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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Nicole Rabner to FLOTUS re Call to Dr C. Everett Koop (partial) (1 page)	05/20/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Domestic Policy Council (Nicole Rabner)
OA/Box Number: 15417

FOLDER TITLE:

Dr. Koop/Tobacco

2012-1035-S
kc1058

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

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

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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release May 20, 1998

TEXT OF A LETTER FROM THE PRESIDENT TO THE MAJORITY AND MINORITY LEADERS OF THE SENATE

May 20, 1998

Dear Mr. Leader:

I applaud the Senate for taking up comprehensive, bipartisan legislation to dramatically reduce teen smoking. Every day, 3000 teenagers start smoking regularly, and 1000 will die prematurely of smoking-related diseases as a result. I urge the Senate to move swiftly to pass comprehensive legislation that could save those children's lives.

Last September, and in my budget plan, I set forth five principles for comprehensive tobacco legislation:

Raising the price of cigarettes by $1.10 a pack over 5 years with additional surcharges on companies that continue to sell to kids;

Affirming the FDA's full authority to regulate tobacco products;

Getting companies out of the business of marketing and selling tobacco to minors;

Promoting public health research and public health goals; and

Protecting our tobacco farmers and their communities.

I have made protecting tobacco farmers and farming communities a top priority for this legislation, and I believe Senator Ford's LEAF Act fully meets this standard. I am deeply troubled by the Senate Leadership's recent attempt to undermine protection for tobacco farmers and their communities. I urge the Senate to work through this impasse and ensure that small, family farmers are protected.

If that issue can be resolved to my satisfaction, the bill before the Senate, as amended by Senator McCain's Manager's Amendment, is a good, strong bill that will make a real dent in teen smoking. Congress should pass it without delay.

I applaud Senator McCain and others in both parties who have worked hard to strengthen this legislation. I am particularly pleased that the bill contains significant improvements which will help reduce youth smoking and protect the public health:

Tough industry-wide and company-specific lookback surcharges that will finally make reducing youth smoking the tobacco companies' bottom line;

Protection for all Americans from the health hazards of secondhand smoke;

No antitrust exemption for the tobacco industry;

Strong licensing and anti-smuggling provisions to prevent the emergence of contraband markets and to prosecute violators;

A dedicated fund to provide for a substantial increase in health research funding, a demonstration to test promising new cancer treatments, a nationwide counteradvertising campaign to reduce youth smoking, effective state and local programs in tobacco education, prevention, and cessation, law enforcement efforts to prevent smuggling and crackdown on retailers who sell tobacco products to children, assistance for tobacco farmers and their communities, and funds for the states to make additional efforts to promote public health and protect children; and

The elimination of immunity for parent companies of tobacco manufacturers, an increase in the cap on legal damages to $8 billion per year, and changes to ensure that the cap will be available only to tobacco companies that change the way they do business, by agreeing to accept sweeping restrictions on advertising, continue making annual payments and lookback surcharges even if those provisions are struck down, make substantial progress toward meeting the youth smoking reduction targets, prevent their top management from taking part in any scheme to promote smuggling, and abide by the terms of the legislation rather than challenging it in court. Because the First Amendment limits what we can do to stop the tobacco companies' harmful advertising practices -- which lure so many young people to start smoking -- we can do far more to achieve our goal of reducing youth smoking if the companies cooperate instead of tying us up in court for decades. If a cap that doesn't prevent anybody from suing the companies and getting whatever damages a
jury awards will get tobacco companies to stop marketing cigarettes to kids, it is well worth it for the American people. I, therefore, oppose the Gregg

Amendment to strike the liability cap.

I strongly support these improvements, and I urge the Senate to pass this legislation without delay.

Sincerely,

WILLIAM J. CLINTON

Bruce - sweet ltr -
understood facts -
1. not true - we ejected his stuff
Rep/Dem stuff - kept out >
heat upon - gave him a draft
no one el
Midnight - Sunday - Tim -
changes
2. Snowe amendment -
unconst - if haven't
3. Lookups
we helped them draft it -
wdn't he
not going to endorse -
not in
liab. - disagree
4. #s wrong
NIH - said call.

May 20, 1998

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: NICOLE RABNER

SUBJECT: **Call to Dr. C. Everett Koop**

Attached please find a letter from Dr. Koop outlining his concerns with the tobacco negotiations. I consulted with Bruce Reed about your call -- he agrees with your instinct to return the call, and advises that Dr. Koop's letter is not wholly accurate. Below please find background on the substantive and personal/political concerns of Dr. Koop:

Liability

On this issue, Dr. Koop disagrees strongly with the Admnistration. The McCain bill includes an $8 billion annual liability cap that is available only to companies that agree to make sweeping restrictions in youth advertising, achieve dramatic reductions in youth smoking, and comply with the legislation instead of tying it up in court. Yesterday, Dr. Koop joined Dr. Kessler, Senator Kennedy, and Senator Gregg at a press conference to call for eliminating the liability cap. We are opposed to such an amendment. The Administration believes that in order to obtain the advertising restrictions, annual payments, lookback payments, and to ensure that the tobacco companies do not file a lawsuit against this legislation if it becomes law, we must include an annual liability cap. Further, the companies would lose the liability cap if they miss the youth smoking targets by more than 20 percent. Please note that the President plans to send a letter to the Senate today (draft attached) expressing his support for the $8 billion liability cap -- Dr. Koop is likely to be extremely upset at this. Bruce also advises that months ago, Dr. Koop told him in confidence that at the end of the day, he would support tough legislation that included a liability cap -- what is clear, however, is that Dr. Koop thinks we're still in the afternoon of this fight, while the President and Bruce seem to think night has come.

Price increase to $1.50

The President called for a $1.10 per-pack increase in his budget request, because the Administration estimates that this is the increase that is necessary to meet our youth smoking reduction targets. We have not changed our position. The President would still sign a bill that increases the price by $1.50, but we have been clear that this is not our fight. Our deal with McCain precludes us from actively supporting $1.50, although we do not oppose it. Bruce also advises that Dr. Koop's estimates of number of children helped by the price increase are wrong.

Strengthen Lookback Penalties

The President has made strong lookback penalties -- penalties on companies who do not meet targets for youth smoking reductions -- a strong priority. Bruce advises that these penalties have been significantly strengthened, with our urging, in McCain's bill. In his letter, Dr. Koop urges the Administration to support an amendment that Senators Durbin and Dewine may offer to

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[001]

strengthen these penalties further. Bruce in fact worked closely with Senators Durbin and Dewine on their amendment and says that they couldn't have designed it without us; further, Bruce advises that the reason we're not endorsing this amendment is that we don't believe it is stronger than our own proposal, but we would be perfectly happy if it passes.

P6/(b)(6)

Poll Commissioned on Koop

Koop writes in his letter that he has heard of a poll commissioned to test his popularity and credibility. The only thing I could find out about this is that months ago, as many were trying to determine who were the most compelling and credible figures to combat the tobacco industry's aggressive advertising campaign, some polling was done -- it determined, to no surprise, that Dr. Koop is the best spokesperson for the need for strong tobacco legislation. Koop seems outraged that any polling was done, so it may be best not engage him on this issue.

Koop Staff Ejected from Key Meetings

Bruce advises that Dr. Koop's assertions about being kept out of key meetings -- by us -- are simply untrue. This past weekend, Senate Republican and Democratic Committee Staff excluded Dr. Koop's key staffperson, Tim Westmoreland, from a meeting to which we were invited, and Bruce gave the staff a very hard time for this. In fact, after the meeting, Bruce secured a copy of the current legislation for Tim (which no other staff person or public health advocate had) and stayed with him until midnight on Sunday going over the changes made to it (many of which Dr. Koop was pushing).

General Talking Points

- The President and I recognize that your leadership over many years has gotten us to where we are today -- on the verge of passing historic, comprehensive anti-tobacco legislation.

- I have not been involved in the day-to-day negotiations, but I have been pushing -- as has the President -- for the toughest bill that we can realistically get from this Congress. The bill has been considerably strengthened since it reached the floor.

- I know there have been tough political judgements made over the past many days about where we have the votes and what is possible. I understand that Bruce and others believe that it is critically important to get a bill out of the Senate this week and that this bill may be the best we can hope for.

- I am happy to listen to your concerns.

C. EVERETT KOOP, M.D.

May 20, 1998

Hillary Clinton
The First Lady
The White House
1600 Pennsylvania Avenue
Washington, DC

Dear Hillary,

I had been looking for an excuse to have a meeting with you and I hoped this occasion might provide that. Understanding your constraints on time, I'm sending a letter as requested, but I hope we can just top it off with a brief conversation on the phone. Your staff and mine will try to arrange that.

I am writing because I am so disturbed about the turn of affairs vis-à-vis the White House and the tobacco wars. I am not an alarmist, Hillary, and this is certainly not an ego trip. What I am doing by writing you is for the public's health. In short, I have been supportive of the President and the Vice President and their smoking plans since the day in the Rose Garden several years ago. I have had very good relationships with Donna Shalala, Bruce Reed, and I thought, too, with Erskine Bowles when he came on board. I now find that, although I won't say that they lied to me, they certainly have been elliptical enough in their answers that I don't where we stand and certainly know we don't stand together as we had before.

For example, last weekend my staff was ejected from a meeting with several Democratic senators and their staff, in spite of the fact that there were other less qualified people at that meeting than my staff, which on tobacco is superb. I hear that one of the things they did was to commission a poll to be taken on my approval rating. I also understand that they were somewhat upset by the fact that I came out just behind Billy Graham and Mother Theresa.

I also hear that the White House will oppose Olympia Snowe's amendment for a limited advertising ban on cigarettes to children along Supreme Court approved guidelines. Indeed, Hillary, it is safe to say that for the past five days I have been fighting the White House more than I have been fighting the tobacco industry.

I find this hard to understand because I had been representing absolutely nothing but what the President stands for. When he said that liability limitation for the tobacco

6707 DEMOCRACY BOULEVARD, SUITE 107, BETHESDA, MD 20817-1129 (301) 493-6603 FAX (301) 493-8160

companies and immunity was not a deal breaker, I took him at his word. More faithfully than anybody else in public health, I have fought for the elimination of all protections of the tobacco industry because they are a renegade industry that stands outside the norms of ethical and moral behavior of corporate America. What they have done to our children and minorities is no mistake – it was planned. They do not deserve to be bailed out of any situation and the United States Senate should not offer to pay their bills and to give them immunity from sins past, present and future.

I have been waiting for a phone call from Al Gore for a full day now. What I had planned to request from Al, with whom I have been dealing chiefly on major issues until the last five days, are the following:

1.) Press hard for stronger look-back protections: These should be company specific. Senators Durbin and Dewine are offering an amendment. I would really love the White House to support this publicly. It is the best weapon we have against the tobacco industry and the thing most likely to cut juvenile smoking.
2.) Liability was not supposed to be a deal breaker as I mentioned above, but in the President's absence, the White House seems to be pressing hard to keep liability in the bill. This is a tragic mistake and leaves me somewhat outraged.
3.) By the time you get this letter, this issue might already be settled, which was why I tried to get in touch with Al Gore all day yesterday, but the tax on cigarettes is extraordinarily important. As I think you know, it is conceded by every tobacco economist and all the public health people who have studied it that the higher the tax, the greater the reduction in juvenile smoking. Let me give you two comparisons, which I have taken from a preliminary unreleased report of the GAO. If the $1.10 tax increase goes in, in ten years juvenile smoking will be reduced 39 percent. If the $1.50 tax goes in, in ten years juvenile smoking will be reduced 59 percent. Every one percent represents 45,000 children. In the end, that means over ten years 900,000 kids would be kept from smoking, one-third of whom would die prematurely and poorly a smoker's death.
4.) There is a great deal of controversy about how research money should be spent. You will recall that I recommended very strongly to the President that he appoint Harold Varmus as director of NIH. Just between you and me, Hillary, I have regretted this many times because of what it has done to the Public Health Service, clinical research, and morale among post-doctoral clinical fellows at the NIH. He takes the arrogant position that he and his colleagues at NIH know better how money should be spent on tobacco research than anybody else. It is my contention that he would not be in the position of receiving $2.7 billion a year had it not been for three decades of tremendously hard work by the public health community and by the hundreds of thousands of volunteer anti-smoking activists, who have usually worked under the aegis of major voluntary agencies. Yet, Varmus wants all of the money at NIH unrestricted.

I believe that in as much as one out of every five deaths in this country is due to smoking, it seems reasonable to allot 20 percent of that money to the kinds of research that might change things. I am not suggesting that we support any further research of heart disease, cancer, emphysema, et cetera – that's being taken care of. But I do think we need some specific allocations for preventive research into behavior about why youngsters start to smoke and we need some specific research into the addictive process. Addiction research has made more strides in the last five years than in the previous 50. Harold Varmus should understand that it is only in this climate that this huge amount of money can be made available for him. I don't think he should mind 20 percent being taken for these other causes, at least as the beginning of a bargaining position.

You and I usually see pretty much eye to eye in these things, Hillary, and I hope we do on smoking. I feel so absolutely frustrated about the way lobbying has been going on by the White House. They have practically paralyzed Senator Conrad, who is one of the stalwarts in the anti-tobacco positions.

Anything you can do to guide this in the right direction would be much appreciated. I pray for you regularly and don't forget I love you.

Sincerely yours,

C. Everett Koop, MD

DRAFT LETTER FROM THE PRESIDENT TO THE SENATE
REVISED 11:15AM 5/20
TO BE SENT TODAY

May 20, 1998

I applaud the Senate for taking up comprehensive, bipartisan legislation to dramatically reduce teen smoking. Every day, 3000 teenagers start smoking regularly, and 1000 will die prematurely of smoking-related diseases as a result. I urge the Senate to move swiftly to pass comprehensive legislation that could save those children's lives.

Last September, and in my budget plan, I set forth five principles for comprehensive tobacco legislation:

- Raising the price of cigarettes by $1.10 a pack over 5 years with additional surcharges on companies that continue to sell to kids;

- Affirming the FDA's full authority to regulate tobacco products;

- Getting companies out of the business of marketing and selling tobacco to minors;

- Promoting public health research and public health goals; and

- Protecting our tobacco farmers and their communities.

I have made protecting tobacco farmers and farming communities a top priority for this legislation, and I believe Senator Ford's LEAF Act fully meets this standard. I am deeply troubled by the Senate Leadership's recent attempt to undermine protection for tobacco farmers and their communities. I urge the Senate to work through this impasse and ensure that small, family farmers are protected.

If that issue can be resolved to my satisfaction, the bill before the Senate, as amended by Senator McCain's Manager's Amendment, is a good, strong bill that will make a real dent in teen smoking. Congress should pass it without delay.

I applaud Senator McCain and others in both parties who have worked hard to strengthen this legislation. I am particularly pleased that the bill contains significant improvements which will help reduce youth smoking and protect the public health:

- Tough industry-wide and company-specific lookback surcharges that will finally make reducing youth smoking the tobacco companies' bottom line;

- Protection for all Americans from the health hazards of secondhand smoke;

- No antitrust exemption for the tobacco industry;

- Strong licensing and anti-smuggling provisions to prevent the emergence of contraband markets and to prosecute violators;

- A dedicated fund to provide for a substantial increase in health research funding, a demonstration to test promising new cancer treatments, a nationwide counteradvertising campaign to reduce youth smoking, effective state and local programs in tobacco education, prevention, and cessation, law enforcement efforts to prevent smuggling and crack down on retailers who sell tobacco products to children, assistance for tobacco farmers and their communities, and funds for the states to make additional efforts to promote public health and protect children; and

- The elimination of immunity for parent companies of tobacco manufacturers, an increase in the cap on legal damages to $8 billion per year, and changes to ensure that the cap will be available only to tobacco companies that change the way they do business, by agreeing to accept sweeping restrictions on advertising, continue making annual payments and lookback surcharges even if those provisions are struck down, make substantial progress toward meeting the youth smoking reduction targets, prevent their top management from taking part in any scheme to promote smuggling, and abide by the terms of the legislation rather than tying it up in court. Because the First Amendment limits what we can do to stop the tobacco companies' harmful advertising practices --which lure so many young people to start smoking --we can do far more to achieve our goal of reducing youth smoking if the companies cooperate instead of fighting us in court every step of the way. If a cap that doesn't prevent anybody from suing the companies and getting whatever damages a jury awards will get tobacco companies to stop marketing cigarettes to kids, it is well worth it for the American people.

I strongly support these improvements, and I urge the Senate to pass this legislation without delay.

Tobacco Q&A
May 20, 1998

Q: What does the President think of the new McCain bill?

A: The President today urged Congress to pass the McCain bill this week. He noted significant improvements in the bill that will help reduce youth smoking and protect the public health, including tougher lookback surcharges, enhanced environmental tobacco smoke protections, improved liability provisions, elimination of the antitrust exemption, and spending for public health, health research, assistance for farmers, and assistance to states, including for child care. The McCain bill, as modified by the new manger's amendment, is a strong bill and the President urged Congress to sign it.

Q. Specifically, what changes were made in the manager's amendment?

A. Our discussions with Senators McCain and Hollings significantly strengthened the bill in all the key areas in which the President had called for improvements. These improvements include:

- Tough industry-wide and company-specific surcharges that will finally make reducing youth smoking the tobacco companies' bottom line;
- Protection for all Americans from the health hazards of secondhand smoke;
- A trust fund to provide for a substantial increase in health research funding; a nationwide counteradvertising campaign to reduce youth smoking; effective state and local programs in tobacco education, prevention, and cessation; law enforcement efforts to prevent smuggling and crack down on retailers who sell tobacco products to children; assistance for tobacco farmers and their communities; and funds for the states to make additional efforts to promote public health and protect children; and
- No antitrust exemption for the tobacco industry;
- Strong licensing and anti-smuggling provisions to prevent the emergence of a contraband market and prosecute violators;
- Elimination of special protection for parent companies of tobacco manufacturers, an increase in the annual cap on damages to $8 billion per year, and changes to ensure that legal protections are available only to tobacco companies that change the way they do business, by agreeing to accept sweeping restrictions on advertising, continue making annual payments and lookback surcharges even if those provisions are struck down, make substantial progress toward meeting the youth smoking reduction targets, prevent their top management from taking part in any scheme to promote smuggling, and abide by the terms of the legislation rather than tying it up in court.

Q. How is the spending apportioned in the manager's amendment?

A. The manager's package contains key provisions to fund important public health programs, health research, and assistance for farmers. It also provides funding to states to be used for a variety of programs, including child care.

Approximately 22 percent of expected revenues from the legislation will go to fund research at NIH, CDC, and Agency for Health Care Policy and Research (AHCPR). Another 22 percent will fund smoking cessation programs, prevention and education programs, international tobacco control efforts, and a variety of enforcement efforts at both the federal and state levels to minimize smuggling and crack down on retailers who sell tobacco products to children. All proceeds from lookback surcharges will go to prevention and education programs.

Forty percent of expected revenues will go to states, with half unrestricted and half to be used for designated purposes -- the Child Care and Development Block Grant, the Safe and Drug-Free Schools Program, Eisenhower Grants, child welfare programs (Title IV-B), the Maternal and Child Health Block Grant, Substance Abuse grant programs, and a limited match for the Children's Health Insurance Program. This entire list is directed at the health and well-being of children and families most in need of assistance.

The remainder of expected revenues from the legislation will go to protect tobacco farmers and to provide assistance to their communities, through the mechanisms of the LEAF Act.

Finally, excess revenues will go to the Medicare program.

Q. But how can the President sign a bill that does not contain real funding for child care or his class size initiative?

A. The McCain bill provides that 40 percent of funds received will go to the states, totaling $196.5 billion over 25 years. Half of these state funds must be used for designated programs to enhance the health and well-being of children and families most in need, including child care. If states were to spend their restricted funding in proportion to current expenditures (and use 6% for the Children's Health Insurance Program), about 45% of the funds, or approximately $5.5 billion over 5 years, could go to child care.

Q. Would you support an amendment to raise the price per pack from $1.10 to $1.50? The public health groups believe $1.50 is necessary to reduce youth smoking.

A. The President called for a $1.10 per-pack price increase in his budget, because this is the increase that the Administration estimates is necessary to meet our youth smoking reduction targets. We have not changed this position. The President, however, will sign a comprehensive tobacco bill meeting his principles that contains a $1.50 per-pack price increase.

Q. **How do you respond to the charges of some of the public health groups that you have sold out by supporting a $1.10 per pack increase instead of $1.50, and by not pressing for even stronger provisions in other areas?**

A. Our negotiations with Senators McCain and Hollings significantly strengthened the bill in the key areas where we called for improvements -- namely, strengthening the lookback penalties, including by imposing strong company-specific penalties, strengthening the environmental tobacco smoke protections, eliminating the antitrust exemption, improving the liability provisions, and funding the President's public health priorities. We have always said, starting with our budget, that a $1.10 per-pack price increase will ensure that we meet the President's youth smoking target, and we have no reason to deviate from that position. The President, however, will sign a comprehensive tobacco bill meeting his principles that contains a $1.50 per-pack increase. And if the bill is further strengthened on the floor in other areas, the Administration will hardly object

Q: **Yesterday, Senator Gregg, Dr. Koop, and Dr. Kessler held a press conference calling for the liability cap to be stripped from the tobacco bill. What's the President's position on this?**

A: We vigorously oppose Senator Gregg's amendment to strip the liability provisions from the bill. As revised in the McCain manager's amendment, the liability cap is nothing more than a way to help change the way tobacco companies do business. The new $8 billion annual cap on legal damages will be available only to tobacco companies that agree to accept sweeping restrictions on advertising, continue making annual payments and lookback surcharges even if those provisions are struck down, make substantial progress toward meeting the youth smoking reduction targets, prevent their top management from taking part in any scheme to promote smuggling, and abide by the terms of the legislation rather than tying it up in court. Stripping the cap may well endanger this bill, and we will fight this effort.

Q. **How exactly were the liability provisions improved in Senator McCain's Manager's Amendment?**

A. Senator McCain's Manager's Amendment contains key improvements in the bill's civil liability provisions. These changes include:

- Ensuring that the bill's liability provisions -- i.e., the settlement of state lawsuits and the annual damages cap -- apply only to companies that agree to accept sweeping advertising restrictions and to comply with the key terms of the law, even if those provisions are struck down;

- Raising the annual liability cap from $6.5 billion to $8 billion (the same amount as in the Chafee-Harkin bill), with all damage judgements to be paid by the industry;

- Strengthening the provisions in the bill that link liability protections to the achievement of youth smoking targets, by removing liability protections from a company that misses its targets by 20 percent or more unless it proves that it used best efforts to reduce youth smoking;

- Permitting suits against parent companies and affiliates of tobacco manufacturers, as well as their attorneys;

- Ensuring that individuals with tobacco-related disease can use evidence of their addiction in suits against tobacco companies; and

- Ensuring that tobacco companies cannot escape their obligations by making fraudulent transfers or declaring bankruptcy.

In addition, the manager's amendment retains important provisions from the underlying bill:

- The bill contains no limits on class action lawsuits and does not limit the amount that anyone can recover from a tobacco company; and

- The bill assists plaintiffs who have minimal resources in suing big tobacco companies by creating judicial presumptions that the use of tobacco causes a wide array of diseases.

Q. How have the lookback provisions changed in the Manager's Amendment?

A. Unlike the underlying bill, which contained only industry-wide surcharges, the manager's amendment contains important company specific surcharges that will provide each company with a powerful incentive to change their behavior and stop marketing to kids. In addition, the manager's amendment strengthens the industry-wide surcharge.

- The manager's amendment contains an uncapped company-specific surcharge of $1,000 per youth smoker for every youth smoker by which the company misses its youth smoking targets. This surcharge represents <u>twice</u> the lifetime profits that a company earns from any youth smoker. The companies will not be able to pass these company-specific surcharges onto price, because any price differential between companies will dramatically affect their share of the adult market.

  At the levels specified in the manager's amendment, company specific surcharges will reduce <u>profits</u> by $640 million for every 10 points. The Treasury Department and OMB estimate that a 20-point miss in 2003 would represent one-third of total industry profits. By affecting their bottom line in this dramatic fashion, the company-specific surcharges in the manager's amendment will provide a significant incentive for tobacco companies to change their behavior and reduce sales to children.

- The manager's package also raises the cap on industry-wide lookback surcharges from $3.5 billion per year to $4 billion per year. The Treasury Department and OMB estimate that if targets are not met and the full $4 billion industry-wide surcharge is levied, the price of a pack of cigarettes will rise by about 35 cents.

Q. What do you think of the debate over the competing Hollings and Lugar farmers initiatives?

A. The President has made protecting tobacco farmers and their communities one of his key principles for national tobacco legislation, and he believes that Senator Ford's LEAF Act, which was part of the Commerce Committee bill, fully meets this standard. He supports giving farmers the chance to have their quotas bought out if they so choose, while maintaining a price stabilization program.

The President has significant concerns about Senator Lugar's proposal. He is concerned that it does not provide adequate protections for farmers. He also shares the concerns of some public health groups, including the Campaign for Tobacco-Free Kids, about ending a tobacco control program, because doing so could increase dramatically the amount of tobacco grown in this country -- essentially providing a subsidy to the companies.

Most important, the President urges the Congress to work through this impasse, which was largely caused by procedural gamesmanship, and get on with the business of passing comprehensive legislation to reduce youth smoking.

Q. Are you comfortable with the "watered down" international provisions in the tobacco bill?

A. Smoking is a global health problem, and international tobacco control efforts are an important component of S.1415. However, the 2-cent per pack fee for funding international tobacco control efforts that originally appeared in S.1415 was an unconstitutional tax on exports and the provisions on advertising and marketing overseas as drafted were unenforceable and therefore ineffective. Senator McCain's manager's amendment improves these provisions by authorizing multilateral efforts to control international tobacco use and encourage other nations to adopt youth smoking reduction laws similar to our own.

Q: What is the President's position on capping attorneys fees?

A: The President's overriding priority is ensuring that tobacco legislation promotes the public health. He does not view the issue of legal fees as central to this effort, and he has not made a specific proposal on how legislation should handle legal fees. In general, he believes that the lawyers who brought the tobacco suits should be fairly compensated, but that they should not be paid out of proportion to the work they actually did and the risks they actually undertook.

Q. Why do you focus on tobacco but ignore drugs?

A. We are not by any means ignoring drugs. In fact, under the spending provisions that we negotiated in the McCain bill, states may use their designated funds for substance abuse treatment and prevention programs and the Safe and Drug Free Schools program. In addition, the President has a comprehensive proposal to target drugs. Nobody disagrees about the need to be tough on drug use, but that is no excuse to be less than tough on youth smoking.

Q: What exactly is the President's strategy on drugs?

A. This past February President Clinton released the 1998 National Drug Control Strategy, a comprehensive ten-year plan to reduce drug use and availability by 50% -- to a historic new low. The strategy is backed by a $17 billion anti-drug budget in FY 1999 -- the largest ever presented to Congress, with a $1.1 billion increase over last year's budget.

While the strategy incorporates specific goals and objectives in the areas of drug treatment and prevention, domestic law enforcement, interdiction, and international programs, its number one goal is to educate and enable our youth to reject illegal drugs. That is why the largest budget increases (15% over last year's funding levels) are targeted for this purpose. In contrast, Speaker Gingrich and the House Republicans tried to cut the Safe and Drug-Free Schools program -- the program that funds anti-drug efforts in 97% of the nation's school districts -- by a full 50% just a few years ago.

Key initiatives in the drug strategy include:

Protecting Kids:
- <u>$195 Million National Youth Anti-Drug Media Campaign</u> to make sure that when kids turn on the television or surf the "net," they learn about the dangers of drugs.
- <u>$50 Million for School Drug Prevention Coordinators</u> to improve and expand the Safe and Drug-Free Schools program by hiring more than 1,000 new prevention professionals to work with thousands of schools in preventing drug use.

Strengthening Our Borders:
- <u>$163 Million for Border Patrol</u> to hire 1,000 new Border Patrol officers and for "force multiplying" technology.
- <u>$54 Million for Advanced Technology</u> for the Customs Service to deploy

advanced technologies, such as X-ray systems and remote video surveillance.

- $75.4 Million to Support Interdiction Efforts in the Andean region and Caribbean, and to train Mexican counterdrug forces.

Strengthening Law Enforcement:

- $38 Million to Crack Down on Methamphetamine and Heroin by hiring 100 new DEA agents, expanding the Administration's anti-methamphetamine initiative, and targeting heroin traffickers.

Breaking the Cycle of Drugs and Crime:

- $85 Million to Promote Coerced Abstinence to help state and local governments implement drug testing, treatment, and graduated sanctions for drug offenders.

Closing the Treatment Gap:

- $200 Million Increase for Substance Abuse Block Grants to help states close the treatment gap.

The Commerce Committee Manager's Package
will Dramatically Reduce Youth Smoking

The Commerce Committee manager's package contains significant improvements over the underlying bill which will help to reduce youth smoking and to protect the public health. With these improvements, the bill meets each of the President's principles for comprehensive tobacco legislation. The improvements include:

Tougher Lookback Surcharges:

- The manager's amendment contains an uncapped company-specific surcharge of $1,000 per youth smoker for every youth smoker by which the company misses its youth smoking targets. This surcharge represents <u>twice</u> the lifetime profits that a company earns from any youth smoker. The companies will not be able to pass these company-specific surcharges onto price, because any price differential between companies will dramatically affect their share of the adult market.

  At the levels specified in the manager's amendment, company specific surcharges will reduce <u>profits</u> by $640 million for every 10 points. The Treasury Department and OMB estimate that a 20-point miss in 2003 would represent one-third of total industry profits. By affecting their bottom line in this dramatic fashion, the company-specific surcharges in the manager's amendment will provide a significant incentive for tobacco companies to change their behavior and reduce sales to children.

- The manager's package also raises the cap on industry-wide lookback surcharges from $3.5 billion per year to $4 billion per year. The Treasury Department and OMB estimate that if targets are not met and the full $4 billion industry-wide surcharge is levied, the price of a pack of cigarettes will rise by about 35 cents.

Enhanced Environmental Tobacco Smoke Protections:

- The manager's package provides that a state can opt out of the national environmental tobacco smoke standard only if the state is able to demonstrate to OSHA that it has an ETS standard at least as protective of the public's health.

Spending:

- The manager's package contains key provisions to fund important public health programs, health research, and assistance for farmers. It also provides funding to states to be used for a variety of programs, including child care.

- Approximately 22 percent of expected revenues from the legislation will go to fund research at NIH, CDC, and AHCPR. Another 22 percent will fund smoking cessation programs, prevention and education programs, international tobacco control efforts, and a variety of enforcement efforts at both the federal and state levels to minimize smuggling and crack down on retailers who sell tobacco products to children. All proceeds from lookback surcharges will go to prevention and education programs.

- Forty percent of expected revenues will go to states, with half unrestricted and half to be used for designated purposes --the Child Care and Development Block Grant, the Safe and Drug-Free Schools Program, Eisenhower Grants, child welfare programs (Title IV-B), the Maternal and Child Health Bureau's Title V Program, Substance Abuse grant programs, and a limited match for the Children's Health Insurance Program. This entire list is directed at the health and well-being of children and families most in need of assistance.

- The remainder of expected revenues from the legislation will go to protect tobacco farmers and to provide assistance to their communities, through the mechanisms of the LEAF Act.

- Excess revenues will go to the Medicare program.

Improved Liability Provisions:

- The manager's package ensures that the bill's liability provisions (i.e., the settlement of state lawsuits and the annual damages cap) apply only to companies that agree to accept sweeping advertising restrictions and to comply with important provisions of the law (i.e., lookbacks and annual payments), even if those provisions are invalidated by the courts.

- The manager's package raises the annual liability cap from \$6.5 to \$8 billion (indexed for inflation), the same amount as the cap in the Chafee-Harkin bill. It also removes liability protections for parent companies and affiliates; ensures that the industry's attorneys will be subject to suit as under current law; and allows plaintiffs claiming injury from disease to use evidence of addiction in their lawsuits.

- The manager's package strengthens the provisions in the bill that link liability protections to the achievement of youth smoking targets. Under the amended legislation, a company that misses its targets by 20 percent or more has the burden of showing both that it did not engage in affirmative misconduct and that it used best efforts to reduce youth smoking in order to escape the loss of liability protections.

Elimination of Antitrust Exemption:

- The manager's package eliminates the blanket antitrust exemption contained in the underlying bill, which was not necessary to achieve the goals of the legislation and could have had anticompetitive effects.

Company-Specific Youth Lookback
Surcharge will Change Industry Behavior

The uncapped company-by-company surcharge of $1,000 per youth smoker contained in the Commerce Committee manger's package will provide a significant incentive for tobacco companies to change their behavior and reduce sales to children. Industrywide surcharges are passed directly to price, and are designed to drive up the price to discourage teens from smoking. Company-specific surcharges are designed not to drive up the price of cigarettes, but to come straight out of the companies' bottom line if they sell to children. Companies cannot pass company-specific surcharges onto price, because any price differential between companies will dramatically affect their share of the adult market.

- Without a company-specific surcharge, any company can still make a profit by selling to kids. The $1,000 per youth smoker surcharge contained in the manager's amendment will force a company to surrender <u>twice the lifetime profits</u> it makes from addicting a teen in the first place.

- This penalty is <u>uncapped</u>, and will take a large bite out of after-tax profits. The total after-tax profits of the domestic tobacco industry are $5 billion ($7.5 billion pre-tax). The Department of Treasury estimates that after-tax profits will drop to about $3.4 billion by 2003 (in constant dollars) under the McCain bill. The company-specific surcharges reduce the companies profits by about $640 million for every 10 points. A 30-point miss would reduce profits by over $1.9 billion, which is more than half of projected profits. A 60-point miss would reduce profits by $3.8 billion, which amounts to more than projected total profits.

- These penalties are large enough to prevent companies from being able to pass them onto price. Assume, for example, that the total volume of cigarettes sold in 2003 is 15 million packs (about halfway between CBO and OMB estimates). Because Philip Morris's market share is 50%, or 7.5 million packs, a 30-point miss would cost the company about $1.2 billion. If Philip Morris passed that amount along to price, it would have to raise the price of Marlboros by 16 cents a pack, or $1.60 a carton. A similar price differential between Philip Morris and RJR cigarettes in 1993 cost RJR so much of its adult market share that the company has never recovered.

- In addition, any company that misses its targets by more than 20% stands a significant chance of losing its liability protections altogether under the manager's amendment. As amended, the bill provides that a company that misses its targets by this amount has the burden of showing both that it did not engage in affirmative misconduct and that it used best efforts to reduce youth smoking in order to escape the loss of liability protections.

Stronger Anti-Smuggling Provisions:

- The manager's amendment will strengthen the anti-smuggling provisions in the bill, so as to prevent the emergence of contraband markets. The bill, as amended, will create a "closed distribution system" for tobacco products so that only licensed entities can sell or buy products; it will provide states with resources to establish or improve retail licensing systems; it will require manufacturers to mark packages for export to prevent their diversion; and it will establish and enforce strong penalties for violations. A very similar system has worked to control smuggling of alcoholic beverages for over sixty years.

The Commerce Committee's Manager's Package
Funds Critical Public Health, Health Research, Farmers, and State Programs

The Commerce Committee's manager's package funds critical funding for public health, health research, farmers and farming communities, and the states, including significant funds for child care.

Public Health Programs: 22 percent of funds (about $14 billion/5 years)

The bill funds critical public health programs, including tobacco prevention and education programs, cessation programs, counter-advertising, Indian health services, international tobacco control efforts, and a variety of enforcement efforts at both the federal and state levels to minimize smuggling and crack down on retailers who sell tobacco products to children.

Health Research Programs: 22 percent of funds (about $14 billion/5 years)

The bill provides 22 percent of funds for research at the National Institutes of Health, the National Science Foundation, the Centers for Disease Control, and the Agency for Health Care Policy and Research. The bill would also fund a demonstration to permit Medicare beneficiaries to participate in certain federally sponsored cancer clinical trials.

Farmers and Communities: 16 percent of funds (about $10 billion/5 years)

The bill provides 16 percent of funds to assist the transition of both flue-cured and burley tobacco growers and their communities. The bill contains $28.5 billion for tobacco farmers and their communities over 25 years, including payments for lost tobacco quota; payments for sale of quotas; payments for community economic development block grants; a worker transition program; and higher education assistance programs.

Grants to States: 40 percent of funds (about $26 billion/5 years)

Recognizing the important role states have played in enabling this legislation, the manager's amendment provides that 40 percent of funds be transferred to the states, $196.5 billion over 25 years, with half unrestricted and half to be used for designated programs for the health and well-being of children and families most in need:

- Child Care and Development Block Grant
- Maternal and Child Health Block Grant
- Child welfare (Title IV-B)
- Substance Abuse and Mental Health Services Administration grants
- Safe and Drug-Free Schools
- Professional Development (Eisenhower) grants
- Match for the Children's Health Insurance Program (limited to 6 percent of restricted funds)

If states were to spend their restricted funding in proportion to current federal expenditures, and use 6% for the Children's Health Insurance Program, at least 40% of the funds, or over $5 billion over five years, would go to child care.

Medicare: Additional Revenues

In the event that the bill generates more receipts than estimated, the balance of funds will be directed to the Medicare HI Trust Fund.

The Manager's Amendment Narrows the Scope of Liability Protections for the Tobacco Industry

Senator McCain's Manager's Amendment contains key improvements in the bill's civil liability provisions. As amended, the bill establishes a higher, $8-billion-per-year cap on damages, which will be available only to tobacco companies that finally change the way they do business by agreeing to restrict advertising to youth and abide by the terms of the legislation rather than tying it up in court. The new version of the bill also removes special protections for parent companies of tobacco manufacturers.

The Manager's Amendment significantly improves on the bill reported out of the Commerce Committee by:

- Ensuring that the bill's liability provisions --i.e., the settlement of state lawsuits and the annual damages cap --apply only to companies that agree to accept sweeping advertising restrictions and to comply with the key terms of the law, even if those provisions are struck down;

- Raising the annual liability cap from $6.5 to $8 billion (the same amount as in Chafee-Harkin-Graham bill), with all damage judgments to be paid by the industry;

- Strengthening the provisions in the bill that link liability protections to the achievement of youth smoking targets, by removing liability protections from a company that misses its targets by 20 percent or more unless it proves that it used best efforts to reduce youth smoking;

- Permitting suits against parent companies and affiliates of tobacco manufacturers, as well as their attorneys;

- Ensuring that individuals with tobacco-related disease can use evidence of their addiction in suits against tobacco companies; and

- Ensuring that tobacco companies cannot escape their obligations by making fraudulent transfers or declaring bankruptcy.

Moreover, the Manager's Package retains important features of the bill reported out of Committee:

- The bill contains no limits on class action lawsuits and does not limit the amount that anyone can recover from a tobacco company; and

- The bill assists plaintiffs who have minimal resources in suing big tobacco companies by recognizing two well established facts --that nicotine is addictive, and that the use of tobacco causes a wide array of diseases.

The Commerce Committee Manager's Package
Contains Tough Anti-Smuggling Provisions

The Commerce Committee manager's package creates a strong licensing and enforcement system that will minimize smuggling by creating a closed distribution system for tobacco products, labeling all products for export, and imposing tough penalties on manufacturers and other firms involved in smuggling.

***An Effective Licensing System is the Key to a Closed Distribution System*:** To prevent black market activity, the manager's package regulates tobacco products in a manner similar to the way the federal government has regulated alcoholic beverages for over 60 years.

Under this closed distribution system, only manufacturers, wholesalers, exporters, importers, and distributors that hold a federal license would be allowed to engage in those businesses. Licenses would be issued based on certain specified criteria and could be revoked or suspended for certain specified violations. Those conducting business without a permit would be subject to civil monetary penalties of up to $10,000 per offense, a prison term of up to five years, and property forfeiture. Tobacco companies implicated in smuggling would lose their liability protections. Licensed entities would be authorized to sell tobacco products only to other licensed entities. Licensing of retailers would be done by the states.

Additionally, all tobacco product packages would be marked with a serial number to facilitate tracking, and all exported packages will be labeled FOR EXPORT FROM THE UNITED STATES to prevent them from being smuggled back into the U.S. and sold illegally.

A Closed Distribution System will Prevent Black Market Activity: A closed distribution system will ensure that products moving outside the legal channels of distribution can be easily earmarked and targeted for prosecution. This system would drastically limit smugglers' ability to enter products into a legitimate distribution channel. Potential black marketeers would not be able to move products through legitimate wholesalers or distributors. Nor would they be able to sell products to retail consumers at local convenience stores or other licensed retail outlets. Instead, without a way to place contraband in the market legally, smugglers would have to sell cigarettes outside channels of legitimate distribution. This would be very risky and criminal provisions and penalties would act as a significant deterrent to persons contemplating the unlawful diversion of tobacco products.

***Funding for Enforcement*:** The manager's amendment authorizes funding for anti-smuggling enforcement as part of the public health spending account and enables the Secretary of the Treasury to collect fees to cover enforcement costs.

Comprehensive Tobacco Legislation will Not Cause Bankruptcy

Claims by the tobacco companies that the McCain bill will drive them into bankruptcy are not convincing for two key reasons. First, the legislation is designed to facilitate the pass-through of manufacturer payments to the prices of tobacco products, minimizing the impacts on the profits of the manufacturers themselves. Second, the industry has a significant cash flow and net assets to absorb the reduced volume as prices rise.

The Payments are Made by Tobacco Consumers, Not Tobacco Manufacturers: The primary goal of comprehensive tobacco legislation is to reduce youth tobacco use. The single most effective means of accomplishing this goal is to raise the price of tobacco products. As a result, the McCain legislation and other bills facilitate the pass-through of industry payments to the price of tobacco products. Mechanisms such as the allocation of industry payments by market share, and volume adjustments which reduce industry payments as volumes fall, will ensure that these payments are made by consumers, not manufacturers.

Payments Made by Tobacco Consumers Have Modest Impact on Manufacturer Profitability: The opinion of the objective experts at the Federal Trade Commission is that even large price increases will have little impact on profits. They find that the AG settlement, which raised prices by 62 cents, lowered the profitability of the tobacco industry by only about 15%. By their method, the $1.10 price increase in the McCain bill would lower profitability by less than 25%.

The Tobacco Industry Has Substantial Financial Resources: The U.S. tobacco industry is large, well-diversified, and financially strong; the operating earnings for the top five tobacco manufacturers was $23.6 billion. The industry leader, Philip Morris, is particularly well positioned to absorb decreases in their domestic tobacco earnings:

- Their stock is currently valued at almost $100 billion.
- They had $4.7 billion in domestic tobacco operating profits in 1997.
- They also had operating profits of $4.6 billion on their international tobacco business.
- They are also a well diversified company that has operating profits of almost $5 billion from other lines of business such as food and beer.

Even the most vulnerable in this industry, RJR Nabisco, has substantial financial resources:

- For 1997, RJR Nabisco's domestic tobacco business had operating profits of $1.5 billion
- The company also has a rapidly growing international business which had $670 million in operating profits in 1997.
- In addition to their tobacco businesses, RJR Nabisco has a substantial asset: its holdings of 80 percent of Nabisco, valued at almost $10 billion dollars. This exceeds by $5 billion the company's outstanding debt (excluding Nabisco).

The McCain Bill's Price Increase will Substantially Reduce Youth Smoking and Prevent Premature Death

The single most important step we can take to reduce youth smoking is to raise the price of a pack of cigarettes significantly. The Treasury Department analysis has found that the $1.10 price increase in the McCain bill will, by itself, reduce youth smoking by 32% in 2003. Taken in conjunction with a conservative estimate of the impact of the other non-price provisions in the legislation, such as access and marketing restrictions, the overall impact is an average 42% reduction in youth smoking and premature deaths in every state.

Why do we need to significantly increase the price of cigarettes to prevent youth smoking?

According to the Treasury Department, the per-pack price increase in the McCain bill combined with advertising and access restrictions will result in an average reduction of 42 percent in underage teenage smoking in the year 2003. The percentage reductions in underage teen smoking and resulting premature deaths range from 33-36 percent in states like Washington, Massachusetts, and Michigan, to 47-51 percent in states like Wyoming, Tennessee, and Kentucky. Fifteen states will see reductions above 45 percent in 2003.

Over the next five years, the number of young people kept from smoking would be about 3 million young people for the country as a whole. Individual states will see reductions ranging from a few thousand in the smaller states up to about 248,000 in California and 205,000 in Texas. And about a million young people will be saved from premature death, including 56,000 in Florida, 57,000 in Ohio, 37,000 in Michigan, 83,000 in California, and 24,000 in Missouri.

Can one million lives really be saved over 5 years if Congress passes comprehensive legislation?

The Treasury Department's analysis shows that the McCain bill's price increase of $1.10 per pack over five years coupled with sales and advertising restrictions will reduce underage smoking by nearly half, stopping 3 million teens from smoking and saving a million lives over the next five years. This analysis includes a conservative estimate that advertising and access provisions will reduce teen smoking by 15 percent. The rest of the reduction is attributable to the price increase.

Don't some experts say a price increase will have no effect on young people's behavior?

In fact, there is a substantial consensus in the economics literature that price increases have a dramatic impact on youth smoking. The model used by the Treasury Department reflects that consensus. Indeed, an independent analysis from the Congressional Budget Office recently reviewed the literature and concluded that youth smoking is very responsive to price.

Doesn't the international evidence contradict this contention?

Again, the clear consensus of the U.S. literature, as confirmed by CBO, is that youths are very responsive to price in their decisions to smoke. International comparisons are much less informative for the response of youths in the U.S. to price changes. If one insists on international comparisons, perhaps the best one to use is Canada, were a doubling of the price of cigarettes over the 1981 to 1991 period led to a 50% fall in youth smoking --almost exactly what would have been predicted by Treasury's model.

Background on Youth Smoking Elasticity Estimates

The Treasury Model

- The Treasury model of youth smoking starts from a participation elasticity of -0.7 at the current price level of about $1.95 — which means that a 10% increase in price above its current level would reduce the number of teen smokers by 7%.

- But this relationship only holds for very small price changes. For larger and larger price increases, the Treasury model predicts somewhat smaller proportional reductions in teen smoking. This reflects the fact that the teens most likely to respond to price signals are also the first to be discouraged from smoking by a price increase.

- Using this model, a $1.10 increase in the real price of cigarettes is projected to reduce youth smoking by 32%. Since a $1.10 increase in the real price in 2003 represents a 53% rise, the associated "average" elasticity is actually -0.6.[1]

Previous Academic Studies

- A number of studies have attempted to estimate the responsiveness of youth smoking in the U.S. to price changes — the participation elasticity, or the change in the number of teen smokers due to price changes. This literature is based on comparisons of youth smoking rates in high and low tax states, and on changes in youth smoking within states as tax rates change.

- The CBO recently summarized this literature by stating that most of the evidence points to participation elasticities ranging from -0.50 to -0.75. **The Treasury estimate is in the range used by the CBO.**

- The results from this literature are shown in the Table below. Because differences in elasticity estimates may be less intuitive, the table shows — for each analysis of youth smoking — the projected reduction in teen smokers from a $1.10 price increase (along with the Treasury estimates). This approach recognizes the fact that the Treasury model allows the elasticity to decline for larger price increases.

Study of Teen Smoking	Percent Reduction in Teen Smoking from $1.10 Real Price Increase
Lewit, Coate, and Grossman (1981)	65%
DeCicca et al. (1998)	46%
Grossman et al. (1983)	41%
Chaloupka and Grossman (1996)	36%

CBO (midpoint)	34%
Treasury	**32%**
Evans and Huang (1997)	28%
Wasserman et al. (1991)	0-9%

- It is clear that the Treasury estimate is within the range of professional consensus on this question. Indeed, our estimates are more conservative than what most of the recent work in this area would suggest.

- One study which estimates a very different response from the remainder of the literature (Wasserman et al.) focuses exclusively on the late 1970s. During this period some surveys indicate that youth smoking fell precipitously without a price increase. We believe a more appropriate interpretation of the data during the late 1970s is that youth smoking was driven down by the broader dissemination of facts about smoking's dangers. According to one major survey, only half of 12th graders saw a great risk in smoking a pack or more of cigarettes a day in 1975 — the lowest level in the survey — but this number increased by nearly 25% between 1975 and 1980. Thus, rather than indicating that price does not affect youth smoking, we believe this data shows that other things can influence teens *in addition to* price.

- This same problem has led to a misinterpretation by some of the Evans and Huang paper. As Professor William Evans of Maryland pointed out in a recent letter to the Commerce Committee, the findings of his paper have been misquoted. *As noted in the Table above, the estimate that Evans stands behind is very close to the Administration estimate.* The confusion over his findings arises from the fact that his estimates which include data from the late 1970s show a smaller youth elasticity than his estimates which focus on the 1980s and 1990s. As Prof. Evans has noted, however, the data are less reliable for this earlier period; in addition, as noted above, this was an era when non-price factors were driving teen smoking down in the face of constant prices.

The Cornell Study

- Some have cited the recent study by DeCicca et al. as refuting the previous literature. In fact, this study finds higher estimates than the remainder of the literature when standard estimation techniques are used on their full sample of 8th-12th graders.[2]

- The study does find smaller effects when they choose the particular sample of 12th graders who weren't smoking in 8th grade, and try to model whether they start smoking. But there is no obvious explanation for this anomalous result; after all, removing from their model a population that is more addicted to cigarettes — individuals smoking from 8th to 12th grade — should *raise*, not *lower*, the elasticity estimate. It is troubling that dropping only 5% of their sample — the 5% of teens that are most addicted — reduces their estimate so dramatically.

- The likely explanation for this anomalous finding is problems with their empirical methodology. A recent re-analysis of their data by Professors Thomas Dee of Georgia Tech and William Evans of Maryland has found these results to be very sensitive to the particular sample restrictions imposed by the Cornell authors. As these experts note, "The results appear to be purely an artifact of the way that the authors constructed the analysis sample". When a broader sample of observations is used, there is a very significant effect of taxes on youth smoking in their onset model -indeed, the results are quite comparable to the previous literature.

- This partly explains why the results of the Cornell study are so statistically imprecise. For example, in this particular model, they estimate that a $1.10 price rise would reduce smoking onset by only 7%. However, given the level of statistical imprecision in their model, their findings would be equally consistent with a reduction in youth onset of 50% or more from this $1.10 price increase — a range which encompasses the Treasury estimate, as well as their own estimates using a more straightforward methodology.

- One criticism levied by DeCicca et al. against the earlier literature is that it does not control for differences across states at a point in time that might determine youth smoking propensities; low tax states may have high smoking because of other regulatory or cultural factors. But their approach does not solve this problem; it still relies on point-in-time comparisons of smoking onset across states, making it difficult to separate out other differences across those states. Other studies address this problem much more directly. Chaloupka and Grossman (1996) do so by including a variety of state characteristics, including state anti-tobacco regulations. Evans and Huang (1997) address the problem even more directly by examining only the effect of within-state price changes on youth smoking. The fact that these estimates are so similar to that used by Treasury highlights the robustness of the conclusions, and indicates why the previous scientific consensus is not undermined by one set of anomalous results.

International Evidence

- There has also been much recent attention paid to the fact that youth smoking remains high in other countries with much higher cigarette prices. In particular, Wall Street analyst Martin Feldman noted in his testimony of March 19th that youth smoking rose in the U.K. between 1988 and 1996, despite a 26% rise in the real price of cigarettes. The inference that is often drawn from this type of evidence is that higher prices won't deter youth smoking in the U.S.

- But *these international comparisons do not tell us much of anything about the response of youth in the U.S. to price changes*. The fact that youth smoking rates remain high in other countries reflects other cultural factors that influence youth to smoke, and is not a rejection of the fundamental relationship between price and demand. And increased smoking among youth in the U.K. between 1988 and 1996 may have more to do with other factors, such as a recession which raised youth unemployment rates by 25% over this period, than with changes in the price of cigarettes.

- In light of this concern, it is certainly preferable to rely on careful, controlled analysis of U.S. teen smoking than on this type of anecdotal international evidence.

- Nevertheless, if one is going to make international comparisons, then the most appropriate one would be to Canada, since it is more similar to and faces many of the same cultural influences as the U.S. The two economic studies which estimate the effects of cigarette prices on Canadian teens are both consistent with the findings in the U.S. literature — teens are not only responsive to price changes, but they are more responsive than adults. In fact, the Canadian youth elasticity estimates are higher than those for the U.S.

- Moreover, the pattern of youth smoking in Canada confirms the sensitivity of youth to price changes. In 1981, Canada had a youth smoking rate that was about 50% higher than that in the U.S. *Over the next decade, Canada raised its cigarette prices by over 100%, and teen smoking fell by almost half.* During this period there were no substantial change in teen smoking rates in the U.S., so by 1991 Canada's teen smoking rate was lower than ours. The implied Canadian elasticity of -0.42 is very close to the estimate that would be computed by the Treasury model (which allows the price responsiveness to fall as the magnitude of the price increase grows) for this large a price rise, which is an elasticity of -0.48.

- Teen smoking then rose again in Canada between 1991 and 1994, as Canada lowered dramatically its federal excise taxes. Of course, teen smoking was on the rise in the U.S. over this period as well, so it is not as easy to attribute all of the rise in Canada over this time period to price impacts. But the fact remains that *for the country most comparable to the U.S., teen smoking rates fell as prices rose, and rose as prices fell.*

S.1415 Protects Tobacco Farmers and Advances Public Health

The Long-Term Economic Assistance for Farmer (LEAF) Act, sponsored by Senator Ford and Hollings and included in S.1415, contains critical protections for farmers and farming communities, to ensure that they are not adversely affected by comprehensive tobacco legislation. The President made protecting tobacco farmers and their communities one of his five key principles for national tobacco legislation, and the LEAF Act meets this standard. Key provisions of the LEAF Act include:

- Necessary Funding: The bill contains $28.5 billion for tobacco farmers and their communities over 25 years, including funding for crucial community assistance to help farmers and farming communities adjust to the reduced demand for tobacco that would occur under the bill. The funds would go toward: payments for lost tobacco quota; payments for sale of quotas; payments for community economic development block grants; a worker transition program; and higher education assistance programs.

- Price Stabilization: The LEAF Act maintains the price stabilization program, which for decades has offered security to tobacco farmers at no net cost to the government.

- Optional Buyout: The bill gives farmers the chance to have their quotas bought out if they so choose.

In contrast to the LEAF Act, the alternative legislation sponsored by Senator Lugar, entitled the Tobacco Transition Act, ends the quota program and fails to protect farmers adequately. The Lugar bill:

- Increases the Amount of Tobacco Grown: If there is no quota program, the amount of tobacco grown in the U.S. could increase dramatically. Maintenance of the tobacco quota program makes it possible to control the amount of tobacco grown in the United States. That is why public health groups, such as the Campaign for Tobacco-Free Kids, support maintaining a tobacco control program such as that advocated by Senators Ford and Hollings.

- Hurts Family Farms: Ending the quota program will destabilize prices and reduce margins, making it difficult for small farmers to survive. The bill will have a disproportionately adverse impact on minority farmers.

- Strains Federal Budget: The proposal requires $18 billion to be paid to farmers over a three-year period (FY1999 through 2002), which would strain the budget and the implementation of tobacco legislation.

- Lacks Transition Funds: The total economic development fund is only $1 billion over 5 years, which is not sufficient to ensure that tobacco communities continue to thrive as the market for this product changes.

Affirming FDA Authority to Prevent Advertising and Marketing to Children

By reaffirming the full authority of the FDA to regulate tobacco products, S.1415 will prevent the tobacco industry from advertising and marketing to children, and establish tough access restrictions on tobacco products to stop sales to children.

Reaffirms 1996 Rule: Many of the measures to reduce teen smoking and protect the public health contained in S.1415 are in the 1996 FDA rule, but have not yet gone into effect because of pending litigation. The bill would put these provisions into effect immediately, protecting American children from the dangers of smoking. These provisions include: 1) banning outdoor advertising within 1000 feet of schools and playgrounds; 2) restricting advertising to black-and-white text only except in adult only facilities or publications with predominantly adult readership; 3) prohibiting the sale or giveaway of promotional products with brand names or logos; 4) prohibiting brand-name sponsorship of sporting or entertainment events; 5) setting the minimum age for purchase of tobacco products at 18 years and requiring age verification for anyone age under 27.

Creates a Separate Chapter for Regulating Tobacco: S.1415 creates a separate chapter in the Food, Drug and Cosmetic Act that gives the FDA explicit authority over access to and advertising of tobacco products, in order to ensure that FDA regulation of tobacco does not impinge on the regulation of other products.

Establishes New Standard for Regulating Tobacco: Instead of requiring tobacco products to meet the traditional safety and efficacy standard required of drugs and devices, S.1415 imposes a new standard which would require FDA regulation of tobacco products to be "appropriate for the protection of public health". This standard better meets the characteristics of tobacco products and allows the FDA to take the addiction of over 40 million Americans into account in making decisions about how to regulate these products.

Provides Necessary Flexibility: Full FDA authority to regulate tobacco products provides the agency with the flexibility it needs to protect the public health. However, any FDA effort to eliminate any particular class of tobacco products or eliminate nicotine cannot go into effect for two years in order to provide Congress with an opportunity to weigh in and vote on the measure.

Preserves State and Local Authority: S.1415 makes clear that except as expressly provided, states and localities may adopt and enforce tobacco product requirements that are in addition to, or more stringent than, requirements established under the Food, Drug and Cosmetic Act for tobacco products.

Provides Full Enforcement Authority: S.1415 provides for the same civil and criminal penalties that the agency may use in enforcing device law.

Summary of FDA Provisions in S.1415

- **Overview of FDA Provisions:** S. 1415 creates a separate chapter in the FDCA that explicitly gives FDA authority over access to and advertising of tobacco products. In nearly all respects this authority is comparable to the authority that FDA asserted in its 1996 rule, which asserted FDA jurisdiction over tobacco products on the ground that nicotine is an addictive drug and that cigarettes and smokeless tobacco products are combination drug/device products under the Federal Food, Drug and Cosmetic Act (FDCA). S.1415, however, created a separate chapter in order to respond to concerns raised by medical device companies that tobacco statutory interpretations and other policies issued under the device provisions of the FDCA could adversely affect those companies.

  The most significant difference between S. 1415 and current law is the standard that products must meet in order to be marketed. Under current law the standard is "reasonable assurance of safety and effectiveness." This standard obviously does not fit tobacco products because tobacco products are inherently unsafe. Therefore, S. 1414 adopts the standard of "appropriate for the protection of the public health," which allows FDA to take into account the fact that over 40 million Americans are addicted to tobacco in making decisions about how to regulate the product.

- **1996 FDA Tobacco Rule in Effect:** S. 1415 provides that the tobacco regulation that FDA finalized in 1996 will remain in effect as though it were issued under the new law. Because the effective date of certain portions of the regulation has been delayed due to the industry's judicial challenge to the rule, the bill would authorize FDA to establish effective dates for those provisions not yet in effect.

- **Access Restrictions:** S. 1415 authorizes FDA to establish restrictions on the sale or distribution of tobacco products. By affirming the 1996 rule's access restrictions, the bill sets the minimum age of purchase at 18 years; requires age verification by photo ID for anyone 26 or younger; requires face-to-face sales (except for mail order sales); bans vending machines and self-service displays except in facilities where only adults are permitted; prohibits the sales of single cigarettes or "loosies"; bans free samples; and sets the minimum package size at 20 cigarettes. However, S. 1415 constrains FDA from prohibiting the sale of tobacco products in face-to-face transactions by specific categories of retail stores (such as a ban on sale of cigarettes by gas stations).

- **Advertising Restrictions and Warning Labels:** S. 1415 expressly authorizes FDA to establish restrictions related to the advertising and promotion of a tobacco product. By affirming the 1996 rule's advertising restrictions, the bill bans outdoor advertising within 1000 feet of schools and public playgrounds; restricts advertising to black-and-white text only (publications, outdoor, point of purchase, direct mail, etc.), except in publications with a predominant adult readership or at adult only facilities; prohibits the sale or giveaways of products like caps or gym bags that carry cigarette or smokeless tobacco product brand names or logos; and prohibits brand-name sponsorship of sporting or entertainment events, but permits it in the corporate name.

S. 1415 also requires stronger and larger warning labels than existing law on tobacco products (to replace the "Surgeon General's warning"), and provides authority for FDA to modify the text, format, and type size requirements of these statements.

- **Submission of Health Information to the Secretary**: S. 1415 requires tobacco product manufacturers and importers, within 6 months of enactment (and annually thereafter), to submit to FDA specific categories of information relevant to FDA regulation of tobacco products.

- **Good Manufacturing Practice Requirements:** Authorizes FDA to issue regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, of a tobacco product conform to good manufacturing practice (GMPs). The bill also makes explicit that the Secretary has the authority to grant either temporary or permanent exemptions or variances from a GMP requirement.

- **Performance Standards:** S. 1415 confirms FDA's authority to issue standards for tobacco for tobacco products (for example limiting the amount of certain ingredients) if FDA determines that a standard is appropriate for protection of the public health. This authority is the same as that for devices.

    -- In issuing a performance standard, FDA must consider the health effects on tobacco users as well as potential users (such as children).

    -- In order to give Congress a chance to vote on any standard that eliminates all cigarettes, all smokeless tobacco products, or any similar class of tobacco products, or requires the reduction of nicotine yields of a tobacco product to zero, such a standard will not go into effect until two years after the President has notified Congress of such a standard.

- **Testing and Reporting of Tobacco Smoke Constituents:** S. 1415 directs the Secretary to issue regulations to require the testing, reporting, and disclosure of tobacco smoke constituents (e.g., tar, nicotine and carbon monoxide) and ingredients that "the Secretary determines should be disclosed to the public in order to protect the public health."

- **Reduced Risk Tobacco Products:** S. 1415 contains a provision that allows FDA to designate a product as a "reduced risk tobacco product" if it finds that "the product will significantly reduce harm to individuals caused by a tobacco product and is otherwise appropriate to protect the public health."

- **Preservation of State and Local Authority**: S. 1415 makes clear that except as expressly provided, states and localities may adopt and enforce tobacco product requirements that are in addition to, or more stringent than, requirements established under FDCA for tobacco products.

-- State and local requirements related to access and advertising are not preempted by the FDCA.

-- State and local requirements related to performance standards, good manufacturing practices, and other similar FDCA requirements, are preempted, but States and localities may apply for exemptions pursuant to procedures that parallel provisions in device law.

-- S.1415 modifies the Federal Cigarette Labeling and Advertising Act in order to ensure that restrictions on advertising imposed under State laws are not preempted.

- **Full Enforcement Authority:** S. 1415 provides for the same civil and criminal penalties that the agency may use in enforcing the device law. The bill also provides that FDA may issue, after an administrative hearing before an Administrative Law Judge, a no tobacco sale order prohibiting the sale of tobacco products at a particular retail outlet based on repeated violations by that outlet. The bill also imposes the same requirements for the export of tobacco products that do not meet the requirements of the FDCA that apply to devices.

May 20, 1998

PRESIDENT CLINTON WILL URGE THE SENATE TO PASS THE MCCAIN BILL THIS WEEK

President Clinton today will applaud the Senate for taking up comprehensive, bipartisan legislation to reduce teen smoking dramatically. He will announce that the bill before the Senate, Senator McCain's Manager's Amendment, is a strong bill, and he will urge Congress to pass it this week.

The President will express his strong support for the significant improvements made to the McCain bill, which will help reduce youth smoking and protect the public health, including:

- Tough industry-wide and company-specific surcharges that will finally make reducing youth smoking the tobacco companies' bottom line;

- Protection for all Americans from the health hazards of secondhand smoke;

- A dedicated fund to provide for a substantial increase in health research funding; a nationwide counteradvertising campaign to reduce youth smoking; effective state and local programs in tobacco education, prevention, and cessation; law enforcement efforts to prevent smuggling and crack down on retailers who sell tobacco products to children; assistance for tobacco farmers and their communities; and funds for the states to make additional efforts to promote public health and protect children; and

- No antitrust exemption for the tobacco industry;

- Strong licensing and anti-smuggling provisions to prevent the emergence of a contraband market and prosecute violators;

- Elimination of special protection for parent companies of tobacco manufacturers, an increase in the annual cap on damages to $8 billion per year, and changes to ensure that legal protections are available only to tobacco companies that change the way they do business, by agreeing to accept sweeping restrictions on advertising, continue making annual payments and lookback surcharges even if those provisions are struck down, make substantial progress toward meeting the youth smoking reduction targets, prevent their top management from taking part in any scheme to promote smuggling, and abide by the terms of the legislation rather than tying it up in court.

Bruce N. Reed
05/19/98 09:36:15 PM

Record Type: Record

To: June Shih/WHO/EOP

cc:
Subject: Bruce/Rahm edits

I thought you'd prefer one-stop shopping, so I incorporated Rahm's edits with mine. The legislative situation is a little fluid, so I had to rearrange a few things.

3rd graph: Shorten to say, "Today, we stand on the verge of passing legislation that will do more than ever before to stop the scourge of youth smoking."

Replace 4th and 5th graph with: "This week, the Senate is considering historic comprehensive, bipartisan tobacco legislation, proposed by Senator McCain and Senator Hollings. Over the past few weeks, my administration has worked with Senators in both parties to strengthen this bill -- protecting Americans from the dangers of secondhand smoke in public buildings, dramatically increasing health research and funding a nationwide advertising campaign to tell young people not to smoke, and toughening lookback surcharges to make reducing youth smoking the tobacco companies' bottom line.

"This bill includes a significant price increase to discourage youth smoking and affirms the FDA's authority to regulate tobacco products. And I hope that in the next few days, the Senate will make sure we do everything we possibly can to protect tobacco farmers and their communities.

"This bill includes another provision -- an $8 billion annual liability cap that is available only to companies that agree to make sweeping restrictions in youth advertising, achieve dramatic reductions in youth smoking, and comply with this legislation instead of tying it up in court. This provision is controversial to some, but it is there to help achieve our goal, which is to stop kids from smoking in the first place. Everybody knows that tobacco advertising lures young people to start smoking, but the First Amendment limits what we can do to stop these harmful practices. Everybody knows that we can pass the toughest law in the world, but we won't achieve our goal of reducing teen smoking and saving millions of lives unless the tobacco companies cooperate in this effort instead of fighting us in court every step of the way. If an $8 billion annual cap that doesn't prevent anybody from suing the companies and getting whatever damages a jury awards will get tobacco companies to change the way they do business and join this historic effort to stop teen smoking, it is well worth it for the American people. *

Add new graph: "I believe this bill is America's best chance to protect the health of our children, to keep them from ever getting hooked on cigarettes in the first place. It is a good, strong bill, and Congress should pass it without delay."

Delete Marlboro man/Joe Camel graph

South lawn graph: say "But I see more than 1000 unique children who cannot be replaced."

Last graph: "Today, across America, 3,000 other young people of your generation will take up this

This bill includes a significant price increase to discourage youth smoking and affirms the FDA's authority to regulate tobacco products. And I hope that in the next few days, the Senate will make sure we do everything we possibly can to protect tobacco farmers and their communities.

This bill includes another provision -- an $8 billion annual liability cap that is available only to companies that agree to make sweeping restrictions in youth advertising, achieve dramatic reductions in youth smoking, and comply with this legislation instead of tying it up in court. This provision is controversial to some, but it is there to help achieve our goal, which is to stop young people from smoking.

Everybody knows that tobacco advertising lures young people to start smoking, but the First Amendment limits what we can do to stop these harmful practices. Everybody knows that we can pass the toughest law in the world, but we won't achieve our goal unless the tobacco companies cooperate in this effort instead of fighting us in court every step of the way. These provisions won't stop anybody from suing the companies and getting whatever damages a jury awards. But they will get the tobacco companies to change the way they do business and join this historic effort to stop teen smoking. And that is well worth it for the American people. We don't want 20 years of litigation -- we want action by our country and by the tobacco companies to stop cigarettes from being sold to our children.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 20, 1998

REMARKS BY THE PRESIDENT
ON TOBACCO LEGISLATION

South Lawn

10:25 A.M. EDT

THE PRESIDENT: Thank you. Thank you very much. First of all, I'd like to thank Tara and Emily. There's really nothing much more to say after their presentations. They weren't so muted and shy, I think we all got the point. Didn't you think they were terrific? Give them another hand. I thought they were great. Thank you. (Applause.)

I'd like to thank all the members of Congress who are here. I think they were all mentioned except we missed Congressman Borski who is in the first seat. No minister would do that in a congregation. (Laughter.) Thank you for being here, all of you. Thank you, Reverend Jackson. I thank the public health advocates who are here. I thank the young people who are here, both behind me and a few out there in the audience. I thank the parents of our speakers who came, and other parents who are here for what they have done.

I can't thank the Vice President enough for his longstanding and absolutely passionate, indeed all-consuming interest in this issue. I think it would be fair to say -- he talked about how we looked at the issue and all the obstacles to it, and I went ahead. The people that had the most influence on me were the Vice President, the First Lady and our daughter. And that was three -- if there were 300 million on the other side, the three would have a majority. So I thank them all, and especially the Vice President for years and years and years of dedicated work on this issue. (Applause.)

This morning I was thinking that when I was the age of

-- even younger than most of the people here in the audience, most of the children here, the biggest public health threat to us was polio. America went to work and conquered the disease, and I was actually part of the first group of children to be immunized against polio.

Today we all know our greatest public health threat to our children, and indeed to all Americans, are all the related things that can happen to people who are addicted to tobacco. I was a little older than most of the children here when the Surgeon General sounded an alarm that has grown louder, clearer, and more difficult to ignore every year -- the warning that smoking kills.

For a generation Americans of all ages and walks of life, including young people just like those whom we honor here today, have answered that alarm by fighting tirelessly to conquer this deadly threat to protect the health of our people. In the face of very powerful opposition, our nation has actually won some victories, both large and small, requiring all cigarette packages to carry warning labels, prohibiting cigarette advertising on the airwaves, banning smoking on domestic airline flights. But today, we stand on the verge of passing legislation that will do far more than anything we have every done to stop the scourge of youth smoking.

This week, as all of you know, the Senate is considering historic, comprehensive, bipartisan legislation, proposed by Senator McCain and Senator Hollings. Over the last few weeks, we have worked very hard with senators in both parties to strengthen this bill -- protecting Americans from the dangers of secondhand smoke in public buildings, dramatically increasing health research, and funding a nationwide advertising campaign to tell young people not to smoke, toughening look-back surcharges to make reducing youth smoking the tobacco companies' bottom line.

This bill includes a significant price increase to discourage youth smoking and affirms the FDA's authority to regulate tobacco products. I hope that in the next few days, the Senate will make sure we do everything we possibly can, also, to protect tobacco farmers in their communities.

This bill is our best chance to protect the health of our children, to keep them from getting hooked on cigarettes ever. It is a good, a strong bill. Congress should pass it and pass it now. (Applause.) Let me also say that I believe the presence of the young people here and their active support of the Tobacco-Free Kids movement is absolutely critical. There are still cynics who say well, this is not the kind of problem that requires this sort of solution. After all, nobody forces these people to start smoking. The young people here wearing their t-shirts, willing to look into the eyes of the lawmakers, are a stunning rebuke to that kind of cynicism. I thank them for saying no to tobacco and yes to their own bright futures. (Applause.)

And I want to tell you that you may well be able to have a bigger impact on Capitol Hill than all the things that we say here in the White House on the remaining undecided voters. Our lawmakers must not let this historic opportunity slip away under pressure from big tobacco lobbying. I want you to go and see them. I know you're going to Capitol Hill -- when you're up there, I want you to ask every member of Congress to go home tonight and think about how they can look you in the eye and say no to your future. (Applause.)

We now know from the release of previously classified documents that for years the tobacco companies looked on you as -- and I quote -- "the replacement smokers" of the 21st century. But here we have more than 1,000 unique children who cannot be replaced -- the scientists, the artists, the teachers, the Olympic champions, the engineers, the leaders, perhaps a future President in the 21st century. The rest of us have an obligation to see that these children and all their counterparts in every community in our country have a chance to grow and live to the fullest of their God-given abilities. That is what this bill is all about. This is more than just another bill in the legislature. This is more than a culmination of an historic fight between powerful political forces. We have no higher obligation than to give the young people we see here today the brightest, best future we possibly can. That's what this bill is about. And we must pass it.

Thank you and God bless you. (Applause.)

END 10:30 A.M. EDT