U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

The Speaker
House of Representatives
Washington, D.C.

Dear Mr. Speaker:

At your request, various committees of the House of Representatives have assembled a number of pieces of legislation designed to aid in the nation's war against controlled substances abuse. These pieces have been combined in a multi-part "package" which is being debated and voted upon by the full House this week. Much of this legislation is being presented without the benefit of prior public hearings or extended debate.

No one can fault the impulse and initiative that underlie this effort. The Congress certainly has an important role to play in the war against drugs in seeing to it that the nation's laws are as well fashioned, and that its law enforcement agencies are as well equipped, as possible, within responsible budgetary constraints, to wage the difficult battles that must be fought and won if the scourge of drugs is to be defeated.

The package itself contains many good proposals, but some proposals involve ill-conceived (though well-intentioned) ideas or ideas that require further study and evaluation. Several proposals, if enacted, would be seriously counter-productive, such as the reduction of United States aid to Mexico's drug eradication program pending the conclusion of the Camarena investigation - a program which benefits the United States as well as Mexico.

We agree that a comprehensive legislative response to the drug problem is appropriate and that as much prudent legislation as possible should be enacted before the end of the present session of Congress. The Administration has over the course of the past two years presented a variety of worthwhile proposals and will be presenting additional proposals in the coming weeks, all of which have been the subject of careful consideration and study. We believe that this package should be amended to include

only those proposals that are genuinely worthwhile and that have been the subject of careful study by the Congress. Finally, we believe that restoration of the amounts initially requested in the President's 1987 budget for drug law enforcement activities is the first step in making a cost effective and intellectually honest response to the drug problem.

Attached are our comments on the specific titles in this omnibus bill. We hope these comments will be considered by the House as it debates this legislation.

Sincerely,

John R. Bolton
Assistant Attorney General
Office of Legislative Affairs

TITLE I

International Narcotics Control Act of 1986 (H.R. 5352)

The Administration supports the majority of the provisions in this multi-faceted bill. It does have serious opposition to some of the provisions, however.

The Administration is not in a position to comment yet on the specific dollar figures provided to increase the budget of the Bureau of International Narcotics Matters or for U.S.I.A. or A.I.D. drug education programs. There is clearly a growing internationalization of the battle against drug trafficking. On the other hand, any increases must be considered in the context of the overall budget and the need to minimize the deficit.

The Administration does oppose those provisions in Part A which impose earmarks on certain funding, i.e., MAP and IMET funding (Sections 112 and 115), which at a time when both accounts are being cut worldwide, would hamper Presidential flexibility in carrying out our vital foreign policy operations. The imposition of time-consuming and restrictive reporting requirements is also objectionable (Section 113 -- retention of title to aircraft; and section 114 -- broad record-keeping requirements on aircraft). While we support in principle additional funding for the identification of an effective herbicide against coca, the bill's language unnecessarily limits INM to aerial application of the herbicides and does not provide for the use of unused funds for other INM activities.

With respect to Section 121 of the bill, the Administration opposes any mandate to reveal in a public report the status of extradition treaty negotiations with other countries. Many such negotiations are confidential and must remain so in order to protect our negotiation efforts.

The Administration endorses Section 122 of the bill providing for the issuance of diplomatic passports for DEA agents stationed abroad.

In reference to Section 123 of the bill, the modification of the Mansfield Amendment, the National Drug Enforcement Policy Board is in the process of studying whether the Mansfield Act should either be modified or simply repealed. Any modification should include an exemption for the Coast Guard while operating, with concurrence of the Department of State, with maritime law enforcement agencies of other countries. Coast Guard operations would take place only in territorial waters of a foreign country, and not within internal waters or within the land boundaries of a foreign country. It should be clear that any repeal or modification of the Mansfield Amendment in no way implies an expansion of our law enforcement agencies' jurisdiction to act without the consent of host countries, or implies an erosion of our ambassadors' authority over law enforcement personnel stationed abroad.

A report on information-sharing between DEA and the State Department on the issuance of visas to drug traffickers (Section 124) has been prepared already; a Memorandum of Understanding between the two agencies has been signed.

With regard to the Administration of Justice provision (Section 126), we do not believe a ceiling of $2 million should be imposed; as written, the provision is unworkable and should be deleted.

We support the findings contained in Section 127(a) based on Coast Guard experience. We also support the concept and policy contained in Section 127(b). However, we believe this legislation to be unnecessary. The Administration already has authority to take such actions, and in fact has successfully done so with the United Kingdom. The National Drug Enforcement Policy Board has endorsed this policy, and the Department of State and the Coast Guard have already opened dialog with other countries to facilitate the interdiction of suspect foreign-registered vessels.

While supporting the general thrust of Sections 131 and 132, we oppose the special reporting requirement as unduly burdensome and duplicative of other reporting mechanisms.

In reference to Part E, it should be understood that the United States continues to oppose consolidation of United Nations anti-narcotics agencies. The United States has been actively supporting and participating in, however, the International Conference on Drug Abuse and Illicit Trafficking and efforts to draft a new United Nations Convention.

The Administration strongly opposes Section 161 which withholds eradication funding from Mexico until the Camarena case is satisfactorily resolved. The Administration believes that such a punitive measure will hurt our narcotics control programs more than it will penalize Mexico, and is concerned that the supply of narcotics from Mexico may be increased by this action.

Section 163, which pertains to Pakistan, contains erroneous findings and assumptions which run counter to the facts. A congressional call for the institution of aerial spraying against opium may not be effective since this major political decision is one which must be made by the Government of Pakistan itself.

TITLE II

Defense Narcotics Act

The Administration supports most portions of this discussion draft with reservations. This draft version, among other things, authorizes appropriations for procurement of equipment and modifications for drug intelligence gathering, and directs the establishment of comprehensive anti-drug health promotion and education programs for military and civilian personnel and their families, and statutorily defines "drugged-while-driving" under the Uniform Code of Military Justice.

Section 3 of the bill dealing with the procurement of aircraft by DOD for use in interdiction is in some respects dissimilar from the recommendations by the National Drug Enforcement Policy Board. Consideration should be given to the study transmitted by letter from the Attorney General to Chairmen Whitten, Goldwater, Hatfield, and Aspin on June 18, 1986. (See Exhibit A)

The Administration also supports the concept of providing boarding parties to ride U.S. Navy ships as outlined in Section 4 of the Act. This is merely the continuation of a program contained in the DOD Appropriations Act for FY 1986, and is the expansion of a program which has been done on a smaller scale by Navy/Coast Guard since 1982. The Administration does not favor that portion of the draft (Section 4(b)) mandating the specific number of Coast Guard personnel to be assigned to U.S. Naval vessels for purposes of interdiction. This approach unduly restricts the authority of the Commandant of the Coast Guard and Chief of Naval Operations to address mission needs with appropriate flexibility. It should be noted that no new legislation is necessary to authorize Coast Guard members to be transported aboard naval vessels.

To be more effective, and in order to fix accountability for the program directly to the Coast Guard, we feel the direction in Section 4 and the recurring funding necessary to support it should be included in the Department of Transportation authorization and appropriation bills. However, if this Section is to remain in the Defense Narcotics Act, we particularly desire to have the flexibility contained in the language of Section 4(b) which would amend Chapter 18 of Title 10 U.S.C., Section 379, permitting such personnel to be assigned to other duty involving enforcement of laws listed in Section 374(a)(1) of the Title if there are insufficient naval vessels available. We recommend Section 379(d) be amended to include the Secretary of Transportation as a consultant with the Attorney General in determining the geographic areas outside the land areas of the U.S. in which these joint Navy/Coast Guard interdiction activities would take place.

The Administration supports those changes in Title 10 of the United States Code which permit the Department of Defense to join with other U.S. agencies in assisting foreign nations in anti-narcotics efforts. The proposed draft would permit DOD equipment to be used in foreign countries "in the case of a covered criminal activity" rather than only in "emergency circumstances." This provision increases the flexibility of the Policy Board to address appropriate circumstances. [We suggest that the spirit of this amendment - allowing the flexible utilization of appropriate DOD resources to assist anti-narcotics efforts outside the land area of the United States - would be best served by completely rewriting 10 U.S.C. § 374(c)(1) to permit the carriage of foreign law enforcement and anti-narcotics forces on U.S. military equipment and to utilize U.S. military equipment to further join anti-narcotics efforts. The current language of the Act may well restrict the utilization of military equipment to carriage of U.S. personnel only, and only for purposes of assisting the enforcement of U.S. laws. We believe an appropriate revision may permit the assistance to foreign governments enforcing their laws, the vigorous enforcement of which will benefit the United States.]

The Administration supports Section 6(b) concerning the Coast Guard Reserve with modifications. We support an increase in programmed strength to a level of 13,000 as requested in the President's FY 1987 budget. Additionally, we would modify the last sentences to read "...of the Selected Reserve force authorized, 1,500 reservists shall perform the majority of their mobilization readiness training by augmenting Coast Guard active forces assigned drug interdiction missions."

Legislation is not required to establish drug abuse education programs for military personnel, civilian employees, and students in DOD elementary and secondary schools. Such programs already exist. Legislation is required to authorize the confiscation of profits of convicted drug offenders and to statutorily define "drugged-while-driving" under the Uniform Code of Military Justice. We strongly support such legislation.

Exhibit A

U.S. Department of Justice

*National Drug Enforcement Policy Board*

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Attorney General, Chairman

18 June 1986

Honorable Jamie L. Whitten
Chairman, Committee
on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The DOD Authorization Bill for FY 1986 called for the establishment of an Air Force Special Operations drug interdiction air wing to provide peacetime air interdiction surveillance and detection assistance to drug enforcement authorities.

The conference report accompanying the FY 1986 Appropriations Act (appended to the Continuing Resolution) required the Department of Defense to configure one AC-130H-30 stretched variant gunship for drug interdiction surveillance deliverable not later than January 31, 1987. Thirty-five million dollars were appropriated for this purpose. The Conference Report also suggested that DOD should consider budgeting for an additional nine AC-130H-30 gunships during FY88-89.

In my letter to you on February 12, 1986, I expressed the National Drug Enforcement Policy Board's concern that the C-130 gunship was not the most cost effective means of providing air surveillance and detection (Enclosure 1). Further, I suggested that the Policy Board would work with the Congress to identify appropriate resources best suited for drug surveillance and intelligence needs, consistent with DOD mission requirements.

In an April 18, 1986 letter to the Vice President, Senator DeConcini and Representative English proposed a plan to implement the DOD Air Wing (Enclosure 2). This plan provides for seven aerostat radar surveillance balloons (two in the Bahamas and five along the U.S. Southern tier); ten C-130 aircraft retrofitted with target acquisition radars (two for SOUTHCOM; remaining eight divided equally between Florida and Arizona); and four Customs P-3A aircraft (or suitable platform) retrofitted with 360° radar.

The National Narcotics Act of 1984 empowered the Policy Board to review, evaluate and develop United States Government policy, strategy and resources with respect to drug law enforcement efforts. Accordingly, on May 19, 1986, the Vice President asked the Policy Board to review the Congressional plan. The Policy Board analyzed the plan and agrees that certain parts of it would help address the problem along the Southern tier.

Specifically, they are: placing five aerostats along the Southwest border, moving Air Force helicopter assets to Davis Monthan AFB, and providing two C-130's to SOUTHCOM to assist drug law enforcement on a not-to-interfere-with-mission basis. The Board believes that the location of the aerostats and other detection assets should be determined by those agencies responsible for their operation.

In addition to the above elements from the Congressional plan, the Policy Board proposes modifications which address interdiction needs and also provide an effective enhancement to the Government's overall anti-drug effort. The alternative proposal constitutes a Government-wide package that will initiate improvements in several of the critical components of the drug strategy. They are presented in Enclosure 3.

The total cost of our proposal is $232.9 million (plus one year O&M of $33M), compared with $309M (plus $61M O&M) for the Congressional plan. Not only would this alternative cost the taxpayers less, the Policy Board believes that it would also be more effective. Our proposal simultaneously addresses several of the key elements of the strategy in a balanced approach, rather than focusing solely on interdiction assets.

While I believe that our proposal fully addresses the needs along the Southwest border, the differences in terrain and threat along the Southeast border pose a more complex set of problems. As an interim solution, the Policy Board endorses the substitution of E-2C's for P-3A's as air surveillance platforms. The P-3A's would then be returned to DOD. (In our view, the E-2C is superior to the P-3A in terms of cost, effectiveness and availability.) However, the Policy Board must emphasize that it is prudent to study other air surveillance modalities before final determination is made for the Southeast border. We will forward to the Congress, following the Policy Board's expedited review, a complementary report for the Southeast border.

I know you share our concern over the adverse impact illicit drug trafficking has on our nation. On behalf of the Board, please be assured of our willingness to work with the Congress to effect measures to end this national scourge. I have sent identical letters to Chairmen Goldwater, Hatfield, and Aspin.

Sincerely,

Edwin Meese III

EDWIN MEESE III
Attorney General

Enclosures

cc: Honorable George Bush
The Vice President
of the United States

## POLICY BOARD'S ALTERNATIVE PROPOSAL*

### Interdiction

Items from Congressional plan:

| | |
|---|---|
| o 5 Aerostats for Southwest border** | $ 62.5M |
| o Transfer 6 Air Force Helicopters to Davis Monthan AFB in Arizona*** | $ 15M |
| o 2 C-130's to Southcom*** | $ 79.4M |

Other items:

| | |
|---|---|
| o Customs Service Command, Control, Communication's Intelligence Center ($C^3I$) for the Southwest border | $ 10M |
| o An All-Source Intelligence Center to modify or replace the existing El Paso Intelligence Center (EPIC) | $ 15M |
| o 4 E-2C's for Southern border** | $ 14M |

### International/Intelligence

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|---|---|
| o DEA foreign agents | $ 4M |
| o Intelligence Community** | $ 12M |

### Investigations

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| o DEA voice privacy radios | $ 7M |

### Drug Prosecution

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|---|---|
| o U.S. Attorneys | $ 6M |

### Drug Abuse Prevention

| | |
|---|---|
| o National Institute of Drug Abuse | $ 3M |
| o ACTION | $ 5M |
| TOTAL: | $232.9M |

* Additional O&M for full year operation is estimated at $33M.

** Acquisition funded by DOD; O&M funded by other agencies.

*** Acquisition and O&M funded by DOD.

TITLE III

International Drug Traffic Enforcement Act

With the reservations noted below in the section-by-section analysis of the bill, the Administration supports this discussion draft, which consists of three parts: the first amends various sections of the Tariff Act of 1930 (19 U.S.C. §1301 et seq.), governing Customs jurisdiction over conveyances and items entering the country; part two amends portions of the Controlled Substance Import and Export Act (21 U.S.C. §950 et seq.) primarily by increasing penalties for existing violations; and the third authorizes the President to impose economic sanctions on trading partners who do not fully cooperate with the United States in combating drug smuggling.

Title I. Amendments to the Tariff Act of 1930

Section 111: This section adds a new category of goods the importation of which is prohibited. Specifically, it prohibits the importation of any drug paraphernalia except as authorized for medical or scientific needs by the Attorney General.

The Administration believes that this amendment should be deferred pending completion of the drug paraphernalia study upon which the National Institute of Justice has recently embarked. This study is focusing on a workable definition of "drug paraphernalia." Until completion of the report, the Administration urges that passage of the amendment be delayed.

Section 112: Part one of this section adds "monetary instruments" to the definition of merchandise. While money laundering prosecutors have not seen substantial movement of monetary instruments aboard vessels, the Administration supports this effort to broaden the bases upon which the profits and proceeds of drug trafficking can be seized, taxed, or forfeited. Part two of the section adds the term "controlled substance" to the definitions section of the Tariff Act and prohibits the importation of such merchandise. The Administration supports this provision as it further enhances customs authority to seize and forfeit contraband and the vehicles used to transport those prohibited items.

Section 113: This section provides that vessels are to immediately report to the nearest customs facility. Presently, vessels have 24 hours within which to report to customs. The Administration supports this provision because it believes that the 24 hour grace period of 19 U.S.C. §1436 was being abused by traffickers in prohibited merchandise.

Section 114: This section provides for enhanced penalties for failure to comply with section 113. While the Administration supports these enhanced penalty provisions, it believes that the

criminal penalties section should contain enhanced penalties commensurate with Title 21 penalties, if "controlled substances" are found upon inspection by customs officers.

Section 115-116: These sections provide for enhanced penalties for unauthorized unloading of passengers and stricter reporting requirements for individuals arriving in the United States. The Administration supports these provisions.

Section 117-119: These sections provide enhanced penalties for falsity or lack of manifest or other recordkeeping obligations. The Administration supports these provisions.

Section 120-121: These provisions create a new section entitled "Aviation Smuggling," prohibiting the transportation of prohibited merchandise or the transfer of this merchandise on the high seas or United States customs waters. It further provides for stiff penalties for violation of its provisions.

The Administration supports this provision with one reservation. The forfeiture section provides for permissive forfeiture of conveyances used to transport prohibited merchandise. S. 1694 provides for mandatory forfeiture throughout the bill; the Administration believes that all the forfeiture provisions of this bill [1/] should likewise be mandatory. The Administration believes that subsection (b) creating presumptions and prima facia evidence is one of the most significant aspects of the bill.

Section 122: Part one of this section changes the standard for the issuance of a search warrant from "cause to suspect" to "probable cause." The Administration supports this change. Probable cause is the proper standard for the issuance of a search warrant where criminal sanctions attach. Cause to suspect has been interpreted through case law to be eqivalent to probable cause. This change merely codifies the case law interpretation of the former standard. Part two of this section would extend the authority of Customs to seek a search warrant for two new classes of property they are: (a) any property which is subject to forfeiture under any provision of law enforced or administered by the Customs Service; (b) any document, container, wrapping, or other article which is evidence of a violation of any law enforced or administered by the Customs Service.

Section 123: This section changes the mandatory forfeiture language of 19 U.S.C. §1595a to permissive forfeiture.

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1/ There are forfeiture provisions other than those contained in Section 120.

The Administration does not support this change. The mandatory forfeiture provisions serve as the most significant deterrent available to law enforcement and provides the harshest sanctions to carriers of contraband. The Administration feels that innocent third parties have adequate protections throughout the course of any instituted forfeiture proceeding. This section clarifies the list of items which may be forfeited. The Administration supports this portion of the section.

Section 124: This section establishes a mechanism for disposing of seized property. It does not adopt the terms of section 115 of S.1694 which allows for donation of forfeited property to federally chartered non-profit youth groups. The Administration believes that the donation provision of S.1694 is a good idea and should be included within the bill.

Section 125: This section provides for rewards to informants not to exceed $100,000 for information concerning violations of customs laws regardless of whether any duty is actually recovered, any fine paid, or property forfeited. The Administration supports these modifications. Because law enforcement must rely so heavily on informants, the incentives built into this section should provide increased incentive for informant cooperation.

Section 126-127: These sections make minor definitional changes in the statute which the Administration supports.

Section 128: This section broadens the "exchange of information" provision of S.1694 to allow such exchange where the action is undertaken by a foreign customs or law enforcement agency, or is in relation to a proceeding in a foreign country. The Administration supports the broadening of the exchange of information provision. Dealing in contraband is an international problem. The more cooperation among the nations of the world the better. Such cooperation is the key to a successful campaign to reduce the flow of contraband into the United States and other cooperating nations.

Section 129: This new section to the Tariff Act allows for the stationing of U.S. Customs officers in foreign countries for the purpose of examining merchandise and persons prior to their arrival in the United States. It further provides for reciprocal arrangements with cooperating foreign countries. The Administration supports this effort to foster greater international cooperation in the detection of illegal movement of contraband across international boarders.

Section 130: This section authorizes the Secretary to issue witness subpoenas, take evidence, and require production of records relevant to enforcement of the Bank Secrecy Act. The summons authority provision overlaps the provision in the House Banking Bill, Title V, Subtitle A. The H.R. 5410 summons authority should be included in the Bank Secrecy Act (31 U.S.C. §5318) rather than Title 19. In terms of substance, the

Administration strongly supports this provision. The investigation, prosecution, and ultimate forfeiture of property related to Bank Secrecy Act violations is a key aspect of the Administration's efforts to eradicate drug trafficking and its by-products in the United States.

Section 131: This section provides exemptions from general federal contracting provisions in order to allow greater flexibility in the establishment and operation of undercover investigations. The Administration recognizes the need to conduct such operations and the importance of allowing the participating agencies the greatest degree of flexibility possibile. This provision establishes adequate accounting safeguards to insure that all assets utilized in such operations are strictly accounted for. Consequently, the Adminstration supports this provision.

Section 141: This section modifies 19 U.S.C. §1613 to authorize broader use of Customs Forfeiture Fund assets. Such uses include the purchase of evidence of smuggling of controlled substances and violations of the currency and foreign transaction reporting requirements if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances. It further authorizes the use of fund assets for equipping the law enforcement functions of Customs Service vehicles, vessels, and aircraft. The Administration supports the expanded use of the Forfeiture Fund for the purposes set forth in this provision.

Title II. Amendments to the Controlled Substances Import and Export Act

Section 201: This section authorizes appropriations for Fiscal Year 1987 for the United States Customs Service. The Department of Justice is not in a position to comment on the feasibility of such fiscal appropriations.

Section 211: This section expands coverage of 19 U.S.C. §1432a to include any vessels which have received merchandise while in the customs waters beyond the territorial sea or while on the high seas. Such vessels, under this section, will be deemed to arrive or have arrived from a foreign port or place for the purposes of sections 1432, 1433, 1434, 1448, 1585, and 1586 of Title 19 United States Code. The Administration approves of this provision as it makes Customs regulatory requirements applicable to vessels which have received foreign merchandise.

Section 212: This section subjects recreational vessels to the same Customs reporting requirements upon entry from a foreign port as are applicable to non-recreational vessels. This section requires pleasure boaters to report their arrival within 24 hours after their arrival from a foreign port and subjects such vessels to all applicable Customs requlations. The Administration supports this provision as it subjects recreational vessels, which are often used in smuggling operations, to Customs

reporting regulations as well as all other applicable regulations.

Section 221: This section broadens coverage under the statute to include the manufacture or distribution of a controlled substance imported into the "waters within a distance of 12 miles of its coast." This section also makes it unlawful for any United States citizen on board any aircraft or any person on board any aircraft owned by a United States citizen or registered in the United States to manufacture or distribute or possess with intent to manufacture or distribute a controlled substance.

The Administration supports this provision as it enables the prosecution of acts of manufacture or distribution committed outside the territorial jurisdiction of the United States which have a definite effect upon the United States. (Note, the terms of this provision are not contained within H.R. 5394).

Section 222: This section changes the penalty provisions of the existing statute. This section refers to "quantity and amount of a controlled substance specified in Section 401(b)(1)(D)." As such section has not yet been enacted it cannot be determined what amount said quantities of controlled substances this section is referring to. Presently, 21 U.S.C. §960(b)(1) has a three-tier penalty structure depending upon the quantity and amount: 20 years; 15 years; 5 years. This section sets a minimum of 10 years up to a maximum of 30 years and increases fines up to $2,000,000 for an individual and up to $5,000,000 for a person other than an individual. This section also changes the penalty for second offenses. A second offender would be subject to a minimum of 20 years' imprisonment to life and a fine $4,000,000 for an individual and up to $10,000,000 for a person other than an individual. This section also changes the penalty provisions for amounts and quantities enumerated in Section 401(b)(1)(A). See previous comment regarding determination of amounts and quantities under an as yet unenacted section. Minimum terms of 5 years are imposed with a maximum term of 20 years. Fines are up to $2,000,000 for an individual and up to $5,000,000 for a person other than an individual. Second offenses are punishable by not less than 10 years and not more than 40 years and a fine up to $4,000,000 for an individual and up to $10,000,000 for a non-individual. Under the new section dealing with penalty provisions for amounts and quantities enumerated in Section 401(b)(1)(A), imposition or execution of sentences under this paragraph shall not be suspended, probation shall not be granted, and there shall be no parole eligibility. In addition, a special parole term of at least 4 years for first time offenders and 8 years for second offenders is imposed.

The penalties provided for in this section are based on an earlier draft of H.R. 5394. As a consequence, they do not jive with many of the terms of H.R. 5394. The Administration has commented on H.R. 5394 and, to the extent of those comments, suggest that H.R. 5394 replace this section.

Section 223: This section increases fines to $500,000 for an individual and $2,000,000 for a non-individual. Assuming there is not a conflict between this fine structure and the fine structure referred to in Section 222 which makes reference to quantities and amounts enumerated in sections not yet enacted, the Administration supports this provision.

Section 224: This section increases fines to $250,000 for an individual and $1,000,000 for a non-individual. Again, assuming there is not a conflict between this fine structure and the fine structure referred to in Section 222, the Administration supports this provision.

Section 225: This section increases fines for a violation of 21 U.S.C. §954 to $100,000 for an individual and $500,000 for a non-individual. The Administration supports this provision.

Section 226: This section adds a new provision to the Controlled Substances Import and Export Act by imposing a term of imprisonment for a minimum or 20 years to life for an offense committed under subsection (b)(1) or subsection (b)(4) of Section 1010 of this Title, from which death or serious bodily injury results. The Administration supports this provision.

Title III. Denial of Trade Benefits to Uncooperative Drug Source Nations

Sections 302 through 306: These sections are interrelated and must be analyzed together. Section 302 adds a provision to the statute which seeks to encourage drug-source nations to take measures to curb the drug trade by making the continuation of preferential trade benefits contingent upon their implementation of measures to curb the drug trade. Under the bill, the President would be required to determine and report to Congress in each fiscal year whether a foreign nation was a direct or indirect source of illegal drugs significally affecting the United States and if so, whether the source nation was cooperating with the United States by taking various steps (as specified in the bill) to curb the flow of drugs from that country to the United States. Section 303 requires the President to take action as specified in the bill if he determines pursuant to Section 302 that a drug-source nation has failed to implement measures to curb the drug trade. Sections 304 through 306 are merely reporting and definitional sections.

The Administration is concerned about the economic and political impact such actions taken by the President will have upon these nations. The Administration is also concerned that these provisions would unduly limit Presidential discretion in the conduct of U.S. foreign policy. Consequently, the Administration opposes these provisions.

Section 307: This section deletes paragraph 5 from 19 U.S.C. §1962(b). The provisions contained in paragraph 5 will now be

found in Section 302 of the bill. The amendments proposed under this section will have the same impact on the Carribbean Business Economic Recovery Act as they have on 19 U.S.C. §1962(b). This provision would have to be changed if the Administration's argument in favor of deleting Section 302 prevails.

TITLE IV

Coast Guard Drug Interdiction and Law Enforcement Act of 1986, H.R. 5406

The Administration does not support enactment of this bill at this time. The National Drug Enforcement Policy Board is conducting a study on air interdiction at this time. Pending completion of that study, and a finding of a need for new legislation and funding, specific legislative action on this issue is premature. The Board will make recommendations upon completion of the study. We do recommend that the Coast Guard be appropriated the full amount requested by the President's 1987 budget.

TITLE V SUBTITLE A

Money Laundering (Derived From a Banking Committee Bill (H.R. 5176))

The Administration supports this subtitle, but believes it can be improved. The subtitle contains some features that supplement those contained in Subtitle A of Title VI, including proposals made by the Department of the Treasury in consultation with the Department of Justice earlier this year (and introduced originally as H.R. 4573.) This subtitle does contain other provisions that are not as helpful to law enforcement as those contained in H.R. 5217 as originally reported by the Judiciary Committee. Many, but not all, of the provisions in H.R. 5217 are now contained in Subtitle A of Title VI.

On the positive side, Subtitle A of Title V adds a provision to the Bank Secrecy Act subjecting a person who causes or attempts to cause a financial institution to fail to file a required report or to file such a report containing false information to civil liability and to criminal prosecution. It also clarifies that a person who structures transactions to avoid the reporting requirements of the Bank Secrecy Act is subject to the sanctions of the Act. The subtitle also provides necessary enhancements to Treasury's Bank Secrecy Act enforcement authority, including administrative subpoena power, civil forfeiture for domestic currency reporting violations, and extension of the statute of limitations for civil penalties. Finally, it provides an exception to the Right to Financial Privacy Act (RFPA) (12 U.S.C. 3401 et seq.) for the provision of bank records which are relevant to a crime against the bank or its supervisory agencies.

However, this subtitle also amends the RFPA (12 U.S.C. 3403(c)) in a manner that is not as helpful as the way the provision was amended in H.R. 5217. (Subtitle A of Title VI now contains no amendment to 12 U.S.C. 3403(c).) The section presently provides that nothing in the RFPA shall preclude a financial institution from notifying a government agency that it "has information which may be relevant to a possible violation of any statute or regulation." An important part of the Administration's money laundering bill was to clarify this provision to ensure that it would allow banks to provide enough specific information about the nature of the violation and the parties involved to allow authorities to obtain a summons, subpoena, or search warrant for more information. H.R. 5217 did this by amending the section to state that: "Such notification may include the furnishing of details (including name, account number, and description of possible violation) sufficient [to allow the government to obtain compulsory process.]"

By contrast, Subtitle A of Title V amends the section to state that the information which may be provided "shall be limited to the names, addresses, and account numbers of persons, information concerning the persons and acts involved in any

possible violation, and the nature and a description of the possible violation. No information provided under this subsection may include financial records or, except to the extent provided in the preceding sentence, information identified with, or identifiable as being derived from, the financial records of any particular customer." This phraseology may cause banks to withhold information clearly showing a violation of law on the grounds that it may ultimately be ruled as identifiable as being derived from a particular financial record. The language used, to wit, "nature and description of the violation," may not be clear enough to convince banks that they may lawfully supply sufficient information to warrant the government's seeking the necessary search warrant or subpoena. This concern is particularly valid because this subtitle, unlike H.R. 5217, does not contain a provision stating that a bank that provides such information to the government in good faith is exempt from the RFPA's civil liability provisions. In general, the language in H.R. 5217 was more compatible with the new criminal reporting form recently adopted by bank supervisory agencies at the urging of the Attorney General's Bank Fraud Enforcement Working Group.

The subtitle adds a new section to the Bank Secrecy Act, 31 U.S.C. § 5325, requiring certain record keeping and reporting for transactions in excess of $3,000. Included in that section is a record keeping requirement for the purchase of cashier's checks and traveler's checks with over $3,000 in cash. This was a proposal Treasury was considering implementing by regulation for some time before this bill was introduced. A proposed Treasury regulation with this provision was published on August 25, 1986. We believe that inclusion of this provision in Subtitle A of Title V is unnecessary, and that there is adequate existing authority to accomplish these ends in the Bank Secrecy Act. Moreover, the inclusion of the provision with its $3,000 amount may constrain the Government's ability to respond to changing law enforcement needs.

Subtitle A of Title V also requires that the bank regulatory agencies to which responsibility for Bank Secrecy Act examination has been delegated by the Secretary of the Treasury promulgate Bank Secrecy Act compliance procedures and examine for compliance with those procedures. We believe it is imperative that, if this provision becomes law, these compliance procedures be subject to the approval of the Secretary of the Treasury who is the official responsible for Bank Secrecy Act enforcement and policy.

TITLE V Subtitle B

Drug Eradication Act - H.R. 5358

The Administration opposes enactment of this bill, which would provide a mechanism for the review and encouragement of foreign governments' drug-eradication and crop-substitution programs through the use of the United States Government's "voice and vote" in the "multilateral development banks," i.e., the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the African Development Bank, and the Asian Development Bank. If enacted, this proposal would mandate that the United States use both the "carrot" and "stick" to encourage drug-source countries to inaugurate or continue eradication/substitution programs. This would be accomplished by the United States Executive Directors of the multilateral development banks ("MDBs") supporting funding for those countries which institute such programs and maintain the scheduling agreed to for such action; those countries which did not enter into such programs, or which fell behind in their schedule, would face opposition from the United States in regards to developmental funding through the "MDBs." The opposition would be an instruction from the Secretary of the Treasury to the United States Executive Directors to vote against loans to countries whose compliance is not certified by the Administrator of the Drug Enforcement Administration in consultation with the Secretary of State.

Although the goals of this bill are worthy ones - drug eradication and crop substitution - the means provided to accomplish this end are both unnecessarily harsh and intolerably inflexible. Most importantly, questions regarding the conducting of foreign policy - which decisions related to such developmental funding must be considered - are, through the Constitution, part of the assigned powers of the President, and, as such, the discretion inherent to such powers should not be curtailed through a legislative enactment of this nature. In addition, the bill is inflexible in that it fails to acknowledge the need that many of these countries have to utilize such developmental funding for other, non-eradication/substitution programs, nor does the draft incorporate provisions for exclusion from the harsh cut-off provision in those instances where a country's funds must be used for unforeseen situations, such as natural disasters (e.g., earthquakes, floods).

TITLE VI SUBTITLE A

Money Laundering (Derived From a Judiciary Committee Bill (H.R. 5217))

The Administration supports this subtitle, with some qualifications. The Administration introduced comprehensive money laundering legislation over a year ago. This subtitle adopts most of the essential features of the original legislation in language which is generally acceptable.

The subtitle creates a new money laundering offense with a maximum twenty year sentence and the possibility of large fines and forfeiture. It includes a series of helpful amendments to the Right to Financial Privacy Act (RFPA) and other statutes which will facilitate money laundering investigations. The subtitle permits forfeiture in the United States of the proceeds of a foreign controlled substance offense where money laundering has occurred. We recommend that this latter provision be modified to cover all foreign drug proceeds, and to provide for the sharing of such proceeds with foreign governments under limited circumstances as provided in the Senate Money Laundering Bill, S. 2683. The subtitle should also be amended to include other provisions found in S. 2683 like amendments to the Bank Secrecy Act penalties and a provision permitting confidential sharing of information between enforcement agencies.

Controlled Substance Analogs, H.R. 5246

The Administration supports H.R. 5246 but with reservations. H.R. 5246 would amend the Controlled Substances Act by defining the term controlled substance analog and providing that such a substance shall be treated, to the extent intended for human consumption, as a controlled substance in schedule I for purposes of the Controlled Substances Act and the Controlled Substances Import and Export Act. The bill excludes from its coverage substances for which there is an approved new drug application under the Federal Food, Drug, and Cosmetic Act or with respect to which an exemption for investigational use under this Act is in effect.

The definition of the term controlled substance analog in H.R. 5246 is problematic. The bill defines this term to mean a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II, if one of the following two tests is satisfied: 1) the substance must have a stimulant, depressant, or hallucinogenic effect on the central nervous system; or 2) with respect to a particular person, such person must represent or intend that the substance have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance. Thus, the definition requires proof relating to both chemical structure and actual or intended effect, unlike the preferable provisions of S. 1437, developed by the Administration and adopted by the Senate, which would allow prosecution under either the chemical structure or effects prong of the definition. While understandable in theory, the House language in practice could result in unnecessary proof problems in trials of these cases. Jurors would have to predicate guilty findings on a unanimous finding of both "similar structure" and "similar actual or intended effect" under circumstances where conflicting "expert" testimony on either issue can reasonably be anticipated, despite the obvious illegal intention of the defendant.

H.R. 5246 is very similar to the controlled substance analog proposal in the Drug-Abuse Prevention and Treatment Act of 1986, Representative Dingel's proposal contained elsewhere in the House Democratic drug package. However, because of differences between the two proposals, they could not logically coexist if enacted.

TITLE VI SUBTITLE C

Narcotics Penalties Enhancements, H.R. 5394

The Administration supports H.R. 5394 with reservations. The bill significantly increases the penalties available for many Controlled Substances Act and Controlled Substances Import and Export Act violations, creates a new offense of using children to manufacture or distribute controlled substances unlawfully, calls for a study by the Attorney General of the need for legislation or regulations to control the diversion of legitimate precursor and essential chemicals to the illegal production of controlled substances, and includes technical amendments to the drug laws. The Administration has been in the process of drafting similar legislation including the precursor and essential chemicals legislation for some time.

One of the most significant features of the bill is its creation of two levels of enhanced penalties with mandatory minimum prison terms for unlawfully dealing in or importing enumerated quantities of specified substances, proposed 21 U.S.C. §§841(b)(1)(A) and (B) and 960(b)(1). In addition, the bill provides that if death or serious bodily injury results from an offense involving any of the drugs specified in these provisions or any schedule I or II substance or an amphetamine, the penalty shall be imprisonment for not less than 20 years or for life. This new provision expressly includes death or serious bodily injury resulting from the use of a substance involved in such an offense. These provisions will be a valuable prosecutive tool if enacted. However, a single tier of mandatory minimum sentences, along with greater maximum sentences, for sections 841(b)(1)(A) and 960(b)(1) is more consistent with the new sentencing guidelines system which will be in effect by the end of next year. The sentencing guidelines can treat in a comprehensive and consistent manner all the factors, including the weight of the controlled substance involved, that are relevant to a proper sentence in a particular case. Consequently, the applicable statutory scheme should be simple but sufficiently broad in range to permit both consistent and adequate sentencing of drug traffickers. An unduly complex statutory scheme may make the development of comprehensive and consistent guidelines more difficult.

Our major concern involving the bill is that it does not completely address the sentencing issues that arise in connection with mandatory minimum terms of imprisonment. In none of the affected provisions is there a proscription against the running of such a term of imprisonment concurrently with any other term of imprisonment. Finally, it is imperative that wherever a provision establishes mandatory minimum prison terms the court should retain the power to impose a term below the prescribed minimum if the defendant provides substantial assistance in investigating and prosecuting others. Without such express authority provided to the court, defendants will be unlikely to

cooperate with prosecutors, particularly after indictment or trial. In addition, the bill contains some technical errors which will cause confusion if not corrected.

White House Conference, H.J. Res. 631

The Administration opposes this resolution which would require a White House Conference composed of Cabinet officials, governors, mayors, and individuals from several private callings to discuss drug abuse and trafficking. The Conference would be required to take place nine months after the resolution's enactment and would last for an unspecified length of time. Following the Conference the President would be required to submit a report to the Congress followed by at least three annual reports on how the findings and recommendations of the Conference were implemented.

The Administration opposes the Conference because its responsibilities are already being carried out by the National Drug Enforcement Policy Board, created as part of the Comprehensive Crime Control Act of 1984, which the Attorney General chairs, and by the White House Office of Drug Abuse Policy. The Conference contemplated by H.R. 631 would be of such size and scope that it would divert resources and attention away from present efforts. The Conference's function of increasing public awareness about the menace posed by illegal drugs would, we believe, be duplicative of a number of other efforts in the public and private sector, efforts which have been aided considerably by the unprecedented media attention given to the drug problem following the drug deaths of celebrity athletes and the influx of "crack." Its function of sharing information is already being handled by drug conferences sponsored by the government. In sum, the costs of the Conference in terms of dollars and in terms of diverting the attention of those already heavily involved in combatting the drug menace outweigh any possible benefits.

Career Criminal Act Expansion, H.R. 4885

The Administration supports this bill which amends the Armed Career Criminal Act. The Act is presently set out as 18 U.S.C. App. II Sec. 1202, but it will be moved to 18 U.S.C. 924(e) when the Volkmer-McClure firearms bill takes effect in November. The Armed Career Criminal Act provides for mandatory imprisonment of at least 15 years, without probation, parole, or a suspended sentence, for persons who have three or more federal or state convictions for burglary or robbery and who possess a firearm. H.R. 4885 would amend the Act to make it applicable to anyone who possesses a firearm and who has any combination of three or more violent felonies or "serious drug offenses," a term defined to include any drug trafficking offense under federal or state law for which punishment of ten years or more is prescribed.

The Administration testified in support of this bill earlier this year. Amendments broadening the original proposal, suggested by the Department of Justice, have been incorporated in this version.

DRUG AND ALCOHOL DEPENDENT OFFENDERS TREATMENT ACT OF 1986 (H.R. 5076)

This bill modifies the authority of the Director of the Administrative Office of the United States Courts to contract with any public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person or an addict or drug-dependent person.

Though contracting for treatment of persons convicted of alcohol abuse or the use of illegal drugs may be an unnecessarily expensive or useless course to follow, retaining the authority to enter into such contracts in appropriate circumstances may be useful. Accordingly, the Administration does not oppose this proposal.

TITLE VI Subtitle G

Budget Increases for Law Enforcement (H.R. 5393)
(Drug Enforcement Enhancement Act)

While there is a clearly recognized need for enhanced law enforcement resources in the drug area, most provisions of this legislation will serve no useful purpose unless previously made appropriation cuts are first restored.

This bill constitutes only an authorization for an increase, not an actual appropriation. This authorization comes at a time when the House of Representatives has just cut the President's 1987 budget request for most Department of Justice components by more than the increases "authorized" by this legislation. For example, the $31,000,000 increase for United States Attorneys just exactly represents what the House cut from the President's request, and falls far short of the House cut in the overall Legal Activities budget request -- and it is only an authorization!

Only for D.E.A. would there be a net increase in FY 1987, if the authorized increase is even appropriated, but the full amount of this increase could not be absorbed in FY 1987 due to the time necessary to recruit and properly train new agents. Although the level of resources identified for the Drug Enforcement Administration (DEA) in this bill is consistent with the enhanced resources contained in the 1988 OMB budget, the priorities and program areas that are supported by both of these packages, i.e., the bill and the 1988 OMB Budget, are not identical. For example, roughly half of the bill's resources for DEA in 1987 would address the problem of the diversion of licit drugs into the illicit market. In terms of DEA's strategic plan, this area represents neither an immediate DEA priority nor a need for additional resources for either 1987 or 1988. Also, DEA is not seeking resources in 1988 for its State and Local Task Forces program. The bill includes a significant increase for this program in 1987. It should be pointed out that both packages do include additional resources for DEA's Foreign Cooperative Investigations program as well as its air operations. In summary, there is no argument as to the level of resources for DEA, only to what areas those resources should be applied and the timing.

New prison construction is a top priority. Further study is needed to determine if the full amounts authorized can be expended in the designated fiscal years due to the time needed to plan, select, and secure new prison sites.

The House reduced the President's budget for prison construction by close to $30 million. Restoration of this cut is essential to cover existing construction plans. The addition of $140 million for construction and $7 million for salaries and expenses (correctional officers) in 1987 could be used by the Federal Prison System (FPS) to construct three additional Federal

Correctional Institutions (FCIs) and hire additional correctional officers. However, the additional $450 million proposed in 1988 for construction would provide for approximately nine additional prisons over the request for three FCIs in the 1988 OMB budget. It is unlikely that FPS could actually construct a total of 12 prisons in any year. Likewise, an additional $500 million in 1989 would add approximately ten prisons to the current plan of six new prisons for that particular year.

The bill makes no provisions in terms of additional authorization for the Federal Bureau of Investigation (FBI) or the Immigration and Naturalization Service (INS). The FBI along with DEA has a major role in the enforcement of this Nation's drug laws. The INS plays an integral part in the interdiction of drugs as well as terrorists and other criminal aliens along our Nation's borders. INS is a primary agency of the Federal Government that is in a position to prevent the entry of drugs and drug smugglers. Immigration inspectors at the ports of entry and the border patrol agents between ports are the Nation's first line of defense. Therefore, both the FBI and INS' roles in this fight against drugs needs to be recognized.

In addition, the bill failed to include additional authorizations for either the Support of U.S. Prisoners or the Fees and Expenses of Witnesses appropriations. Both of these will be affected by the buildup in drug law enforcement and prosecution resources provided in this bill.

Restoration of appropriations cuts, rather than cosmetic increased authorizations, would constitute a meaningful contribution to the war on drugs. The Administration does not oppose Section 2 of the bill as it only constitutes an authorization, but suggests that the real answer lies in first restoring previously made cuts as part of the appropriations process followed by more carefully considered additional increases at the appropriations stage.

The Administration strongly opposes Section 3 of the bill. It makes little sense to provide several hundred million dollars in new grant programs to state and local law enforcement agencies at a time when state and local budgets are in far better shape than the federal budget. It also is unwise to have the Drug Enforcement Administration as the agency charged with managing the discretionary program. The Bureau of Justice Assistance (BJA) and its predecessor agency, the Law Enforcement Assistance Administration, have nearly 20 years experience administering Federal programs for support of State and local criminal justice agencies. It does not seem logical now to vest this responsibility in another Federal agency which has little experience in the direction or administration of these programs. Adding BJA as a support unit for DEA in the administration of the discretionary program without decision making authority would result in an awkward chain of command at the very least.

Additionally, we see no reason for splitting the discretionary program into a program with no match requirement and one with 50 per cent state or local match.

It should be noted that the recently enacted program of equitable sharing of forfeited assets will ultimately provide as much, and potentially more, funding to local law enforcement than a new bureaucratic red-tape plan which will only serve to further erode the clear division of responsibilities between the state and federal governments.

The Administration does fully support Section 4 of the proposed legislation. The new paragraph will make it clear that the Attorney General is authorized to make payments from the Fund for program-related support and control expenses. This action will greatly enhance the Administration's overall effectiveness in combatting drugs. The Attorney General will, of course, retain the authority to make payments for case-related expense pursuant to paragraph (c)(A)(i).

## TITLE VII

Federal Aviation Act Amendments

The Administration supports passage of these amendments with the reservations which are noted below.

Section 701 of the proposed amendments would amend Section 902(b) of the Federal Aviation Act of 1958, 49 U.S.C. App. 1472(b). That section currently makes it a Federal crime for anyone: to knowingly and willfully forge, counterfeit, alter, or falsely make a federal aviation certificate; to knowingly sell, use, attempt to use, or possess with intent to use any fraudulent aviation certificate; or to knowingly and willfully display or cause to be displayed on any aircraft any markers that are false or misleading as to the nationality or registration of the aircraft. Section 701(a) of the proposed amendments specifies that states are not preempted from establishing their own criminal penalties for such conduct. It also specifies that states are not precluded from establishing criminal penalties for the offense of obtaining a federal aviation certificate through the making of a false statement or through the use of false, fraudulent, or forged documents. This is currently a federal offense under 18 U.S.C. 1001. Section 701(b) would enable state and local law enforcement personnel to enforce such state laws by requiring the operator of an aircraft to produce the aircraft's certificate or registration at their request. The Administration notes that all of the aforementioned criminal conduct frequently occurs in connection with the use of private aircraft to smuggle narcotics or other controlled substances into or within the United States.

The Administration can conceive of no reason why states should be precluded from enacting criminal legislation proscribing such conduct. Indeed, it feels that they should be encouraged to do so. By enabling state and local law enforcement personnel to investigate, identify, and arrest persons involved in such activities, such legislation would substantially increase the risk of detection of such persons at little or no cost to the Federal Government. And because persons arrested under such state statutes would be tried in state courts, there would be no increase in the caseload of federal courts and prosecutors as a result of such legislation. Thus, the Administration strongly supports enactment of Section 701 of the proposed amendments.

Section 702 of the proposed amendments substantially expands the scope of criminal conduct proscribed by Section 902(q) of the Federal Aviation Act of 1958, 49 U.S.C. App. § 1472(q). That section currently makes it a federal crime for anyone to knowingly and willfully serve as an airman in any capacity without an airman's certificate authorizing him to serve in such capacity, in connection with the transportation by aircraft of controlled substances. Under Section 703 of the proposed amendments, it

would also be a criminal offense for a person to do any of the following acts in connection with the knowing transportation of any controlled substance:

> (i) to knowingly and willfully operate or attempt to operate an aircraft eligible for federal registration where the aircraft is unregistered or the registration has been suspended or revoked or, if the person is the owner of the aircraft, to permit another to operate or attempt to operate such an aircraft;
>
> (ii) to knowingly or willfully employ or utilize any airman in any capacity where the airman has no valid airman's certificate to serve in such a capacity;
>
> (iii) to knowingly and willfully operate an aircraft in violation of FAA regulations regarding the display of navigation or anticollision lights; and
>
> (vi) to knowingly operate an aircraft with a fuel tank or fuel system that has been installed or modified in violation of FAA regulations. 1/

This part of Section 702 would, therefore, substantially increase the number of offenses with which persons who engage in the aerial trafficking of controlled substances could be charged and correspondingly increase the maximum criminal penalties faced by such offenders. The Administration strongly supports enactment of this part of Section 702.

Another part of Section 702 would provide for the seizure and forfeiture of aircraft used in the transportation of controlled substances where the aircraft have fuel tanks or fuel systems which have been installed or modified in violation of FAA regulations. It also would provide that the Secretary of Transportation may authorize such officers and agents as are necessary to carry out such seizures and forfeitures and that such officers and agents would have the same powers and duties as customs officers with respect to seizures and forfeitures under the customs laws. The Administration has two objections to this part of Section 702. First, aircraft which are used or intended for use in the transportation of narcotics are already subject to seizure and forfeiture under Title 21, United States Code, Section 881. thus, this part of Section 702 is simply

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1/ The proposed amendment would also create a rebuttable presumption that any person who (i) operates an aircraft on which a fuel tank has been installed or modified and (ii) fails to carry an FAA certificate approving such installation or modification, will be presumed to have violated this section.

unnecessary. We agree that aircraft which have fuel tanks or fuel systems installed in violation of FAA regulations should be forfeited. However, the Administration deems it inadvisable to empower the Secretary of Transportation to authorize officers and agents to conduct such seizures and forfeitures. Agents of the U.S. Customs Service, the DEA and the FBI already have such authority, are well trained in conducting such seizures and forfeitures, and are available in sufficient numbers to meet the existing need for such seizures and forfeitures. Empowering the Secretary of Transportation to authorize additional officers and agents, therefore, is not only unnecessary, but would require expenditure of scarce budget dollars for training and development of such officers and agents and would create administrative difficulties in areas such as coordination of enforcement policies among the agencies charged with conducting such seizures and forfeitures. For these reasons, the Administration opposes enactment of this part of Section 702.

Section 703 of the proposed amendments would require the Secretary of Transportation to conduct a study on the relationship between the usage of controlled substances and highway safety. It specifies that the study shall include "a simulation of driving conditions, emergency situations, and driver performance under various drug or dosage conditions" and shall "determine the dosage levels for controlled substances performance." Such a study presumably would require the administration of controlled substances to human subjects who would then engage in simulated driving exercises. Such a procedure might be appropriate for less dangerous controlled substances (e.g., Schedules III, IV and V) where (i) the subjects have a verified medical need for such substances and (II) the substances are administered and the tests are conducted under close medical supervision. However, the Administration feels that certain controlled substances (e.g., those presently in Schedules I and II) are considered so inherently dangerous to under any circumstances. Thus, the Administration opposes enactment of this proposed amendment to the extent that the study provided for thereunder would involve the administration of inherently dangerous controlled substances to human subjects.

DRUG ABUSE EDUCATION AND PREVENTION ACT OF 1986 (H.R. 5378)

This legislation (1) mandates that the Secretary of Education establish federal programs of drug-abuse education and prevention in elementary and secondary schools and institutions of higher education; (2) establishes a National Advisory Council on Drug Abuse Education and Prevention; (3) sets forth criteria for state and local use of funds made available under this Act, with certain percentages allotted to federal and state programs involving named locations or programs; (4) mandates that the Secretary of Education, in conjunction with the Secretary of Health and Human Services, establish a national public education and prevention program on drug abuse, as detailed; and (5) authorizes that not to exceed $10 million may be taken from the FOJ Assets Forfeiture Fund and not more than $10 million from the Customs Forfeiture Fund to fund the provisions of this Act, while extending the life of the two funds through 1989.

The Administration supports efforts to eliminate drug use among students through drug prevention programs in our schools. A temporary and focused national program is a logical next step to assist school districts to establish the needed drug prevention programs. The approach of H.R. 5378 has many positive features, such as:

- programs are school based;
- focus is on early intervention;
- programs are founded on a partnership of all levels of government;
- participating schools are required to have a drug abuse program;
- the importance of law enforcement is recognized;
- state administrative costs are limited to five percent; and,
- funding is provided on a matching basis with the States.

However, the federal government must ensure that the funds it provides are used for effective drug education and prevention programs. H.R. 5378 fails to provide sufficient safeguards that assure federal funds will be spent on effective well-conceived programs. Specifically, the bill should add provisions for school districts to:

- specify their no-drug policy, including the student conduct codes and procedures they will employ to eliminate the sale or use of drugs on school premises;

- provide funds to develop and implement only curriculum materials and counseling programs that present a clear and consistent message that drugs are wrong and harmful;

- permit the use of funds to involve parents in drug prevention activities, as well as in drug education programs;

- permit use of funds to support enhanced security measures in schools;

- conduct and describe in their initial application for funds a candid assessment of the extent and nature of the school's drug problem. In applying for third year funding, the school district should demonstrate progress in achieving and maintaining a drug-free school; and,

- match from local funds one-third of total program costs in the second and third year and plan for maintaining the program after expiration of the three-year federal grant.

In addition to such amendments, certain provisions of this proposed legislation should be eliminated or modified.

- The postsecondary component distorts the focus of the bill by allocating monies to an area that requires a different approach. Postsecondary institutions need to establish policies and controls to enforce an anti-drug environment. While many postsecondary institutions recognize they have a drug problem on campus, they have not sought federal money. Moreover, the critical need is for education and prevention efforts among younger students.

- The proposed clearinghouse would create unneeded new bureaucracy by duplicating existing national clearinghouses.

- The requirement that the program include a national media campaign is an unnecessary aspect of the legislation. A substantial national media campaign is already underway and federal efforts may simply replace what is already being done.

- It is unclear how the State would calculate the set-aside for programs for high school dropouts. Moreover, this program would be difficult to implement and little evidence exists of viable models of drug prevention programs aimed exclusively at the dropout population.

Finally, the integrity of a national program such as that proposed by this bill requires that certain functions reside at the national level. Functions such as research, surveys, demonstration and dissemination are clearly appropriate functions for the federal government. Therefore, sufficient funds available under this bill should be allocated for national improvement activities at the discretion of the Secretary of Education.

DRUG ABUSE PREVENTION AND TREATMENT ACT OF 1986

This proposed legislation (1) authorizes appropriation of $180 million for FY'87, including $30 million made available to the Agency for Substance Abuse Prevention (to be established in ADAMHA) and $120 million to be allotted to the states for treatment and rehabilitation services pursuant to a formula prescribed by the Secretary of Health and Human Services; (2) establishes an unpaid advisory board of 15 members to advise the Director of ASAP; (3) mandates that the Secretary of HHS contract with the Institute of Medicine of the National Academy of Sciences to study the extent and adequacy of public, private, and other coverage for drug-abuse treatment; (4) mandates that the President call a White House Conference on Drug Abuse and Drug Trafficking Control to increase public awareness of the drug problem, pool information and experience, and assist in formulating a national strategy; (5) amends Title 21 to include provisions relating to controlled substance analogs; (6) specifically addresses the coordination of efforts to address substance abuse among Indians; (7) establishes an unpaid Advisory Commission on the Comprehensive Education of Intercollegiate Athletes to investigate and advise Congress on issues related to athletic programs at colleges and universities in the U.S., some of which relate to drug abuse; and (8) mandates that alkyl nitrites and their isomers be treated as a drug for the purposes of the Federal Food, Drug and Cosmetic Act.

The Administration opposes the core of this legislation which seeks to set up a new agency and various advisory boards to address the problem of the use of illegal drugs. Such proposals are based on the out-dated and discredited notion that the federal government needs to set up new structures and bureaucracy to deal with old problems. Illegal drug use is not a new problem, or an old problem which has been ignored, in spite of the renewed Congressional interest in it. Most of the governmental structures needed to address the problems of illegal drug use have been in place for quite some time. In addition, this Administration has committed unprecedented resources to, and developed innovative approaches in, both law enforcement and other disciplines to combat illegal drug use. Thus, the Administration opposes this effort to turn back the clock and propose expensive governmental actions as if the slate were completely clean and no one had ever considered these issues before. Establishing an Agency for Substance Abuse Prevention, yet another White House Conference, and miscellaneous advisory boards are simply unnecessary expenditures of resources.

With respect to Title 7 of the bill, providing that alkyl nitrites and their isomers be treated as drugs for purposes of the Federal Food, Drug, and Cosmetic Act, the Administration believes that control of such substances would be more effectively accomplished by adding them to the schedules of controlled substances in the Control Substances Act. The change proposed in the bill would only put the substances within the jurisdiction of the Food and Drug Administration, a jurisdication which concerns only the manufacture and shipment of drugs under the Food, Drug, and Cosmetic Act. It appears that treating the substances as controlled substances under the law enforcement jurisdiction of the Drug Enforcement Administration is the most practical approach this problem.

RECOMMENDATIONS OF THE COMMMITTEE ON POST OFFICE AND CIVIL SERVICE

This proposal (1) mandates that OPM develop and maintain, in cooperation with programs for the prevention, treatment, and rehabilitation of federal employees who are alcohol or drug abusers; (2) provides that any records generated under these programs shall be confidential as provided in Section 523 of the Public Health Service Act; (3) mandates that OPM report as to the types of programs made available, the costs associated with these programs, training requirements, and suggestions for further needed legislation; (4) mandates that agency heads, OPM, and the Secretary of HHS coordinate the conveyance to federal workers of drug and alcohol abuse information, including information concerning the availability of programs for treatment and the administrative or criminal penalities associated with drug and alcohol abuse by federal workers; (5) mandates that OPM determine the feasibility of providing for federal health insurance coverage among federal workers for treatment of alcohol and drug abuse associated problems, including counseling and medical treatment, with a pilot program being instituted in at least one standard metropolitan area; (6) amends 18 U.S.C. 1716(a) to include controlled substances as nonmailable matter.

The Office of Personnel Management has submitted detailed comments on this legislation to the Office of Management and Budget. In sum, this proposal is unnecesssary, burdensome, and potentially extremely costly.

TITLE XI

Indian Substance Abuse Prevention Act

The Administration opposes enactment of Subtitle A of this bill, which would require the Secretary of Health and Human Services and the Secretary of the Interior to enter into a Memorandum of Agreement to coordinate existing federal and tribal programs and to consider new or modified programs aimed at both the prevention and the treatment of alcohol and substance abuse among Indian peoples. Specifically, the bill would (i) amend the Indian Elementary and Secondary School Assistance Act to provide federally assisted educational programs aimed at preventing alcohol and substance abuse among Indian youths; (ii) provide for the construction, staffing and operation of 11 regional treatment facilities for Indians suffering from alcohol or substance abuse, as well as on-reservation treatment centers or halfway houses for the treatment and rehabilitation of youthful abusers or youths convicted of alcohol or drug offenses; and (iii) increase the maximum criminal penalties which may be imposed by tribal courts, provide training for BIA and tribal law enforcement and judicial personnel in the investigation and prosecution of narcotics offenses and in the prevention and treatment of alcohol or substance abuse, and provide assistance to the Papago Indians in investigating and apprehending illegal narcotics traffickers known to operate on that part of the Papago reservation directly adjacent to Mexico.

The Departments of Health and Human Services and Interior opposed enactment of similar legislation in testimony before the Interior and Insular Affairs Committee, and in the Senate before the Select Committee on Indian Affairs. (Testimony regarding H.R. 1156 and S. 1298.) While the Administration agrees that combatting alcoholism and drug abuse among American Indians and Alaska natives is an important goal in the nationwide battle against substance abuse, the Administration regards the proposed legislation as unnecessary because federal efforts in this regard have already been improved and better coordinated. Moreover, the Administration believes that the bill seeks to implement programs at the national level which are more suited to the local level, where they can be carried out more effectively and efficiently.

The proposal to increase the maximum penalty from six months to one year that a tribal court may mete out under 25 U.S.C. 1302 is strongly objectionable. Although assertedly motivated by the desire to "enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics on Indian reservations," this proposal would apply to all offenses, not just narcotics offenses. Moreover, the proposal is somewhat pointless and irrational as an anti-drug measure, since even one year is a clearly insufficient penalty for most drug violations, and since federal law covers, generally at felony levels, virtually all drug offenses committed anywhere in the United States, including Indian reservations.

Most fundamentally, the increased penalty is objectionable because of the uneven quality of justice administered by tribal courts. The various tribal court systems vary tremendously in sophistication, fairness, and approximation of the kind of justice available in federal and state courts. Accordingly, Congress made a considered judgment when it enacted 25 U.S.C. 1302 to limit the maximum punishment imposable by a tribal court to that of a petty offense, i.e., six months' imprisonment. We believe this judgment remains valid today and represents a fair balancing of the interests of tribal governments with those of Indian citizens in the enjoyment of their civil liberties. (Tribal courts have no jurisdiction over non-Indians.)

The Administration objects to certain parts of Subtitle C, which concerns drug enforcement activities in the "insular areas of the United States outside the customs area of the United States and states freely associated with the United States." It objects to Section 201 of that Subtitle, which requires the President to report annually concerning domestic and international drug interdiction efforts. Such reports constitute an unnecessary and duplicative burden considering the vast number of reports already required by Law.

The Administration also strongly objects to those parts of Section 202(b), (d), and (e) which require DEA and the FBI to assign specified numbers of agents to Puerto Rico and the Virgin Islands. The Administration feels that these requirements constitute an unprecedented, undue, and highly inadvisable restraint on the discretion of those agencies to determine where and how to allocate personnel and equipment in order to most effectively discharge their law enforcement responsibilities. DEA assigns its limited agent resources based on a detailed staffing review conducted each winter. The review is based on performance indicators, drug abuse trend data, drug priorities and the agency's overall strategy to place resources where they can reach the highest levels of the drug traffic. The staffing review provides for a systematic and analytical assessment of areas in greatest need of drug enforcement resources.

Unfortunately, the numerical allocation of agent resources to particular geographic areas or jurisdictions through legislation usurps the agency's ability to manage its resources in an efficient and most effective manner. While we can appreciate the desire to dedicate resources to Puerto Rico, Guam and the Virgin Islands, we cannot support this type of management intervention by the legislative branch and still meet our overall objectives and mission set forth by the Congress in our authorization and appropriation. Furthermore, to meet the pressing demands of the drug problem, we need to ensure that the agency retains sufficient flexibility to quickly and definitively reallocate its resources to areas of greatest need.

Nor do we support Section 202(e) which directs the Coast Guard to assign and maintain at least one patrol vessel in

St. Thomas and St. John, and one patrol vessel in St. Croix, Virgin Islands. The Coast Guard already maintains one patrol vessel in St. Thomas and has just recently assigned four patrol vessels to Roosevelt Roads, Puerto Rico. We believe the extra patrol vessel specified for St. Croix would be redundant coverage as the squadron of four vessels in Puerto Rico are fully intended to patrol the areas near the U. S. Virgin Islands.

The Administration does not support Section 202(b) which directs the Coast Guard to assign and maintain at least four patrol vessels in Guam and the Northern Marianas Islands. We are not aware of any threat assessment or intelligence which indicates that any of these insular areas or freely associated areas constitute either a source of, or a transshipment point for, narcotics entering the United States. We also have no intelligence to indicate that large quantities enter these areas by vessel. The Coast Guard currently has a patrol vessel homeported in Guam that we consider sufficient for operational requirements in the area.

We understand that the above provisions mandating specific deployment of personnel will be changed to mere recommendations. While we greatly welcome this change, we still oppose these provisions as unwarranted by current conditions and regard them as an undue interference with management decisions within the Executive Branch.

TITLE XII

Reorganization of Executive Branch, H.R. 5266

Although the Administration firmly believes that the National Drug Enforcement Policy Board, chaired by the Attorney General, and the White House Office of Drug Abuse Policy currently coordinate activities among the various federal agencies involved in combatting drug trafficking and abuse in an effective manner, the Administration does not object to H.R. 5266, which would require the President to submit to the Congress not later than six months after the date of enactment recommendations for legislation to reorganize the Executive branch "to more effectively combat drug trafficking and drug abuse." While we do not presently believe that any reorganization which would require authorizing legislation is necessary, we would, if called on to do so by the Congress, conduct a careful study to determine if any such reorganization and necessary authorizing legislation would be helpful.

THE WHITE HOUSE

WASHINGTON

September 19, 1986

MEMORANDUM FOR DONALD T. REGAN

FROM: RALPH C. BLEDSOE

THROUGH: ALFRED H. KINGON

SUBJECT: Drug Abuse Program Directive

Attached is a memorandum for your signature directing Fred Ryan, in his role as Director of Public Sector Initiatives, to prepare a draft letter to the CEOs of Fortune 500 companies for the President's signature. The letter will outline our philosophy and goals for the national crusade against drug abuse, and ask these leaders to establish or continue company policies for a drug-free workplace.

This action was included in the report of the Domestic Policy Council's Working Group on Drug Abuse Policy, and was approved by the President at the Cabinet meeting on September 11, 1986.

THE WHITE HOUSE

WASHINGTON

September 19, 1986

MEMORANDUM FOR THE DIRECTOR OF PRIVATE SECTOR INITIATIVES

FROM: DONALD T. REGAN

SUBJECT: The President's Drug Abuse Program

As you know, the President has approved major new initiatives designed to achieve a drug-free America. Two of these are:

- o mobilize management and labor leaders in the private sector to fight drug abuse in the workplace, and
- o encourage all citizens and private sector groups to join the First Lady's drug abuse prevention awareness campaign.

Consistent with these, please draft a letter to chief executive officers of Fortune 500 companies for the President's signature. The letter should outline the philosophy and goals of our national crusade against drug abuse, acknowledge the many management efforts already underway, and emphasize the important role corporations can assume in their community. These leaders should be asked to establish or continue company policies aimed at a drug-free workplace, and to support national and community efforts to wipe out illegal drug use.

You should coordinate the preparation of the letter with the White House Drug Abuse Policy Office, and work with Carlton Turner in handling follow-up responses. Results should be periodically reported to the President through the Domestic Policy Council.

THE WHITE HOUSE

WASHINGTON

September 19, 1986

MEMORANDUM FOR DAVID CHEW
ALFRED KINGON

FROM: RALPH BLEDSOE Ralph Bledsoe

SUBJECT: Presidential Message to All Employees

Attached are a Presidential message to all Executive Branch employees, and an accompanying memorandum for department and agency heads. The "all hands" memorandum is based on comments received following the clearance process of yesterday. The only comments not completely followed were by Peter Wallison, the primary one being that a letter should be used instead of a Presidential memorandum. It was felt the letter would be much more expensive, because the method of communication would have to be more precise, i.e. names and addresses. The memorandum format, while a bit bureaucratic, is accepted practice, and the duplication and distribution mechanisms are in place and less expensive. We have incorporated some of Peter's editorial comments, and have shortened the memorandum from the earlier version.

For distribution, you might wish to provide each department and agency head with a quality master copy of the President's message. They could produce copies from the master for distribution to all employees in their organization.

THE WHITE HOUSE

WASHINGTON

September 19, 1986

MEMORANDUM FOR THE PRESIDENT

FROM: ALFRED H. KINGON

SUBJECT: Memorandum to Heads of Executive Departments and Agencies Regarding a Drug-Free America

As a result of the various policies and programs you have approved concerning the Administration's drug abuse program, a series of memoranda to different people are being prepared for your signature. This is one of them and it goes to the heads of all departments and agencies concerning a drug-free workplace, helping employees to obtain assistance when needed, and working with the private sector and state and local governments.

I recommend that you sign this memo.

Attachment

THE WHITE HOUSE

WASHINGTON

DRAFT

September 19, 1986

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Federal Initiatives for a Drug-Free America

As you know, I have approved several major new initiatives to achieve a drug-free America. These require the support and commitment of department and agency heads and senior staff.

One of our goals is a drug-free workplace, both for the Federal government and for private companies that work with the government. To achieve that goal, all Federal department and agency heads should:

- Expand drug abuse awareness and prevention programs for the Federal workforce. The aim is to:
  - Increase each employee's awareness of the health, economic, and social costs of illegal drug use;
  - Ensure that each employee is aware that unauthorized possession of a controlled substance is a crime; and
  - Increase each employee's awareness of what can be done to identify and combat illegal drug use, not only in the workplace but also in homes and communities.
- Develop a plan for achieving the goal of a drug-free workplace, in accordance with Executive Order 12564, which I signed on September 15, 1986.
- Reach beyond the Federal workforce by developing and promulgating guidance to government contractors concerning our philosophy and procedures for achieving a drug-free workplace.
- Send letters to the state and local leaders of your counterpart organizations encouraging them to purge drug abuse from their workplaces.

THE WHITE HOUSE

WASHINGTON

DRAFT

A second major goal is to increase public awareness and prevention of drug abuse. To reach that goal, you should:

- Broaden your Employee Assistance Program to include drug prevention and education for employees and their families.

- Provide incentives and recognition for your agency employees who work with the private sector in developing new and innovative awareness and prevention programs.

- Pursue opportunities to increase drug abuse prevention activities among the private sector groups with which your agency works, though workshops, meetings, special events and the distribution of educational material.

You should proceed on these initiatives as soon as possible. The Departments of Justice and Health and Human Services and the Office of Personnel Management will be prepared to provide assistance as needed. Please report progress on these important initiatives to me through the Domestic Policy Council.