in the past.

So far, the new governor seems open to any and all new ideas for governing effectively. His transition chief, **Steven Bosacker**, served as chief of staff to former New Democrat Congressman **Tim Penny**. Penny himself, who will also advise Ventura, told the Minneapolis *Star-Tribune*: "He doesn't owe anybody anything in terms of giving out jobs to political hacks. He can hire the best."

No, we can not say Governor Ventura is a New Democrat. But we think becoming a one is the best way to make his "Third Way" in Minnesota politics work.

BRIEFING NOTES ON FLUE-CURED TOBACCO MARKETING

- The flue-cured markets open late in July starting with the week later up through the Carolinas and Virginia.

-Marketings through August 26, 1998 reflected a larger than normal share of the crop coming under the price support loan. On average, about 16 percent of the crop is NOT being purchased by the companies and is being diverted into the price support loan program and deposited with the grower cooperative. This equates to approximately 42 million pounds of the marketing todate being diverted to the loan.

- On Monday of this week a record amount of tobacco was placed in the loan in several markets. On auction sales in Conway, S.C., the Stabilization Cooperative received 80 percent of the tobacco sold on that day, Other markets, such as Tabor City, N.C. and Mullins, S.C. saw as much as 60 percent of the marketings placed in the loan. Yet in other markets in N.C. and elsewhere, tobacco companies have purchased the traditional amounts of tobacco.

- USDA has not been able to rationalize the reason for this purchase pattern in the markets. We have attempted to connect the pattern to quality factors applicable to the crop in S.C. but have been unable to do so.

- The fear of some growers and warehousemen is that the tobacco companies may be taking advantage of the current uncertainty in the markets to accomplish some objectives such as shrinking the number of warehouses in which growers now sell or even changing the way the crop is marketed from loose leaf to bale tobacco. In those markets where the crop is being baled experimentally, companies are purchasing nearly all of the crop.

- Others are wondering if the companies are collectively agreeing not to buy tobacco in certain markets and whether this violates any laws or regulations.

EW Copy for MS Cynthia + 2 extra's

FEDERAL TRADE COMMISSION

OFFICE OF CONGRESSIONAL RELATIONS
Sixth and Pennsylvania Ave, NW
Washington, DC 20580
(202) 326-2195

FAX TRANSMITTAL

to: Tom Freedman, White House Policy Advisor
FAX: 456-7431

from: Carol Ann Kando-Pineda
Legislative Counsel
Fax: (202) 326-3585

date: **November 24, 1998**
time: **4:13 pm**
pages: _____ pages (including cover sheet)
re: Tar & nicotine testing

note: FYI -- the letter to HHS seeking their assistance with the review of the tar& nicotine testing system.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

Donald S. Clark
Secretary

Direct Dial
(202) 326-2514

November 19, 1998

The Honorable Donna E. Shalala
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Shalala:

We are writing to request the assistance of the Department of Health and Human Services in developing specific recommendations on the future of the Federal Trade Commission's program for testing the tar, nicotine and carbon monoxide content of cigarettes.

As you know, cigarette ratings for tar, nicotine, and carbon monoxide are currently determined by machine testing conducted in accordance with a method originally adopted by the Federal Trade Commission in 1967. Both the accuracy and continued validity of this method have come under question. In particular, the National Cancer Institute conducted a review of the method and concluded that significant changes should be made to the FTC testing protocol. The NCI found, among other things, that the existing system does not accurately reflect actual human smoking behavior, which varies widely among smokers, and that smokers who switch to lower tar and nicotine cigarettes may change their smoking behavior in ways that negate potential health benefits.

Following the NCI review, the FTC in September 1997 proposed revisions to the test method. The comments we received in response to our proposal raised a number of significant technical and health policy issues, including whether the findings of more recent studies question the presumed relationship between lower tar and nicotine cigarettes and reduced health risks. Because of their scientific nature, these issues fall more within the expertise of HHS rather than the FTC. For this reason, the Commission is requesting that your Department initiate a further review into FTC's cigarette testing method, and include recommendations on whether the system should be continued, and, if it should be continued, what specific changes should be made to the testing methodology to correct the limitations identified by the NCI. We would hope that such work could be completed in 18 months.

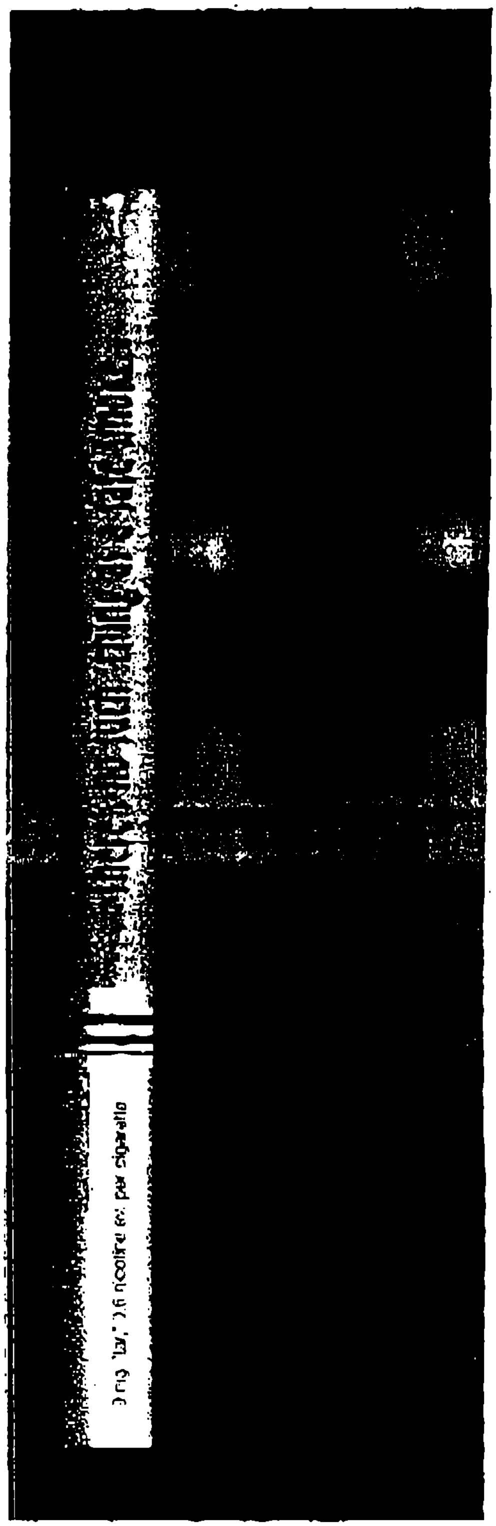
If HHS can assist us in this matter, the Commission will announce that it will participate in the joint review of the test methodology with the goal of arriving at specific recommendations within 18 months. In the interim, we would begin a consumer education program designed to alert consumers to the significant limitations in existing tar and nicotine numbers. Some samples of consumer education materials our staff has developed are enclosed for your review. We would welcome HHS assistance in this effort as well.

We look forward to working with you to improve this system so that it will provide consumers with accurate and useful information.

By direction of the Commission.

Donald S. Clark

Donald S. Clark
Secretary



The story on tar and nicotine?

Don't Count on the numbers.

There's no such thing as a safe smoke.

FDA REGULATION OVER TOBACCO PRODUCTS AS DRUGS AND DEVICES

"A proposal"

LEGISLATION AND STRATEGIES FOR THE 106TH CONGRESS

Prepared by Scott D. Ballin for the American Lung Association and in the interests of the entire public health community

Table of Contents

PART I --- The Legislation

PART II --- The Strategies

PART I

THE LEGISLATION

OBJECTIVES:

- To develop legislation that will give the Food and Drug Administration full authority over the regulation of the manufacture, sale, distribution, labeling, advertising and marketing of all tobacco products as drugs and devices under the FD & C Act.

- To ensure that such legislation contains a funding source that allows the FDA to carry out its responsibilities to ensure full regulation of tobacco products

- To ensure that the regulation of tobacco products are part of a comprehensive regulatory framework of drugs and devices and in particular the regulation of therapeutic nicotine delivery devices and other treatments and management for nicotine dependence.

- To ensure that the public health community is committed to a specific legislative proposal for FDA regulation prior to the beginning of the 106th Congress so that such a bill cannot be or should not be amended or watered down.

- To draft the legislation in such a way that it can either be a 'free standing' proposal or can easily be included in a broader legislative package.

- To begin the process to gain House and Senate bipartisan support for such legislation.

- To educate and mobilize grassroots activities designed to work towards passage of legislation as well as putting members of Congress on notice that they will be held accountable in the next election cycle for their failure to support this effort.

- To ensure that this issue is conveyed to the public as one that should be and is supported by both republicans as well as democrats.

- To send a strong message to the FDA, HHS and the White House that full and complete FDA regulatory authorities over tobacco products is essential.

The Fairness in Tobacco and Consistency in Nicotine Regulation Act

WHAT THIS PROPOSED LEGISLATION DOES

1. It provides the Food and Drug Administration authority to regulate all products, which are sold in interstate commerce and contain tobacco as "drugs" and "devices" under the Federal Food Drug and Cosmetic Act.
2. It does this by defining tobacco products as any article or a component of any article, which contains tobacco leaf, homogenized leaf or a tobacco by-product.
3. It amends the act to include tobacco products under the definition of both "drugs" and "devices" under the Act (Section 201)
4. It allows the FDA to establish regulations in order to protect the public health to the maximum extent feasible but does not allow the FDA to ban tobacco products on the sole basis that they are addictive and cause disease.
5. It requires that the regulation of tobacco products be part of a broader, comprehensive, and more consistent regulatory scheme related to the use, abuse and cessation of tobacco products including products designed for treating nicotine dependence.
6. It establishes a Tobacco and Drug Advisory Committee to the Commissioner to assist the agency in working through the many complex, scientific, medical and legal issues related to the regulation of tobacco products.
7. It establishes a tobacco product user fee in order to support the FDA's regulatory and educational programs related to tobacco.
8. It repeals the Federal Cigarette Labeling and Advertising Act as well as the Comprehensive Smokeless Tobacco Health Education Act.
9. It provides the FDA and the Tobacco and Drugs Advisory Committee with temporary subpoena powers to call witnesses and obtain documents etc., that will assist the Committee in carrying out its activities.
10. It clarifies that while FDA jurisdiction pertains to manufactured tobacco products, nothing would prevent the FDA from taking action to remove a product from the market if the manufactured product presented public health problems caused by or during the agricultural production.

WHAT THIS PROPOSED LEGISLATION *DOES NOT DO*

1. It does not allow the FDA to ban tobacco products on the sole basis that such products cause disease and/or are addictive.

2. It does not limit any of the FTC's existing authorities to regulate unfair and deceptive trade practices under the Federal Trade Commission Act.

Note:-This is a **draft** and is intended to represent the primary outline of legislation.

H.R.

In the House of Representatives

A BILL

To amend the Federal Food Drug and Cosmetic Act to establish fair standards for the manufacture, labeling, sale, distribution, advertising and promotion of tobacco products as drugs and or devices, to implement a comprehensive regulatory policy for all consumer products containing nicotine, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States in Congress Assembled,

Sec. 1. **SHORT TITLE**

(a) Short title – this Act may be cited as the "Fairness in Tobacco and Consistency in Nicotine Regulation Act of 1999."

Sec. 2 **FINDINGS**

The Congress finds that --

(1) Tobacco product use accounts for approximately 450,000 deaths each year in the United States. Tobacco products cause more disease, addiction, disability and death than are caused by all of the other drugs, medical devices, foods, cosmetics, and dietary supplements regulated by the Food and Drug Administration combined.
(2) Tobacco products and the nicotine contained in them are as addictive as cocaine and heroin.
(3) There is overwhelming evidence that cigarettes and smokeless tobacco products are manufactured and marketed with the intended purposes of "affecting function and structure of the body" and thereby, are subject to regulation under the Food Drug and Cosmetic Act.
(4) There is overwhelming evidence that many tobacco products are marketed with implied or direct health and safety claims and are therefore intended to mitigate or prevent disease" and are thereby, subject to regulation under the food Drug and Cosmetic Act.

(5) While the Food and Drug Administration has the authority to regulate tobacco products which are deemed to be "drugs" and or "devices" under the Food Drug and Cosmetic Act, this authority does not extend to all tobacco products.
(6) Because tobacco products are inherently dangerous as well as used to satisfy an addiction to nicotine, they should be subjected to regulation by the Food and Drug Administration in order to ensure adequate protection of the public health.
(7) The American public is in need of a comprehensive and rational regulatory policy for the regulation of all tobacco products comparable to other drugs and devices. This is particularly important with respect to the regulation of therapeutic nicotine delivery devices and other treatments for nicotine dependence.
(8) A national policy for the regulation of tobacco should be based on and guided by public health concerns. The goals and objectives of this Act are to reduce disease, disability and death caused by tobacco products.
(9) Tobacco advertising and marketing which uses such lifestyle themes of sexual attraction, sophistication, success, good looks and good health, success, and athletic abilities is inherently misleading and should be restricted or prohibited. For more than three decades the tobacco companies have failed to adhere to their own voluntary advertising restrictions which prohibit the use of such images and themes.
(10) Tobacco advertising that uses statements or messages that imply that the product is safer, less addictive or has other positive attributes affecting health is inherently misleading unless such claims can be substantiated based upon sound scientific evidence. For more that three decades the tobacco companies have failed to adhere to their own voluntary advertising restrictions which prohibit the use of direct or implied health and safety claims.
(11) Consumers should be provided with complete and scientifically accurate information about tobacco products so that they can be fully informed about these products. This should include messages related to health, contraindications, disclosure of chemical additives and constituents in tobacco, and any other information deemed important to educate the public and the medical profession.
(12) Tobacco product labeling and advertising which omits important health and safety information necessary for consumers to understand the nature of tobacco products is inherently misleading.
(13) Tobacco companies have, manufactured, sold and marketed their products knowing that such products caused disease death and addiction and there is substantial evidence that they intentionally withheld that information from the public in order to continue to make profits at the expense of their customer's health.
(14) Internal tobacco industry documents have clearly shown that the tobacco industry has long viewed itself as being in the business of selling drugs and in competition with the pharmaceutical industry.
(15) The tobacco industries past behaviors constitute violations of fundamental fairness, corporate ethics, integrity, and responsibility, inconsistent with the ideals and values in a free market system.

Sec. 3-- **REGULATION OF TOBACCO PRODUCTS**

(a) DEFINITIONS-- Section 201 of the Food Drug and Cosmetic Act is amended by adding at the end the following:

"(gg) The term 'tobacco product' means any article or component of any article used by man which contains tobacco leaf, homogenized tobacco leaf, and or tobacco by-product.

(b) TOBACCO PRODUCTS AS DRUGS AND DEVICES -- SECTION 201(g) and (h) related to the definition of "drugs" under the Food Drug and Cosmetic Act is amended by,

(1) Adding in section 201(g), after subparagraph "(C) articles (other than food) intended to affect function of the body or other animals", a new subparagraph (D) as follows: "(D) tobacco products;".

(2) and redesignating "(D)" as "(E)"

(3) adding in section 201(h) after (3), a new paragraph (4) as follows: "(4) used as a means of delivering nicotine or any other constituents contained in a tobacco product that affects function and structure of the body, and"

(c) HEALTH AND SAFETY STANDARDS FOR TOBACCO PRODUCTS -- Section 503 of the Food Drug and Cosmetic Act, "Exemptions and Consideration for Certain Drugs, Devices and Biological Products", is amended by adding at the end thereof a new section (h) as follows: "(h) The Secretary shall promulgate the necessary regulations and performance standards to protect the public health from the dangers of tobacco products and use, except that the Secretary may not ban such products from interstate commerce on the sole basis that they cause disease and or are addictive".

(d) TOBACCO AND DRUGS ADVISORY COMMITTEE -- Section 903 of the Food Drug and Cosmetic Act concerning "Scientific Review Groups" is amended by adding a new section as follows:

"903(d)(I)(1) Not later than sixty days after enactment of this section, the Secretary shall establish at the Food and Drug Administration a "Tobacco and Drugs Advisory Committee".

(2) Members: The Secretary in consultation with the Commissioner of the Food and Drug Administration shall appoint to the Tobacco and Drugs Advisory Committee fifteen (15) experts representing but not limited to the following areas: pharmacology, addiction medicine, advertising and marketing, family medicine, pediatric medicine, behavioral science, biomedical science (including toxicology, chemistry, and engineering), food and drug law, social psychology, public health, public health education, and ethics. The Chairman of the Committee shall be designated by the Secretary.
(3) Ex Officio Members: Qualified representatives from the following agencies shall serve on the committee as ex officio members: the Centers for Disease Control, the National Institute on Drug Abuse, the National Institutes of Health, the Federal Trade Commission, AHCPR, the Health Care Financing Administration, the Office of the Surgeon General, the Environmental Protection Agency, the Department of Defense, the Occupational Safety and Health Administration, the Department of Veteran Affairs, and the United States Department of Agriculture.

(4) Duties: The Tobacco and Drugs Advisory Committee shall advise the Commissioner of the Food and Drug Administration in the development of regulations and other programs related to the manufacture, distribution, sale, labeling, advertising and marketing of tobacco products. In conducting its duties the Advisory Committee shall review and make recommendations to the Commissioner with respect to but not limited to the following:

(i) The labeling of all tobacco products including package inserts and other educational efforts consistent with warnings and other information required for other drugs and devices;
(ii) The methodologies for testing, labeling and information disclosure of constituents and ingredients in tobacco products and constituents in tobacco smoke;
(iii) Restrictions on the advertising and marketing of tobacco products consistent with the requirements for other drugs and devices;
(iv) The most effective measures for reducing use of tobacco products by children and adolescents;
(v) The feasibility of establishing performance standards for tobacco products;
(vi) The technical and commercial feasibility of reducing or eliminating nicotine and addicting harmful or toxic substances in tobacco products and the public health consequences of such actions;
(vii) The establishment of a regulatory review process for all ingredients used in the manufacture of tobacco products;
(viii) The establishment of good manufacturing practices for manufacturers of tobacco products;
(ix) Identifying new areas of research to improve the effectiveness of the regulation of tobacco products as well as effective strategies for reducing nicotine dependence.
(x) The Committee may conduct hearings and establish subcommittees as may be necessary for carrying out its responsibilities.

(5) The Committee shall terminate five years after the day of the appointment of members, except that the Commissioner may extend such date for up to two years in order for the Committee to complete its work.

(6) The Tobacco and Drugs Advisory Committee shall during the period of its existence have subpoena power to obtain documents and hear witnesses that relate to the functions and duties of the committee in carrying out its work.

Sec. 4. **TOBACCO PRODUCT MANUFACTURER FEES**

Section 736 of the Food Drug and Cosmetic Act is amended by adding at the end thereof the following new PART 3- FEES RELATED TO TOBACCO PRODUCTS:

"PART 3 –FEES RELATED TO TOBACCO PRODUCTS

(a) FEE PURPOSE – For the purpose of paying the costs associated with the implementation of this Act, each tobacco product manufacturer shall pay an annual fee established pursuant to paragraph (2). Such fee shall be payable on or before January 31 of each year.

(b) ESTABLISHMENT BY THE SECRETARY – Subject to the amount established in Appropriations Acts, each tobacco product manufacturer fee shall be determined by the Secretary based upon the total market share for each brand of tobacco product.

(c) CREDITING AND AVAILABILITY OF FEES –

(1) Fees collected for a fiscal year pursuant to subsection (a) shall be credited to the appropriation account for salaries and expense of the Food and Drug Administration and shall be available in accordance with appropriation Acts until expended without fiscal limitation.

(2) The fees authorized for collection in subsection (a) ---

(A) shall be collected in each fiscal year in an amount equal to specified in appropriations Acts for such fiscal year, and

(B) shall only be collected and available to implement the provisions and regulations pursuant to this Act.

Sec. 5. -- CONFORMING AMENDMENTS

(a) Two years after passage of this Act the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act shall be repealed.
(b) Nothing in this Act shall prohibit or prevent the Federal Trade Commission from taking action against tobacco manufacturers and tobacco products under its existing authorities pursuant to the Federal Trade Commission Act.

Sec. 6 – FDA AUTHORITY OVER ON-FARM PRODUCTION OF TOBACCO

(a) Should the Food and Drug Administration suspect or determine that a tobacco product contains any deleterious substance or that the tobacco product is adulterated in any way as part of the agricultural production of the tobacco, the FDA shall notify the Environmental Protection Agency and the Secretary of Agriculture of the public health and safety concerns posed by such tobacco. Within sixty days the Secretary of Agriculture and the Environmental Protection Agency shall report back to the Commissioner of the FDA on actions that will be taken in order to ensure proper protection of the public health and safety.
(b) Nothing in this section shall prohibit or prevent the Food and Drug Administration from removing any manufactured tobacco product from interstate commerce if the agency determines that such removal is warranted in order to protect the health and safety of the public.

Darland

SPECIAL

Total Pages: 4

LRM ID: MLG194

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, August 26, 1998

LEGISLATIVE REFERRAL MEMORANDUM

to Lyn LC?

TO: Legislative Liaison Officer - See Distribution below

FROM: E. Holly Fitter (for) Assistant Director for Legislative Reference
AG Cooney

OMB CONTACT: Michael L. Goad
PHONE: (202)395-3857 FAX: (202)395-5691

SUBJECT: **AGRICULTURE Report on HR3437 Tobacco Market Transition Act**

DEADLINE: **10:00 AM, Wednesday, September 2, 1998**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: The proposed report does not specifically address the provisions of the bill, some of which could impact your agency. We therefore request your agency's views on both the report and the bill. If additional time is needed to prepare your agency's views on the bill, please contact this office. If you do not respond by the deadline, we may assume that you have no comment on either the proposed report or the bill.

DISTRIBUTION LIST

AGENCIES:
33-Environmental Protection Agency - John Reeder - (202) 260-5414
61-JUSTICE - L. Anthony Sutin - (202) 514-2141
52-HHS - Sondra S. Wallace - (202) 690-7760
88-Office of Government Ethics - Jane Ley - (202) 208-8022
92-Office of Personnel Management - Harry Wolf - (202) 606-1424
107-Small Business Administration - Mary Kristine Swedin - (202) 205-6700
114-STATE - Paul Rademacher - (202) 647-4463
118-TREASURY - Richard S. Carro - (202) 622-0650
128-US Trade Representative - Fred Montgomery - (202) 395-3475

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LRM ID: MLG194 **SUBJECT:** AGRICULTURE Report on HR3437 Tobacco Market Transition Act

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Michael L. Goad Phone: 395-3857 Fax: 395-5691
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-6194

FROM: ______________________ **(Date)**

______________________ **(Name)**

______________________ **(Agency)**

______________________ **(Telephone)**

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

Honorable Robert F. Smith
Chairmman
Committee on Agriculture
U.S. House of Representatives
1301 Longworth House Office Building
Washington, D.C. 20515-6001

Dear Bob:

This is in response to your request for the Department of Agriculture's (USDA) views on H.R.3437, a bill "To provide market transition assistance for quota holders, active tobacco producers, and tobacco growing counties, to authorize a private Tobacco Production Control Corporation and tobacco loan associations to control the production and marketing and ensure the quality of tobacco in the United States, and for other purposes."

Like several Senate and House bills, this bill provides payments to tobacco marketing quota holders and tobacco farmers and provides for a long-term community revitalization program to support communities in tobacco production areas. These provisions would add needed funds to traditional tobacco producing areas to assist in the transition from a long standing Federal tobacco program to a Federally-chartered corporation. However, by abolishing the current program, many uncertainties would exist during this transition period while the corporation adjusts to controlling tobacco marketings, implementing quality assurances, and establishing tobacco price support levels.

While USDA shares the bill sponsors' concerns about long-term transition for tobacco quota holders and tobacco farmers as demand for U.S. - grown tobacco declines, the Administration does not support abolition of the current program or establishment of a private tobacco production control corporation. Rather, the Administration supports a continuation of the current program with transition payments and buyouts similar to those set forth in S. 1415.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administrations's program.

Sincerely,

DAN GLICKMAN
Secretary

Sally Katzen
William P. Marshall
Elena Kagan
Thomas L. Freedman
Jerold R. Mande
Christopher C. Jennings
Sarah A. Bianchi
Joshua Gotbaum
Sherman G. Boone
Rosalyn J. Rettman
Peter G. Jacoby
Robert J. Pellicci
Janet R. Forsgren
Michael L. Goad
Ronald K. Peterson
James C. Murr
Cynthia Dailard

tobacco

5 - 10 cents a dollar

LRM ID: IMS322 SUBJECT: TREASURY Testimony on S1415 National Tobacco Policy and Youth Smoking Reduction Act - Bankruptcy Issues

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT
5/11/98 – 1:00 pm

Text as Prepared for Delivery
'May 13, 1998

TREASURY ASSISTANT SECRETARY

FOR FINANCIAL MARKETS

GARY GENSLER

SENATE TOBACCO TASK FORCE

Chairman Conrad, and distinguished members of the Task Force, I am pleased to appear before you today. I joined the Treasury last year, after working for 18 years on Wall Street. As a partner of the Goldman Sachs Group, L.P., I was fortunate to have a variety of experiences which help inform my understanding of bankruptcy issues in the tobacco industry. During the 1980's and early 1990's, I was a senior professional in the firm's merger effort. We advised companies on broad matters of finance, including mergers, corporate restructurings, and the issuance of securities. I subsequently gained both trading and international experience as the head of Goldman Sachs' debt and currency trading efforts in Japan.

Jon Gruber, Deputy Assistant Secretary for Economic Policy, is here with me to help address any of your questions. Mr. Gruber has been with the Treasury Department for the last year, and is also a professor of economics at the Massachusetts Institute of Technology.

My testimony will consider the effect of comprehensive tobacco legislation on the risk of insolvency in the tobacco industry. To best understand such effects, I will begin by providing the Task Force with a brief overview of the tobacco industry and its business characteristics. I think that you will share our conclusion that the industry is currently financially strong and viable, but not without risk. This financial risk, which has been endemic to the industry for many years, arises from uncertainties related to litigation concerning the companies' business practices. Subsequently, I will turn to proposed legislation and its implications for the tobacco industry's overall financial health. Finally, I will make some observations about how bond investors assess the tobacco industry's credit risk.

1. Industry Characteristics

The U. S. tobacco industry is financially strong. It is comprised of five major companies: B.A.T. Industries, Liggett Group, Loews, Philip Morris, and RJR Nabisco. As presented in Figure A, these companies had combined revenues approaching $150 billion last year. They had operating earnings in excess of $23 billion. Their combined stock market value is $145 billion. By all of these measures, this is a large and viable industry. It also is concentrated as an oligopoly among only a handful of players.

These companies also are well-diversified. As presented in Figure B, only one third of the industry's operating earnings is derived from domestic tobacco. A large and growing percentage of earnings is attributable to international tobacco sales. Such sales accounted for 27 percent of operating earnings. Moreover, each of the companies in the industry has diversified holdings in other businesses. With interests in food, beer, financial services, and hotels, the industry owns such familiar companies as Kraft Foods, Miller Brewing, Nabisco, CNA, and Loews Hotels. These non-tobacco interests accounted for 39 percent of earnings last year. As can be seen, the industry does not, by any means, rely solely on domestic cigarette sales to stay profitable.

2. Business Characteristics

The tobacco companies share several business characteristics.

First, they enjoy significant brand loyalty from their customers. With such strong consumer franchises, the companies benefit from significant barriers to entry. Moreover, the industry's limited potential for technological innovation helps to maintain these barriers. In addition, potential marketing restrictions are likely to raise these barriers and strengthen their franchises.

Second, cigarette sales are highly concentrated among the top brands. The leading product, Marlboro, accounts for approximately one-third of all domestic cigarette sales. The top dozen brands together account for 80 percent of domestic cigarette sales.

Third, the tobacco business has high operating margins. Loews, Philip Morris and RJR had combined operating earnings of 38 cents on every dollar of domestic tobacco sales last year. Even the smallest among them, Loews, earned 22 cents on every dollar of tobacco sales. These generous margins are [2 to 4] times the average margins enjoyed by American industry as a whole. **[possible chart - showing industry margins compared to other leading industries]**

The industry benefits from advantages on both the revenue side and the cost side of its business. The strength of brand names and the industry's oligopolistic nature give tobacco companies substantial pricing flexibility. At the same time, the industry's cost structure is largely variable, allowing the industry to more readily adapt to changing environments. Approximately two-thirds of costs are selling, general and administrative costs. Dominated by distribution, marketing, and advertising costs, these are largely variable. Manufacturing costs, which make up the remaining one third of costs, also are dominated by variable costs, such as the purchase of raw materials and packaging.

Fourth, the industry has provided smooth returns over many years. Contrasted to many industries, the tobacco industry has had relatively modest volatility in revenues or earnings. This is especially relevant in analyzing solvency risk.

Fifth, the tobacco companies recently have experienced dramatic growth in international sales. International sales of the two leading companies have grown by over 10 percent per year over the last five years. The companies are profitable in many countries, despite having lower international market shares. More importantly, they are profitable even in countries where cigarette prices are significantly higher than in the U.S. For example, they profitably compete for sales in the U.K., Denmark and Norway, where the average price of a package of cigarettes is greater than $5.00. Even under the most aggressive estimates for price increases under proposed legislation, prices in the United States are not expected to reach the current levels in many foreign countries. **[we need to make sure that this statement is true]**

On the other hand, however, the companies have been confronted with declining demand in the U. S. Over the last five years, demand has dropped by more than one percent per year.

3. Potential Legal Liabilities

As we have reviewed, the industry is currently financially strong and viable. It is not, however, without risk. The tobacco companies face one major business uncertainty: the potential for incurring substantial legal liabilities. This financial risk, which has been a characteristic of the industry for years, emanates from uncertainties related to pending and future litigation concerning the companies' business practices. Although the industry has lost only one lawsuit in its history, the risk of a major damages award creates uncertainty that must be factored into any assessment of financial prospects. The various legal expenses associated with defending lawsuits also affect the profitability of the tobacco companies.

As stated earlier, the risks associated with potential legal liability have confronted this industry for many years. Litigation risks were endemic to the industry before any comprehensive tobacco legislation was ever contemplated, and they remain an independent source of business uncertainty notwithstanding the proposed legislation. Even in this environment, however, the combined stock market value of the tobacco companies has risen almost 50 percent in the last 3 years.

4. Proposed Legislation

I would like to now turn to the subject of comprehensive tobacco legislation and discuss some of the key features as contemplated.

Price Provisions

The central goal of proposed legislation is to lower youth smoking and the volume of cigarette sales in the United States. This goal is achieved in a variety of manners, including increasing the price of tobacco products. S. 1415, as reported out of the Commerce Committee, requires cigarette manufacturers to make substantial payments to the Government, and mandates that the costs of such payments be passed through to consumers. As Deputy Secretary Summers has testified, the Administration estimates that the provisions will raise the price of cigarettes by $1.10 per pack, in constant 1998 dollars, by the year 2003. Given other underlying trends in cigarette pricing, it is anticipated that the real price of cigarettes will rise to $3.19.

Despite the considerable size of the required payments, the proposed legislation contains three classes of provisions that protect the industry against a drastic drop in profitability. First, as noted, the legislation provides for consumers, not manufacturers, to finance the industry's payments. The pass-through provisions ensure that the payment costs do not come directly out of tobacco company profits.

Second, industry payments are allocated by market share, and adjusted for sales volumes declines after the fifth year. By taking into account individual companies' ability to pay, these mechanisms further ameliorate the effects on industry profitability. In addition, a number of proposals phase in the industry payments over five years. This allows the industry to adjust over time.

Third, both the original Attorney Generals' settlement and S. 1415 contain a number of features designed to preserve the market share of existing industry participants. The bill contains antitrust exemptions that allow the industry substantial leeway in coordinating prices. Moreover, the legislation raises barriers to entry against imports and new manufacturers by mandating that non-participating manufacturers make payments that exceed those of participating firms, so that any settlement costs borne by the existing participants will also be borne at least equally by newcomers to the industry.

Non-Price Provisions

The Commerce Committee bill further attempts to reduce youth smoking through non-price means, such as restricting the access of youth to tobacco products, and restricting marketing to youth. It also imposes penalties if the industry does not meet specified youth-smoking reduction targets.

Legal Liability Provisions

Another central feature of comprehensive legislation is the legal liability protections that it provides to the industry. The comprehensive legislation would settle the 41 outstanding state suits against the industry, as well as a handful of local suits. The terms of the legislation also would apply to new entrants to the industry, and to international competitors. It thus resolves significant legal uncertainty, and provides broader coverage than merely settling currently outstanding legal claims. National legislation that covers all potential participants in the industry ensures that the industry is able to pass settlement costs on to consumers.

The legislation also provides for limits on the industry's liability. Such limits further reduce the legal uncertainty facing this industry. The extent of the reduction in risk, however, depends on the details of the limits themselves.

5. Implications of Legislation for Bankruptcy Risk

I will now turn to the question of how comprehensive tobacco legislation will affect the tobacco industry's financial health. In summary, we do not believe that the proposed legislation will materially affect the tobacco companies' risk of insolvency. Even under the most conservative assumptions with respect to price, domestic sales volume and operating margin, the tobacco industry will remain very profitable. The companies will continue to have earnings that are more than sufficient to cover interest payments. In short, bankruptcy in this industry is much more likely to arise from the vicissitudes of the market or of litigation than from comprehensive tobacco legislation.

The Effect of Price Increases on Volume

Our analysis of the proposed legislation focusses on its effects on pricing, sales volume, and operating margins in the tobacco industry. As previously outlined, the proposed legislation contains several provisions that provide for the pass-through of payments to prices. The attendant price increases will lead to a decline in sales volume. We estimate that for every 10 percent increase in price, there is a 4.5 percent reduction in product demand. As a result, a $1.10 price increase, for example, would lower sales volumes by about 23 percent.

Some research analysts from Wall Street have predicted that the price increases caused by the proposed legislation will be greater than this analysis, and other legislation that has been proposed has contemplated greater price increases as well. But even if the price increase were higher, say $1.50, there only would be an incremental 30 percent decline in domestic cigarette volumes.

The Effect on Operating Earnings

As previously noted, the tobacco industry's cost structure is largely variable, allowing it to more readily adapt to changing environments. Thus, it is likely that the proposed legislation would cause the industry's margins to decline only modestly in the short run. Based upon the relationship between sales volume and operating margin that currently exists within the industry, we estimate that a 23 percent decline in sales volume will lead to a decline in operating margins of no more than 15 percent. Under those circumstances, the combined effect of declining domestic sales and operating margins would lead to only a 12 percent decline in the total operating earnings of the industry.

As noted earlier, some Wall Street research analyst project larger volume declines than 23 percent, and some proposed legislation contemplates larger volume declines as well. Even if that were the case, the domestic tobacco businesses of the various companies would remain profitable. Using margin assumptions more conservative than above, a 30 percent incremental decline in volumes would lead to only a 15 percent decline industry operating earnings. The industry would still have over $ 4 billion in domestic tobacco operating earnings and approximately $ 20 billion in overall operating earnings.

Corporate Debt Levels

The tobacco companies paid approximately $3 billion of interest payments last year on their outstanding debt. As noted, the industry had operating earnings of over $23 billion. Thus, the industry earned enough to cover its interest more than seven times. Indeed, all of the major participants in the tobacco industry have operating earnings from sources other than domestic tobacco -- such as international sales and non-tobacco products -- that far exceed annual interest payments. Thus, even with significant reductions in domestic tobacco earnings, these firms should be able to meet their interest obligations. Moreover, the asset values of the non-tobacco businesses of Phillip Morris, RJR Nabisco, and Loews, are greater than the companies' outstanding debt. For instance, in the case of RJR Nabisco, the company's 80 percent stake in Nabisco is worth [$11 billion,] while the company's outstanding debt and preferred stock is only [$7 billion].

6. Bond Market Investors

I now will discuss how bond investors assess the industry's credit risk. Bond investors are an important barometer, as they risk their money based on their views. In addition, they are not easily swayed by politics, rhetoric or theory.

By way of background, corporate bonds trade at interest yields that are higher than the Treasury's borrowing rate. This interest rate differential is due to many factors, but is primarily associated with the risk of corporate default. Investors refer to this interest rate differential as a "credit spread."

Investors trade corporate bonds relative to each other in terms of maturities and company-specific risks. In examining bond investors' assessment of the credit risk of a particular firm, it is instructive to look at the interest rate which investors demand on that firm's bonds, relative to other similar corporate bonds.

Figure C illustrates how bond investors assessed these companies at three points in time. We looked at trading levels (i) prior to the Attorney Generals' settlement, (ii) just after the Attorney Generals' settlement, and (iii) during the several days after the Commerce Committee voted S. 1415 out of committee. The numbers in the columns represent the additional interest yield that investors required versus an index of other relevant corporate bonds.

A number of important observations can be made about this information. First, investors viewed the credit risk for all of the companies in early April 1998 as about the same as they did one year earlier. In fact, investors were willing to purchase the industry's bonds at modestly lower interest yields than prior to the Attorney Generals' settlement. Accordingly, S. 1415 does not appear to have had any material effect on investor perceptions of the tobacco companies' credit risk.

Second, after the Attorney Generals' settlement, the bonds of one of the companies, RJR, improved significantly. This suggests that investors saw the Attorney Generals' settlement as lowering the credit risk for this company. That interest yield advantage was reversed as the Commerce Committee voted S. 1415 out of committee. But, to reemphasize, in the wake of this vote the assessment of the bankruptcy risk of this firm, and the others in the industry, was no different than it was before discussions of comprehensive tobacco legislation were public.

Third, the interest rates required on the debt of all but one firm in this industry are very close to those required on the most financially secure businesses in America. The one company for which investors require an additional premium, RJR, has greater levels of debt. This is primarily due to the debt left over from RJR's leveraged buy-out completed in 1989. To give you some context, however, well-known companies such as Westinghouse, Time Warner, and K-Mart trade in the same range as RJR.

7. Conclusion

In conclusion, the tobacco industry is financially strong and viable. Comprehensive tobacco legislation includes mechanisms to protect that financial condition. The legislation assures that payments are made by consumers rather than the tobacco manufacturers, and makes adjustments according to individual companies' ability to pay. The industry has substantial operating earnings to bear any decline in earnings due to price increases caused by the legislation. The industry also has significant non-tobacco assets that are currently valued well in excess of their debt. As previously noted, tobacco companies for years have faced substantial legal uncertainties related to their business practices. Comprehensive tobacco legislation does not increase these existing risks.

Lastly, S. 1415 does not appear to have any material effect on bond investors' perceptions of the tobacco companies' credit risk.

While there are commercial risks facing the tobacco companies, as there are facing all companies, we do not see any reason to expect that the pricing effects of comprehensive tobacco legislation would materially affect these companies' risk of insolvency. They should be able to continue to profitably produce and market tobacco products in the United States.

Figure C
Tobacco Bond Yields
Comparison to Market

(basis points)

	Pre-AG	Post- AG	Post -Commerce
B.A.T.	+ 16 to 18	+ 8 to 11	+ 5 to 9
Loews	+ 9 to 11	+ 5 to 13	(0 to 2)
Philip Morris	+ 2 to 5	+ 5 to 10	(0 to 2)
RJR Nabisco	+ 13 to 19	(2 to 20)	+ 2 to 7

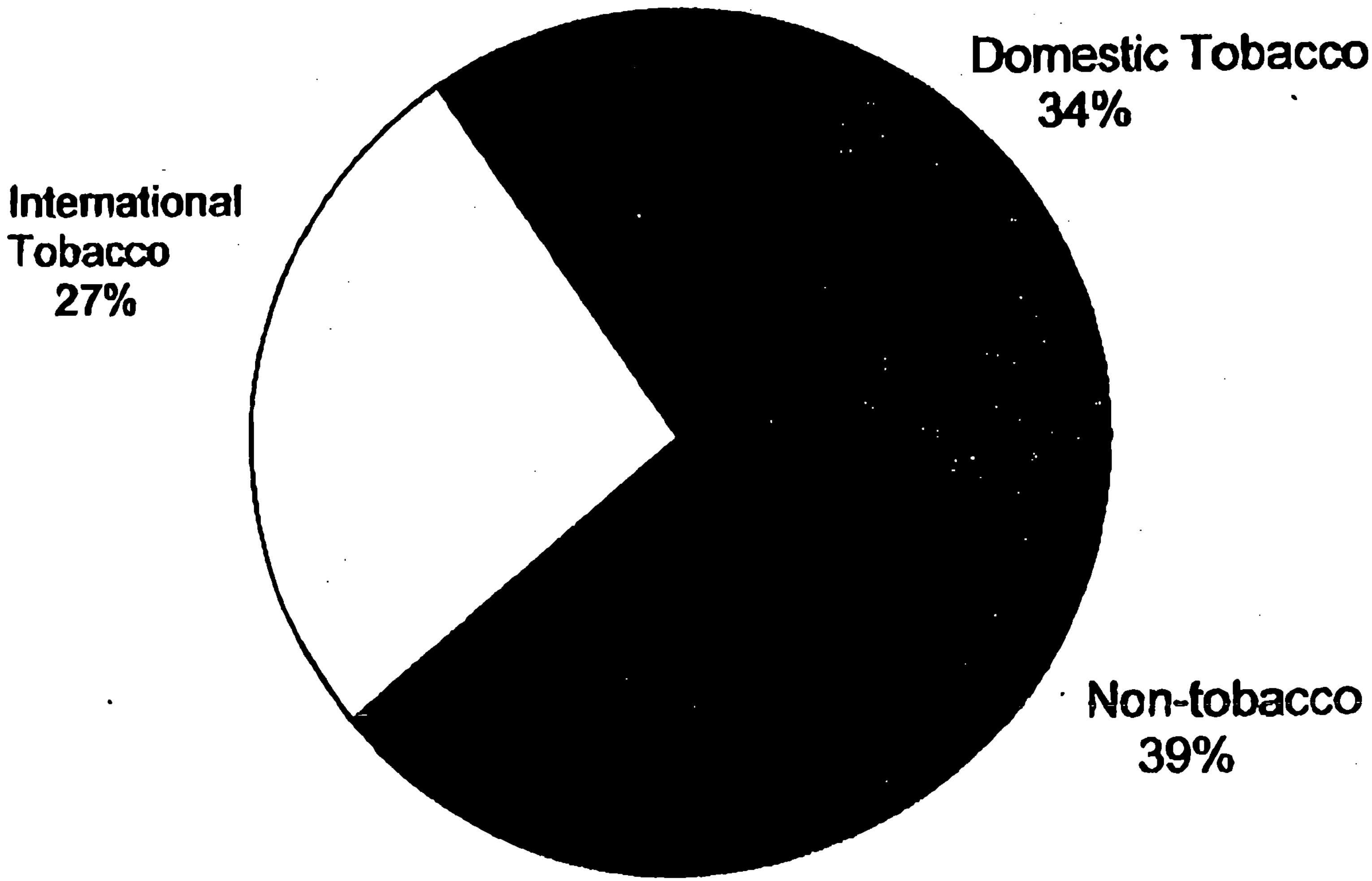
* Bond yields on tobacco companies are compared with indexes of corporate bonds which trade similarly to each company. The reference indexes are Moody's series as follows: B.A.T. (A2); Loews (BBB2); Philip Moris (BBB3); RJR Nabisco (BB3).

Figure A
1997 Results for Major Firms in the Tobacco Industry

	(billions of dollars)	
	Sales	Operating Earnings
British American (B.A.T.)	39.4	4.3
Loews	20.1	2.0
Philip Morris	72.1	13.7
RJR Nabisco	17.1	3.4
TOTAL	148.7	23.4

Figure B

Sources of Earnings of Three Major Domestic Tobacco Manufacturers*



* Philip Morris, RJR Nabisco, Loews.

facsimile
TRANSMITTAL

tobacco

Name: The Honorable Erskine Bowles
Organization: The White House
Fax: 202.456.6703
From: Larry B. Wooten, Assistant to the President
Date: September 3, 1998
Subject: Letter To Glickman on Tobacco Exports
Pages: 3

Dear Mr. Bowles:

Attached for your review is a letter presented to Secretary Glickman yesterday in Wilson, NC.

There are specific things that USDA and the Administration can do now to soften the tobacco quota cut next year and help the small and medium size farmer in future years.

The export market is the only major option available to the American Tobacco Farmer and we need our government's help in opening and maintaining these markets.

Sincerely,

Larry B. Wooten

Larry B. Wooten
Assistant to the President

CC: Thomas Freedman

North Carolina Farm Bureau
Raleigh, North Carolina
Telephone: 919.782.1705
Fax: 919.783.3593
E-mail ncfbfed@ncfb.com

NORTH CAROLINA FARM BUREAU FEDERATION

TELEPHONE (919) 782-1705 / P. O. BOX 27766 / RALEIGH, NORTH CAROLINA 27611

September 2, 1998

The Honorable Dan Glickman
Secretary of Agriculture
Washington, D.C.

Dear Secretary Glickman:

As you know, the tobacco farmer in the South faces an uncertain future. Both young and old, big and small have felt shockwaves from the anger directed toward the tobacco industry over the past year and a half.

More than anything, our farmers need certainty and stability for the future if they are to continue farming tobacco. ***Our tobacco farmers' future and survival depend on increasing exports.*** Tobacco should be included in every export program just like other agricultural commodities. This year, every pound of tobacco that goes to the Flue-Cured Tobacco Cooperative Stabilization Corporation will mean a direct reduction of quota in 1999. We expect that a number of farmers will be forced out of tobacco production next year if quota falls much further. Most of these will be small and medium-size farms.

Attached is a list of items that the North Carolina Farm Bureau feels would benefit the small and medium tobacco farmer both this year and in the future. I ask that you direct your staff to explore these possibilities and establish export policy that includes tobacco at every opportunity. There may be other opportunities of which we are unaware. We would like to meet and discuss any possible options. Many farmers' backs are against the wall and need the help of USDA and other federal agencies.

Without assistance in exporting tobacco from the federal level, I fear for the economic well-being of many counties and rural communities in the South. ***Farmers are not looking for special privileges, but fair and equal access to export markets.*** I look forward to hearing your timely assessment of these items and suggestions on how to increase exports of flue-cured and burley tobacco.

Sincerely,

Larry B. Wooten

Larry B. Wooten
Assistant to the President

Attachment
CC: The Honorable Erskine Bowles
The Honorable Jesse Helms
The Honorable Lauch Faircloth
The NC Congressional Delegation

- Open China's markets to U. S. tobacco and tobacco products - Tobacco farmers should have the same access to markets in China as other U.S. agricultural commodities. Opening up this market should be a condition for membership in the World Trade Organization.

- Use GSM-102 credit programs as a way to sell un-manufactured American tobacco to emerging markets, especially Southeast Asia. Find a way to make it work for tobacco exporting.

- During the upcoming negotiations of the Free Trade of the Americas Agreement, (FTAA) include tobacco along with other agricultural products.

- The office of USTR and USDA Trade Policy should include and consider tobacco in market access negotiations along with other U.S. agricultural commodities.

- Greater flexibility should be allowed for use of No-Net cost funds in order to enhance the movement of Cooperative Stabilization stocks into non-traditional markets.

- Increase the percentage of U.S. produced leaf tobacco in the domestic blends of those countries that receive U.S. foreign aid.

- Reconsideration should be given to tobacco's use of USDA Export (1) promotion programs, (2) Enhancement Funds, (3) credit guarantees, and (4) MAP Funds.

Jaylen LD
SW

COMMENTS ON SENATE COMMERCE COMMITTEE BILL -- 5/12/98

Type of Change	Bill Title	Section Number	Page Number	Description of Issue	Proposed Change	Agency
Policy	Section 2: Findings	2	245	In order to support Title V, Congress needs to make a finding that exposure to environmental tobacco smoke affects interstate commerce and poses unacceptable risks to nonsmokers.	Insert after paragraph (11): **"(12)Congress finds that (a) Lung cancer, heart disease, and other adverse health effects arising from exposure to environmental tobacco smoke impose a substantial burden upon interstate commerce in terms of lost production, lost wages, medical expenses and disability compensation payments; (b) Involuntary exposure to environmental tobacco smoke in public facilities poses an unacceptable risk of adverse health effects. Restricting smoking in public facilities will substantially reduce or eliminate that risk."**	OSHA
Technical	Purpose	3(9)	252	Bill allows privilege assertions, so it does not require disclosure of all research	In purpose no. 9, strike both uses of the word "all"	DOJ
Technical	Definitions	6(1)	257	Definition of brand may not be sufficiently broad to carry out the intention of the bill	Page 257 line 16, strike "or packaging," and replace with "packaging, logo, registered trademark or brand name, identifiable pattern of colors,"	CDC

COMMENTS ON SENATE COMMERCE COMMITTEE BILL -- 5/12/98

Type of Change	Bill Title	Section Number	Page Number	Description of Issue	Proposed Change	Agency
Technical/ Policy	Definitions	6(1)	257	Definition of cigarette leaves out related products that could be used by manufacturers as a vehicle for advertising	Page 258 line 6, strike, "cigarette." and replace with "cigarette, and includes cigarette tubes and cigarette sticks."	CDC
Technical	Definitions	6(15)	260	Definition of roll-your-own is inconsistent with that of cigarette tobacco; doesn't explicitly state that it is subject to requirements for cigarettes	Page 260 line 19 add "Unless otherwise stated, the requirements for cigarettes shall also apply to roll-your-own tobacco."	CDC
Technical/ Legal	Definitions	6(19)	261	Definition of "tobacco product" is not consistent with FDCA definition.	Lines 11-14, strike "cigarettes . . . fine cut products." and insert "any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product.".	FDA

COMMENTS ON SENATE COMMERCE COMMITTEE BILL -- 5/12/98

Type of Change	Bill Title	Section Number	Page Number	Description of Issue	Proposed Change	Agency
Technical	I.A.	101 FDCA 913 (a)(2)(B)	324	typo	line 16, strike "(iii)", insert "(iv)"	
Technical	I	122(a)(1) (F)	340	Current law already prohibits the advertising of tobacco products on the Internet. Report language should be included to clarify this.	Add the following to the Committee Report: "The Commerce Committee does not intend that anything in this bill be construed to limit the authority of the Department of Justice of the Federal Trade Commission to enforce Sec. 6 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335) or Sec. 3(f) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402) which prohibit the advertising of cigaretttes, little cigars and smokeless tobacco to all person on `any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission.' "	

COMMENTS ON SENATE COMMERCE COMMITTEE BILL -- 5/12/98

Type of Change	Bill Title	Section Number	Page Number	Description of Issue	Proposed Change	Agency
Technical	II	202(a)	346-347	Requires use of University of Michigan "Monitoring the Future" survey (or survey with same methodology) to measure underage tobacco use.	Strike 202(a) and insert: "Determination of Underage Use. – The Secretary shall conduct an annual performance survey of underage tobacco use; such survey shall comply with the following requirements: ▸ be based on a nationally representative sample of young individuals to assure sufficient survey precision. ▸ be a household-based, in person survey. ▸ measure use of each type of tobacco product within the past 30 days. ▸ identify usual brand of each type of tobacco product used within the past 30 days. ▸ permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of	

COMMENTS ON SENATE COMMERCE COMMITTEE BILL -- 5/12/98

Type of Change	Bill Title	Section Number	Page Number	Description of Issue	Proposed Change	Agency
Technical (continued)	II	202(a)	346-347	Continued	[continued from above] tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) from the annual performance survey. Such point estimates shall be deemed to be conclusively correct and accurate for calculating actual percentage reductions in underage use of a type of tobacco product (or, in the case of a manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of tobacco product of a manufacturer) is such that the 95% confidence interval around such point estimates is no more than + or - 1%. A survey using the foregoing methodology shall be deemed conclusively proper, correct, and accurate for purposes of this Act. Further, the Secretary by notice and comment rulemaking may subsequently adopt a different survey methodology so long as the different methodology is as statistically accurate as the	ASPE/ HHS

COMMENTS ON SENATE COMMERCE COMMITTEE BILL -- 5/12/98

Type of Change	Bill Title	Section Number	Page Number	Description of Issue	Proposed Change	Agency
					[continued from above] methodology described above and prescribed by this Act."	
Technical	II	202	347	No language that protects confidentiality of data and respondents.	Page 347, before (b), insert: " If the information collected in the course of conducting the annual performance survey results in the young individual supplying the information or described in it to be identifiable, such information may not be used for any purpose other than the purpose for which it was supplied unless such young individual (or such individual's guardian) has consented to its use for such other purpose. Such information may not be published or released in other form if the person supplying the information or described in it is identifiable unless such young individual (or such individual's guardian) has consented to its publication or release in other form."	ASPE/ HHS
Policy	II	204 (3)	359	Does not separately specify "non-attainment percentage for cigarettes" for new manufacturers.	The non-attainment percentage should be defined separately for new manufacturers. Insert: "In the case of a new manufacturer, the term non-attainment percentage means the number of percentage points yielded by the percentage points by which the percent prevalence of underage use of the manufacturer's product exceeds the percentage of underage children in the de minimis level."	

COMMENTS ON SENATE COMMERCE COMMITTEE BILL -- 5/12/98

Type of Change	Bill Title	Section Number	Page Number	Description of Issue	Proposed Change	Agency
Technical	II: Reduction in Underage Tobacco Use	202 and 203	346	Consequence of nonattainment in excess of 20 percent	Loss of liability protection should be determined on a manufacturer-by-manufacturer rather than a brand-by-brand basis. In addition, it is impossible to determine whether a given company caused the industry to miss its target by more than 20%. Thus, should replace 203(a)(1) with: "If the Secretary determines that the non-attainment percentage for cigarettes is greater than 20 percentage points for any cigarette manufacturer, measured as the average percentage prevalence of use of all brands manufactured by that manufacturer, the Secretary may commence an action under this section against that tobacco product manufacturer..." [make same change for smokeless].	TR