NLWJC - Kagan

DPC - Box 042 - Folder 006

Tobacco-Background

February 20, 1997

MEMORANDUM FOR ELENA KAGAN

FROM: Elizabeth Drye

SUBJECT: Background for Tobacco Meeting with Skip Humphrey's Staff

Luanne Nyberg and Doug Blanke of AG Humphrey's staff will brief us Friday at 10:00, in the Ward Room, on Humphrey's views on possible tobacco legislation. Humphrey, and 21 other state Attorneys General, are suing tobacco companies to recover tobacco-related state health care costs. Humphrey prefers that challenges to FDA's tobacco rule and liability suits be fought out in the courts and not preempted by Congressional action. Nevertheless, he is leading an effort among the AGs to draft legislation acceptable to him and anti-tobacco groups to inform any debate in the Congress. His staff will advocate that the White House stand firm in support of FDA's rule and that the White House fight for very progressive legislation if the rule is struck down in the courts.

This memo briefly reviews the President's tobacco initiative and recent events affecting it, and discusses Humprhey's proposal. Additional background materials are attached. Our goal at tomorrow's meeting should be to get a clear picture of Humphrey's and, to the extent possible, of other AG's concerns. As noted below, I do not think a legislative deal will be put forward in the near term, and we are not pursuing one, so the meeting won't address any pressing decisions..

Contents of FDA's Rule

On August 28, 1996, the President announced FDA's final rule: "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents." The rule aims to reduce children's access to tobacco and reduce tobacco's appeal to youth. It's goal is to reduce smoking among young people by 50% over 7 years. FDA issued the rule after finding that cigarettes and smokeless tobacco are delivery devices for nicotine, an addictive drug, and are therefore subject to regulation under the Food, Drug, and Cosmetic Act.

> **Key provisions to restrict access**: requires age verification and face-to-face sale (except for mail orders); eliminates free samples; prohibits sales of single cigarettes; and bans vending machines and self-service displays (except in adults-only facilities).
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> **Key provisions to restrict appeal**: bans outdoor advertising within 1,000 feet of schools and publicly owned playgrounds; permits black-and-white text-only advertising for all other outdoor advertising, including billboards, signs inside and outside of buses, and inside stores; permits black-and-white text-only advertising in publications with "significant" youth readership (those with more than 15 percent or 2 million youth readers); prohibits sale or giveaway of gym bags, caps, and clothes, and other products with tobacco logos; prohibits brand-name sponsorship of sporting teams, entries, or events (but permits in corporate name).

File - Tobacco - general / background materials

Implementation Timetable

Most of the provisions of the rule take effect August 28, 1997. Two provisions take effect later this month -- a prohibition on the sale of tobacco products to persons under age 18 (already state law in all states), and a requirement that retailers check photo identification for all individuals under age 27. The prohibition on sponsorship is effective on August 28, 1998. In the coming months, FDA will also propose to require tobacco companies to educate children and adolescents about the danger of cigarettes through a national multi-media campaign.

Litigation

Immediately after FDA issued the proposed tobacco rule in August 1995, four sets of plaintiffs -- including manufacturers of cigarettes and smokeless tobacco, the American Advertising Federation, and the National Association of Convenience Stores -- sued to enjoin the FDA regulations from taking effect. The suits have been consolidated, and Judge William Osteen in the U.S. District Court for the Middle District of North Carolina is hearing the case. Plaintiffs filed motions for summary judgment on October 15, 1996, after the final rule had been issued. The motions are based on three principle grounds: (1) Congress has withheld from FDA the authority to regulate tobacco; (2) the Food, Drug, and Cosmetic Act does not authorize FDA to regulate tobacco (i.e. FDA does not have jurisdiction under the Act); (3) and the First Amendment free speech protections prohibit the restrictions. The judge heard oral arguments on February 10, and expects to rule within 5-10 weeks from that date.

Legislative Activity

Rumors have surfaced occasionally over the last several month that key industry people, anti-tobacco lawyers, and members of Congress are brokering legislation that would override the FDA rule, establish a non-FDA regulatory program, establish a multi-billion dollar lawsuit settlement fund, and grant tobacco companies immunity from future liability (see attached WSJ article). Commissioner Kessler's resignation and Erskine's appointment inadvertently gave some momentum to these rumors. But the President has been clear that he is standing firmly by the FDA proposal, and industry and trial attorneys do not appear to be anywhere close to a deal. Further, key members of Congress -- including Congressman Bliley and Senator Faircloth -- have said they have no plans to introduce legislation affecting FDA's rule and are waiting for the courts to resolve the matter. In short, I do not expect that a legislative debate is imminent. The legislative outlook may change again, however, if the court stays FDA's rule.

Highlights of Humphrey's proposal

Humphrey's legislative proposal goes well beyond the Administration's rule (see attached). It codifies the FDA rule and adds a number of additional regulatory provisions, including provisions to: require owners of non-residential buildings to reduce the public's exposure to environmental tobacco smoke; require companies to disclose cigarette additives; and limit federal preemption of state and local tobacco control laws. In addition, the legislation creates a multi-billion dollar fund

-- paid for by industry -- to compensate states litigating for recovery of health care costs and private plaintiffs who choose to settle tobacco suits, and to fund health-related initiatives. Two-page and ten-page descriptions of the proposal are attached.

I would be happy to discuss this issue with you at greater length at your convenience.

Attachments: HHS Fact Sheet: Key Elements of President's Plan
Final Rule
HHS Fact Sheet: Reducing Children's Use of Tobacco: A Chronology
HHS Fact Sheet: Legal Issues Relating to FDA Rule
Outlines of Humphrey's draft legislative proposal -- 2 pager and 10 pager
WSJ article on rumored legislative deals.

HHS FACT SHEET

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

August 23, 1996

KEY ELEMENTS OF PRESIDENT'S PLAN
TO REDUCE CHILDREN'S USE OF TOBACCO

President Clinton today established the nation's first-ever comprehensive program to protect children from the dangers of tobacco and a lifetime of nicotine addiction with the publication of the Food and Drug Administration's final rule on tobacco and children, and with FDA's initiation of a process to require tobacco companies to educate children and adolescents -- using a national multi-media campaign -- about the dangers of cigarettes and smokeless tobacco.

This comprehensive and coordinated plan is intended to reduce tobacco use by children and adolescents by 50 percent in seven years. It builds on previous actions taken by Congress and others such as the ban on television advertising and state laws to prohibit the sale or use of tobacco by children. It follows recommendations by the American Medical Association and the National Academy of Science's Institute of Medicine. Experts have consistently recommended that the keys to achieving the goal are reducing access and limiting the appeal to children. This ambitious initiative accomplishes that objective while preserving the availability of tobacco products for adults.

Reducing Easy Access by Children

Children and adolescents continue to have easy access to tobacco products. In 13 studies reviewed by the Surgeon General, minors were successfully able to buy cigarettes 67 percent of the time. Of the nine studies of vending machines, illegal sales were successful on average 88 percent of the time. The FDA rule will:

- Require age verification and face-to-face sale (except for mail orders), and eliminate free samples, and the sale of single cigarettes and packages with fewer than 20 cigarettes.
- Ban vending machines and self-service displays except in facilities where only adults are permitted, such as certain nightclubs totally inaccessible to persons under 18.

Reducing Appeal to Children

Tobacco products are among the most heavily advertised and promoted products in the United States, with the tobacco industry spending more than $6 billion annually. Children and adolescents are widely exposed to and influenced by this advertising and promotion. One study found that 30 percent of 3-year-olds and 91 percent of 6-year-olds could identify "Joe Camel" as a symbol of smoking. Another study found that 86 percent of underage smokers who buy their own cigarettes purchase one of the three most heavily advertised brands. The FDA rule will:

- Ban outdoor advertising within 1,000 feet of schools and publicly-owned playgrounds. Permit black-and-white text-only advertising for all other outdoor advertising, including billboards, signs inside and outside of buses, and all point-of-sale advertising. Advertising inside "adult only" facilities like nightclubs can use color and imagery.
- Permit black-and-white text-only advertising in publications with significant youth readership (under 18). Significant readership means more than 15 percent or more than 2 million. There are no restrictions on print advertising below these thresholds.
- Prohibit sale or giveaway of products like caps or gym bags that carry cigarette or smokeless tobacco product brand names or logos.
- Prohibit brand-name sponsorship of sporting (including teams and entries) or entertainment events, **but** permit it in the corporate name.

Educating Children About Real Dangers of Smoking

In addition to the rule and its provisions aimed at reducing access and appeal, the FDA will propose to require each of the six tobacco companies with significant sales to children to educate young people about the real health dangers associated with the use of tobacco products. This national multi-media campaign, including television spots, would be monitored for its effectiveness.

The FDA will initiate the process under Section 518 of the Federal Food, Drug, and Cosmetic Act, which allows the FDA to require companies to notify consumers about the unreasonable health risks of their products.

Focusing on Children

In reviewing the more than 95,000 individual comments received from the public during the comment period, the FDA made a number of changes aimed at more narrowly targeting the rule to its goal: reducing the use of tobacco products among children and adolescents under 18. Changes include:

- Vending machines and self-service displays will be allowed in facilities where only adults are permitted. By removing vending machines and self-service displays from sites accessible to children, the rule's goal will still be achieved, and the Agency will closely monitor the effectiveness of this provision for two years to determine if additional restrictions are necessary.
- Mail-order sales will be permitted. This provision will allow adults in rural or isolated areas to have access to these products. There was little evidence presented that children use mail order at the present time, but the Agency will monitor future trends.

- Advertising using color and imagery will be permitted in "adult only" facilities totally inaccessible to persons under 18, provided that the advertising is not visible from the outside and is not removeable.

Some state and local laws that are different from, or in addition to, this rule will be preempted under this rule. However, the Agency is establishing an expedited process for state and local government to apply for waivers for more stringent laws or regulations. The FDA believes the requirements it is establishing set an appropriate floor but as a matter of policy, the Agency should leave open the possibility for state or local governments to adopt more restrictive requirements. State laws not related to the rule -- such as local bans on smoking in restaurants -- will not be affected.

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The 1995 proposed rule provided a 90-day comment period (extended to 144 days in the Federal Register of October 16, 1995, 60 FR 53560). As discussed previously, the revised burden hour estimates in the final rule are based partially on comments received.

The information collection provisions in the proposed rule were approved under OMB no. 0910–0312. Because of changes made since the proposed rule, FDA has submitted the information collection provisions of the final rule to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the information collection provisions in the final rule.

XVII. Congressional Review

This final rule has been determined to be a major rule for purposes of 5 U.S.C. 801 *et seq.*, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). FDA is submitting the information and reports as required by that statute.

List of Subjects

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 804

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 897

Advertising, Cigarettes, Labeling, Sale and distribution, Smokeless tobacco.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 801, 803, 804, 807, and 820 are amended and a new part 897 is added as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. Section 801.126 is added to subpart D to read as follows:

§ 801.126 Exemptions for cigarettes and smokeless tobacco.

Cigarettes and smokeless tobacco as defined in part 897 of this chapter are exempt from section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act.

PART 803—MEDICAL DEVICE REPORTING

3. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

4. Section 803.19 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 803.19 Exemptions, variances, and alternative reporting requirements.

* * * * *

(f) Manufacturers as defined in part 897 of this chapter shall submit medical device reports concerning cigarettes and smokeless tobacco under this part only for serious adverse events that are not well-known or well-documented by the scientific community, including events related to contamination, or a change in any ingredient or any manufacturing process.

(g) User facilities are exempt from submitting medical device reports concerning cigarettes and smokeless tobacco under this part.

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

5. The authority citation for 21 CFR part 804 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

6. Section 804.25 is amended by adding a new paragraph (c) to read as follows:

§ 804.25 Reports by distributors.

* * * * *

(c) Distributors as defined in part 897 of this chapter shall submit medical device reports concerning cigarettes and smokeless tobacco under this part only for adverse events related to contamination.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

7. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374).

8. Section 807.65 is amended by adding a new paragraph (j) to read as follows:

§ 807.65 Exemptions for device establishments.

* * * * *

(j) Distributors of cigarettes or smokeless tobacco as defined in part 897 of this chapter.

PART 820—GOOD MANUFACTURING PRACTICE FOR MEDICAL DEVICES: GENERAL

9. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: Secs. 501, 502, 515, 518, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e, 360h, 360i, 360j, 371, 374).

10. Section 820.1 is amended by adding and reserving new paragraph (e) and adding new paragraph (f) to read as follows:

§ 820.1 Scope.

* * * * *

(e) [Reserved]

(f) This part does not apply to distributors of cigarettes or smokeless tobacco as defined in part 897 of this chapter.

11. New part 897 is added to read as follows:

PART 897—CIGARETTES AND SMOKELESS TOBACCO

Subpart A—General Provisions

Sec.

Subpart B—Prohibition of Sale and Distribution to Persons Younger Than 18 Years of Age

Authority: Secs. 502, 510, 518, 519, 520, 701, 704, 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360h, 360i, 360j, 371, 374, 393).

Subpart A—General Provisions

§ 897.1 Scope.

(a) This part sets out the restrictions under the Federal Food, Drug, and Cosmetic Act (the act) on the sale, distribution, and use of cigarettes and smokeless tobacco that contain nicotine.

(b) The failure to comply with any applicable provision in this part in the sale, distribution, and use of cigarettes and smokeless tobacco renders the product misbranded under the act.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of Title 21, unless otherwise noted.

§ 897.2 Purpose.

The purpose of this part is to establish restrictions on the sale, distribution, and use of cigarettes and smokeless tobacco in order to reduce the number of children and adolescents who use these products, and to reduce the life-threatening consequences associated with tobacco use.

§ 897.3 Definitions.

(a) *Cigarette* means any product which contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a)(1) of this section.

(b) *Cigarette tobacco* means any product that consists of loose tobacco that contains or delivers nicotine and is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements pertaining to cigarettes shall also apply to cigarette tobacco.

(c) *Distributor* means any person who furthers the distribution of cigarettes or smokeless tobacco, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for the purposes of this part.

(d) *Manufacturer* means any person, including any repacker and/or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished cigarette or smokeless tobacco product.

(e) *Nicotine* means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl)pyridine or $C_{10}H_{14}N_2$, including any salt or complex of nicotine.

(f) *Package* means a pack, box, carton, or container of any kind in which cigarettes or smokeless tobacco are offered for sale, sold, or otherwise distributed to consumers.

(g) *Point of sale* means any location at which a consumer can purchase or otherwise obtain cigarettes or smokeless tobacco for personal consumption.

(h) *Retailer* means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted under this part.

(i) *Smokeless tobacco* means any product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

Subpart B—Prohibition of Sale and Distribution to Persons Younger Than 18 Years of Age

§ 897.10 General responsibilities of manufacturers, distributors, and retailers.

Each manufacturer, distributor, and retailer is responsible for ensuring that the cigarettes or smokeless tobacco it manufactures, labels, advertises, packages, distributes, sells, or otherwise holds for sale comply with all applicable requirements under this part.

§ 897.12 Additional responsibilities of manufacturers.

In addition to the other responsibilities under this part, each manufacturer shall remove from each point of sale all self-service displays, advertising, labeling, and other items that the manufacturer owns that do not comply with the requirements under this part.

§ 897.14 Additional responsibilities of retailers.

In addition to the other requirements under this part, each retailer is responsible for ensuring that all sales of cigarettes or smokeless tobacco to any person comply with the following requirements:

(a) No retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age;

(b)(1) Except as otherwise provided in § 897.16(c)(2)(i) and in paragraph (b)(2) of this section, each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age;

(2) No such verification is required for any person over the age of 26;

(c) Except as otherwise provided in § 897.16(c)(2)(ii), a retailer may sell cigarettes or smokeless tobacco only in a direct, face-to-face exchange without the assistance of any electronic or mechanical device (such as a vending machine);

(d) No retailer may break or otherwise open any cigarette or smokeless tobacco package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the quantity in the minimum cigarette package size defined in § 897.16(b), or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use; and

(e) Each retailer shall ensure that all self-service displays, advertising, labeling, and other items, that are located in the retailer's establishment and that do not comply with the requirements of this part, are removed or are brought into compliance with the requirements under this part.

§ 897.16 Conditions of manufacture, sale, and distribution.

(a) *Restriction on product names.* A manufacturer shall not use a trade or brand name of a nontobacco product as the trade or brand name for a cigarette or smokeless tobacco product, except for a tobacco product whose trade or brand name was on both a tobacco product and a nontobacco product that were sold in the United States on January 1, 1995.

(b) *Minimum cigarette package size.* Except as otherwise provided under this section, no manufacturer, distributor, or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.

(c) *Vending machines, self-service displays, mail-order sales, and other "impersonal" modes of sale.* (1) Except as otherwise provided under this section, a retailer may sell cigarettes and smokeless tobacco only in a direct, face-to-face exchange between the retailer and the consumer. Examples of methods of sale that are not permitted include vending machines and self-service displays.

(2) Exceptions. The following methods of sale are permitted:

(i) Mail-order sales, excluding mail-order redemption of coupons and distribution of free samples through the mail; and

(ii) Vending machines (including vending machines that sell packaged, single cigarettes) and self-service displays that are located in facilities where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

(d) *Free samples.* No manufacturer, distributor, or retailer may distribute or cause to be distributed any free samples of cigarettes or smokeless tobacco.

(e) *Restrictions on labels, labeling, and advertising.* No manufacturer, distributor, or retailer may sell or distribute, or cause to be sold or distributed, cigarettes or smokeless tobacco with labels, labeling, or advertising not in compliance with subparts C and D of this part, and other applicable requirements.

Subpart C—Labels

§ 897.24 Established names for cigarettes and smokeless tobacco.

Each cigarette or smokeless tobacco package shall bear, as provided in section 502 of the act, the following established name: "Cigarettes", "Cigarette Tobacco", "Loose Leaf Chewing Tobacco", "Plug Chewing Tobacco", "Twist Chewing Tobacco", "Moist Snuff", or "Dry Snuff", whichever name is appropriate.

§ 897.25 Statement of intended use and age restriction.

Each cigarette or smokeless tobacco package, that is offered for sale, sold, or otherwise distributed shall bear the following statement: "Nicotine-Delivery Device for Persons 18 or Older".

Subpart D—Labeling and Advertising

§ 897.30 Scope of permissible forms of labeling and advertising.

(a)(1) A manufacturer, distributor, or retailer may, in accordance with this subpart D, disseminate or cause to be disseminated advertising or labeling which bears a cigarette or smokeless tobacco brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification, in newspapers; in magazines; in periodicals or other publications (whether periodic or limited distribution); on billboards, posters, and placards; in nonpoint-of-sale promotional material (including direct mail); in point-of-sale promotional material; and in audio or video formats delivered at a point-of-sale.

(2) A manufacturer, distributor, or retailer intending to disseminate, or to cause to be disseminated, advertising or labeling for cigarettes or smokeless tobacco in a medium that is not listed in paragraph (a)(1) of this section, shall notify the agency 30 days prior to the use of such medium. The notice shall describe the medium and discuss the extent to which the advertising or labeling may be seen by persons younger than 18 years of age. The manufacturer, distributor, or retailer shall send this notice to the Division of Drug Marketing, Advertising, and Communications, 5600 Fishers Lane (HFD–40), rm. 17B–20, Rockville, MD 20857.

(b) No outdoor advertising for cigarettes or smokeless tobacco, including billboards, posters, or placards, may be placed within 1,000 feet of the perimeter of any public playground or playground area in a public park (e.g., a public park with equipment such as swings and seesaws, baseball diamonds, or basketball courts), elementary school, or secondary school.

(c) This subpart D does not apply to cigarette or smokeless tobacco package labels.

§ 897.32 Format and content requirements for labeling and advertising.

(a) Except as provided in paragraph (b) of this section, each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, any labeling or advertising for cigarettes or smokeless tobacco shall use only black text on a white background. This section does not apply to advertising:

(1) In any facility where vending machines and self- service displays are permitted under this part, provided that the advertising is not visible from outside the facility and that it is affixed to a wall or fixture in the facility; or

(2) Appearing in any publication (whether periodic or limited distribution) that the manufacturer, distributor, or retailer demonstrates is an adult publication. For the purposes of this section, an adult publication is a newspaper, magazine, periodical, or other publication:

(i) Whose readers younger than 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence; and

(ii) That is read by fewer than 2 million persons younger than 18 years of age as measured by competent and reliable survey evidence.

(b) Labeling and advertising in an audio or video format shall be limited as follows:

(1) Audio format shall be limited to words only with no music or sound effects.

(2) Video formats shall be limited to static black text only on a white background. Any audio with the video shall be limited to words only with no music or sound effects.

(c) Each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, advertising permitted under this subpart D, shall include, as provided in section 502 of the act, the product's established name and a statement of its intended use as follows: "Cigarettes—A Nicotine-Delivery Device for Persons 18 or Older", "Cigarette Tobacco—A Nicotine-Delivery Device for Persons 18 or Older", or "Loose Leaf Chewing Tobacco", "Plug Chewing Tobacco", "Twist Chewing Tobacco", "Moist Snuff" or "Dry Snuff", whichever is appropriate for the product, followed by the words "A Nicotine-Delivery Device for Persons 18 or Older".

§ 897.34 Sale and distribution of nontobacco items and services, gifts, and sponsorship of events.

(a) No manufacturer and no distributor of imported cigarettes or smokeless tobacco may market, license, distribute, sell, or cause to be marketed, licensed, distributed, or sold any item (other than cigarettes or smokeless tobacco) or service, which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

(b) No manufacturer, distributor, or retailer may offer or cause to be offered any gift or item (other then cigarettes or smokeless tobacco) to any person

purchasing cigarettes or smokeless tobacco in consideration of the purchase thereof, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.

2128/98 (c) No manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entry or team in any event, in the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco. Nothing in this paragraph prevents a manufacturer, distributor, or retailer from sponsoring or causing to be sponsored any athletic, musical, artistic, or other social or cultural event, or team or entry, in the name of the corporation which manufactures the tobacco product, provided that both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995, and that the corporate name does not include any brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

Dated: August 22, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

NOTE: The following Annex will not appear in the Code of Federal Regulations.

BILLING CODE 4160-01-F

HHS FACT SHEET

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

August 23, 1996

REDUCING CHILDREN'S USE OF TOBACCO: A CHRONOLOGY

February 25, 1994: The Food and Drug Administration (FDA), responding to a petition asking FDA to regulate low-tar and low-nicotine cigarettes, writes a letter to the Coalition on Smoking or Health stating that the Agency will consider the question of whether it has jurisdiction over nicotine-containing tobacco products.

March 25, 1994: Food and Drug Commissioner David A. Kessler, M.D., testifies before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce on FDA's preliminary evidence -- including industry patents and analyses of nicotine-to-tar ratios -- that cigarette companies control the levels of nicotine in a manner that creates and sustains addiction in the vast majority of smokers.

April 14, 1994: The Subcommittee on Health and the Environment of the House Committee on Energy and Commerce hears testimony from the chief executives of seven tobacco companies on the industry's views on nicotine addiction and on industry practices with regard to nicotine, and each executive denies that nicotine in tobacco products is addictive.

April 28, 1994: The Subcommittee on Health and the Environment of the House Committee on Energy and Commerce hears testimony from two former Philip Morris scientists, Victor DeNoble and Paul Mele, on their company-sponsored research establishing the addictive properties of nicotine.

June 21, 1994: Food and Drug Commissioner David A. Kessler, M.D., testifies before the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce on evidence developed by the FDA of the cigarette industry's manipulation of nicotine, specifically one company's breeding of high nicotine levels in one strain of tobacco and the use of chemical compounds in cigarettes to enhance nicotine delivery to smokers.

August 2, 1994: FDA's Drug Abuse Advisory Committee holds a public hearing on the addictiveness of nicotine-containing tobacco products and concludes that products currently marketed contain nicotine at levels sufficient to create and sustain addiction in consumers.

August 10, 1995: President Clinton announces the proposed FDA rule to reduce the access and appeal of tobacco products to children and adolescents and his goal of reducing children's use of tobacco products by 50 percent within seven years of final Agency action. The rule is published the next day in the Federal Register and a public comment period begins.

January 2, 1996: The public comment period for the proposed FDA rule closes, with a total of more than 95,000 different comments -- more than 700,000 pieces of mail -- received.

January 18, 1996: The Department of Health and Human Services and the Substance Abuse and Mental Health Services Administration issue the final Synar Rule designed to ensure that states and territories adopt and enforce laws prohibiting the sale or distribution of tobacco products to children.

March 18, 1996: FDA re-opens the public comment period for the limited purpose of seeking comments on the statements of three former Philip Morris employees about that company's manipulation of nicotine in the design and production of cigarettes and to seek comments on further explanations of certain provisions in the proposed rule.

April 19, 1996: The limited comment period closes.

August 23, 1996: President Clinton announces the publication of the final FDA rule to restrict access and reduce appeal of tobacco products for children and adolescents and FDA's proposal to mount a national mass-media campaign for young people on the dangers of tobacco use.

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HHS FACT SHEET

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

August 23, 1996

LEGAL ISSUES RELATING TO FDA RULE ON CHILDREN AND TOBACCO

FDA Jurisdiction

FDA has concluded that cigarettes and smokeless tobacco are delivery devices for nicotine, a drug that causes addiction and other significant pharmacological effects. The Federal Food, Drug, and Cosmetic Act provides that a product is a drug or device if it is an article (other than food) "intended to affect the structure or any function of the body."

Nicotine in cigarettes and smokeless tobacco does "affect the structure or any function of the body" because:

- nicotine in these products causes and sustains addiction;
- nicotine in these products causes other mood-altering effects, including tranquilization and stimulation;
- nicotine in these products controls body weight.

Manufacturers of cigarettes and smokeless tobacco "intend" these effects because:

- the addictive and pharmacological effects are so widely known and accepted, a reasonable manufacturer can foresee the products will be used by consumers for these effects;

- consumers use these products predominantly for pharmacological purposes;
- manufacturers know that nicotine in their products causes pharmacological effects and that consumers use their products primarily to obtain these effects;
- manufacturers of these products design the products to provide consumers with a pharmacologically active dose of nicotine; and
- an inevitable consequence of the design of these products to provide consumers with a pharmacologically active dose of nicotine is to sustain consumers' addiction to nicotine.

Rule Protects Appropriate Commercial Speech

The U.S. Supreme Court has upheld restrictions on commercial speech if certain standards are met. Given that selling cigarettes and smokeless tobacco to children under 18 is already illegal in every state, the rule is aimed at regulating commercial speech to ensure that an illegal activity is not promoted. Furthermore, the rule is narrowly tailored to meet the tests established by the U.S. Supreme Court in its opinions on commercial speech, including 44 Liquormart, Inc. v. Rhode Island.

- Protecting the health of children under 18 is a substantial government interest justifying restrictions on tobacco advertising that appeals to children;
- Advertising and promotion have been shown to play a

material role in children beginning and continuing to use tobacco products, and therefore the regulations directly advance the government's interest; and

- Permitting unrestricted advertising in publications primarily read by adults and permitting companies to sponsor events in the corporate name -- instead of the brand identifications so appealing to young people -- are examples of how the rule is narrowly tailored to advance the government's interest.

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Telecom Victory Is Expected for Cities

FCC Prepares to Let Stand Troy, Mich., Ordinance On Phone Competition

By Bryan Gruley
Staff Reporter of The Wall Street Journal

WASHINGTON – Federal regulators are preparing to hand U.S. cities a significant victory by letting stand a Michigan city ordinance that imposes new fees and rules on cable operators, long-distance telephone companies and others seeking to compete against local phone monopolies.

Although the Federal Communications Commission isn't expected to endorse a 1995 ordinance adopted by Troy, Mich., the agency is preparing to leave it essentially untouched. Industry and city officials say that decision would remove a potential obstacle to other towns' adopting similar fees and rules for telecommunications rivals that want to dig up streets to install phone wires. With dozens of municipalities considering ordinances like Troy's, experts have said the fees could be worth as much as $20 billion a year.

The case is the first to test how far cities and towns can go in creating rules for new phone competitors under the telecommunications law passed by Congress last year. Municipalities contend that Congress explicitly gave them the right to control – and charge for – use of the "rights of way" beneath public streets and sidewalks.

Cable companies, long-distance concerns and other potential competitors for local phone business have urged the FCC to strike down Troy's ordinance and declare anything like it illegal. They contend such regulations could forestall the local competition envisioned by the telecom law. But FCC staffers are preparing a narrow decision that's expected to avoid a direct attack on Troy's ordinance, while accommodating Tele-Communications Inc., the Englewood, Colo., cable operator that asked the FCC to overturn the measure.

"It's unfortunate," said Daniel Brenner, vice president for law and regulatory policy at the National Cable Television Association, an industry lobbying group. "As long as cities attempt to create additional regulatory hoops that weren't intended by Congress or by the states, it's bad for competition."

Howard Symons, TCI's Washington lawyer, said the company "would certainly be disappointed if the [FCC] didn't use this opportunity. . . . A clear statement now would limit the damage to competition."

Cities are "trying to make sure our laws are up to date and facilitate" competition, said Eileen Huggard, executive director of the National Association of Telecommunications Officers and Advisors, a lobbying group in McLean, Va. "Putting ordinances in place puts the framework in place for all of us to operate under." Peter Letzmann, Troy's city attorney, said, "Regardless of how the [FCC] decision comes down, it has been a wake-up call to the municipalities to get their houses in order to deal with telecommunications and other deregulatory activities."

But potential phone rivals contend that Troy, a suburb of Detroit, and other cities have overstepped their bounds. The companies say they already have enough

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federal and state rules to follow without having to face a new patchwork of different rules in dozens of towns. In addition, in some states, local ordinances don't apply to entrenched phone companies that hold decades-old statewide franchises. Still, even those companies are objecting to the ordinances for fear that they eventually will be forced to comply.

The FCC remains a few weeks from a final decision, and critics of the ordinances are lobbying hard to persuade the commissioners to launch a broader attack on Troy's rules. In recent days, an unusual alliance of lobbyists for TCI, local phone companies, long-distance companies and consumers have been meeting with the commissioners to argue that Troy's ordinance violates the telecom law because it poses a "barrier" to competition.

Agency officials say they eventually hope to take steps to prevent cities from putting undue burdens on new phone competitors. But key officials – including FCC Chairman Reed Hundt – are worried that an order striking down Troy's ordinance wouldn't withstand a legal challenge likely to be brought by Troy and other cities. Other pending cases, such as one involving an ordinance affecting wireless carriers in Roseville, Minn., might offer stronger evidence that the telecom law has been violated, officials said.

TCI challenged Troy's ordinance last year after the city denied the company permission to upgrade its cable network. Although TCI said it had no intention of using the upgraded wires to offer phone service, the city suspected otherwise and demanded that TCI obtain a telecommunications franchise that would require it to pay fees equal to 5% of its annual revenues – in addition to fees it already pays under its cable franchise.

TCI then asked the FCC to exercise its authority under the telecom law to "preempt" the ordinance. But because TCI has no current plan to offer phone service, key FCC officials think it would be difficult to defend overturning Troy's ordinance in court. For example, the case would lack specifics on how the ordinance would affect TCI's ability to compete for phone service.

The FCC is considering limited steps that would compel Troy to permit TCI to upgrade its cable network. But Mr. Symons, TCI's lawyer, nevertheless argued that the FCC "has the ability and even the obligation to issue these broader rulings. If there was ever a case that called out for such a ruling it is this one, and this is the time." The Troy case was the subject of a page-one story in The Wall Street Journal in December.

FTC Staff Sees a Case Against RJR Joe Camel Ads

By Bruce Ingersoll
Staff Reporter of The Wall Street Journal

WASHINGTON – Federal Trade Commission staff investigators are urging the agency to bring an unfair-advertising case against R.J. Reynolds Tobacco Co., alleging that its colorful Joe Camel campaign targets youngsters.

In a memo, Jodie Bernstein, the FTC's director of consumer protection, recommended going after the nation's No. 2 cigarette maker, citing a vast amount of new evidence about the tobacco industry's advertising tactics that wasn't available in 1994 when the commission voted 3-2 against bringing a case over the Joe Camel character. The memo was sent two weeks ago.

The FTC staff reopened its investigation of the highly successful Joe Camel cartoon ads in the summer after receiving a bipartisan petition from 67 House members, led by Rep. Timothy Roemer.

"The commission is being presented new evidence and will respond to it accordingly," said FTC spokeswoman Victoria Streitfeld. "The company will be given a full opportunity to meet with commissioners before they vote."

The vote on the staff recommendation could come within a month or two, and some expect the commission – now headed by Clinton appointee Robert Pitofsky – to do an about-face on the Joe Camel ads. The FTC already has evinced a strong interest in protecting youngsters from unfair and deceptive ads by opening an investigation of Stroh's beer advertising on television.

The composition of the new commission is very helpful," said Rep. Roemer, an Indiana Democrat. "And the introduction of new evidence in the last few years will help make the case that Liggett [Group] and other companies have marketed cigarettes to kids."

RJR spokeswoman Peggy Carter said "nothing has changed" in the two years since the FTC voted against bringing a Joe Camel case. "There is no substantive research that indicates anything different," she said.

"They looked at tens of thousands of pages of our documents and concluded there wasn't any evidence to support the allegations about this campaign," she added. "They haven't asked for any new information."

In comments on the FDA regulations last year, RJR and other tobacco companies argued that the FTC vote should have disposed of the Joe Camel matter. But in a June 1994 letter to RJR, the FTC reserved the right to reopen the case, saying that the decision not to take any action shouldn't be construed as "a determination that a violation may not have occurred."

An FTC administrative complaint against the RJR Nabisco Holdings Corp. unit would open another front in the tobacco wars, greatly complicating the industry's efforts to fend off a growing array of legal and regulatory challenges.

One of the arguments that the industry advanced against the Food and Drug Administration's regulations to ban tobacco sales to people under 18 and sharply restrict cigarette and chewing-tobacco advertising was that only the FTC is empowered to crack down on unfair and deceptive advertising. Moreover, the FDA has provided the FTC staff with a trove of internal RJR documents and other industry files to buttress any case it might file.

If the FTC decides to move against RJR, it would allege that the Joe Camel ad campaign is unfair because it is likely to "cause substantial consumer injury" that children and teenagers "cannot reasonably avoid," federal trade lawyers said.

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In an interview earlier this year, Ms. Bernstein, the agency's consumer-protection director, said the grounds for making such a case would be strengthened by the fact that selling tobacco to young people is unlawful in all states. "If it's illegal to sell it, it's unfair to target kids," she said.

Liggett Group's settlement with 22 state attorneys general and numerous plaintiffs' lawyers last week is likely to further strengthen the FTC's enforcement hand. Liggett, a unit of Brooke Group Ltd. and the nation's smallest major cigarette company, agreed to turn over hundreds of internal documents and publicly acknowledge, among other things, that the industry targets underage smokers with its advertising.

In addition, the FTC will have the benefit of all the evidence the FDA accumulated over the past two years, including RJR marketing documents.

The FDA has alleged that the Joe Camel campaign is "the logical outgrowth" of a company policy to develop new brands that would appeal to "presmokers" and "learners" aged 14 to 18.

The Joe Camel cartoon, the FDA said, was the "centerpiece" of a campaign so successful that it quickly boosted the Camel brand's youth market share from less than 4% to at least 13%.

One of the FDA documents now in FTC hands is a 1993 RJR study showing that 86% of all youngsters aged 10 through 12 surveyed recognized Joe Camel, and of that group, 95% knew from billboard and store ads that the cartoon character sold cigarettes. RJR executives have steadfastly denied targeting minors with their ads.

Last year, in commenting on the FDA antismoking regulations, the FTC emphasized that the 1994 decision to drop the Joe Camel case doesn't "mean that cigarette and smokeless-tobacco advertising, in the aggregate, is not one of a number of factors that plays an important role in a youth's decision to use tobacco."

THE WALL STREET JOURNAL
WEDNESDAY, MARCH 26, 1997

File – Tobacco – Other

Market Ends Higher After Fed Raises Rates; AML, Integrated Systems Fall on Weak Outlooks

SMALL STOCK FOCUS

By Larry Bauman And Thomas Granahan
Dow Jones Newswires

NEW YORK – Small-capitalization and Nasdaq stocks rose, although they lost about half of their intraday gains after the news that the Federal Reserve nudged interest rates higher.

Small-cap and Nasdaq Stock Market issues managed to outperform the broad market and blue-chip sector, both of which slid into negative territory after the Fed announcement at 2:15 pm. EST.

The Russell 2000 index of small-capitalization stocks rose 1.22, or 0.35%, to 350.70. The Nasdaq Composite Index gained 5.42, or 0.44%, to 1248.06.

Earnings outlooks from a handful of companies were behind some of the larger moves.

AML Communications shed 2 7/16, or 36%, to 4 5/16 after saying its fourth-quarter results won't meet analysts' expectations.

The maker of products for the cellular-communications market said results for the period will come in "substantially short" of the mean estimate of 12 cents a share provided by First Call.

AML also said revenue for the quarter will be about $100,000 shy of the year-ago quarter's $2.6 million.

Integrated Systems lost 5 3/4, or 34%, to 11 3/8 after announcing that its fourth-quarter results will fall short of analysts' expectations. The company sees earnings for the quarter of 10 cents to 11 cents a share, well below forecasts of 19 cents.

Shares of Network Peripherals, a developer of computer network systems, lost 2 1/8, or 20%, to 8 3/8, closing above its low for the day of 7 1/4. The company expects to lose up to eight cents a share in its first quarter, while analysts had called for net income of three cents a share, according to First Call.

On the positive side, M.S. Carriers added 1 3/16, or 7%, to 17 5/8. The trucking concern said it sees first-quarter net income above Wall Street's expectations of 16 cents to 17 cents a share, compared with 14 cents in the year-ago period. The company cited additional capacity, strong freight demand and continuing cost reductions for its outlook.

American Realty Trust shot up 2 7/8 to 22. The Dallas real-estate investment company said it was contacted by the New York Stock Exchange regarding unusual trading activity that has been occurring recently. The company said it is its policy not to comment on variances in the trading volume or price of its stock.

Stride Rite (NYSE) tacked on 3/4, or 5.4%, to 14 3/4, a 52-week high and just below its high for the day of 15. The shoe company earned eight cents a share in its first-quarter, up from three cents in the year-ago quarter and two cents above analysts' mean estimate. Stride Rite also said it is encouraged by its prospects for the remainder of 1997.

Checkfree shares rallied 1 3/8, or 12%, to 12 5/8. The provider of electronic-commerce services will team with Fundtech to market and implement a multibank wire-transfer system called WireNext.

A bleak fourth-quarter outlook from International Imaging Materials sent shares slumping 2 1/4, or 12%, to 16 3/4. The company late Monday said earnings for the quarter will be 28 cents to 30 cents a share, below the mean expectation of 37 cents.

A downgrade from Hambrecht & Quist to "buy" from "strong buy" sent shares of Legato Systems reeling 2 5/8, or 14%, to 16 1/8.

Advancing issues edged out decliners, 2,006 to 1,957, on national market volume of 500 million shares and overall volume of 544 million, compared with 546 million and 595 million, respectively, Monday.

"The market's relieved the Fed has taken action," helping to lift the uncertainty that has loomed over it, said Peter Anderson, chief investment officer at IDS Advisory Group. On the other hand, he said, "rarely do you have one rate increase without a second one," and expectations of still-higher rates will be a bearish factor for stocks.

From a technical perspective, "the market doesn't look particularly healthy," Mr. Anderson said. The market's breadth–the relationship of advancing and declining issues–is "awful," he said. "Either the breadth has to improve, or the market will roll over."

If the market does start to retreat, Mr. Anderson sees some industry groups much more vulnerable to a correction than others. Interestingly, he doesn't expect technology stocks to be subject to much downward pressure, simply because the group has "already been trashed."

Consumers Remain Bullish on Economy As Job-Market Sentiment Stays Strong

By Jacob M. Schlesinger
Staff Reporter of The Wall Street Journal

WASHINGTON – Americans remain highly bullish about the economy overall and the job market in particular.

The Conference Board said yesterday that its consumer confidence index hit 118.5 in March, down slightly from February's 118.9 mark, which was revised upward. Consumer confidence last month was the highest since the summer of 1989, according to the private New York-based business-research group.

The index, based on a survey of 5,000 households, measures and combines public opinion on a range of economic issues such as business conditions, employment prospects and income expectations. In the index, the year 1985 is set at 100.

Among the most closely watched components is the gauge of consumer sentiment about the job market. The percentage of people saying that jobs are "plentiful" rose to 33.1% in March from 32.5% in February, reaching the highest mark in nearly eight years. The portion saying that jobs are "hard to get" inched up to 18.6% from last month's 18.5%, the lowest ever recorded in the Conference Board survey.

Federal Reserve Chairman Alan Greenspan, among others, has cited the growing worker confidence evident in the poll as a sign that inflation may soon escalate. His logic has been that unusually slow wage growth during the current economic expansion has kept prices in check – and that wages have been suppressed by widespread worker insecurity. Thus, increasing confidence presages demands for higher wages which, in turn, will result in higher prices. Yesterday, the Fed raised short-term interest rates a quarter of a percentage point, citing the risk of accelerating inflation.

Ed Yardeni, an economist with Deutsche Morgan Grenfell Inc., said that the report indicates that the unemployment rate, currently 5.3%, will slip below 5% this year. "There's a tight correlation between the percentage of respondents saying jobs are hard to get and the civilian unemployment rate," he said. But the lower unemployment rate will not necessarily lead to higher prices, he added. "I don't think companies can pass increased labor costs through," Mr. Yardeni said. "There's too much competition domestically and globally."

The high degree of confidence also likely means continued robust consumer spending over the next few months, said Lynn Franco, associate director of the Conference Board's Consumer Research Center. "I don't see anything that indicates they're going to be closing their wallets," she said. Reports of surprisingly high consumer spending so far this year have led many economists to boost estimates for economic growth. Yesterday's survey shows "things will continue on the path that they're on," said Ms. Franco.

CORRECTIONS & AMPLIFICATIONS

THE ANNUAL GROWTH RATE of the world's economies in the past three years increased by nearly one-third from the rate of the previous two decades. A page-one article March 13 said the rate nearly doubled. For the 20 years through 1993, the increase averaged 3% a year, not 2% as stated in the article.

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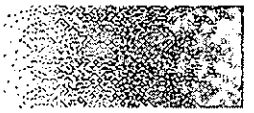
THE $75 MILLION seven-year notes of Spanish Broadcasting System Inc., which were priced Monday, are rated B-2 by Moody's Investors Service Inc. and single-B by Standard & Poor's Ratings Group. Yesterday's New Securities Issues column misstated the ratings as Caa by Moody's and triple-C-plus by S&P.

THE WALL STREET JOURNAL, WEDNESDAY, MARCH 26, 1997

Tobacco - background



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Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Elizabeth Drye/OPD/EOP, Christopher C. Jennings/OPD/EOP

cc:

Subject: Tobacco Poll

From 6-18-97 ABC News Poll

Do you think measures to reduce cigarettes smoking in the country have gone too far, or not far enough?

	Gone too far	Not far enough	About right	No opinion	
All	28	55	10		7
Smokers	43	35	13		7
Non-smokers	22	63	9	6	

Nicotine Regulation

Neither group favors the total ban of smoking either by restricting smoking only to the smoker's home or by outlawing the sale of cigarettes. But majorities of both favor finding a way to regulate the use of nicotine, including most of the 13 percent of Americans who say they're hooked on the stuff. But the two groups part on banning cigarette advertising, with six in 10 smokers against it and a similar number of non-smokers for it.

But when asked about some specific measures the government could take to reduce smoking, more agreement between the two camps emerges:

	Smokers	Non-smokers
Ban all cigarette advertising	38	58
Find a way to regulate the use of nicotine	68	77
Make smoking illegal in all places - indoors and out except a smoker's own home	16	40
Make it illegal for an adult to buy cigarettes	8	17