U.S. DEPARTMENT OF LABOR
Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

FACSIMILE TRANSMISSION

DATE: MONDAY 2/9

TO: TOM FREEDMAN

FAX: 456 5587

NUMBER OF PAGES, INCLUDING COVER SHEET:

FROM: Greg Watchman

TELEPHONE NUMBER: (202) 219-6091

FAX NUMBER: (202) 219-6064

SPECIAL INSTRUCTIONS:

Here are OSHA's comments. We only received this draft bill today, so doubtless these are not complete. But at least we're covering issues identified in first read-through.

Line Edits:

Pg1 **Bill Title** -- Insert the following new clause after the first clause:

"to expose the tobacco industry's past misconduct and to stop the tobacco industry from targeting children,"

Pg 4 **Findings** -- Insert the following new findings:

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on page 4, line 9 insert after "smoking." "The industry has also targeted minorities."

on page 5, line 1 insert: "(5) Seventy percent of adult smokers would like to quit smoking completely."

Pg 7 **Definitions** -- Insert:

on page 7 line 20 insert after "nicotine": "or a nicotine analog"

Title VI, Pg 1 **Tobacco-Related Research** -- Insert:

on page 1, line 23 insert: "(5) the development of non-addictive, reduced risk tobacco products;"

Toby Donenfeld @ OVP
02/09/98 07:17:25 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Jerold R. Mande/OSTP/EOP

cc:
Subject: Conrad Bill

I wrote down quickly some of my concerns w/ the Conrad bill. I hope this is helpful. Thanks.

Minorities

Title I Page 4 -- Under findings

can we also include after (4) and before (5) that we know that the tobacco industry targets minorities.

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"its efforts to lure underage users AND MINORITIES to its products"

also add
(10) There is evidence to support that price increases reduce youth smoking.

Title I p.5
(c) "restricting adverstisements AND PROMOTIONS designed to..."

add (d) set youth smoking reduction goals.

Title II p. 38

add between (c) and (d) -- "the sale of marketing of tobacco products to minorities"

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and what programs to quit smoking work and which do not

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I think we should add something in that is beyond school based -- to include K-12 and pre-K programs. -- and to do research and dissemination of which school-based programs are most effective. Also, non-profits (like the Amer. Lung Assoc. school curriculum) should not be excluded from school-based programs.

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The section on individuals having to apply to the Sec. to receive cessation program reimbursements is way too complicated!

Event Sponsorship

should be phased out in less than 10 years.

[redacted]

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To: Thomas L. Freedman/OPD/EOP, Jerold R. Mande/OSTP/EOP

cc: Jennifer L. Klein/OPD/EOP
Subject: Issues in Conrad tobacco bill

Updated views.
---------------------- Forwarded by Neera Tanden/WHO/EOP on 02/09/98 06:46 PM ---------------------------

[redacted]

Record Type: Record

To:

cc:
Subject: Issues in Conrad tobacco bill

---------------------- Forwarded by Neera Tanden/WHO/EOP on 02/09/98 06:24 PM ---------------------------

[redacted]

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To: Jerold R. Mande/OSTP/EOP, Thomas L. Freedman/OPD/EOP

cc: Jennifer L. Klein/OPD/EOP, Nicole R. Rabner/WHO/EOP
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1. Conrad uses the Medicaid formula for distribution of the funds, while we use the child allocation formula - these are very different. This is a larger issue, but we don't particularly care for child care.

2. Head Start and Early Head Start should not be paid for out of tobacco funding (which Conrad does and we steered very clear of doing). The argument is that this doesn't make sense since Head Start money goes directly to grantees (not states).

3. We don't spend anything on IDEA (although we don't have a problem with that).

4. The quality set-aside within the Child Care and Development Block Grant (CCDBG) (Section 131(a)(1)(A)) is too high -- we should suggest a 2 to 1 ratio between subsidies and early learning/quality. Also, the language ("including") suggests that states could use the funding for other non-specified uses. But should add additional activities, such as home visitation, and health linkages.

5. Again, the language is "including". This quality money should also be limited to the specified uses.

Mary L. Smith
02/09/98 07:21:54 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc:
Subject: DOJ comments for Conrad

Phil Barts wanted to make clear at the outset that DOJ has not done a thorough vetting nor a constitutional analysis, but here are a few comments anyway

1. DOJ doesn't like section 911 which is a citizen enforcement section
2. DOJ suggests that we should add some sanctions to the document disclosure to the FDA section such as a per-day fine for failing to comply (Section 910 under the FDA part)
3. Section 721 says that anytime a manufacturer enters into a contract with a disttributor or retailer, the distributor or retailer has to agree to abide by the conditions of the Tobacco Protocol. Phil suggests that there might be legal problems with such a contract requirement, but, in addition to any possible legal concerns, there might be an unintended consequence that a small mom-and-pop retailer might be unfairly prejudiced by having to agree to such a condition.

That's all DOJ had.

V. HHS

A. Should leave more to HHS secretary discretion-- too much of research portfolio through NIH.

B. Title VI. Sec. 603 surveillance and evaluation activities-- no CDC, (JM--Tobacco Use Survey -- Title III, page 1, line 11. Add periodic survey of 18-21 year olds to investigate age creep.)

C. NIH funding levels -- not smooth ramp up, too much frontloaded 2001- 2002 (decrease) NIH money people need to talk to OMB

VI. Minorities--

Emphasize minority concerns in documents, research, cessation and add community-based programs that could target for example smoking cessation in minority communities.

VII. Technical edits

A. OMB

In addition to the Medicaid edit that we will fax, there are several other technical edits to offer regarding Title III:

1. Baseline level definition. The baseline level (page 2 line 3) is defined only for specific brands, not for cigarette use as a whole.

2. Reduction defined. The reduction on p. 4 line 5 should be specified to be from the baseline.

3. Actual percentage reduction. This definition on page 8 line 1 should be multiplied by 100 to compare to the required reductions which are expressed as integers, not as fractional percents.

B. Other Technical Edits:

Pg1 **Bill Title** -- Insert the following new clause after the first clause:

"to expose the tobacco industry's past misconduct and to stop the tobacco industry from

Draft Conrad Tobacco Bill
Suggested Changes
2/9/98

I. Spending

A. Funds for Medicare and Debt Reduction should go to other causes (including science/research).

B. Child Care -- need more money; should have state match for both child care and education spending. Perhaps a trade of less restrictive language on the 43% state share for some state match on the federal share.

1. Head Start and Early Head Start should not be paid for out of tobacco funding .

2. The quality set-aside within the Child Care and Development Block Grant (CCDBG) (Section 131(a)(1)(A)) is too high -- suggest a 2 to 1 ratio between subsidies and early learning/quality. Also, the language ("including") suggests that states could use the funding for other non-specified uses. But should add additional activities, such as home visitation, and health linkages.

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4. FYI. Conrad uses the Medicaid formula for distribution of the funds, while we use the child care allocation formula - these are very different.

5. FYI. We don't spend anything on IDEA.

C. Class Size

1. In order to ensure that we can meet the President's policy goal of reducing class size in the early grades, each state must allocate at least 35% of its combined child care and education funds for class size reduction.

2. To ensure that high poverty school districts (30% poverty) receive a fair share of the funds, states must guarantee these districts the same proportion of the state class size funds as the districts receive under the Title 1 program.

> The Education Department provided Conrad's staff with statutory language to accomplish this (copy attached); If it is not possible to accomplish explicitly in the statute as proposed by Education, we have proposed additional language that would give the Secretary the authority to regulate on this issue (copy attached).

X. Roll Out and other Questions:

1. Have they checked with public health community and are they ok. Should use as opportunity to de-emphasize civil liability as the test of the issue.

2. Medicare and Medicaid changes

3. Clarify which provisions are tax deductible

HHS

3. Surveillance of youth smoking (Sec. 302) is now set for a year after enactment-- O'hara asks for 2 years (not enough time to ramp up). Want rolling averages.

4. Penalties (304) 10 cents or 1/10 of a cent? For each unit of tobacco product?

5. Sec. 304(3)c-- de minimis rules-- 0.5 % of total number less (does this mean you need only less than 99% of mkt to apply.

Other:

-- no mention of anti-trust

-- definition on of youth smoking as someone who has smoked in last thirty days

-- what is the FDA science advisory board

Richard J. Turman
02/09/98 07:06:11 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc: See the distribution list at the bottom of this message
Subject: Several Technical Edits to Draft Conrad Bill

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Message Copied To:

Joshua Gotbaum/OMB/EOP
Jill M. Pizzuto/OMB/EOP
Barry T. Clendenin/OMB/EOP
Wm G. White/OMB/EOP
Jim R. Esquea/OMB/EOP
Marc Garufi/OMB/EOP
Patrick G. Locke/OMB/EOP

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2. Research Spending (VP priorities) -- Increase cancer research spending; Funds for NSF, NASA, etc. (take money from debt account)

3. 43% restrictions

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Assistant Secretary for
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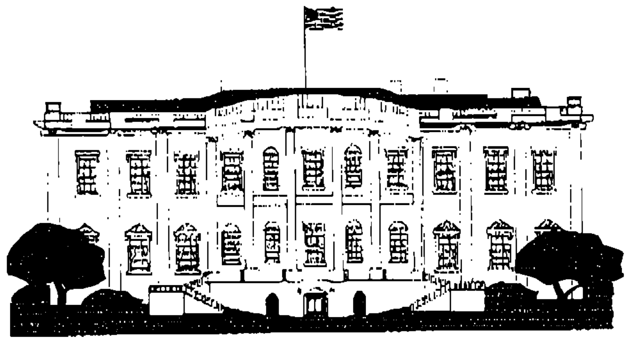
EXECUTIVE OFFICE OF THE PRESIDENT
Office of National Drug Control Policy
Washington, DC 20503



FACSIMILE MESSAGE

TO: Jose Cerda

FAX: 456-7028

DATE: 2/9/98 **TIME:** 2:10pm **PAGES:** 5 + Cover

FROM: Charles Blanchard, Director, Office of Legal Counsel

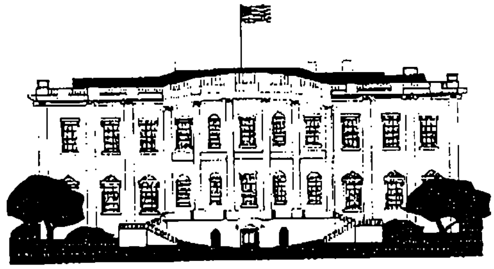
FAX NUMBER: 202-395-5543

OFFICE NO: 202-395-6621

COMMENTS:

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy
Washington, DC 20503



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FAX: 456-7028

DATE: 2/9/98 **TIME:** 2:10pm **PAGES:** 5 + Cover

FROM: Charles Blanchard, Director, Office of Legal Counsel

FAX NUMBER: 202-395-5543

OFFICE NO: 202-395-6621

COMMENTS:

Tom--

Here are the line edits for the changes we discussed. Please call me (202-456-5587) or page me (757-5000) if I can be of any help.

1. The education changes (which we think you have.) 4 pages.

2. OSHA suggested changes. 3 pages.

3. Line edits for emphasis on kids and nicotine. 1 page

4. Line edits to emphasize minority issues and tobacco. 1 page

5. Technical budget line edits. 1 page.

I understand you've talked to HHS about some specific changes which they thought it was ok to get you tomorrow, we will forward them on to you in the morning.

Tom

JRM: 43%
TM: counties/cities ~~&~~ want to avoid getting screwed by states
JRM: State Gov's will be pissed.
TM: To reimburse -- we don't want to raise flags.
$ may redraft.

— Changes by mid-morning.

— is enuf for [illegible]?

— talked to Gotham

(1) IN GENERAL.—Each State desiring a grant under this section shall submit to the Secretary of Education a State plan at such time, in such manner, and accompanied by such information as the Secretary may require.

(2) CONTENTS.—Each State plan shall demonstrate to the satisfaction of the Secretary of Education that—

(A) the activities assisted by the State with funds provided under this section will be conducted in compliance with ~~the~~ any regulations ~~described in~~ promulgated under subsection (a); ~~and~~

(B) the State will use the funds provided under this section to reduce class size for students in grades 1 through 3 in elementary schools throughout the State, focusing on using the funds to train, recruit, and hire teachers for elementary schools serving communities with the least resources available for ~~training, recruiting and hiring teachers for the grades~~ that purpose and with the ~~highest~~ largest class sizes in those ~~student-to-teacher ratios for~~ the grades; and

see (C), attached

(3) APPROVAL.—The Secretary shall approve a State plan submitted under paragraph (1) if the State plan meets the requirements of this subsection.

(b) SUPPLEMENT NOT SUPPLANT.—Amounts provided to a State under this section shall be used to supplement and not supplant other Federal, State and local funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

(c) FUNDING.—The Board shall use amounts made available for a fiscal year under section 111(a)(2)(B)(i) to carry out this section in such fiscal year.

SEC. 132. IMPROVING ELEMENTARY EDUCATION.

(a) GRANTS AUTHORIZED.—From amounts made available under section 111(a)(2)(b)(ii) for each fiscal year, the Secretary of Education shall award grants to States to enable the m ~~States~~ , and local educational agencies in the States, to train, recruit, and hire elementary school teachers for the purpose of reducing the average class size for students in grades 1 through 3 to ~~not less than 15 and not more than~~ 18 students or less ~~per teacher~~.

(b) REGULATIONS ~~REQUIRED~~.—The Secretary of Education, not later than March 1, 1999, shall promulgate regulations implement~~ing~~ the grant program described in subsection (a). as the Secretary determines are necessary to

(c) STATE PLAN.—

DRAFT
FEB. 9, 1998
1:30 pm

Draft Conrad bill and reduction in class size

On page 44, insert the following between lines 21 and 22:

(C) an assurance that, of the funds the State receives under this section, it will make available to each local educational agency that serves children in grades 1 through 3 and in which at least 30 percent of the children are from families below the poverty level at least as great a percentage of those funds as it provides to that local educational agency from the funds it distributes to all local educational agencies in the State under part A of title I of the Elementary and Secondary Education Act of 1965.

* * * * *

DRAFT
FEB. 9, 1998
6:15 pm

Draft Conrad bill and reduction in class size

On page 43, lines 21 through 24, rewrite subsection (b) to read as follows:

(b) REGULATIONS. The Secretary of Education shall, by March 1, 1999, issue such regulations as the Secretary determines necessary to help States and school districts that participate in the program under this section provide small classes with qualified teachers in the early grades, which may include provisions relating to--

(1) the use of the State's grant, such as subgrants to local educational agencies; and

(2) teacher preparation and certification.

(3) accountability for improved student achievement

* * * * *

Technical Concerns with "Title V" (ETS Provisions)
OSHA

We have reviewed Title V--Standards to Reduce Involuntary Exposure to Tobacco Smoke and believe that it raises the following issues and make the following recommendations:

Page 1:

Line 5: Congress needs to make a finding that " exposure to environmental tobacco smoke constitutes a significant risk of material impairment of health and the health consequences of this exposure impose a substantial burden upon interstate commerce in terms of lost production, wage loss, medial expenses and disability compensation payments."

Line 14: add after "any" the words "workplace covered by the Occupational Safety and Health Act of 1970 and any"

Line 14: Change "building" to "enclosed structure" [note: need to cover warehouses, garages, vaults, and other public enclosed places that arugably are not "buildings"]

Lines 18-20: Public facility is drafted to exclude any building or portion thereof used for residential purposes. This sentence should be changed to ". . .such term shall not include any building or portion thereof while used (delete "regularly") for residential purposes (or "as a private residence" - see next comment). This deals with homes used as day care facilities or other businesses.

Line 20: Change "for residential purposes" to "as a private residence" [note: language as written might allow smoking in hospices, long-term care facilities, etc., where susceptibility to the effects of ETS may be particularly high]

Page 2:

Lines 2-5: The clause "with an indoor seating capacity of fewer than 50 individuals" should be moved from where it is and inserted after the term "restaurant".

Line 10: Strike the word "and".

Line 13: The word "generated" should be "generates".

Lines 6-14: Should be rewritten to make clear that the exclusion only applies to that portion of a facility that serves both liquor and food that is actually the bar area [note: Maryland, we believe, has defined the bar area as the counter where drinks are served and a ring 6 feet beyond it]. Otherwise, a 500-seat facility that serves 51 percent liquor would be wholly exempt from having a no-smoking area for diners.

Line 14: Add "food and liquor" after "gross" [note: so that proceeds from souvenirs and other money-making activities would not allow facilities to serve large amounts of food and still qualify for the exemption].

Lines 6-14: Staff should *consider* adding some language requiring some protection of workers in this very highly-exposed sector. Perhaps owners of exempted facilities should be required to provide life or health insurance to their employees, or institute work practices to minimize unnecessary employee exposures.

Line 25: The definition of fast food restaurants is geared to customers under whereas OSHA usually protects only employees. Currently OSHA's authority is limited to protecting employees. This bill appears to expand that authority (see also next comment and comment on page 4, line 23, etc.) If there is to be direct OSHA enforcement it may need to be added to page 7, line 17.

Page 3:

Lines 1-5: The "responsible entity" may or may not be an "employer".

Line 22: Add after "facility" the words "or any air intake vent (including open windows and doors)".

Page 4:

Lines 13-18: change to "the area is subject to direct exhaust ventilation to ensure that air from the area is directly exhausted to the outside *of the building* and does not recirculate or drift to other areas within the public facility" [note emphasis added]. Add (presumably back on page 2) "direct exhaust ventilation" from the Preamble to the IAQ proposal:

> Direct exhaust ventilation handles contaminated exhaust air from a designated smoking room in such a way that it is transported to the outside of the building, through exhaust ducts under negative pressure to avoid duct leakage into nonsmoking areas that the duct passes through.

Lines 19-22: change to "the area is maintained at negative pressure as compared to adjacent nonsmoking areas"." Add the following definition of "negative pressure" from the IAQ Preamble:

> Negative pressure is achieved by exhausting more air from the space than is supplied to the space. Transfer air must enter the designated smoking room to make-up the volumetric flowrate differential between supply and exhaust air. It may be necessary to provide a tight architectural enclosure so as to achieve negative pressure and containment. Negative pressure will induce airflow into the room through the entrance door undercut. Containment may be checked by using smoke-trails at the door undercut to verify direction of airflow.

Line 23: Non-smoking individuals are not necessarily employees.

Line 25: add at end "and for an additional period that allows for at least three air exchanges to occur in the room" [note: this will probably require less than an hour's waiting time, but will be very helpful in reducing the concentrations of hazardous ETS components that accumulate while smoking has been taking place]. *Also add this clause* to the end of line 3 on page 5.

<u>Page 5:</u>

Lines 1-3: This could still leave employees at risk because no time period for ventilation is specified.

Page 5-6, lines 4-18: There is an issue of jurisdiction between OSHA and the Department of Education.

Lines 18-24: Smokeless tobacco does not cause the same types of adverse health effects as environmental tobacco smoke.

<u>Page 6:</u>

Line 19-to *Page 7*, line 11: Could be a jurisdictional issue between OSHA and the Department of Transportation.

<u>Page 7:</u>

Line 6: "...on property affiliated with the conveyance" may be overly broad

Lines 14-17: **Enforcement: The following language should be added: Requirements of this section shall be enforced against employers and other covered entities in accordance with enforcement mechanisms established in the OSH Act, including Sections 8-15 and 17.**

Lines 18-23: Pre-emption: After "section 18" add "of the OSH Act", and after "any other" in Line 20 add "current or future".

Line 23: add "States shall not be permitted to preempt or prevent localities from enacting protections against ETS that are more stringent than those provided for in this section."

<u>Page 8,</u>

Lines 4-6: Unless the Agency is relieved of some of its statutory burdens (paperwork, SBREFA, feasibility analyses etc.) the one year time frame is not easily achievable.

Kids

Line Edits:

Pg1 **Bill Title** -- Insert the following new clause after the first clause:

"to expose the tobacco industry's past misconduct and to stop the tobacco industry from targeting children,"

Pg 4 **Findings** -- Insert the following new findings:

on page 4, line 6 insert: "(2) Nicotine is an addictive drug. The marketplace for tobacco products is largely based on addiction."

on page 4, line 9 insert after "smoking." "The industry has also targeted minorities."

on page 5, line 1 insert: "(5) Seventy percent of adult smokers would like to quit smoking completely."

Pg 7 **Definitions** -- Insert:

on page 7 line 20 insert after "nicotine": "or a nicotine analog"

Title VI, Pg 1 **Tobacco-Related Research** -- Insert:

on page 1, line 23 insert: "(5) the development of non-addictive, reduced risk tobacco products;"

on page 9, line 13: **Cessation** -- Program should be changed to ~~a state grant program possibly modeled after the substance abuse block grant. (see attached)~~ placeholder for Sec'y to develop a program. HHS will provide language tomorrow am.

mid.

Minorities

Minorities

1. In findings

Title I p. 5 line 24

"its efforts to lure underage users AND MINORITIES to its products"

2. Title II p. 38

add between (c) and (d) -- "the sale of marketing of tobacco products to minorities"

3. add section "601(a)(9) the relationship between the use of tobacco products and cancer, particularly among minorities"

4. Sec. 611(a)(2) "to carry out community-based prevention programs, including in predominantly minority communities, using methods that are proven and effective."

Technical

Title I

- Page 51, Section 133(e)(2)(A)(iii) should read: "the difference between the enhanced FMAP and the Federal medical assistance percentage (as defined in the first sentence of section 1905(b) for the State for the fiscal year described in section 2105(b)."

Title III

- Page 1, Sections 302(a)(1) and (2) should read: "the percentage of all individuals under 18 years of age who used a tobacco product in the recent past, with the appropriate time frame to be defined by the Secretary."

- Page 2, Section 302 (c) should read: "The baseline level of the child tobacco brand use (referred to in this title as the 'baseline level') is the percentage of individuals under 18 years of age determined to have used any of the brands of tobacco produced by a given manufacturer in the first annual performance survey."

Title VI

- Page 2, Section 601(a) should add the following:

  "(7) the responsiveness of smoking, particularly youth smoking, to price increases, non-price incentives such as advertising, and youth-specific penalties on the tobacco industry; and
  (8) the economic implications of smoking-related illness, including but not limited to, the effect of smoking-related disability on the labor force; the impact of smoking-related disability on government expenditures; and the impact of smoking-related disability on the family's standard of living."

Tom--

Here are the line edits for the changes we discussed. Please call me (202-456-5587) or page me (757-5000) if I can be of any help.

1. The education changes (which we think you have.) 4 pages.

2. OSHA suggested changes. 3 pages.

3. Line edits for emphasis on kids and nicotine. 1 page

4. Line edits to emphasize minority issues and tobacco. 1 page

5. Technical budget line edits. 1 page.

I understand you've talked to HHS about some specific changes which they thought it was ok to get you tomorrow, we will forward them on to you in the morning.

Penn, Schoen & Berland Associates, Inc.
805 15th Street tenth floor NW Washington, DC 20005
Telephone (202) 842-0500 Fax (202) 289-0916

To: Tom Freedman

From: Jenifer Coleman

Date:

Fax Number: 456 7431

Number of Pages, Including cover: 5

Comments:

If you have not received all the pages that are indicated, or are having problems with the reception of the materials, please contact our office. (202) 842-0500

Conrad Bill Changes

Spending

1. Child Care and Elementary Education changes including state match.

2. Research Spending (VP priorities) -- Increase cancer research spending; Funds for NSF, NASA, etc. (take money from debt account)

3. 43% restrictions

Other Issues

1. **Cessation** -- Title VI, page 9, line 13. Program should be changed to a state grant program possibly modeled after the substance abuse block grant.

2. **Tobacco Use Survey** -- Title III, page 1, line 11. Add periodic survey of 18-21 year olds to investigate age creep.

Draft Conrad Tobacco Bill
Suggested Changes
2/9/98

I. Spending

A. Funds for Medicare and Debt Reduction should go to other causes (including science/research).

B. Child Care -- need more money; should have state match for both child care and education spending. Perhaps a trade of less restrictive language on the 43% state share for some state match on the federal share.

1. Head Start and Early Head Start should not be paid for out of tobacco funding .

2. The quality set-aside within the Child Care and Development Block Grant (CCDBG) (Section 131(a)(1)(A)) is too high -- suggest a 2 to 1 ratio between subsidies and early learning/quality. Also, the language ("including") suggests that states could use the funding for other non-specified uses. But should add additional activities, such as home visitation, and health linkages.

3. Again, the language is "including". This quality money should also be limited to the specified uses.

4. FYI. Conrad uses the Medicaid formula for distribution of the funds, while we use the child care allocation formula - these are very different.

5. FYI. We don't spend anything on IDEA.

We'd do it w/ 20 [illegible] 30:15 to agree language

C. Class Size

1. In order to ensure that we can meet the President's policy goal of reducing class size in the early grades, each state must allocate at least 35% of its combined child care and education funds for class size reduction.

2. To ensure that high poverty school districts (30% poverty) receive a fair share of the funds, states must guarantee these districts the same proportion of the state class size funds as the districts receive under the Title 1 program.

> The Education Department provided Conrad's staff with statutory language to accomplish this (copy attached); If it is not possible to accomplish explicitly in the statute as proposed by Education, we have proposed additional language that would give the Secretary the authority to regulate on this issue (copy attached).

3. In order to ensure that states and local school districts address issues of teacher quality and accountability, we have proposed new language that provides the Secretary the authority to regulate on this issue (copy attached).

4. We suggest removing the limitation on states to reduce class size below an average of 15; we believe that states should retain the flexibility to make classes even smaller if the funding would permit.

5. We have attached a series of minor edits to the Conrad draft.

D. Funds for International should include Treasury in distributing and allow World Bank etc. to participate. More funds ($100 million)

E. Budget dollars for smuggling/enforcement

~~F. Cessation spending should be funneled to CHC's or other organizations which target care to the poor, rather than distributed through individual grants.~~

Title VI, page 9, line 13. Program should be changed to a state grant program possibly modeled after the substance abuse block grant.

G. Cancer clinical trials-- confirm now in and sufficient cancer dollars

II. OSHA (Attached)

III. Treasury (attached)

IV. Department of Justice

A. Section 911 which is a citizen enforcement section is not a good idea.

B. Add some sanctions to the document disclosure to the FDA section such as a per-day fine for failing to comply (Section 910 under the FDA part)

C. Section 721 says that anytime a manufacturer enters into a contract with a distributor or retailer, the distributor or retailer has to agree to abide by the conditions of the Tobacco Protocol. Suggest that there might be legal problems with such a contract requirement, but, in addition to any possible legal concerns, there might be an unintended consequence that a small mom-and-pop retailer might be unfairly prejudiced by having to agree to such a condition.

V. HHS Place-holder Cessation

FDA LAC

A. Should leave more to HHS secretary discretion-- too much of research portfolio through NIH.

B. Title VI. Sec. 603 surveillance and evaluation activities-- no CDC, (JM--Tobacco Use Survey -- Title III, page 1, line 11. Add periodic survey of 18-21 year olds to investigate age creep.)

C. NIH funding levels -- not smooth ramp up, too much frontloaded 2001- 2002 (decrease) NIH money people need to talk to OMB

1st

VI. Minorities--

Emphasize minority concerns in documents, research, cessation and add community-based programs that could target for example smoking cessation in minority communities.

VII. Technical edits

A. OMB

In addition to the Medicaid edit that we will fax, there are several other technical edits to offer regarding Title III:

Manufacturers

Removal? Check

1. Baseline level definition. The baseline level (page 2 line 3) is defined only for specific brands, not for cigarette use as a whole.

2. Reduction defined. The reduction on p. 4 line 5 should be specified to be from the baseline.

3. Actual percentage reduction. This definition on page 8 line 1 should be multiplied by 100 to compare to the required reductions which are expressed as integers, not as fractional percents.

B. Other Technical Edits:

Pg1 **Bill Title** -- Insert the following new clause after the first clause:

"to expose the tobacco industry's past misconduct and to stop the tobacco industry from targeting children,"

Pg 4 **Findings** -- Insert the following new findings:

on page 4, line 6 insert: "(2) Nicotine is an addictive drug. The marketplace for tobacco products is largely based on addiction."

on page 4, line 9 insert after "smoking." "The industry has also targeted minorities."

on page 5, line 1 insert: "(5) Seventy percent of adult smokers would like to quit smoking completely."

Pg 7 **Definitions** -- Insert:

on page 7 line 20 insert after "nicotine": "or a nicotine analog"

Title VI, Pg 1 **Tobacco-Related Research** -- Insert:

on page 1, line 23 insert: "(5) the development of non-addictive, reduced risk tobacco products;"

IX. Drugs/ Alcohol. Add some rhetoric.

X. Roll Out and other Questions:

1. Have they checked with public health community and are they ok. Should use as opportunity to de-emphasize civil liability as the test of the issue.

2. Medicare and Medicaid changes

3. Clarify which provisions are tax deductible

HHS

3. Surveillance of youth smoking (Sec. 302) is now set for a year after enactment-- O'hara asks for 2 years (not enough time to ramp up). Want rolling averages.

4. Penalties (304) 10 cents or 1/10 of a cent? For each unit of tobacco product?

5. Sec. 304(3)c-- de minimis rules-- 0.5 % of total number less (does this mean you need only less than 99% of mkt to apply.

Other:

-- no mention of anti-trust

-- definition on of youth smoking as someone who has smoked in last thirty days

-- what is the FDA science advisory board

THE WALL STREET JOURNAL, TUESDAY, FEBRUARY 10, 1998

Will Lawyers' Greed Sink the Tobacco Settlement?

By MATTHEW SCULLY

As if the whole tobacco settlement weren't complicated enough, we now have the Clinton administration proposing to spend one-fifth of the $368.5 billion in expected revenues on new social programs. There is, of course, the minor problem that Congress has not yet approved the settlement. On top of that, we have the trial lawyers who brokered the deal already counting on fees upward of $14.5 billion—never mind what their client, the public, might have to say about that.

It all began two years ago with that landmark settlement between the Liggett Group, Inc., and the states. Back then just six state attorneys general, led by Mississippi's Mike Moore, had filed class-action lawsuits against the tobacco companies. By July 1997, when the $368.5 billion deal was announced, 41 states were in the deal, all represented by 300 or so trial lawyers operating out of 89 law firms. The leading lawyers were Ron Motley of South Carolina, retained by 19 states, and Richard Scruggs of Mississippi, retained by 12 states.

Under the deal, the tobacco companies would pay $368.5 billion in damages to the federal government over 25 years, with some $193 billion of the total to be divvied up among the 41 states. In return the companies would get immunity from further class-action litigation, plus caps on damages in individual suits. Behind this is the novel legal theory of government (via Medicaid) as victim. The cigarette makers pay protection money, their stocks stabilize, and they get to stay in business. We, the innocent consumers of America, recoup tobacco-related Medicaid costs.

Another legal landmark is the idea of using multimillionaire tort lawyers as de facto deputy attorneys general, armed with the coercive power of the state for their own private gain. Of the 41 states, only Maine paid its trial lawyers on an hourly basis; and somehow the attorneys general of California and Colorado managed to conduct their states' legal business without need of a single private lawyer.

Having "risked" all on our behalf, the tort lawyers who dreamed up this scheme expect handsome rewards for their ingenuity. In Florida, which struck its own $11.3 billion settlement in August, the bill comes to 25% of the total, or $2.8 billion—an average of $200 million per attorney, or roughly $14,000 per hour, assuming the lawyers spent every waking hour on the case for 42 months.

There's been a hitch, however, causing much alarm among attorneys engaged in the other states' suits. In November, Florida Circuit Court Judge Harold J. Cohen declared that $2.8 billion in fees "simply shock the conscience of this court." Some of the lawyers, insisting "a deal is a deal," have sued to put a freeze on the entire $11.3 billion—money that is supposed to fund health education programs alerting Florida's wayward teens to the dangers of smoking.

All the state-level fee arrangements may be subsumed by the national deal anyway, at least according to Mississippi's Mr. Moore, who told Congress: "An independent panel composed of three members, one selected by the states and their lawyers, one selected by the tobacco companies, and one agreed to by both sides would set the fee amount." The industry has a side agreement with the trial lawyers not to "take any position adverse to the size of the fee award requested," so even this stacked arbitration panel could still work out very well indeed for the lawyers. The consensus puts the likely final fee at 4%, or $14.5 billion.


Richard Scruggs

But the liability limitations that made it all possible have brought about another unexpected turn of events. It's no longer Big Tobacco vs. Big Torts. Now it's Big Torts vs. Big Torts: a ferocious struggle over the carcass between a few trial lawyers in on the deal and the angry throng cut out. The no-liability provision is firmly opposed by every trial lawyer in America, minus 300.

The deal is "an unconstitutional sham," says Richard Hailey, president of the Association of Trial Lawyers of America. "Congress must ensure that citizens' existing legal rights will be preserved; no caps will be imposed on damage awards; and tobacco will be subject to unfettered FDA regulation." That's what is hanging in the balance here: nothing less than the basic American right to unfettered regulation.

There remain a few obstacles between the tobacco lawyers and payday. Reps. Scott McInnis (R., Colo.), Chris Cox (R., Calif.) and Paul McHale (D., Pa.) have cosponsored a bill to limit all fees by attorneys engaged in the settlement to a maximum of $150 an hour, with an absolute cap of 0.01% of the total $368.5 billion. This is based on the simple enough theory that if the public is the victim, the public is the client. Ergo, those billions are ours, and we'll decide what constitutes reasonable pay here. Sen. Lauch Faircloth (R., N.C.) proposes to limit fees to $125 an hour.

The bills have had a good effect already: Suddenly all the tort lawyers are talking about the sanctity of private property and the limits of government power. A consumer activist for Ralph Nader's Public Citizen was heard to warn that a cap on lawyers fees "runs afoul of the Tenth Amendment, which prevents the federal government from trammeling on the sovereign interests of the state, and the Fifth Amendment's prohibition on the taking of private property without just compensation." A limit on multimillion-dollar lawyers' fees, said Tampa, Fla., trial lawyer C. Steven Yerrid, would deal irreparable harm to "working families, the disabled, and those who cannot afford the best legal talent this country has to offer."

All this from the same folks who have just completed $368.5 billion worth of takings, trammeling and unfettered regulation, and now demand $14.5 billion or more for the favor.

Mr. Scully is a writer in Washington.

Impeachment Inquiry Discussed in House

Leaders Consider Logistics of Probe but Link Decision With Caveat on Stronger Evidence

By Guy Gugliotta
Washington Post Staff Writer

The House leadership has quietly begun to consider the logistics of a possible impeachment inquiry against President Clinton, but both parties agree the evidence will have to be much stronger than it is today before lawmakers can seriously contemplate removing a popular chief executive from office.

House members question whether independent counsel Kenneth W. Starr, as required by law, can gather enough "substantial and credible information" about Clinton transgressions to send it to the House as "grounds for impeachment."

And even if the information exists, House members from both parties wonder if any misdeeds involved in an alleged affair with former White House intern Monica S. Lewinsky would rise to the level of "high crimes and misdemeanors" stipulated by the Constitution as impeachable offenses.

And finally, say House lawmakers and aides, an inquiry of impeachment will likely depend as much on the tide of public opinion as it will on the case against Clinton. "Go ahead, make my day," said Rep. John Conyers Jr. (Mich.), ranking Democrat on the Judiciary Committee, where any impeachment inquiry would begin.

"A foolhardy attempt to impeach an overwhelmingly popular and successful president on inconsistent and highly suspect circumstantial evidence is one way to ensure a Democratic congressional majority next November," Conyers said.

Indeed, surveys continue to demonstrate unprecedented levels of popularity for Clinton since the scandal broke. A Wall Street Journal/NBC News poll last weekend showed him with a towering 79 percent approval rating. More typical was the latest Newsweek poll, which found a 66 percent approval, with 49 percent saying the president shouldn't be impeached even if he told Lewinsky to lie about the alleged affair.

Rep. Martin Frost (D-Tex.) called this phenomenon "one of these peculiar things in politics." Frost, head of the Democratic Congressional Campaign Committee, also said the scandal has not affected the party's efforts to recruit candidates and raise money for the 1998 elections.

Some lawmakers noted that Clinton's popularity contrasts markedly with the circumstances that existed when the Judiciary Committee opened an impeachment inquiry against President Richard M. Nixon in 1974, the last time the procedure was used. At that time, the Watergate scandal had resulted in the indictment of 19 people, among them two Nixon Cabinet secretaries and many of his closest advisers. Nixon himself had been named an "unindicted co-conspirator" by a special prosecutor for his role in the Watergate cover-up. His approval rating fell to 24 percent in August 1974.

"One of the controlling factors is if there is an atmosphere [to] consider removal," said former representative M. Caldwell Butler (R-Va.), who served on the Judiciary Committee in 1974. "Today, that's just not the circumstance. Until the American people get stirred up like they were in 1974, there should be no discussion of impeachment."

Starr has made clear that should he come across evidence of impeachable offenses, he will turn it over to the House. There Judiciary Committee Chairman Henry J. Hyde (R-Ill.) will consult with Speaker Newt Gingrich (R-Ga.) and other Republican leaders before deciding to open an inquiry.

If a majority of the Judiciary Committee votes articles of impeachment, the full House then acts as a grand jury and, by a simple majority vote, could pass the case to the Senate for trial. It takes a two-thirds vote of the Senate to remove the president from office. Nixon resigned in 1974 before his case left the House.

Rep. Robert L. Barr Jr. (R-Ga.), one of Clinton's most outspoken detractors, had introduced an impeachment resolution before the current controversy, but it languishes in the House Rules Committee, awaiting a leadership decision that is not likely any time soon.

Hyde's office said he had quietly discussed financing an impeachment inquiry last week with Gingrich, and Hyde told reporters "we would have to augment our [committee] staff considerably."

But even as they make these preliminary preparations, however, Republicans appear to have raised the threshold for an inquiry. Last week Gingrich told a closed meeting of Republicans that he would demand that Starr turn over all the evidence he had gathered in more than three years of investigating the Clinton administration before the House would contemplate an impeachment inquiry.

People familiar with Gingrich's thinking acknowledged that his remark was intended to suggest to Starr that his evidence needed to be overwhelming enough to warrant the abandonment of a probe that has involved everything from Arkansas financial scandals to the White House travel office.

Democrats, meanwhile, suggest that Starr's evidence is so weak that he wants to "punt to Congress" rather than admit he has no case. "Starr dumps it on the committee, then says Hyde and Gingrich didn't have the guts to go ahead with it," said one Democratic source.

This, Republicans say, isn't going to happen. "If this boils down to a 'he said, she said,' problem, Henry Hyde is not likely to take it," one Republican said. "It's his job to determine what laws were broken and whether they meet the threshold of impeachable offenses."

Both the House Republicans and Democrats are holding annual retreats early this week, and Democrats in particular appeared anxious to put to rest any hasty rush to impeachment. House Minority Leader Richard A. Gephardt (D-Mo.) said any move by the Judiciary Committee "would stop everything in its tracks."

"Up to this point, he [Hyde] has been one to withhold judgment, and properly so," said Rep. Ken Bentsen (D-Tex.). "The Republican pot is boiling and some of their members are eager to exploit these allegations."

But not Hyde. He said he wanted "precise evidence" of a "substantial nature," and unlike Gingrich was not interested in obtaining three years of Starr investigation documents. "One of the best ways to hide things" is to send too much, he said.

Hyde and other Republicans said that for any inquiry to have credibility, they would need to consult with Democrats before taking any action. Perhaps confirming the preliminary state of things, Conyers said Hyde had not called. The Judiciary Committee has 19 Republicans and 15 Democrats.

But to establish credibility, said Butler, the committee needed allegations that were serious enough to break through the partisan noise. "It was gloomy, and given the choice, I don't think I'd do it again," Butler said of the 1974 inquiry. "It was pretty hard on Republicans, but as we went on, the evidence became pretty clear-cut. That's the acid test."

Staff writer Ceci Connolly contributed to this report.

The Washington Post
TUESDAY, FEBRUARY 10, 1998

February 9, 1998
Conrad Tobacco Bill
Attachment to §304

According to §304, a manufacturer whose products are "not used by at least 0.5 percent of the total number of children determined to have used such tobacco products for the year involved" is not subject to a penalty for failing to meet a reduction target. This language implies that all firms whose products are used by up to 99.5% of all children who used such tobacco products are not subject to a penalty. Perhaps the bill means to say that firms whose products are used by less than 0.5% of children who used such tobacco products would not be subject to a penalty.

Let's assume that the bill means that firms whose products are used by less than 0.5% of children who used such tobacco products would not be subject to a penalty. There may be problems associated with measuring tobacco prevalence rates at a level of 0.5% of all children who used the tobacco product in question. For example, let's say we are seeking to measure prevalence rates for firms that produce cigarettes. If the overall prevalence estimate of children who use cigarettes is 20%, a firm would need to have an overall prevalence rate of less than 0.1% (the product of 0.5% and 20%) in order to be exempt from the penalty. Assuming a survey sample size of 25,000, an overall prevalence estimate of 0.1% would be based on a sample size of 25. Generally, statisticians are uncomfortable using estimates based on less than a sample size of 50.

Even firms that have prevalence rates above 0.5% of all children who used the tobacco product in question may be subject to measurement problems because of small sample sizes. For example, assuming a survey sample size of 25,000, the baseline prevalence estimate of a cigarette firm with a 1% share of the total number of children who use cigarettes would be based on a sample size of 250 (1% of 25,000). This sample size is large enough for a fairly reliable point estimate. However, by the year 2007, the bill would require the Secretary to estimate a 45% reduction in the baseline. This point estimate would be based on a sample size of 137 (0.55% of 25,000), which is a fairly small sample size.

Section 133

fiscal year 1997 should be either fiscal year 1998 or 1999

Section 301

line 7: number of should be "proportion of"

Section 302

line 13: Not later than 1 year... should be "Not later than 2 years ..."

Section 303

line 8 and following: language can stand but should understand it may be statistically stronger to use multi-year running averages (here and throughout this section) to determine reduction and this should be discussed later as part of ongoing technical assistance

Section 304

line 18: $.10 cents should be clarified that it means 10 cents, and not .1 cent; this is a question throughout this section

paragraph (e) Prohibition on Single-Pack sales, line 21: Not later than 1 year should be "Not later than 2 years..." so as to be consistent with survey timetable

paragraph (f) Required Generic Packaging, line 9 and 10: Not later than 1 year should be "Not later than 2 years..." so as to be consistent with survey timetable

Title VI
Section 601
Line 5 and 6 should be: The Secretary shall establish a program to encourage and promote...

Section 603
Lines 9 and 10 should be: The Secretary shall conduct surveillance and evaluation activities....

Both of the previous comments are to give the Secretary added flexibility and discretion in implementing these sections

Section 611
paragraph (c) (1) and (2): language on "highest smoking rates" may require new surveys; consider deleting it

Throughout bill the word "incidence" needs to be reviewed; in epidemiology, the correct term is "prevalence"

Section 624
Line 10: Strike "World Health Organization"
There should be flexibility to fund these programs through a number of organizations

Sec. 622. NATIONAL TOBACCO CESSATION PROGRAM

(a) **ESTABLISHMENT**.-- There is established a program to be known as the "National Tobacco Cessation Program." The Secretary is authorized to make grants to, and enter into contracts and cooperative agreements with public and private entities for the purpose of expanding the availability and utilization of cessation services.

(b) **USE OF FUNDS**.--- Funds made available under subsection (a) may only be used for the planning, establishment or administration of tobacco use cessation programs approved in accordance with subsection (c).

(c) **CESSATION PROGRAM**. -- Programs receiving assistance under subsection (a) shall provide a range and quality of services consistent with the most current cessation service guidance issued by the Agency for Health Care Policy Research. In addition, using the best available scientific information, the Secretary shall promulgate such additional guidelines as are necessary to assure the quality, accessibility and cost effectiveness of services receiving funds under this section.

(d) **FUNDING**. -- There shall be made available to carry out this section an amount equal to 30 percent of the amounts made available under section 101(d)(2)(C) for a fiscal year.

Office of the Assistant Secretary for Health
Office of Public Health and Science
Department of Health and Human Services

200 Independence Ave, SW, Rm 716-G
Washington, DC 20201
Phone: 202.690.7694
Fax: 202.690.6960

FAX TRANSMISSION COVER SHEET

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To: Tom Freebairn

Fax:

Re:

From: O'Hara

YOU SHOULD RECEIVE ___ PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL 202.690.7694.

Have a Healthy, Active Day!

Tobacco - Conrad - HHS

To: "Burke, Kevin (OS)" <kburke1@OS.DHHS.GOV>
From: "Giovino, Gary A." <gag3@cdc.gov>
Cc: "'BURKE FISHBURN'" <bfishbur@OSASPE.DHHS.GOV>,"Eriksen, Michael" <mpe0@cdc.gov>,"'Pechacek, Terry F.'" <txp2@cdc.gov>, "Warren ,Wick C." <wcw1@cdc.gov>
Bcc:
Subject: Comments on the Conrad Bill
Attachment: Headers.822
Date: 2/9/98 5:42 PM

Comments on the Look-back Section (Title III) in Senator Conrad's Draft Legislation

1. What is the definition of a tobacco product? CDC feels strongly that cigars, pipes, and roll-you-own cigarettes should be part of a comprehensive survey that is used to assess youth tobacco use. In recent surveys from New York and Massachusetts, for example, a higher percentage of students smoked cigars than used smokeless tobacco. Also, in Canada, roll-your-own cigarette consumption increased after a recent large tax increase on manufactured cigarettes, but not tobacco used in roll-your-own cigarettes.

2. Page 2, line 7 -- we would suggest that the brand of tobacco product be operationalized as the "usual brand smoked or used" and that the first survey be conducted in 1999. 1999 is possible if we simply measure usual brand. However, if we are required to quantify amount consumed for the usual brand and any other brands smoked/used, then methods work will be required -- such work will take at least a year and maybe longer.

3. Page 2, line 20 -- we think that a Scientific Advisory Board should be established with top scientists in the field who will oversee the survey work and establish methods which produce results that are "reasonably precise and valid."

4. Page 3, lines 15, 22 and perhaps elsewhere throughout the bill: we do not use the term incidence -- in epidemiology, incidence is the rate of first use during a given time period. We suggest using "prevalence," which is the percent of use (not just first use) at a given point in time or during a given period of time.

5. Page 5, lines 1-18: We are concerned that the schedule of penalties for smokeless tobacco should be the same as that for cigarettes. Providing a less rigorous schedule for one type of tobacco product may give such a product an advantage over any other product that is on a more rigorous schedule.

6. Page 5, line 19 through page 6, line 3: We are not certain if the language of this section requires brand-specific reductions. However, if it does, then we feel the wording should be changed to require [illegible] specific reductions (however, we also have a suggestion

below).

7. Page 8, lines 11-17: We have problems with such a definition of a de minimus level. Conceptually, the youth prevalence share for any tobacco product will always add to 100%. Unless there are 200 manufacturers of a certain type of tobacco product (for cigarettes there are only 5), it would be impossible for all companies to attain the de minimus level under the scenario proposed. Additionally, a company could have a large portion of the youth prevalence share and still be penalized, even if only a small amount of that product was consumed by children.

Another scenario would measure the percentage of all youths who used a certain company's products and schedule manufacturer-specific reductions on a schedule similar to those for prevalence. However, this scenario becomes problematic with manufacturers that have small percentages of the overall youth market -- for example, if 5 percent of kids use smokeless tobacco (SLT), and if 10% of kids who use SLT use a brand called (hypothetically) SPIT, then only 0.5% of all kids would use SPIT. While we can measure this level with a certain precision (about + 0.2%), calculating percentage reductions on such small numbers would be fairly imprecise.

We would suggest a scenario that uses a two-tiered approach that assesses an industry-wide penalty and bases the penalty on each manufacturer's youth prevalence share. This system ensure that firms with the highest proportion of the youth market pay the highest share of the penalty. The government would determine if the entire industry had met the youth tobacco use reduction target by measuring youth tobacco use on an annual basis. If the target was not met, a penalty would be assessed on the industry based on the percentage points by which it had fallen short of the target. This penalty would be allocated based on each firm's share of the youth market or youth prevalence (as opposed to the provision in the settlement that would divide the penalty based on each firm's share of the entire market). This system would hold the entire industry accountable for achieving the reductions and prevent firms from free riding on the reduction efforts of other firms. Each firm would have an incentive to reduce overall youth smoking as well as its share of youth smokers.

8. Page 12, line 22: How is "arbitrary and capricious" determined? It would be important for us to know what kind of standard we would be held to before commenting.

Gary A. Giovino, Ph.D.
Chief, Epidemiology Branch
Office on Smoking and Health
Centers for Disease Control and Prevention
4770 Buford Highway, NE
Atlanta, Georgia 30341
(770) 488-5703
(770) 488-5848 (FAX)

Porter Hunt

Vet w/ farmers

Minorities

Signatures

STATEMENT BY VICE PRESIDENT AL GORE
ANNOUNCEMENT OF "THE HEALTHY KIDS ACT"
WEDNESDAY, FEBRUARY 11, 1998

Today, we take a critical step forward in the fight against teen smoking -- and we take the first step toward writing last year's tobacco settlement into law.

The truth is, for years, America's parents and families have been outmatched -- by multi-million dollar ad campaigns targeted at our children. By secret strategies to hide the deadly effects of smoking. By nicotine addiction that captures 3,000 of our children every day -- and costs 1,000 of them their lives.

Over the past five years, President Clinton and I have been determined to change all that -- to protect our children from the number-one preventable cause of death in this country. We enacted the toughest-ever measures to cut-off children's access to tobacco, and we brought the tobacco companies to the bargaining table -- because they knew we meant business.

Now we have an opportunity to build on the landmark tobacco settlement that was reached last June, and take dramatic steps to reduce underage smoking. We have a chance to pass bipartisan, comprehensive legislation that improves the public health and changes the way tobacco companies do business forever.

The President has made clear that there are five core principles * that must be met for any bill to receive his signature: It must raise the price of cigarettes by up to $1.50 a pack over the next 10 years, with penalties on the tobacco industry if it keeps marketing to our children; it must give the FDA full authority to regulate tobacco as a drug; it must require tobacco companies to disclose information on the dangers of their products; it must advance other crucial health goals, like reducing second-hand smoke; and it must protect the economic welfare of tobacco farmers.

Today, just two weeks after Congress has come back to work, Senator Conrad and his colleagues have come forward with legislation that meets all five principles -- and therefore meets America's challenge of protecting our children from tobacco. It is a bill the President and I could easily support. w/ farmers X

We know that there will be other proposals in the weeks and months to come -- and that many more sponsors will join this and other bills. And let me be very clear that it is critical for <u>any</u> successful bill to have broad, bipartisan support. I know there are a great many Republicans in both houses of Congress who care very deeply about this issue, and want to be part of the solution.

But today's announcement is a crucial step in the right direction. The starting point for strong anti-tobacco legislation must be the five principles that the President has outlined, and that these Senators have adopted. There should be no doubt that any legislation that fails to meet all five principles -- including a price increase on a pack of cigarettes -- is legislation the President and I cannot support. Teen smoking is a comprehensive problem -- and it demands a comprehensive solution.

I want to conclude with a special word to the children who are here today. You are what this fight is all about. An astonishing 25% of all 17- and 18-year olds in America smoke cigarettes. We know that if you don't start smoking by the time you turn 19, you're unlikely to start at all. But once you start, it's hard to stop; 70% of adult smokers want to quit, but can't. We've got to act now to protect all of our children from illness and disease.

I ask every member of Congress, of both parties: join in supporting this legislation, or come forward with your own bill that meets our five principles. This can be the Congress that finally protects our children from tobacco -- to give America the healthy kids and the healthy families we deserve. Surely, that is a goal we can meet across all lines of party and politics.

Smoking is not a political issue, it is a public health issue And this bill is a start ~~at~~ for Congress to begin a bipartisan process

Tom--

Here are the line edits for the changes we discussed. Please call me (202-456-5587) or page me (757-5000) if I can be of any help.

1. The education changes (which we think you have.) 4 pages.

2. OSHA suggested changes. 3 pages.

3. Line edits for emphasis on kids and nicotine. 1 page

4. Line edits to emphasize minority issues and tobacco. 1 page

5. Technical budget line edits. 1 page.

I understand you've talked to HHS about some specific changes which they thought it was ok to get you tomorrow, we will forward them on to you in the morning.

McClure / Tauzin

Leg. affairs to call them.

Title I

- Page 51, Section 133(e)(2)(A)(iii) should read: "the difference between the enhanced FMAP and the Federal medical assistance percentage (as defined in the first sentence of section 1905(b) for the State for the fiscal year described in section 2105(b)."

Title III

- Page 1, Sections 302(a)(1) and (2) should read: "the percentage of all individuals under 18 years of age who used a tobacco product in the recent past, with the appropriate time frame to be defined by the Secretary."

- Page 2, Section 302(c) should read: "The baseline level of the child tobacco brand use (referred to in this title as the 'baseline level') is the percentage of individuals under 18 years of age determined to have used any of the brands of tobacco produced by a given manufacturer in the first annual performance survey."

- Page 3, a Section 302(f) - "REVIEW -There shall be a review by the Secretary by 2003 to ensure that the industry is not evading this penalty by targeting their marketing efforts to 18-20 year olds. This review will consider changes in smoking behavior by 18-20 year olds relative to children under 18."

Title VI

- Page 2, Section 601(a) should add the following:

  "(7) the responsiveness of smoking, particularly youth smoking, to price increases, non-price incentives such as advertising, and youth-specific penalties on the tobacco industry; and
  (8) the economic implications of smoking-related illness, including but not limited to, the effect of smoking-related disability on the labor force; the impact of smoking-related disability on government expenditures; and the impact of smoking-related disability on the family's standard of living."

Defintitional technical edits:

1. <u>Baseline level definition</u>. The baseline level (page 2 line 3) is defined only for specific brands, not for cigarette use as a whole.

2. <u>Reduction defined</u>. The reduction on p. 4 line 5 should be specified to be from the baseline.

3. <u>Actual percentage reduction</u>. This definition on page 8 line 1 should be multiplied by 100 to compare to the required reductions which are expressed as integers, not as fractional percents.

O'Hara —

language or culture

Toby Donenfeld @ OVP
02/09/98 07:17:25 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Jerold R. Mande/OSTP/EOP

cc:
Subject: Conrad Bill

I wrote down quickly some of my concerns w/ the Conrad bill. I hope this is helpful. Thanks.

Minorities

Title I Page 4 -- Under findings

can we also include after (4) and before (5) that we know that the tobacco industry targets minorities.

Title I p. 5 line 24

"its efforts to lure underage users AND MINORITIES to its products"

also add
(10) There is evidence to support that price increases reduce youth smoking.

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(c) "restricting adverstisements AND PROMOTIONS designed to..."

add (d) set youth smoking reduction goals.

Title II p. 38

add between (c) and (d) -- "the sale of marketing of tobacco products to minorities"

INGREDIENTS

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The Sec. shall approve or disprove of the safety of the ingredients... -- what does that mean? What happens to the companies if the Sec. disproves?

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I think we should add something in that is beyond school based -- to include K-12 and pre-K programs. -- and to do research and dissemination of which school-based programs are most effective. Also, non-profits (like the Amer. Lung Assoc. school curriculum) should not be excluded from school-based programs.

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Title VI - p.11

The section on individuals having to apply to the Sec. to receive cessation program reimbursements is way too complicated!

Event Sponsorship

should be phased out in less than 10 years.

targeting children,"

Pg 4 **Findings** -- Insert the following new findings:

on page 4, line 6 insert: "(2) Nicotine is an addictive drug. The marketplace for tobacco products is largely based on addiction."

on page 4, line 9 insert after "smoking." "The industry has also targeted minorities."

on page 5, line 1 insert: "(5) Seventy percent of adult smokers would like to quit smoking completely."

Pg 7 **Definitions** -- Insert:

on page 7 line 20 insert after "nicotine": "or a nicotine analog"

Title VI, Pg 1 **Tobacco-Related Research** -- Insert:

on page 1, line 23 insert: "(5) the development of non-addictive, reduced risk tobacco products;"

IX. Drugs/ Alcohol. Add some rhetoric.

X. Roll Out and other Questions:

1. Have they checked with public health community and are they ok. Should use as opportunity to de-emphasize civil liability as the test of the issue.

2. Medicare and Medicaid changes

3. Clarify which provisions are tax deductible

HHS
3. Surveillance of youth smoking (Sec. 302) is now set for a year after enactment-- O'hara asks for 2 years (not enough time to ramp up). Want rolling averages.

4. Penalties (304) 10 cents or 1/10 of a cent? For each unit of tobacco product?

5. Sec. 304(3)c-- de minimis rules-- 0.5 % of total number less (does this mean you need only less than 99% of mkt to apply.

Other:
-- no mention of anti-trust

-- definition on of youth smoking as someone who has smoked in last thirty days

-- what is the FDA science advisory board

"(iii) the enhanced FMAP for the State for the fiscal year described in section 2105(b).

the difference between the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the State and

"(B) DETERMINATION OF THE EXCESS BASELINE ENROLLMENT.—For purposes of subparagraph (A)(i), the excess baseline enrollment for a State for a fiscal year is the difference between (i) the actual number of full year equivalent children enrolled with the State plan and (ii) the number of such children which the State estimates would be so enrolled on the basis of the number of such children so enrolled in the preceding fiscal year and expected increases resulting from population growth and such other factors as the Secretary determines are appropriate.

"(3) DATA REQUIREMENTS.—Each State shall submit to the Secretary such data, at such time and in such manner, as the Secretary determines is necessary to make the payments required under this subsection. The Secretary shall ensure that data is provided under this subsection in a manner that is consistent with other data reporting requirements for information required to be submitted by a State

[redacted]

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Jerold R. Mande/OSTP/EOP

cc: Jennifer L. Klein/OPD/EOP

Subject: Issues in Conrad tobacco bill

Updated views.

---------------------- Forwarded by Neera Tanden/WHO/EOP on 02/09/98 06:46 PM ---------------------------

[redacted]

Record Type: Record

To:

cc:

Subject: Issues in Conrad tobacco bill

---------------------- Forwarded by Neera Tanden/WHO/EOP on 02/09/98 06:24 PM ---------------------------

[redacted]

Record Type: Record

To: Jerold R. Mande/OSTP/EOP, Thomas L. Freedman/OPD/EOP

cc: Jennifer L. Klein/OPD/EOP, Nicole R. Rabner/WHO/EOP

Subject: Issues in Conrad tobacco bill

The following are the child care team's comments on the Conrad bill:

1. Conrad uses the Medicaid formula for distribution of the funds, while we use the child allocation formula - these are very different. This is a larger issue, but we don't particularly care for child care.

2. Head Start and Early Head Start should not be paid for out of tobacco funding (which Conrad does and we steered very clear of doing). The argument is that this doesn't make sense since Head Start money goes directly to grantees (not states).

3. We don't spend anything on IDEA (although we don't have a problem with that).

4. The quality set-aside within the Child Care and Development Block Grant (CCDBG) (Section 131(a)(1)(A)) is too high -- we should suggest a 2 to 1 ratio between subsidies and early learning/quality. Also, the language ("including") suggests that states could use the funding for other non-specified uses. But should add additional activities, such as home visitation, and health linkages.

5. Again, the language is "including". This quality money should also be limited to the specified uses.

Mary L. Smith
02/09/98 07:21:54 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc:
Subject: DOJ comments for Conrad

Phil Barts wanted to make clear at the outset that DOJ has not done a thorough vetting nor a constitutional analysis, but here are a few comments anyway
1. DOJ doesn't like section 911 which is a citizen enforcement section
2. DOJ suggests that we should add some sanctions to the document disclosure to the FDA section such as a per-day fine for failing to comply (Section 910 under the FDA part)
3. Section 721 says that anytime a manufacturer enters into a contract with a disttributor or retailer, the distributor or retailer has to agree to abide by the conditions of the Tobacco Protocol. Phil suggests that there might be legal problems with such a contract requirement, but, in addition to any possible legal concerns, there might be an unintended consequence that a small mom-and-pop retailer might be unfairly prejudiced by having to agree to such a condition.

That's all DOJ had.

Line Edits:

Pg1 **Bill Title** -- Insert the following new clause after the first clause:

"to expose the tobacco industry's past misconduct and to stop the tobacco industry from targeting children,"

Pg 4 **Findings** -- Insert the following new findings:

on page 4, line 6 insert: "(2) Nicotine is an addictive drug. The marketplace for tobacco products is largely based on addiction."

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Toby Donenfeld @ OVP
02/09/98 07:17:25 PM

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cc:
Subject: Conrad Bill

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Event Sponsorship

should be phased out in less than 10 years.

U.S. DEPARTMENT OF LABOR
Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

FACSIMILE TRANSMISSION

DATE: MONDAY 2/9

TO: TOM FREEDMAN

FAX: 456 5587

NUMBER OF PAGES, INCLUDING COVER SHEET:

FROM: Greg Watchman

TELEPHONE NUMBER: (202) 219-6091

FAX NUMBER: (202) 219-6064

SPECIAL INSTRUCTIONS:

Here are OSHA's comments. We only received this draft bill today, so doubtless these are not complete. But at least we're covering issues identified in first read-through.

Technical Concerns with "Title V" (ETS Provisions)
OSHA

We have reviewed Title V--Standards to Reduce Involuntary Exposure to Tobacco Smoke and believe that it raises the following issues and make the following recommendations:

Page 1:

Line 5: Congress needs to make a finding that " exposure to environmental tobacco smoke constitutes a significant risk of material impairment of health and the health consequences of this exposure impose a substantial burden upon interstate commerce in terms of lost production, wage loss, medial expenses and disability compensation payments."

Line 14: add after "any" the words "workplace covered by the Occupational Safety and Health Act of 1970 and any"

Line 14: Change "building" to "enclosed structure" [note: need to cover warehouses, garages, vaults, and other public enclosed places that arugably are not "buildings"]

Lines 18-20: Public facility is drafted to exclude any building or portion thereof used for residential purposes. This sentence should be changed to ". . .such term shall not include any building or portion thereof while used (delete "regularly") for residential purposes (or "as a private residence" - see next comment). This deals with homes used as day care facilities or other businesses.

Line 20: Change "for residential purposes" to "as a private residence" [note: language as written might allow smoking in hospices, long-term care facilities, etc., where susceptibility to the effects of ETS may be particularly high]

Page 2:

Lines 2-5: The clause "with an indoor seating capacity of fewer than 50 individuals" should be moved from where it is and inserted after the term "restaurant".

Line 10: Strike the word "and".

Line 13: The word "generated" should be "generates".

Lines 6-14: Should be rewritten to make clear that the exclusion only applies to that portion of a facility that serves both liquor and food that is actually the bar area [note: Maryland, we believe, has defined the bar area as the counter where drinks are served and a ring 6 feet beyond it]. Otherwise, a 500-seat facility that serves 51 percent liquor would be wholly exempt from having a no-smoking area for diners.

Line 14: Add "food and liquor" after "gross" [note: so that proceeds from souvenirs and other money-making activities would not allow facilities to serve large amounts of food and still qualify for the exemption].

Lines 6-14: Staff should *consider* adding some language requiring some protection of workers in this very highly-exposed sector. Perhaps owners of exempted facilities should be required to provide life or health insurance to their employees, or institute work practices to minimize unnecessary employee exposures.

Line 25: The definition of fast food restaurants is geared to customers under whereas OSHA usually protects only employees. Currently OSHA's authority is limited to protecting employees. This bill appears to expand that authority (see also next comment and comment on page 4, line 23, etc.) If there is to be direct OSHA enforcement it may need to be added to page 7, line 17.

<u>Page 3:</u>

Lines 1-5: The "responsible entity" may or may not be an "employer".

Line 22: Add after "facility" the words "or any air intake vent (including open windows and doors)".

<u>Page 4:</u>

Lines 13-18: change to "the area is subject to direct exhaust ventilation to ensure that air from the area is directly exhausted to the outside *of the building* and does not recirculate or drift to other areas within the public facility" [note emphasis added]. Add (presumably back on page 2) "direct exhaust ventilation" from the Preamble to the IAQ proposal:

> Direct exhaust ventilation handles contaminated exhaust air from a designated smoking room in such a way that it is transported to the outside of the building, through exhaust ducts under negative pressure to avoid duct leakage into nonsmoking areas that the duct passes through.

Lines 19-22: change to "the area is maintained at negative pressure as compared to adjacent nonsmoking areas"." Add the following definition of "negative pressure" from the IAQ Preamble:

> Negative pressure is achieved by exhausting more air from the space than is supplied to the space. Transfer air must enter the designated smoking room to make-up the volumetric flowrate differential between supply and exhaust air. It may be necessary to provide a tight architectural enclosure so as to achieve negative pressure and containment. Negative pressure will induce airflow into the room through the entrance door undercut. Containment may be checked by using smoke-trails at the door undercut to verify direction of airflow.

Line 23: Non-smoking <u>individuals</u> are not necessarily employees.

Line 25: add at end "and for an additional period that allows for at least three air exchanges to occur in the room" [note: this will probably require less than an hour's waiting time, but will be very helpful in reducing the concentrations of hazardous ETS components that accumulate while smoking has been taking place]. *Also add this clause* to the end of line 3 on page 5.

Page 5:

Lines 1-3: This could still leave employees at risk because no time period for ventilation is specified.

Page 5-6, lines 4-18: There is an issue of jurisdiction between OSHA and the Department of Education.

Lines 18-24: Smokeless tobacco does not cause the same types of adverse health effects as environmental tobacco smoke.

Page 6:

Line 19-to *Page 7*, line 11: Could be a jurisdictional issue between OSHA and the Department of Transportation.

Page 7:

Line 6: "...on property affiliated with the conveyance" may be overly broad

Lines 14-17: **Enforcement: The following language should be added: Requirements of this section shall be enforced against employers and other covered entities in accordance with enforcement mechanisms established in the OSH Act, including Sections 8-15 and 17.**

Lines 18-23: Pre-emption: After "section 18" add "of the OSH Act", and after "any other" in Line 20 add "current or future".

Line 23: add "States shall not be permitted to preempt or prevent localities from enacting protections against ETS that are more stringent than those provided for in this section."

Page 8,

Lines 4-6: Unless the Agency is relieved of some of its statutory burdens (paperwork, SBREFA, feasibility analyses etc.) the one year time frame is not easily achievable.

Mike Cohen

1. In order to ensure that we can meet the President's policy goal of reducing class size in the early grades, each state must allocated at least 35% of its combined child care and education funds for class size reduction.

2. To ensure that high poverty school districts (30% poverty) receive a fair share of the funds, states must guarantee these districts the same proportion of the state class size funds as the districts receive under the Title 1 program.

- The Education Department provided Conrad's staff with statutory language to accomplish this (copy attached);
- If it is not possible to accomplish explicitly in the statute as proposed by Education, we have proposed additional language that would give the Secretary the authority to regulate on this issue (copy attached).

3. In order to ensure that states and local school districts address issues of teacher quality and accountability, we have proposed new language that provides the Secretary the authority to regulate on this issue (copy attached).

4. We suggest removing the limitation on states to reduce class size below an average of 15; we believe that states should retain the flexibility to make classes even smaller if the funding would permit.

5. We have attached a series of minor edits to the Conrad draft.

(1) IN GENERAL.—Each State desiring a grant under this section shall submit to the Secretary of Education a State plan at such time, in such manner, and accompanied by such information as the Secretary may require.

(2) CONTENTS.—Each State plan shall demonstrate to the satisfaction of the Secretary of Education that—

(A) the activities assisted by the State with funds provided under this section will be conducted in compliance with ~~the~~ any regulations ~~described in~~ promulgated under subsection (a); ~~and~~

(B) the State will use the funds provided under this section to reduce class size for students in grades 1 through 3 in elementary schools throughout the State, focusing on using the funds to train, recruit, and hire teachers for elementary schools serving communities with the least resources available for ~~training, recruiting and hiring teachers for the grades~~ that purpose and the ~~highest~~ with largest class sizes in those ~~student to teacher ratios for~~ the grades; and

(3) APPROVAL.—The Secretary shall approve a State plan submitted under paragraph (1) if the State plan meets the requirements of this subsection.

see (C), attached

(b) SUPPLEMENT NOT SUPPLANT.—Amounts provided to a State under this section shall be used to supplement and not supplant other Federal, State and local funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

(c) FUNDING.—The Board shall use amounts made available for a fiscal year under section 111(a)(2)(B)(i) to carry out this section in such fiscal year.

SEC. 132. IMPROVING ELEMENTARY EDUCATION.

(a) GRANTS AUTHORIZED.—From amounts made available under section 111(a)(2)(b)(ii) for each fiscal year, the Secretary of Education shall award grants to States to enable the m ~~States~~ to train, recruit (i) and hire elementary school teachers for the purpose of reducing the average class size for students in grades 1 through 3 to ~~not less than 15 and not more than~~ 18 students or less ~~per teacher~~.

; and local educational agencies in the States,

(b) REGULATIONS ~~REQUIRED~~.—The Secretary of Education, not later than March 1, 1999, shall promulgate regulations implement~~ing~~ the grant program described in subsection (a). as the Secretary determines are necessary to

(c) STATE PLAN.—

DRAFT
FEB. 9, 1998
1:30 pm

Draft Conrad bill and reduction in class size

On page 44, insert the following between lines 21 and 22:

(C) an assurance that, of the funds the State receives under this section, it will make available to each local educational agency that serves children in grades 1 through 3 and in which at least 30 percent of the children are from families below the poverty level at least as great a percentage of those funds as it provides to that local educational agency from the funds it distributes to all local educational agencies in the State under part A of title I of the Elementary and Secondary Education Act of 1965.

* * * * *

DRAFT
FEB. 9, 1998
6:15 pm

Draft Conrad bill and reduction in class size

On page 43, lines 21 through 24, rewrite subsection (b) to read as follows:

(b) REGULATIONS. The Secretary of Education shall, by March 1, 1999, issue such regulations as the Secretary determines necessary to help States and school districts that participate in the program under this section provide small classes with qualified teachers in the early grades, which may include provisions relating to--

(1) the use of the State's grant, such as subgrants to local educational agencies; and

(2) teacher preparation and certification.

(3) accountability for improved student achievement

* * * * *

Tobacco — Lowered charges

Office of Economic Policy

Department of the Treasury
Washington, D.C. 20220

FAX

Date: Feb. 9, 1998
Number of pages including cover sheet: 4

	Name	Fax Number	Phone Number
To:	Tom Freedman	456-7431	
From:	Jon Gruber	202-622-2633	

REMARKS: ___ Urgent ___ For your review ___ Reply ASAP ___ Please comment

DEPARTMENT OF THE TREASURY
WASHINGTON

February 9, 1997

Memo To: Tom Freedman
From: Jon Gruber JG
Re: General and Specific Comments on Conrad

I agreed with a number of the general comments made in the meeting today. While I can't catalog all of them, here are some that I would highlight:

- We should definitely try to get our other research priorities (NSF in particular) into this bill, perhaps using the Medicare/debt dollars

- We should suggest a state match on the child care & education spending, highlighting the potential leveraging of federal spending in these areas. We could suggest a trade, whereby they get rid of the restrictive language on spending the state share (43%), in return for asking for some state match on the federal share (57%).

- The child care dollars should be collapsed into a single block grant amount, perhaps divided into traditional child care and after/before school care - but not the detailed breakout that they propose.

  - In particular, they tie much too much of their spending to "quality", rather than distributing the dollars directly to low income individuals through the block grant. We went over this at length during the interagency process, and we concluded that it was important to get as many of the dollars as possible directly in the hands of poor individuals (the block grant is very well targeted, and only serves about one-quarter of current eligible poor mothers).

  - So, even if they don't want to move this to a grand lump sum, we should propose that they reduce spending on quality and increase spending through the block grant.

- We need a better solution than the Medicaid matching rate for distributing the child care/education dollars to states, although there are no easy answers here. My vote would be to:

  - distribute the state 43% share by Medicaid
  - distribute 50% of the federal 57% share by child care formula
  - distribute 33% of the federal share by Title I or other education formula, and insist on this as a floor for education spending
  - distribute the remaining 17% of the federal share by Medicaid, and allow them to spend it on either child care or class size

- On education, we should also include some placeholder on both substate distribution, and on maintenance of effort on existing spending.

- The spending on international anti-tobacco efforts is much too small - it should be raised to at least $100 million per year. It should also be run through the Treasury Department.

- There should be budget dollars for increased enforcement, both domestically through ATF and customs enforcement at the border.

- Cessation spending should be funnelled to CHCs or other organizations which target care to the poor, rather than distributed through individual grants.

In addition to these general comments, I have a series of specific wording comments:

Comments on Title I

1) Page 51, Section 133(e)(2)(A)(iii) should read "the difference between the enhanced FMAP and the regular FMAP for the State for the fiscal year described in section 2105(b)".

Comments on Title III

1) Page 1, 302(a)(1) and (2) - it may be very hard to do company-specific penalties based on smoking over the past 30 days, as opposed to smoking yesterday (as used in the settlement). Since companies are likely to sue us about these penalties, we don't want to tie our hands by using a measure which makes our case harder (e.g. which may require youths to recall what brand they smoked 29 days ago). This is not an issue that should be legislated, but rather one that should be decided by survey experts. The language should be sufficiently vague to permit whatever measure is deemed most appropriate by the experts - for example, for (1):

"the percentage of all individuals under 18 years of age who used a tobacco product in the recent past, with the appropriate time frame to be defined by the Secretary".

If there is resistance to this vagueness, then we should push them to move to the smoking yesterday definition - this is to be preferred to the past 30 day definition for doing company-specific assessments.

2) Page 2, 302(c)

a) Page III-2, Section 302(c) - this is where we see the problem that the text is not clear on brand-specific, versus company-specific, penalties. This should be rewritten as:

"The baseline level of the child tobacco brand use (referred to in this title as the 'baseline level') is the percentage of individuals under 18 years of age determined to have used any of the brands of tobacco produced by a given manufacturer in the first annual performance survey."

b) Note that I dropped the specific date 1998 from the end of this section - this is an unrealistic target - there is no way that a survey can get done during 1998 at this point.

3) We should add some language to ensure that the industry does not evade these penalties by trying to hook teens once they turn 18. This could be added under miscellaneous provisions at the end of the title:

(e) REVIEW. - There shall be a review by the Secretary by 2003 to ensure that the industry is not evading this penalty by targeting their marketing efforts to 18-20 year olds. This review will consider changes in smoking behavior by 18-20 years olds relative to children under 18.

Comments on Title VI

1) Page 2, Section 601(a) - should add to the list:

(7) the responsiveness of smoking, particularly youth smoking, to price increases, non-price incentives such as advertising, and youth-specific penalties on the tobacco industry;

(8) the economic implications of smoking-related illness, including but not limited to: the effect of smoking-related disability on the labor force; the impact of smoking-related disability on government expenditures; and the impact of smoking-related disability on the family's standard of living.

2) Section 625 - we should phase out the sporting event after three years. This leaves sufficient time for events to find other sources of finance.

Moreover, under the current scheme, we are actually increasing the amount of money that goes to events over time, and then cutting them off after 10 years. If there is a desire to maintain 10 years of support, it could be designed so that the spending phases out, to "wean" the events of their need for tobacco funding. For example, spending in this category could fall in half after three years, half again after six years, and go to zero after 10 years.

To [illegible] Conrad – Changes

(1) IN GENERAL.—Each State desiring a grant under this section shall submit to the Secretary of Education a State plan at such time, in such manner, and accompanied by such information as the Secretary may require.

(2) CONTENTS.—Each State plan shall demonstrate to the satisfaction of the Secretary of Education that—

(A) the activities assisted by the State with funds provided under this section will be conducted in compliance with ~~the~~ any regulations ~~described in~~ promulgated under subsection (a); ~~and~~

(B) the State will use the funds provided under this section to reduce class size for students in grades 1 through 3 in elementary schools throughout the State, focusing on using the funds to train, recruit, and hire teachers for elementary schools serving communities with the least resources available for ~~training, recruiting, and hiring teachers for the grades~~ that purpose and the ~~highest~~ largest class sizes in those ~~student-to-teacher ratios for~~ the grades; and with

see (C), attached

(3) APPROVAL.—The Secretary shall approve a State plan submitted under paragraph (1) if the State plan meets the requirements of this subsection.

(b) SUPPLEMENT NOT SUPPLANT.—Amounts provided to a State under this section shall be used to supplement and not supplant other Federal, State and local funds provided for programs that serve the health and developmental needs of children. Amounts provided to the State under any of the provisions of law referred to in this section shall not be reduced solely as a result of the availability of funds under this section.

(c) FUNDING.—The Board shall use amounts made available for a fiscal year under section 111(a)(2)(B)(i) to carry out this section in such fiscal year.

SEC. 132. IMPROVING ELEMENTARY EDUCATION.

(a) GRANTS AUTHORIZED.—From amounts made available under section 111(a)(2)(b)(ii) for each fiscal year, the Secretary of Education shall award grants to States to enable the m ~~States~~ , and local educational agencies in the States, to train, recruit, and hire elementary school teachers for the purpose of reducing the average class size for students in grades 1 through 3 to ~~not less than 15 and not more than~~ 18 students or less ~~per teacher~~.

(b) REGULATIONS ~~REQUIRED~~.—The Secretary of Education, not later than March 1, 1999, shall promulgate regulations as the Secretary determines are necessary to implement~~ing~~ the grant program described in subsection (a).

(c) STATE PLAN.—

DRAFT
FEB. 9, 1998
1:30 pm

Draft Conrad bill and reduction in class size

On page 44, insert the following between lines 21 and 22:

(C) an assurance that, of the funds the State receives under this section, it will make available to each local educational agency that serves children in grades 1 through 3 and in which at least 30 percent of the children are from families below the poverty level at least as great a percentage of those funds as it provides to that local educational agency from the funds it distributes to all local educational agencies in the State under part A of title I of the Elementary and Secondary Education Act of 1965.

* * * * *

DRAFT
FEB. 9, 1998
6:15 pm

Draft Conrad bill and reduction in class size

On page 43, lines 21 through 24, rewrite subsection (b) to read as follows:

(b) REGULATIONS. The Secretary of Education shall, by March 1, 1999, issue such regulations as the Secretary determines necessary to help States and school districts that participate in the program under this section provide small classes with qualified teachers in the early grades, which may include provisions relating to--

(1) the use of the State's grant, such as subgrants to local educational agencies; and

(2) teacher preparation and certification.

(3) accountability for improved student achievement

* * * * *

Technical Concerns with "Title V" (ETS Provisions)
OSHA

We have reviewed Title V--Standards to Reduce Involuntary Exposure to Tobacco Smoke and believe that it raises the following issues and make the following recommendations:

<u>Page 1:</u>

Line 5: Congress needs to make a finding that " exposure to environmental tobacco smoke constitutes a significant risk of material impairment of health and the health consequences of this exposure impose a substantial burden upon interstate commerce in terms of lost production, wage loss, medial expenses and disability compensation payments."

Line 14: add after "any" the words "workplace covered by the Occupational Safety and Health Act of 1970 and any"

Line 14: Change "building" to "enclosed structure" [note: need to cover warehouses, garages, vaults, and other public enclosed places that arugably are not "buildings"]

Lines 18-20: Public facility is drafted to exclude any building or portion thereof used for residential purposes. This sentence should be changed to ". . .such term shall not include any building or portion thereof <u>while</u> used (delete "regularly") for residential purposes (or "as a private residence" - see next comment). This deals with homes used as day care facilities or other businesses.

Line 20: Change "for residential purposes" to "as a private residence" [note: language as written might allow smoking in hospices, long-term care facilities, etc., where susceptibility to the effects of ETS may be particularly high]

<u>Page 2:</u>

Lines 2-5: The clause "with an indoor seating capacity of fewer than 50 individuals" should be moved from where it is and inserted <u>after</u> the term "restaurant".

Line 10: Strike the word "and".

Line 13: The word "generated" should be "generates".

Lines 6-14: Should be rewritten to make clear that the exclusion only applies to that portion of a facility that serves both liquor and food that is actually the bar area [note: Maryland, we believe, has defined the bar area as the counter where drinks are served and a ring 6 feet beyond it]. Otherwise, a 500-seat facility that serves 51 percent liquor would be wholly exempt from having a no-smoking area for diners.

Line 14: Add "food and liquor" after "gross" [note: so that proceeds from souvenirs and other money-making activities would not allow facilities to serve large amounts of food and still qualify for the exemption].

Lines 6-14: Staff should *consider* adding some language requiring some protection of workers in this very highly-exposed sector. Perhaps owners of exempted facilities should be required to provide life or health insurance to their employees, or institute work practices to minimize unnecessary employee exposures.

Line 25: The definition of fast food restaurants is geared to customers under whereas OSHA usually protects only employees. Currently OSHA's authority is limited to protecting employees. This bill appears to expand that authority (see also next comment and comment on page 4, line 23, etc.) If there is to be direct OSHA enforcement it may need to be added to page 7, line 17.

Page 3:

Lines 1-5: The "responsible entity" may or may not be an "employer".

Line 22: Add after "facility" the words "or any air intake vent (including open windows and doors)".

Page 4:

Lines 13-18: change to "the area is subject to direct exhaust ventilation to ensure that air from the area is directly exhausted to the outside *of the building* and does not recirculate or drift to other areas within the public facility" [note emphasis added]. Add (presumably back on page 2) "direct exhaust ventilation" from the Preamble to the IAQ proposal:

> Direct exhaust ventilation handles contaminated exhaust air from a designated smoking room in such a way that it is transported to the outside of the building, through exhaust ducts under negative pressure to avoid duct leakage into nonsmoking areas that the duct passes through.

Lines 19-22: change to "the area is maintained at negative pressure as compared to adjacent nonsmoking areas"." Add the following definition of "negative pressure" from the IAQ Preamble:

> Negative pressure is achieved by exhausting more air from the space than is supplied to the space. Transfer air must enter the designated smoking room to make-up the volumetric flowrate differential between supply and exhaust air. It may be necessary to provide a tight architectural enclosure so as to achieve negative pressure and containment. Negative pressure will induce airflow into the room through the entrance door undercut. Containment may be checked by using smoke-trails at the door undercut to verify direction of airflow.

Line 23: Non-smoking individuals are not necessarily employees.

Line 25: add at end "and for an additional period that allows for at least three air exchanges to occur in the room" [note: this will probably require less than an hour's waiting time, but will be very helpful in reducing the concentrations of hazardous ETS components that accumulate while smoking has been taking place]. *Also add this clause* to the end of line 3 on page 5.

Page 5:

Lines 1-3: This could still leave employees at risk because no time period for ventilation is specified.

Page 5-6, lines 4-18: There is an issue of jurisdiction between OSHA and the Department of Education.

Lines 18-24: Smokeless tobacco does not cause the same types of adverse health effects as environmental tobacco smoke.

Page 6:

Line 19-to *Page 7*, line 11: Could be a jurisdictional issue between OSHA and the Department of Transportation.

Page 7:

Line 6: "...on property affiliated with the conveyance" may be overly broad

Lines 14-17: **Enforcement: The following language should be added: Requirements of this section shall be enforced against employers and other covered entities in accordance with enforcement mechanisms established in the OSH Act, including Sections 8-15 and 17.**

Lines 18-23: Pre-emption: After "section 18" add "of the OSH Act", and after "any other" in Line 20 add "current or future".

Line 23: add "States shall not be permitted to preempt or prevent localities from enacting protections against ETS that are more stringent than those provided for in this section."

Page 8.

Lines 4-6: Unless the Agency is relieved of some of its statutory burdens (paperwork, SBREFA, feasibility analyses etc.) the one year time frame is not easily achievable.

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NATIONAL JOURNAL'S CongressDaily/A.M.

TUESDAY, FEBRUARY 10, 1998

Conrad To Offer Tobacco Legislation Without Immunity

HEALTH

Tobacco legislation being crafted by **Sen. Kent Conrad**, D-N.D., will not contain the basic legal immunity provisions included in the tobacco settlement between state attorneys general and the tobacco industry — and demanded by cigarette makers as non-negotiable prerequisites for industry cooperation, according to Democratic sources familiar with the emerging bill. Conrad, who was tapped by **Senate Minority Leader Daschle** last summer to chair the Senate Democratic task force on tobacco, plans to introduce his bill Wednesday. **Labor and Human Resources ranking member Edward Kennedy**, D-Mass., and **Sen. Richard Durbin**, D-Ill., are among the cosponsors. Conrad plans to pitch the bill at the Democratic Caucus' weekly luncheon today and is expected to pick up more support, according to a Senate Democratic aide.

The bill, Conrad has told congressional Democrats, grants immunity to tobacco companies neither from suits based on past misconduct nor from class action suits — the two key protections given cigarette makers in the $368.5 billion tobacco settlement. However, according to sources, the bill does not specifically bar a grant of immunity under these circumstances. According to one Democratic aide, Conrad intends for Congress to debate the issue after the bill hits the floor. The bill also includes no limits on future industry liability, deleting the $5-billion tobacco settlement cap on industry payments for future damages.

However, it "resolves" all federal government, state and local suits against the industry for past misconduct — according to a chart obtained by *CongressDaily* that compares Conrad's "Healthy Kids Act" to the proposed settlement and President Clinton's budget — thus barring future government suits for past wrongdoing.

White House officials, several congressional sources said, have a far more detailed view of the tobacco settlement than

Continued on Page 6

SCHEDULE

SENATE

Convenes at 10 a.m. to consider the nomination of Dr. David Satcher as surgeon general, and a district court judge nomination. Roll call votes are expected to begin at 11 a.m.

HOUSE

Not in session.

SENATE COMMITTEES

AGING

SOCIAL SECURITY GOALS

Full committee hearing on the goals of Social Security. ***Witnesses:*** Kenneth Apfel, commissioner, Social Security Administration; Tim Penny, fiscal fellow, CATO Institute; Joseph Perkins, president-elect, American Assoc. of Retired Persons; Fidel Vargas, member, Advisory Council on Social Security; and Jane Ross, director, income security, GAO. 628 DSOB. 10 a.m.

Continued on Page 9

Support Growing For Coverdell Bill

EDUCATION

Supporters of tax-free education savings accounts may now have enough votes to secure cloture during Senate floor debate following agreements reached Monday on separate provisions regarding pre-paid college tuition and school construction, aides said. The rewritten bill will be marked up today by the Senate Finance Committee. The core legislation, sponsored by **Senate Republican Conference Secretary Paul Coverdell** of Georgia and **Sen. Robert Torricelli**, D-N.J., would allow families to place up to $2,500 a year in an education savings account that would accumulate interest tax free. The money could be used for any K-12 education expenses, including private school tuition. The House passed the bill last fall by a 230-198 margin as part of its series of education reform bills.

Democrats complained the bill was more of a tax break for the rich who could afford such accounts, rather than sound education policy. When it reached the Senate, Coverdell failed two times to get cloture on the bill, winning only 56 votes — including two Democrats. None of the Democrats on the Finance Committee voted for cloture. **Sens. Bob Graham**, D-Fla., **Mary Landrieu**, D-La., and **John Breaux**, D-La., then said they would vote for cloture if Coverdell added a provision allowing tax-free withdrawals from state-run, pre-paid college tuition plans. But in the end of session crush of legislative business, Coverdell could not change the bill and get back to the floor again. That provision, originally authored by **Sen. Mitch McConnell**, R-Ky., will be added to the bill today during the markup.

Continued on Page 7

TO DO

~~25~~44-3906
fax 224-7776 tobacco - Consumer ~~F~~unds - EW

~~Teacher quality~~ (need specific language)
~~Class size~~] TRF - Cohen

Cessation funneled to other organizations - JRM

OPM

Check w/HHS -
get HHS changes — TRF (O'Hara)

~~VP changes~~

Minority language — minority — TRF (

OMB technical edits → TRF call Josh Gotbaum

JM ~~technical~~ edits →

surveillance

def. of youth smoker as someone who has smoked
in last 30 days.

~~OSHA~~

Grubic — ~~State~~ match
TPM make

1. Polling – Conrad
2. Editorialists
3. McCain –
4. Radio address
5. Bill has international problems

Bruce Lindsey

HHS
Treasury
DOJ

Conrad –
Friday

11 – VP

(1) – [illegible]
– Conrad – opportunity
– Friday – speech – radio
(3) polling – msg. → [illegible]
medicare [illegible] – U.S. [illegible]
civil liability
WRFA
drugs [illegible]

– topics of concern

[illegible]
multilateral
[illegible]

(5)
Road [illegible] – [illegible]
NSDA / FDA

(5)
McCain [illegible] week

Richard J. Turman
02/09/98 07:06:11 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc: See the distribution list at the bottom of this message
Subject: Several Technical Edits to Draft Conrad Bill

In addition to the Medicaid edit that we passed on earlier, OMB has several other technical edits to offer regarding Title III:

1. Baseline level definition. The baseline level (page 2 line 3) is defined only for specific brands, not for cigarette use as a whole.

2. Reduction defined. The reduction on p. 4 line 5 should be specified to be from the baseline.

3. Actual percentage reduction. This definition on page 8 line 1 should be multiplied by 100 to compare to the required reductions which are expressed as integers, not as fractional percents.

Message Copied To:

Joshua Gotbaum/OMB/EOP
Jill M. Pizzuto/OMB/EOP
Barry T. Clendenin/OMB/EOP
Wm G. White/OMB/EOP
Jim R. Esquea/OMB/EOP
Marc Garufi/OMB/EOP
Patrick G. Locke/OMB/EOP

[redacted]

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Jerold R. Mande/OSTP/EOP

cc: Jennifer L. Klein/OPD/EOP
Subject: Issues in Conrad tobacco bill

Updated views.

--------------------- Forwarded by Neera Tanden/WHO/EOP on 02/09/98 06:46 PM ---------------------------

[redacted]

Record Type: Record

To:

cc:
Subject: Issues in Conrad tobacco bill

--------------------- Forwarded by Neera Tanden/WHO/EOP on 02/09/98 06:24 PM ---------------------------

[redacted]

Record Type: Record

To: Jerold R. Mande/OSTP/EOP, Thomas L. Freedman/OPD/EOP

cc: Jennifer L. Klein/OPD/EOP, Nicole R. Rabner/WHO/EOP
Subject: Issues in Conrad tobacco bill

The following are the child care team's comments on the Conrad bill:

1. Conrad uses the Medicaid formula for distribution of the funds, while we use the child allocation formula - these are very different. This is a larger issue, but we don't particularly care for child care.

2. Head Start and Early Head Start should not be paid for out of tobacco funding (which Conrad does and we steered very clear of doing). The argument is that this doesn't make sense since Head Start money goes directly to grantees (not states).

3. We don't spend anything on IDEA (although we don't have a problem with that).

4. The quality set-aside within the Child Care and Development Block Grant (CCDBG) (Section 131(a)(1)(A)) is too high -- we should suggest a 2 to 1 ratio between subsidies and early learning/quality. Also, the language ("including") suggests that states could use the funding for other non-specified uses. But should add additional activities, such as home visitation, and health linkages.

5. Again, the language is "including". This quality money should also be limited to the specified uses.

Mary L. Smith
02/09/98 07:21:54 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP

cc:
Subject: DOJ comments for Conrad

Phil Barts wanted to make clear at the outset that DOJ has not done a thorough vetting nor a constitutional analysis, but here are a few comments anyway
1. DOJ doesn't like section 911 which is a citizen enforcement section
2. DOJ suggests that we should add some sanctions to the document disclosure to the FDA section such as a per-day fine for failing to comply (Section 910 under the FDA part)
3. Section 721 says that anytime a manufacturer enters into a contract with a disttributor or retailer, the distributor or retailer has to agree to abide by the conditions of the Tobacco Protocol. Phil suggests that there might be legal problems with such a contract requirement, but, in addition to any possible legal concerns, there might be an unintended consequence that a small mom-and-pop retailer might be unfairly prejudiced by having to agree to such a condition.

That's all DOJ had.

Conrad Bill Changes

Spending

1. Child Care and Elementary Education changes including state match.

2. Research Spending (VP priorities) -- Increase cancer research spending; Funds for NSF, NASA, etc. (take money from debt account)

3. 43% restrictions

Other Issues

1. **Cessation --** Title VI, page 9, line 13. Program should be changed to a state grant program possibly modeled after the substance abuse block grant.

2. **Tobacco Use Survey** -- Title III, page 1, line 11. Add periodic survey of 18-21 year olds to investigate age creep.

Line Edits:

Pg1 **Bill Title** -- Insert the following new clause after the first clause:

"to expose the tobacco industry's past misconduct and to stop the tobacco industry from targeting children,"

Pg 4 **Findings** -- Insert the following new findings:

on page 4, line 6 insert: "(2) Nicotine is an addictive drug. The marketplace for tobacco products is largely based on addiction."

on page 4, line 9 insert after "smoking." "The industry has also targeted minorities."

on page 5, line 1 insert: "(5) Seventy percent of adult smokers would like to quit smoking completely."

Pg 7 **Definitions** -- Insert:

on page 7 line 20 insert after "nicotine": "or a nicotine analog"

Title VI, Pg 1 **Tobacco-Related Research** -- Insert:

on page 1, line 23 insert: "(5) the development of non-addictive, reduced risk tobacco products;"

Toby Donenfeld @ OVP
02/09/98 07:17:25 PM

Record Type: Record

To: Thomas L. Freedman/OPD/EOP, Jerold R. Mande/OSTP/EOP

cc:
Subject: Conrad Bill

I wrote down quickly some of my concerns w/ the Conrad bill. I hope this is helpful. Thanks.

Minorities

Title I Page 4 -- Under findings

can we also include after (4) and before (5) that we know that the tobacco industry targets minorities.

Title I p. 5 line 24

"its efforts to lure underage users AND MINORITIES to its products"

also add
(10) There is evidence to support that price increases reduce youth smoking.

Title I p.5
(c) "restricting adverstisements AND PROMOTIONS designed to..."

add (d) set youth smoking reduction goals.

Title II p. 38

add between (c) and (d) -- "the sale of marketing of tobacco products to minorities"

INGREDIENTS

Title II p.14

The Sec. shall approve or disprove of the safety of the ingredients... -- what does that mean? What happens to the companies if the Sec. disproves?

State Concerns/Youth Access

Title II p.29 -30

Is it realistic or fair to ask states to make sure that fewer than 5% of minors able to purichase tobacco products successfully.

Misc.

Title II p. 28 -- Line 1 -- "Nothing" is missing an "h"

Research

Title II p. 7 -- (5) -- investigate new cessation products, nicotine substitutes... to examine their effectiveness"

Title VI p. 3 -- line 18
"psychological, PHYSICAL, etc"
line 20
and what programs to quit smoking work and which do not

Education

Title VI -- p. 6

I think we should add something in that is beyond school based -- to include K-12 and pre-K programs. -- and to do research and dissemination of which school-based programs are most effective. Also, non-profits (like the Amer. Lung Assoc. school curriculum) should not be excluded from school-based programs.

Cessation

Title VI - p.11

The section on individuals having to apply to the Sec. to receive cessation program reimbursements is way too complicated!

Event Sponsorship

should be phased out in less than 10 years.