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Tobacco-Settlement: Environmental Tobacco Smoke

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Tobacco - Settlement: Environmental Tobacco Smoke

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RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

h. ind

Judges absent in h. ind

Tob - ntl - environmental tobacco smoke

EVC/CR/Christ
- Anything here?
BPR

November 16, 1998

MEMORANDUM TO: RON KLAIN, ANNE LEWIS, BRUCE REED AND MELANNE VERVEER

FROM: LORETTA UCELLI, GARY GUZY AND STEPHANIE CUTTER

SUBJECT: EVENT TO UNVEIL CAMPAIGN AGAINST SECOND-HAND SMOKE

Over the last year, EPA has been working with the Centers for Disease Control, American Medical Association and the Consumer Research Council to develop the first-ever national public service campaign to protect children from the dangers of secondhand smoke. This campaign includes television, radio and print public service announcements, funded by EPA, that aim to reduce children's exposure to secondhand smoke by using an "angel" and "devil" scenario that encourages parents not to smoke around their children.

Below is an event idea for the President, Vice President or First Lady to roll-out the PSA campaign. A White House event to announce this campaign would amplify this Administration's commitment to protecting children's health and highlighting continuing concerns about tobacco.

Background

In 1993, EPA released a major report on the health risks of breathing secondhand smoke. In addition to establishing secondhand smoke as a known human carcinogen, EPA's scientific study found that secondhand smoke poses significant health risks to children. Nearly one-quarter of American children are exposed to secondhand smoke in their homes every day, with enormous consequences. Secondhand smoke is known to contribute to aggravated asthma, serious ear infections, and respiratory tract infections such as bronchitis and pneumonia. There is also increasing evidence that secondhand smoke doubles the risk of sudden infant death syndrome. Parental smoking is estimated to cost $4.6 billion annually in direct medical expenditures for children. Asthma is now the leading cause of childhood hospital admissions, and can have a profound effect on the ability of families to conduct their day-to-day lives.

While a U.S. District Court struck down portions of EPA's risk report earlier this year, that ruling did not challenge EPA's findings on children's health. In fact, the tobacco industry has never openly challenged the health effects of secondhand smoke on children.

In the last Congress, the Administration explored, along with Senator Chafee, legislation to authorize a joint state and federal education and outreach program to help families become aware of these significant health risks and take steps to protect their children.

The campaign was developed after extensive focus group research by the Consumer Research Council. It is slightly different from the typical public health approach of calling for people to quit smoking because it has been carefully calculated to appeal to those who have chosen to smoke. The basic message of the campaign is – if you are going to smoke, don't jeopardize the health of your children. In addition, we are working with HHS to explore whether the Surgeon General could issue a national health advisory in conjunction with the rollout of the national media campaign. This health advisory -- which would appear in pediatrician offices and hospitals, parenting magazines, etc. – would warn parents of the significant health risks of secondhand smoke. At this point, it is unclear whether a health advisory is feasible.

EPA has contracted with the Plow Share Group to distribute the PSA campaign over the next year, focusing on the top1,050 network affiliates and 5,500 radio stations across the nation. Plow Share Group also has established a grassroots network of about 1,000 "partners," including local chapters of the American Lung Association, the American Medical Association and others, who will contact stations in their area to encourage local coverage.

Event

The President, Vice President or First Lady could roll out the national public service campaign against secondhand smoke and possibly announce a national health warning from the Surgeon General to protect children from secondhand smoke. A "White House" event could provide an opportunity to challenge the 106th Congress to take action on tobacco legislation. The event could take place at the White House, and the President, Vice President, or First Lady could be joined by members of Congress, mayors, representatives of the American Medical Association, American Academy of Pediatrics, and others. This event would demonstrate that this Administration is meeting its responsibility to protect the health of the nation's children in the absence of leadership and action in Congress.

Attached is a copy of the secondhand smoke PSA, which will be ready by mid-November. It may make sense to announce the national public service campaign and health advisory in January when the new Congress convenes and Washington refocuses its attention on issues after the holiday break.

If you have any questions, or would like us to further develop this idea, please call Loretta Ucelli, Gary Guzy or Stephanie Cutter at 202/260-9828.

cc: Kris Balderston, Cabinet Affairs
Cynthia Rice, DPC
Pat Ewing, OVP

Tob-ets - environmental
Tobacco smoke

Cynthia A. Rice 11/17/98 03:59:29 PM

Record Type: Non-Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

cc:

Subject: OSHA and ETS

Jerry found me after our staff meeting to say he's going over to OSHA to be the deputy with duties including the ETS rule and could we wait on directing OSHA to produce its rule in a year until he gets over there and gets the lay of the land?

The information I have -- which is from the deputy Jerry is replacing -- is that if they got their act together they could produce the rule in a year if they put aside the indoor air quality part.

I'll still plan to go ahead and talk to our outside friends to get a reaction.

Tob - ext - exec action
(and)
Tob - ext - environmental tobacco smoke

Proposal for an Executive Order on
Environmental Tobacco Smoke
July 1, 1998

Executive Order Proposal: To direct OSHA to issue an ETS standard separate from its pending Indoor Air Quality standard within one year.

Background: In 1991, OSHA identified problems with indoor air quality (IAQ) as an occupational hazard, and began the regulation process in order to protect workers. IAQ consists of two major components: (1) ETS; and (2) air pollutants (bacteria such as Legionnella and hazardous chemicals). The proposed standard focuses on the maintenance and operation of heating, ventilation, and air conditioning systems to reduce adverse health effects related to indoor air pollution and ETS.

OSHA issued a notice of proposed rulemaking in 1991, and proposed the final rule in 1994. Public hearings followed the publishing of the proposed final rule. The ETS provisions received all of the opposition, stemming from mainly the tobacco and hospitality industries. The docket compiled was the largest ever for any OSHA standard, and they have been analyzing the docket ever since. OSHA indicated that it is years away from completing the standard, in part because the scientific evidence both indicating that indoor air pollutants are a problem and supporting OSHA's proposed remedy are not very strong.

Protecting Workers from ETS: ETS exposure in the workplace poses significant risks to employees who are non-smokers. These risks include increased risk of lung cancer, heart disease, and eye and nose irritation in adults. ETS also increases the frequency and severity of asthma attacks, increases the risk of bronchitis and pneumonia, and has been strongly associated with reduced birth weight and sudden infant death syndrome (SIDS).

Proposed Executive Action: The President could direct OSHA to issue a separate ETS standard. OSHA estimates that if the President ordered a separate standard, more resources could be devoted to the project and a final regulation could be delivered to OMB in 12 to 18 months. They believe that the public climate is more open to such regulation at this time.

Potential Drawbacks of this Approach: Issuing a separate standard for ETS means abandoning the issue of indoor air pollutants, because the "benefits" in the cost/benefits analysis will be largely absorbed by the second-hand smoke benefits and addressing the problem of indoor air pollutants alone will be prohibitively expensive for employers. The AFL-CIO is the major stakeholder in OSHA and the indoor air pollutant standard, and will be disappointed that we are abandoning the cause. The public health community may also voice some criticism for the same reason, but their enthusiasm over the expedited ETS standard may outweigh their concern. The restaurant industry is likely to file suit once OSHA has complied with the Executive Order and the regulation is in place.

ToL - sct - environmental
to Lacco mube

COURTS DECISION TO OVERTURN EPA STUDY ON SECOND HAND SMOKE

July 20, 1998

Background: In 1993, EPA released a report, after five years of extensive scientific review, concluding that second-hand smoke causes lung cancer in adult nonsmokers and impairs the respiratory health of children. The agency classified second-hand smoke as a Group A known human carcinogen -- a designation that has been used by EPA for only 15 other pollutants.

On Friday, July 17, a U.S. District Court judge in North Carolina ruled that EPA's conclusions were flawed due to technical and procedural problems in its review of health data. The ruling in no way challenges EPA's conclusions that second-hand smoke poses significant health risks to children.

Despite this ruling, EPA stands behind the science used in the report - and so does the scientific community. EPA looked at the total weight of scientific evidence, including more than 30 studies of the link between second-hand smoke and lung cancer. An independent Science Advisory Board made up of 18 experts from academia, government, and research organizations examined virtually every one of the tobacco industry's arguments about lung cancer. The Board concurred in EPA's methodology and unanimously endorsed EPA's conclusions.

Below are talking points regarding this ruling. If you have any questions or need further information, call Loretta Ucelli or Stephanie Cutter at 260-9828.

Talking Points:

- It is widely accepted in the scientific community that second-hand smoke poses significant health risks to children and adults. We believe that the court's decision challenging EPA's second-hand smoke study should in no way change those scientifc conclusions.
- The court's decision does not challenge EPA's findings on the serious respiratory impacts kids face from second-hand smoke.
- The decision is based on procedural concerns regarding technical aspects of EPA's review of health data.
- The scientific findings on children's health impacts of second-hand smoke remain unchallenged. Further, since EPA's 1993 report, health study after health study confirms that both kids and adults are at serious risk from second-hand smoke.
- EPA attorney's are working with the Department of Justice to review the decision, and evaluate what aggressive actions the agency can take to challenge the ruling, including an appeal.
- There is no doubt in the courts of scientific and public opinion that breathing second-hand smoke is dangerous for kids and adults. We are confident that we will ultimately prevail.

ToS - set - environmental tobacco smoke

Tobacco Q&A
July 20, 1998

Q. What do you think of Friday's court decision overturning the EPA's study on the dangers of second hand smoke?

A. It is widely accepted in the scientific community that second-hand smoke poses significant health risks to children and adults. The court's decision challenging EPA's second-hand smoke study is based on procedural concerns regarding technical aspects of EPA's review of health data, and should in no way change these scientific conclusions. The court's decision does not challenge EPA's findings on the serious respiratory impacts kids face from second-hand smoke, and since EPA's 1993 report, health study after health study confirms that both kids and adults are at serious risk from second-hand smoke.

EPA attorneys are working with the Department of Justice to review the decision, and evaluate what aggressive actions the agency can take to challenge the ruling, including an appeal. There is no doubt in the courts of scientific and public opinion that breathing second-hand smoke is dangerous for kids and adults. We are confident that we will ultimately prevail.

Background: In 1993, EPA released a report, after five years of extensive scientific review, concluding that second-hand smoke causes lung cancer in adult nonsmokers and impairs the respiratory health of children. The agency classified second-hand smoke as a Group A known human carcinogen -- a designation that has been used by EPA for only 15 other pollutants. On Friday, July 17, a US District Court judge in North Carolina ruled that EPA's designation of second-hand smoke as a Group A carcinogen was flawed due to technical and procedure problems in its review of health data. The ruling does not challenge EPA's conclusions that second-hand smoke poses significant health risks to children.

Despite this ruling, EPA stands behind the science used in the report. EPA looked at the total weight of scientific evidence, including more than 30 studies of the link between second-hand smoke and lung cancer. An independent Science Advisory Board made up of 18 experts from academia, government and research organizations examined virtually every one of the tobacco industry's arguments about lung cancer. The Board concurred in EPA's methodology and unanimously endorsed EPA's conclusions.

Q. What do you think of the new report described in today's Washington Post highlighting the number of trips that Republicans took on tobacco industry corporate jets?

A. This just provides one more example of how many Republicans remain in the pocket of big tobacco. It is not just a coincidence that much of the travel cited in this report occurred precisely at the time that the tobacco industry was working to kill the McCain bill. While taking trips on tobacco industry corporate jets at a fraction of their cost may have represented just "another big perk" for Republicans on Capitol Hill, it helped result in a great loss for the children of this country -- 3000 of whom start smoking every day and 1000 of whom will die early as a result.

Tob - ntr - environmental tob smoke

Cynthia A. Rice 07/22/98 09:24:19 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

cc: Daniel J. Chenok/OMB/EOP, Jerold R. Mande/OSTP/EOP, Cynthia Dailard/OPD/EOP

Subject: FYI: Browner on Newshours with Jim Lehrer

We're sitting down with EPA staff and others to discuss the issues today at 1:00.

ONLINE FOCUS

SMOKE SCREEN?

July 21, 1998

The NewsHour with Jim Lehrer Transcript

A federal judge ruled the Environmental Protection Agency based their decisions on the deadly effects of second-hand cigarette smoke on "selective information." Carol Browner of the EPA and Charles Blixt of RJ Reynolds tobacco company discuss the investigation.

KWAME HOLMAN: Thirty-four years after a landmark surgeon general's report issued the warning, there is no dispute cigarette smoking is a health hazard. But whether the smoke generated in the process is a threat to nonsmokers nearby long has been controversial.

In 1993, the federal environmental protection agency said second-hand smoke is harmful. The EPA report stated second-hand smoke "is responsible for approximately 3,000 lung cancer deaths each year in nonsmoking adults and impairs the respiratory health of hundreds and thousands of children." Six months later, the tobacco industry filed a lawsuit that challenged the EPA's findings.

The judge's ruling.

Last week, in North Carolina, the federal judge in the case sided with the industry, saying the EPA made serious mistakes five years ago in evaluating the risk

of second-hand smoke. In his ruling, Federal District Judge William Osteen said the "EPA publicly committed to a conclusion before research had begun" and the "EPA disregarded information and made findings on selective information."

That, the judge said, put into question the agency's 1993 decision to designate secondhand smoke a Class A carcinogen or a proven cause of cancer in humans. Only 15 other highly reactive substances, including asbestos and radon, are ranked Class A carcinogens.

The EPA report on second-hand smoke was the impetus for hundreds of jurisdictions around the United States to ban smoking in public places, including restaurants, office buildings, and airports. The report also has been used as evidence in lawsuits against the tobacco companies. In a video news release a tobacco executive said the new ruling attacking the EPA report is likely to undercut the basis for future suits claiming injury from second-hand smoke.

ELLEN MERLO, Senior Vice President Corporate Affairs, Philip Morris: I think was this ruling gives us is an opportunity for reasonable dialogue, for developing reasonable options and solution to deal with the whole issue of secondhand smoke, like ventilation technology, working together to ensure that we're upholding the rights and the preference of both smokers and nonsmokers alike.

The ruling "an opportunity for reasonable dialogue."

JIM LEHRER: Carol Browner is the administrator of the Environmental Protection Agency. Charles Blixt is the Executive Vice President and General Counsel of RJ Reynolds tobacco company. He was a lead lawyer of the industry when it first challenged the EPA.

JIM LEHRER: Was the EPA wrong in 1993, Ms. Browner?

CAROL BROWNER, EPA Administrator: We stand by our science. I think there's wide agreement. The American people certainly recognize that exposure to second-hand smoke brings with it a whole host of health problems, not only lung cancer and those who choose not to smoke but a lot of problems for our young children. The EPA report found problems in terms of respiratory illnesses. Subsequent studies have shown decreased birth weight, asthma in children, sudden infant death syndrome. There are real public health problems and what we did is we put out a scientific report that was independently peer reviewed. Eighteen well-respected scientists looked at it, agreed with the conclusion it is EPA reached. The judge simply made a procedural ruling.

Did the EPA ignore evidence?

JIM LEHRER: But the judge said you had foregone conclusions and ignored evidence that didn't support your conclusion.

CAROL BROWNER: Absolutely not true. We all know that the EPA report in 1993 was only one in a series of reports. You had in 1986 the Surgeon General saying tobacco smoke was a problem. You had the National Academy of Sciences. As a result of those 1986 reports, it is true that EPA sought to educate the American people about the dangers of tobacco smoke. That's part of our job, to educate the American people. But then we undertook a comprehensive review, 31 independent scientific studies were reviewed, 18 scientists from outside of EPA looked at the conclusions, the weight of the evidence, and they all unanimously agreed that second-hand tobacco smoke brings with it real health problems.

JIM LEHRER: And the judge's decision last week doesn't change anything from your point of view?

CAROL BROWNER: We stand by our science. I think the judge made a procedural ruling. What he essentially said is that industry, that R.J. Reynolds should have sat at the table to review the science. And we don't agree with that. We think independent scientists -- as we did -- are the appropriate people to review a body of scientific evidence.

Charles Blixt: "This opinion was about abuse of power by the EPA."

JIM LEHRER: Mr. Blixt, in your point of view a procedural ruling or something sweeping about second-hand smoke?

CHARLES BLIXT, RJ Reynolds executive vice president and general counsel: This opinion wasn't about any abuse of procedure, Jim. This opinion was about abuse of power by the EPA. What the EPA essentially did was deliberately mislead about the American people what about what science has proven about second-hand smoke. The judge's opinion cut right to the heart of that science. Sixty pages of the opinion discussed the science that the EPA supposedly conducted in evaluating and conducting this risk assessment.

And as your lead-in story said, the judge specifically found that the EPA came to a pre-determined conclusion then cherry picked data, excluded any data which didn't support their pre-determined conclusion, changed the rules of science, didn't follow the law, and didn't follow its own internal regulatory procedures. All of which the judge used to strike down six of the chapters of the EPA report.

JIM LEHRER: So is it your position, the industry's position, that second-hand smoke is not harmful to health?

CHARLES BLIXT: It's not our position that second-hand smoke is not harmful to health. It's our position that the science doesn't support any finding or any conclusion that second-hand smoke causes cancer or heart disease or any of these other diseases that were listed. In fact, if it were proved, why would the World Health Organization be currently conducting the largest single study of this kind, spending millions of dollars, a study that's been going on for several years and the preliminary report of which says that the risk of cancer from second-hand smoke has not been established.

JIM LEHRER: And that's your position? Not that it isn't there, that it may not be possible...that it just hasn't been established yet?

CHARLES BLIXT: Well, science can't prove a negative, Jim. Science can't prove thatsomething doesn't happen. All they can do is look at ate hypothesis, not a pre-determined conclusion, as the EPA did, but form a hypothesis, undertake a scientific inquiry and determine if the hypothesis is proven by the data and in this case it's not.

Second-hand smoke: A health hazard?

JIM LEHRER: Let's move together from the 1993 report to where we are today. Make your best case for the fact that second-hand smoke is, in fact, a health hazard, does, in fact, cause 3,000 people to die each year.

CAROL BROWNER: Study after study, studies that came after the EPA study-

JIM LEHRER: Such as?

CAROL BROWNER: The French study issued by the medical department of France. The U.K. study. Even the World Health Organization study. You know, let's not mislead the American people. I have a statement from the scientists in the World Health Organization and they say their results support previous studies in Europe and the United States which indicate that passive smoking -- secondhand smoke -- increases the risk of lung cancer in humans. That's a statement from the scientists.

CHARLES BLIXT: But it's not...

CAROL BROWNER: Excuse me, hold on, my turn.

CHARLES BLIXT: She's reading from a report. The biennial report of the International Agency for Research...

CAROL BROWNER: I'm reading from a statement from the scientists who did the study and I'm...

JIM LEHRER: Let her answer the question.

CAROL BROWNER: More importantly, what you have here is a judge. A judge in Winston-Salem, North Carolina essentially trumping the scientific opinion of 18 independent scientists. Trumping the opinion of the Surgeon General, the National Academy of Sciences. You know, there's nothing else like this in EPA's history. We did what we're supposed to do. We looked at all of the science, we reached conclusions, we presented those to independent scientists, we asked the tobacco industry what they thought about those in a draft form. They gave us thousands of pages. They appeared for hours before the scientists reviewing these findings and at the end of the day, the conclusion was unanimous. Secondhand smoke is bad.

And you know, it's extremely important that the American people understand that nothing in this judge's ruling has changed that. There are real health problems both in adults and most particularly our children. And Jim, just one last thing. The tobacco industry did not challenge EPA's scientific findings with respect to our children. The respiratory findings that EPA made.

Carol Browner: "What you have here is a judge...essentially trumping the scientific opinion of 18 independent scientists."

JIM LEHRER: Is that true?

CHARLES BLIXT: Well, the two chapters which dealt with respiratory diseases in children doesn't need to be attacked then.

CAROL BROWNER: You agree, then?

CHARLES BLIXT: It was so much weaker than the purported science the EPA had on the lung cancer issue.

CAROL BROWNER: But the judge let the two chapters stand.

CHARLES BLIXT: Let's get a couple factors correct. It wasn't a judge in Winston-Salem, North Carolina. It was a federal judge in the middle district of North Carolina which sits in Greensboro. The same judge who a year ago ruled contrary to what the tobacco industry desired--that the FDA had the authority to regulate the tobacco industry - an opinion which is now on appeal to the fourth circuit. The implication that it was a single judge in Winston-Salem . . .

CAROL BROWNER: It is a single judge. One judge's opinion.

CHARLES BLIXT: He's a federal judge.

CAROL BROWNER: I don't disagree. It's a federal judge. But it's one judge trumping 18 scientists.

CHARLES BLIXT: But, he didn't trump 18 scientists.

CAROL BROWNER: He did.

CHARLES BLIXT: If you read the opinion, Jim, he used the internal scientists from the EPA itself, and I'll cite you to page 64 of the opinion where he quotes four or five different scientists inside of EPA, a member of the scientific advisory board of the EPA all of whom said before the final draft was written that this was wrong.

The practical applications of this decision.

JIM LEHRER: We'll get back to all of the procedures in a moment. What I'm interested in tonight is the practical effect this should have on the way people conduct their lives and from your point of view, Mr. Blixt, what would you say to somebody listening to this tonight? Does this change the way they should handle their attitude toward second-hand smoke?

CHARLES BLIXT: It's always been our position that the attitude towards smokers should be one of accommodation and we still believe that. We believe smokers and non-smokers can be accommodated, can live together. Can be accommodated in the workplace, can be accommodated in the service industry, in restaurants and bars and we don't need the EPA to trump up science to come to an incorrect conclusion.

JIM LEHRER: We heard you on that.

CHARLES BLIXT: And then try to regulate where people can smoke.

CAROL BROWNER: Wait. No, no, no, no, no.

JIM LEHRER: Let me just finish with Mr. Blixt. As you know, as a result, as Kwame said in his report, as a result of the EPA report in 1993 and subsequent reports, there are a lot of city ordinances, a lot of state laws that have to do with smoking in public places, etc. Is it the industry's position that those things should be -- that they should be looked at, they should be reexamined, there should be a second look taken at all of those as a result of what this judge did in North Carolina?

CHARLES BLIXT: Well. Clearly what the EPA did was establish a foundation for all those regulations which is have been passed subsequent to that? That foundation has been pulled out from underneath the EPA and underneath all of these regulations. Does that mean all of these municipalities and states are going to go back and . .

JIM LEHRER: Should they? Do you think they should?

CHARLES BLIXT: Well, I think there's been, as a result partially of the EPA's report and as a result of the anti-smoking industry's crusade to ban smoking I think that there's been an extreme and almost ridiculous separation of smokers. In some communities you can't even smoke in a public park. That's not accommodation and it's not reasonable. I think that people should look at these things, employers should look at these, businesses should look at it, restaurants, bars, the service industry, and accommodate both smokers and non-smokers. I know there's a lot of people who are annoyed by smoke and they shouldn't have to be exposed to it if they don't want to be.

Should this ruling change laws and attitudes?

JIM LEHRER: Now, Ms. Browner, what do you think should be done as a result of this judge's ruling? Should anything change?

CAROL BROWNER: Absolute any nothing should change. The American people need too know that second-hand tobacco smoke is bad for their health, it's bad for adults and it's bad for children. And no city, no business that's made a sensible decision to protect people from second-hand smoke should change those decisions. They're right, that's what the American people want, that's what the American people have come to expect. I don't think we want to go back to a time when you enter a public building, when you enter an airplane and you gag because of the amount of smoke. If you choose not to smoke, you deserve to be protected. Our science was thorough on this. We stand by the science and nobody should walk away.

JIM LEHRER: Are you going to... Is the federal government or the EPA going to appeal Judge Osteen's decision?

CAROL BROWNER: We're looking at all of our options and clearly at the top of the list and what's most likely is we will appeal this. Again, we've never seen a judge go into a body of science -- a body of science not just reviewed by EPA but reviewed by 18 scientists from outside of EPA -- the head of the Yale Medical Center, the New York Medical Center -- they all, all 18, unanimously concurred with the conclusions that second-hand smoke causes lung cancer and it causes respiratory problems in our children.

JIM LEHRER: Is the industry going to pursue this to its final conclusion? In other words, if EPA appeals, you go with it and go all the way to the supreme court if you have to?

CHARLES BLIXT: Certainly we'll pursue whatever avenue in this litigation is necessary to see that the power of the EPA is not abused. Clearly that's what's happened here.

JIM LEHRER: What is it that you want... When this is all said and done, if you win, what do you want to win?

CHARLES BLIXT: Well, when this started five years ago, Jim, all we were trying to do was to hold the EPA to its scientifically rigorous standards of doing a risk assessment. It may be politically correct to contend that smoking causes these diseases. It's not scientifically correct and a judge has now said it's not legally correct.

EPA regulation?

JIM LEHRER: So what do you want to do?

CHARLES BLIXT: What we want out of this case is for... as has now happened, the entire report dealing with cancer has been invalidated, we have a pleading on file, a supplemental pleading, to stop the EPA from trying to regulate in this area as they have tried to do.

CAROL BROWNER: We don't regulate as you know. Now wait, Jim, this is important.

CHARLES BLIXT: They have tried to conduct regulation and the judge found they have de facto regulated this industry.

CAROL BROWNER: No. No. No. Now hold on just a moment.

CHARLES BLIXT: It was a finding of the judge.

CAROL BROWNER: Excuse me. EPA issued a scientific report. Cities and businesses across the country of their own volition put in place regulations to ban smoking.

JIM LEHRER: There's no EPA regulation?

CAROL BROWNER: There's no EPA ...there is absolutely no EPA regulation on smoking. Now, admit that. That's true!

CHARLES BLIXT: What the judge has found...

CAROL BROWNER: Chuck, you know that's true. No.

CHARLES BLIXT: What the judge has found...

CAROL BROWNER: Cite the regulation.

CHARLES BLIXT: What the judge has found is that this is de facto regulation by the EPA.

CAROL BROWNER: No. No.

CHARLES BLIXT: The EPA, according to our supplemental complaint, which will now be litigated--

CAROL BROWNER: We issued a scientific report.

CHARLES BLIXT: ...has tried to invade the private arena and tried to regulate the tobacco industry.

JIM LEHRER: I have a hunch we haven't heard the last of this but we have right at this moment. Thank you both very much.

Tob-rr-environmental tobacco smoke

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 6 1998

MEMORANDUM FOR ELENA KAGAN AND CYNTHIA RICE

OFFICE OF THE ADMINISTRATOR

FROM: **Gary S. Guzy,**
Counselor to the Administrator

SUBJECT: **Environmental Tobacco Smoke Issues**

As discussions intensify between the Administration and Congress concerning comprehensive tobacco legislation, I want to follow-up on our meeting yesterday to emphasize the importance of addressing children's environmental tobacco smoke (ETS) issues. The President recognized last fall that ETS is a key component of an overall tobacco settlement. While the McCain Bill addresses an important issue concerning worker exposures to ETS in public buidlings, it does not address the most important public health issue that Administrator Browner believes is posed by ETS -- which is the major health threat America's children face from exposure in the home. We urge the Administration to take steps to correct this oversight. Highlighting this issue would also be consistent with the Administration's broader focus on children's health and smoking.

EPA's 1992 risk assessment found that ETS is a known human carcinogen, and helped establish the basis for state and local governments and businesses to address indoor smoking. EPA has also found that approximately one-quarter of America's children are exposed to ETS daily in their homes. This is known to contribute to aggravated asthma, serious ear infections, and respiratory tract infections, such as bronchitis and pneumonia. There is also increasing evidence that secondhand smoke doubles the risk of sudden infant death syndrome (SIDS). The implications of these health effects are serious: 7 million more missed days of school, 10 million more days of bed confinement, and 18 million more days of restricted activity for children exposed to ETS. Parental smoking is estimated to cost $4.6 billion annually in direct medical expenditures for children.

We recognize that the direct regulation of secondhand smoke in the home is neither desirable nor practical. Even so, effective federal legislation could provide families with greatly enhanced information so that they could be aware of these significant health threats and take steps to protect their children. Senator Chafee has been very supportive of an approach that would authorize a joint state and federal education and outreach program -- which we would expect would be conducted in partnership with such groups as the American Medical Association, the American Academy of Pediatrics, and others -- to address these health risks. We encourage you to include this with the items the Administration seeks to fix in the McCain legislation through a Manager's Amendment or other means. Similar national efforts to educate

parents on testing for radon, immunizing children, and utilizing seatbelts have proven the effectiveness of sustained and significant outreach campaigns. Attached is a copy of a sample provision to address this issue.

Also attached is a provision we discussed on consultation with EPA for standard setting for the public buildings portion of the legislation. In addition, to the extent there is a negotiated resolution with the tobacco industry or it is appropriate to legislate, we would also believe it is critical for the industry to drop its pending Federal District Court challenge to EPA's ETS Risk Assessment.

Thank you for your attention to these matters. We would be pleased to provide you with any additional materials you may require.

cc. Michael Eriksen, CDC
Emily Sheketoff, DOL

NATIONAL EDUCATION PROGRAM TO REDUCE KIDS SECONDHAND SMOKE EXPOSURE

(a) ESTABLISHMENT OF PROGRAM - The Administrator of the Environmental Protection Agency, in consultation with the Secretary of Health and Human Services, shall establish a program to be known as the National Education Program to Reduce Kids Secondhand Smoke Exposure under which the Administrator may conduct public informational and educational activities to reduce exposure of children to secondhand tobacco smoke.

(1) The Administrator of the Environmental Protection Agency may enter into contracts with or award grants to eligible and appropriate public and nonprofit private entities and to states to carry out public informational and educational activities designed to reduce exposure of children to secondhand tobacco smoke.

(b) FUNDING- There are authorized to be appropriated from the National Tobacco Settlement Trust Fund, other than from amounts in the State Litigation Settlement Account, such sums as may be necessary to carry out this section.

Addressing EPA/OSHA cooperative administration of ETS public buildings program:

Amend section 505 to add:

> The Assistant Secretary is authorized to promulgate, in consultation with the Administrator of the Environmental Protection Agency, such regulations as the Assistant Secretary deems necessary to carry out this title.

Tob- sec- environmental
tob smoke

Reducing Exposure to Environmental Tobacco Smoke is Critical to Public Health

Many studies published by respected research institutions (Harvard University, University of California, among others), show that exposure to Environmental Tobacco Smoke (ETS), or secondhand smoke, results in increased risk of lung cancer, heart disease, and asthma and can increase pregnancy risks. Based on these scientific studies, EPA estimated 3,000 lung cancer deaths occur among non-smokers in the general population each year due to ETS exposure; and OSHA estimated that between 2,000 and 13,000 heart disease deaths occur each year among non-smoking workers due to occupational ETS exposure.

ETS exposure also has serious health consequences for children. ETS is a risk factor for childhood asthma and can increase the frequency and severity of attacks. ETS exposure is also strongly associated with low birth weight and sudden infant death syndrome (SIDS), and increases the risk of bronchitis and pneumonia, as well as acute and chronic ear problems.

Clearly, ETS exposure is an important cause of illness and premature death in this country. By protecting children and adults from ETS, this needless suffering could be avoided.

How can we protect people from Environmental Tobacco Smoke?

ETS-related deaths and illnesses will be significantly reduced by restricting smoking in public facilities and workplaces so that non-smokers are not exposed to tobacco smoke involuntarily. The simplest way to achieve that is to ensure that public facilities are smoke free, requiring that smokers go outdoors to smoke or to designated smoking areas.

A "public facility" is any building or enclosed structure regularly entered by 10 or more individuals at least one day per week. This definition would ensure that people would not be exposed to smoke while at work or conducting business, but smoking could occur in residences, private clubs, hotel guest rooms, tobacco shops, and institutions such as prisons and mental health facilities.

Both options for restricting smoking (outside or in designated smoking areas) are currently being used by many business owners either voluntarily or through local regulations. In workplaces in which either option has already been implemented, peer-reviewed studies conducted by scientists at the National Institutes of Health, the University of California and others show that worker productivity and turnover have not been adversely affected by the implementation of either option.

If business owners choose to allow smoking within their facilities, engineering controls should be required. Accepted "best" industrial hygiene practices require the isolation of the contaminant in designated smoking areas. Designated smoking areas are characterized by: having physical barriers to separate them from surrounding areas; being under negative pressure compared to surrounding areas; and exhausting all the air from them directly to the outside,

through exhaust ducts under negative pressure. Negative pressure is achieved by exhausting more air from the space than is supplied to the space in quantities sufficient to induce air flow into the room. These definitions are non-controversial and can easily be included in any legislation rather than deferring them to a potentially lengthy regulatory process.

Legislation should restrict smoking within the facility and on the facility property to an area away from the immediate vicinity of the entrance to the facility or any air intake vent, including open windows or doors, or to designated smoking areas. Clear and prominent notices of smoking restrictions should be posted in appropriate and visible locations in the facility. Non-smoking individuals, including cleaning and maintenance workers, should not be required to enter the designated smoking area for any purpose while smoking is occurring or until a reasonable amount of time has passed after smoking in the area has ceased.

Should state or localities be allowed to either develop more protective legislation or opt out of the federal requirements?

Any state or local jurisdiction should be allowed to develop more protective legislation for workers. If new data become available, or if technology breakthroughs occur in engineering controls, federal, State or local authorities should not be limited in their ability to enact legislation that is more protective in response to the new information.

Non-smoker exposure to ETS is a serious health problem that requires nationwide legislation to protect the general US population. Currently, a patchwork of state and local legislation exists that covers only a portion of the population and offers varying levels of protection. For example, California and Hawaii have strict smoking restrictions for private worksites, while other states have none. Legislative proposals which allow states to opt out of a national standard will only perpetuate this patchwork system, leaving many workers unprotected from the dangers of ETS. National legislation should instead establish the baseline for the entire nation and, therefore, eliminate issues of inequity. The June 1997 settlement proposed by the State Attorneys General contained such a national baseline.

Are there other valid approaches to regulating ETS other than codifying a national standard?

Another promising approach, proposed by the Harkin-Chafee legislation, would provide funding to states for the purpose of reducing exposure to ETS. The Harkin-Chafee bill also proposes a performance bonus which the Secretary of HHS could award to states based on their success in reducing exposure to ETS.

Some Facts on Environmental Tobacco Smoke and Children:

Environmental tobacco smoke, commonly known as secondhand smoke, presents a serious public health threat, especially to children. Studies have shown that secondhand smoke can cause aggravated asthma, ear infections, respiratory tract infections, such as bronchitis and pneumonia, and it is a risk factor for sudden infant death syndrome (SIDS). In adults, secondhand smoke can cause cancer. Because of the serious health risks presented by secondhand smoke and the number of children exposed to these risks, it is important that these risks be addressed, most appropriately through targeted outreach and education.

- In 1996, 21.9 percent of children faced daily exposures to secondhand smoke and its health risks in the home. [CDC]

- Daily exposures to secondhand smoke cause children to have 18 million more days of restricted activity, 10 million more days of bed confinement, and 7 million more missed days of school. [CDC]

- Secondhand smoke increases the frequency and severity of asthma attacks for between 400,000 and 1 million children and is estimated to result in more than 1.8 million outpatient visits and 28,000 hospitalizations for children each year. [EPA; American Medical Association Journal]

- Each year secondhand smoke is associated with between 150,000 and 300,000 cases of lower respiratory tract infections, such as bronchitis and pneumonia. These infections result in between 7,500 and 15,000 hospitalizations. [EPA]

- Infants exposed to secondhand smoke face increased risk of SIDS (sudden infant death syndrome), with parental smoking estimated to be responsible for an estimated 2,000 cases of SIDS each year. [American Medical Association Journal]

- Secondhand smoke can cause the build-up of fluid in the inner ear, resulting in ear infections and leading to an estimated 110,000 surgical procedures annually for the insertion of an ear tube. [EPA; American Medical Association Journal]

- Reducing parental smoking could save up to 6,000 children's lives each year. [American Medical Association Journal]

- Parental smoking is estimated to cost $4.6 billion annually in direct medical expenditures for children. [American Medical Association Journal]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
THE ADMINISTRATOR

April 21, 1998

MEMORANDUM FOR ELENA KAGAN, DOMESTIC POLICY COUNCIL

FROM: Gary S. Guzy, Counselor to the Administrator
Douglas Tsao, Special Assistant to the Administrator

SUBJECT: Environmental Tobacco Smoke

Attached is a paper developed jointly by EPA, OSHA, and HHS (OSH) that outlines our recommendation for an Administration position on environmental tobacco smoke. Consensus was reached on all of the major points, with the exception of treatment of the hospitality industry. The two differing approaches are outlined in the text. Please call me at 260-7960 if you have any questions.

cc: Cynthia Rice, Domestic Policy Council

OSHA, EPA, and DHHS
Recommendations on Appropriate Environmental Tobacco Smoke (ETS) Legislation

I. Why does ETS need to be addressed through Federal legislation?

Environmental Tobacco Smoke (ETS), also known as secondhand smoke, contains the same toxic substances found in smoke inhaled by an active smoker. Numerous health studies of ETS have been conducted and comprehensive reviews of these studies by U.S. EPA, OSHA, California EPA, Australia's National Health and Medical Research Council and the U.K.'s Scientific Committee on Tobacco and Health have documented that ETS exposure poses significant risks to non-smokers. These risks include increased risk of lung cancer, heart disease, and eye and nose irritation in adults. In addition, ETS has been documented in well over 100 studies to have serious health consequences for young children. ETS increases the frequency and severity of asthma attacks and is a risk factor for the induction of new asthma in children. It has been strongly associated with reduced birth weight and sudden infant death syndrome (SIDS) and increases the risk of bronchitis and pneumonia, as well as causing acute and chronic ear problems.

Non-smoker exposure to ETS is a serious health problem that requires nationwide legislation to protect the general US population. Currently, a patchwork of state and local legislation exists that covers only a portion of the population and offers varying levels of protection. For example, California and Maryland have strict smoking restrictions for private work-sites, while other states have none. National legislation would establish the baseline for the entire nation and would, therefore, eliminate issues of inequity.

II. Can the benefits of legislation be quantified?

Based on scientific studies, EPA estimates that 3,000 lung cancer deaths occur among non-smokers in the general population each year due to ETS exposures; OSHA estimates a comparable number of lung cancer deaths and also estimated that between 2,000 and 13,000 heart disease deaths occur each year among non-smoking workers due to occupational ETS exposures. ETS-related deaths and illnesses will be significantly reduced by restricting smoking in public facilities and workplaces. Other economic costs associated with smoking, such as lost output from shortened work lives and lost workdays, would also be reduced.

Parental smoking is an important preventable cause of illness and premature death in children and is estimated to cost $4.6 billion per year in direct medical expenditures alone (not including loss-of-life costs). Dramatically reducing children's exposure to secondhand smoke in the home could substantially reduce these costs and save up to 6000 lives annually (includes low birth weight, SIDS, respiratory infections and asthma cases attributable to parental smoking). [Source: Aligne and Stoddard, Archives of Pediatrics, American Medical Association. 1997.]

III. Should ETS be regulated?

The goal of ETS legislation should be to minimize health risks to the population from exposure to

secondhand smoke using the most appropriate policy tools. Protecting non-smoking workers and the general public – including children – from being exposed to tobacco smoke involuntarily in public facilities can most effectively – and fairly – be accomplished by establishing a Federal baseline of protection. The simplest way to achieve that is to give employers the option of requiring that smokers go outdoors to smoke or to restrict smoking to properly designed designated smoking areas. Protecting the 10.5 million children exposed to tobacco smoke in the home on a daily basis – where regulation of smoking is not appropriate – can best be achieved through a major outreach campaign to educate parents about the health risks to their children and the simple and effective steps they can take to reduce those risks and by increasing smoke-free norms in places outside the home.

IV. Which facilities should be covered by ETS legislation?

Regulation should apply to public facilities. A "public facility" is any building or enclosed structure regularly entered by 10 or more individuals at least one day per week. Buildings owned by or leased to an agency, independent establishment, department, or branch of the US government should also be covered explicitly.

Due to the nature of "fast food" and "family-style" restaurants (where at least 40% of the patrons are less than 18 years of age), these facilities should not allow smoking at all.

Private residences should not be covered by regulatory provisions. However, businesses in homes, such as day care facilities, dental offices, and hair salons should not be exempted. Long-term care facilities such as nursing homes or hospices should not be exempted because clients in such facilities are likely to be more susceptible to the effects of ETS than the general population.

The only exemptions to smoking legislation might be private clubs, hotel guest rooms, tobacco shops, prisons, and mental institutions. Tobacco shops may allow smoking for customers to test different tobacco blends while in the shop. Private clubs and guest rooms in hotels probably are not "public facilities" as defined above. Prisons and mental institutions should be allowed latitude -- within the overall framework of seeking to protect all residents and staff – to enforce restrictions as appropriate, given the unique nature of the inhabitants.

Both options for restricting smoking (outside or in designated smoking areas) are currently being used by many business owners either voluntarily or through local regulations. In workplaces in which either option has already been implemented, studies conducted by government scientists (e.g., National Institutes of Health) and others (e.g., University of California) and published in peer-reviewed journals show that worker productivity and turnover have not been adversely affected by the implementation of either option.

If business owners choose to allow smoking within their facilities, engineering controls will be required. Accepted "best" industrial hygiene practices require the isolation of the contaminant in designated smoking areas. Designated smoking areas are characterized by: having physical barriers to separate them from surrounding areas; being under negative pressure compared to

surrounding areas; and exhausting all the air from them directly to the outside, through exhaust ducts under negative pressure. Negative pressure is achieved by exhausting more air from the space than is supplied to the space in quantities sufficient to induce air flow into the room. These definitions are non-controversial and can easily be included in any legislation rather than deferring them to a potentially lengthy regulatory process.

Legislation should restrict the smoking of cigarettes, cigars, and pipes, and any other combustion or heating of tobacco within the facility and on the facility property to an area away from the immediate vicinity of the entrance to the facility or any air intake vent, including open windows or doors, or to designated smoking areas. Clear and prominent notices of smoking restrictions should be posted in appropriate and visible locations in the facility. Individuals, including cleaning and maintenance workers, should not be required to enter the designated smoking area for any purpose while smoking is occurring or until a reasonable amount of time has passed after smoking in the area has ceased. It may take at least one hour for smoke to dissipate sufficiently so that non-smokers will not be adversely impacted; specific time periods for entry depend, in part, upon the type of ventilation system installed and could be shortened. Smoking should not be allowed in the designated smoking area if the exhaust ventilation system is not operational.

V. Should legislation allow for special considerations for certain industries?

The hospitality industry [eating, drinking, and gaming facilities] presents unique problems because workers and patrons share the same air space. However, occupational ETS exposures are very high in these industries, placing non-smoking employees who must serve smoking customers at greater risk of adverse health effects. The preferred option is that each hospitality facility go smoke-free. Although it may not be feasible to eliminate all exposures for their workers fully right away, the risks to the workers can be reduced by relatively inexpensive engineering and work practice controls. However, risk *reduction* strategies should be allowed only as an interim solution until smoke-free spaces are achieved.

A reasonable approach to reduce ETS exposures in the hospitality industry where smoking is allowed could include phasing-in requirements as follows: restrict smoking to a specific area and implement work practice controls within 6 months; separate smoking and non-smoking areas with physical barriers and pressure schemes within 24 months; install additional engineering controls to reduce ETS exposures within the smoking areas, e.g., floor-to-ceiling displacement ventilation systems, local exhaust ventilation, and "clean-air islands," at fixed work stations within 36 months; and design and install improved ventilation systems in new construction and major renovations within 5 years. **[Note: HHS/OSH disagrees with this approach; its comment: "Support the hospitality industry going smoke-free at this time until mechanisms are in place to allow for indoor smoking. This would be in contrast to allowing continued indoor smoking at this time until mechanisms are in place to contain smoke thus creating smoke-free areas."]**

Financial incentives involving tax credits or accelerated depreciation for engineering control expenditures could facilitate compliance with smoking restrictions. Double tax credits could be

established so that for every month of early compliance before the effective date of legislation, the business owner could receive an extra month of tax credit.

VI. How should the regulatory provisions of legislation be enforced?

Legislation would be enforced in one of two ways: (A) Private right of action - Any person aggrieved by a violation of a smoking restriction provision may notify the alleged responsible party. If the violation has not been corrected after 60 days, and the alleged responsible party is not an employer subject to the OSH Act who is endangering employees protected by the OSH Act, the aggrieved person may file an action in Federal District Court to require compliance; and, (B) OSHA Administrator under the OSH Act - If an alleged responsible party is an employer subject to the Occupational Safety and Health Act, the Secretary of Labor will enforce a smoking restriction provision as a mandatory occupational safety or health standard.

The 60-day notice rule would apply only to suits by aggrieved persons; employers violating this provision will be subject to administrative enforcement by OSHA at any time.

VII. Can localities be allowed to develop more protective legislation?

Any state or local jurisdiction should be allowed to develop more protective legislation, e.g., to broaden coverage to uncovered facilities or broaden protection to workers in the hospitality sector. No state law should be permitted to be less stringent than the Federal baseline. Any Federal tobacco legislation should also clearly state that such legislation in no way affects any Federal ability to regulate other air contaminants pursuant to statutory authority.

VIII. How should the non-regulatory provisions addressing risks to children in the home be implemented?

Effective Federal legislation to reduce risks to the public from secondhand smoke should specifically mandate – and authorize appropriate resources for – a nationally-led education and outreach program, to be conducted in partnership with the states and other appropriate public and non-profit entities. This program should be designed to encourage parents to protect their children from secondhand smoke. Similar national education campaigns in such areas as direct smoking, disease immunization of children, and radon testing and mitigation have demonstrated that concerted and sustained Federal efforts to educate and motivate the public to take steps to protect their families and themselves can be highly effective even in the absence of regulation.

Several Federal agencies have appropriate knowledge and expertise to contribute to such a campaign. EPA manages a nationwide non-regulatory program designed specifically to reduce risks from secondhand smoke, radon, and other indoor air pollutants. EPA, in close cooperation with DHHS and private sector organizations such as the American Medical Association and the Consumer Research Council, is launching a nationwide campaign in the summer of 1998 to encourage parents not to smoke in the home. DHHS, through the Office on Smoking and Health, also has extensive experience in conducting effective outreach and education programs on

smoking related issues.

A "National Education Program to Reduce Kids Secondhand Smoke Exposure" should contain authority to conduct national outreach programs as well as issue grants to public and non-profit entities to specifically educate parents about the health risks to their children from secondhand smoke. Preliminary research now being conducted in preparation of a first phase of EPA's national media campaign indicates that those messages likely to have the greatest impact are those which explain to parents the health risks to their children and encourage parents to simply smoke outside. A program which is focused specifically on a straightforward parental message with a simpler solution than full smoking cessation – while ultimately having collateral benefits of encouraging cessation – might more effectively reduce kids exposure to secondhand smoke if it were administered separately from – but in close cooperation with – broader cessation programs. It should also be noted that restrictions on smoking in places other than the home are an important educational component. As norms change to be less accommodating of smoking, educational messages about the harmfulness of secondhand smoke will be reinforced.

IX. Summary

Federal legislation to reduce risks from secondhand smoke should address all significant risks, including risks to children in the home and in public places, risks to workers (including those most exposed, such as workers in the hospitality industry) and the general public in public facilities.

Tob-sr-environmental tobacco smoke

ETS

5/5/98

Except where noted, this information comes from a recent NCI survey of workplace smoking policies, Gerlach, K., et al, "Workplace smoking policies in the United States: results from a national survey of more than 100,000 workers," Cancer Prevention, 6; 199-206; 1997.

- total number of indoor workers estimated to be 102 million

- 81.6% indoor workers surveyed report that their workplace has an official policy on workplace smoking

- 46% reported that their workplace did not permit smoking in either public/common areas (e.g., restroom and cafeterias) or work areas - designated as "smoke-free"

- percent of workers in "smoke-free" workplaces ranges from a low of 21.1% for food service occupations to a high of 80.7 % among health diagnosing occupations (See Table)

  - among food service occupations (over 1/3 smoke), this means that about 1 million workers are covered by "smoke-free" policies while another 4 million workers are not covered by "smoke free" policies but may have some smoking restrictions in the workplace

  - among "blue-collar" workers (about 1/3 smoke), this means that 8 million workers (28.5%) are covered by "smoke-free" policies while another 21 million workers are not covered by "smoke free" policies but may have some smoking restrictions in the workplace.

- total number buildings covered by OSHA's IAQ proposal is 4.5 million (source OSHA NPRM, 4/94; 59 FR 16004)

Federal State Smoking Regulations - State Government Worksites - Updated to 9/2/97

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alabama				✔		
Arkansas				✔		
Colorado	✔[3]				✔	✔
Delaware			✔		✔	✔
D.C.			✔		✔	✔
Florida			✔[4]		✔	✔
Georgia				✔		
Idaho	✔[3]					
Illinois			✔			
Kansas		✔			✔	✔
Louisiana			✔			
Maine	✔				✔	
Massachusetts			✔			
Mississippi				✔		
Missouri			✔		✔	✔
Montana			✔			
Nebraska			✔			✔
New Hampshire			✔		✔	✔
New Jersey			✔			✔
North Dakota			✔		✔	
Ohio			✔			✔
Oklahoma			✔			
Pennsylvania			✔		✔	✔
Rhode Island			✔		✔	
South Dakota	✔[3]				✔	✔
Texas	✔				✔	
West Virginia				✔		
Wisconsin			✔		✔	✔

*Adapted from State Tobacco Control Highlights---1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not speciffically address worksites
[2]No smoking allowed or designated smoking areas allowed if separately ventilated
[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.

Federal State Smoking Regulations -Private Worksites - Updated to 9/02/97

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alabama				✔		
Arkansas				✔		
Colorado				✔		
Delaware			✔		✔	✔
D.C.			✔		✔	✔
Florida			✔		✔	✔
Georgia				✔		
Idaho	✔ in all areas public access					
Illinois			✔			
Kansas		✔			✔	✔
Louisiana			✔			
Maine		✔	✔ "allowed" not required		✔	
Massachusetts				✔		
Mississippi				✔		
Missouri			✔		✔	✔
Montana			✔		✔	
Nebraska			✔			✔
New Hampshire			✔		✔	✔
New Jersey			✔			
North Dakota				✔		
Ohio				✔		
Oklahoma				✔		
Pennsylvania			✔		✔	✔
Rhode Island			✔		✔	
South Dakota				✔		
Texas				✔		
West Virginia				✔		
Wisconsin			✔		✔	✔

*Adapted from State Tobacco Control Highlights---1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not speciffically address worksites
[2]No smoking allowed or designated smoking areas allowed if separately ventilated
[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.
[5]. Except bars and restuarants.

Federal State Smoking Regulations -Restaurants - Updated to 9/02/97

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alabama				✔		
Arkansas				✔		
Colorado				✔		
Delaware			✔		✔	✔
D.C.			✔		✔	✔
Florida			✔		✔	✔
Georgia				✔		
Idaho			✔With seating capacity of 30+		✔	✔
Illinois			✔			✔
Kansas		✔			✔	✔
Louisiana				✔		
Maine			✔ "allowed"			
Massachusetts			✔			
Mississippi				✔		
Missouri			✔		✔	✔
Montana			✔		✔	
Nebraska			✔			✔
New Hampshire			✔		✔	✔
New Jersey				✔		
North Dakota			✔		✔	
Ohio				✔		
Oklahoma			✔			
Pennsylvania			✔		✔	✔
Rhode Island			✔		✔	✔
South Dakota				✔		
Texas				✔		
West Virginia				✔		
Wisconsin			✔		✔	✔

*Adapted from State Tobacco Control Highlights---1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not speciffically address worksites
[2]No smoking allowed or designated smoking areas allowed if separately ventilated
[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.
[5] Except bars, taverns, and hotel lobbies.

State-Plan States Smoking Regulations - State Government Worksites - Updated to 5/12/98

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alaska			✔		✔	✔
Arizona			✔[1]		✔	
California	✔				✔	
Connecticut			✔[4]			
Hawaii			✔		✔	✔
Indiana			✔			
Iowa			✔		✔	✔
Kentucky				✔		
Maryland		✔				
Michigan	✔[3]					
Minnesota			✔			✔
Nebraska			✔			✔
Nevada			✔		✔?	✔?
New Mexico			✔		✔	✔
New York			✔		✔	✔
North Carolina				✔		
Oregon			✔			
South Carolina			✔		✔	✔
Tennessee				✔		
Utah	✔				✔	✔
Vermont		✔				
Virginia			✔		✔	✔
Washington	✔[3]					
Wyoming		✔[3]				

*Adapted from State Tobacco Control Highlights---1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not speciffically address worksites
[2]No smoking allowed or designated smoking areas allowed if separately ventilated
[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.

State-Plan States Smoking Regulations -Private Worksites - Updated to 5/12/98

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alaska				✔		
Arizona				✔		
California	✔				✔	
Connecticut			✔			
Hawaii	✔					✔
Indiana				✔		
Iowa			✔		✔	✔
Kentucky				✔		
Maryland		✔			✔	
Michigan				✔		
Minnesota			✔			✔
Nevada				✔		
New Mexico				✔		
New York			✔		✔	✔
North Carolina				✔		
Oregon				✔		
South Carolina				✔		
Tennessee				✔		
Utah			✔		✔	✔
Vermont			✔		✔	
Virginia				✔	✔	✔
Washington	✔[3]	✔				
Wyoming				✔		

*Adapted from State Tobacco Control Highlights---1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not speciffically address worksites
[2]No smoking allowed or designated smoking areas allowed if separately ventilated
[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.

State-Plan Smoking Regulations -Restaurants - Updated to 5/12/98

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alaska			✔		✔	✔
Arizona				✔		
California	✔				✔	
Connecticut			✔			✔
Hawaii			✔		✔	
Indiana				✔		
Iowa			✔		✔	✔
Kentucky				✔		
Maryland			✔		✔	
Michigan			✔		✔	
Minnesota			✔			✔
Nevada				✔		
New Mexico				✔		
New York			✔		✔	✔
North Carolina				✔		
Oregon			✔		✔	
South Carolina				✔		
Tennessee				✔		
Utah	✔				✔	✔
Vermont	✔				✔	
Virginia			✔		✔	✔
Washington				✔		
Wyoming				✔		

*Adapted from State Tobacco Control Highlights---1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not speciffically address worksites
[2]No smoking allowed or designated smoking areas allowed if separately ventilated
[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.

Tob - scr - environmental
tob smoke

To Cynthia Rice

From Emily Sheketoff

Attached are the things I believe Elena Kagan asked me about:

1. information on how many workers are already being covered by some smoking restrictions...you should ask HHS for the National Cancer Institute survey these stats come from

2. grid from last Fall of states' smoking regulations

Can you distribute to the others? I wasn't sure who everyone else was in the room

ETS

5/5/98

Except where noted, this information comes from a recent NCI survey of workplace smoking policies, Gerlach, K., et al, "Workplace smoking policies in the United States: results from a national survey of more than 100,000 workers," Cancer Prevention, 6; 199-206; 1997.

- total number of indoor workers estimated to be 102 million

- 81.6% indoor workers surveyed report that their workplace has an official policy on workplace smoking

- 46% reported that their workplace did not permit smoking in either public/common areas (e.g., restroom and cafeterias) or work areas - designated as "smoke-free"

- percent of workers in "smoke-free" workplaces ranges from a low of 21.1% for food service occupations to a high of 80.7 % among health diagnosing occupations (See Table)

  - among food service occupations (over 1/3 smoke), this means that about 1 million workers are covered by "smoke-free" policies while another 4 million workers are not covered by "smoke free" policies but may have some smoking restrictions in the workplace

  - among "blue-collar" workers (about 1/3 smoke), this means that 8 million workers (28.5%) are covered by "smoke-free" policies while another 21 million workers are not covered by "smoke free" policies but may have some smoking restrictions in the workplace

- total number buildings covered by OSHA's IAQ proposal is 4.5 million (source OSHA NPRM, 4/94; 59 FR 16004)

Table 4 American workers covered by smoke-free policies and their smoking prevalence, by occupational category

Standard Census Bureau Occupational Categories (codes) (number of interviews)	Smoke-free* (%)	(95% CI)	Smoking prevalence* (%)	(95% CI)	Workers in occupation† (n)
Food service occupations (433–444) (n = 5957)	21.1	(19.9–22.3)	34.3	(32.9–35.7)	5 516 086
* Other transport occupations and material moving (823–859) (n = 508)	22.6	(18.4–26.8)	37.8	(32.9–42.7)	1 137 081
* Construction trades (553–599) (n = 908)	22.9	(19.8–26.1)	32.9	(29.4–36.4)	3 485 288
* Fabricators/assemblers/inspectors/samplers (783–799) (n = 2475)	26.3	(24.3–28.3)	33.7	(31.5–35.9)	2 514 753
* Machine operators/tenders, excluding precision (703–779) (n = 4988)	26.7	(25.3–28.2)	36.3	(34.7–37.9)	4 642 885
* Mechanics and repairers (503–549) (n = 2824)	27.0	(25.1–28.9)	35.5	(33.4–37.6)	3 798 910
* Other handlers/equipment cleaners/labourers (864–868; 874; 885–889) (n = 1484)	27.0	(24.4–29.6)	38.7	(35.8–41.6)	2 040 942
* Motor vehicle operators (803–814) (n = 358)	28.9	(23.5–34.3)	33.4	(27.8–39.0)	3 432 109
* Other precision production occupations (613–699) (n = 3598)	30.0	(28.2–31.8)	33.6	(31.8–35.4)	5 597 173
Farm workers and related occupations (477–489) (n = 504)	30.0	(24.0–36.0)	32.0	(25.9–38.1)	1 770 210
* Freight/stock/material handlers (875–883) (n = 1540)	31.6	(29.0–34.3)	30.2	(27.6–33.8)	1 781 065
Protective service occupations (413–427) (n = 1237)	36.2	(33.2–39.2)	27.5	(24.7–30.3)	2 109 396
Sales workers, retail/personal services (263–278) (n = 5726)	37.8	(36.3–39.3)	25.3	(24.0–26.7)	5 592 229
Sales representatives, commodities, excluding retail (258–259) (n = 738)	38.5	(34.4–42.6)	22.4	(18.9–25.9)	1 346 188
Supervisors and proprietors, sales (243) (n = 2860)	40.7	(38.6–42.8)	27.2	(25.3–29.1)	2 633 311
* Cleaning/building service occupations (448–455) (n = 2367)	41.6	(39.3–43.9)	32.0	(29.8–34.2)	2 870 642
Lawyers and judges (178–179) (n = 550)	44.6	(39.6–49.6)	8.4	(5.6–11.2)	445 505
Financial records, processing occupations (337–344) (n = 2511)	45.7	(43.3–48.1)	25.1	(23.0–27.2)	1 979 999
Personal services occupations (456–469) (n = 1598)	47.8	(44.8–50.8)	27.3	(24.6–30.0)	1 743 150
Other executive, administrators, managers (007–022) (n = 9109)	48.2	(47.0–49.4)	21.0	(20.0–22.0)	8 075 918
Mail and message distributing (354–357) (n = 640)	48.2	(43.5–52.9)	26.2	(22.1–30.3)	919 716
Engineering and science technicians (213–225) (n = 1124)	48.7	(45.3–52.1)	24.0	(21.1–26.9)	1 076 204
Sales representatives, finance, and business service (253–257) (n = 1370)	50.0	(46.9–53.1)	20.2	(17.7–22.7)	1 634 928
Computer equipment operators (308–309) (n = 708)	50.9	(46.6–55.2)	28.4	(24.5–32.3)	628 340
Supervisors–administrative support (303–307) (n = 885)	51.1	(47.2–55.0)	23.4	(20.1–26.7)	771 350
Engineers (044–059) (n = 1874)	51.6	(49.0–54.2)	13.5	(11.7–15.3)	1 714 158
Management-related occupations (023–037) (n = 4202)	52.5	(50.7–54.3)	16.6	(15.3–18.0)	3 653 579
Other administrative support occupations, including clerical (316–336; 345–353; 359–389) (n = 10897)	53.9	(52.8–55.0)	24.3	(23.3–25.3)	9 398 830
Secretaries, stenographers, typists (313–315) (n = 5132)	53.9	(52.2–55.6)	21.5	(20.1–22.9)	4 096 948
Technicians, other (226–235) (n = 1608)	54.3	(51.4–57.2)	20.2	(17.9–22.5)	1 447 771
Health service occupations (445–447) (n = 2181)	55.4	(52.9–57.9)	31.6	(29.2–34.0)	2 113 638
Administrators/officials, public administration (003–006) (n = 812)	57.5	(53.4–61.6)	21.3	(17.9–24.7)	674 509
Other professional specialty occupations (043; 063; 163–177; 183–199) (n = 3605)	58.2	(56.3–60.2)	16.4	(14.9–17.9)	3 155 911
Math/computer scientists (064–068) (n = 1074)	59.8	(56.5–63.1)	15.2	(12.8–17.6)	927 700
Teachers, college and university (113–154) (n = 1031)	60.3	(56.5–64.1)	9.8	(7.5–12.1)	731 468
Natural scientists (069–083) (n = 557)	68.9	(64.2–73.6)	12.0	(8.7–15.3)	477 368
Teachers, excluding college and university (155–159) (n = 5590)	70.4	(68.9–71.9)	10.3	(9.3–11.3)	4 304 867
Health technologists and technicians (203–208) (n = 1817)	72.4	(69.9–74.9)	21.3	(19.0–23.6)	1 487 788
Health assessment/treating occupations (095–106) (n = 3117)	76.8	(74.9–78.7)	16.8	(15.2–18.5)	2 478 306
Health diagnosing occupations (084–089) (n = 428)	80.7	(76.3–85.1)	6.7	(3.9–9.5)	387 247

*Estimates based only on the responses obtained from workers who met the indoor worker criteria (see Method).

† Number of American workers in each occupational category estimated using all persons who responded to the CPS labour force core questionnaire that they were currently working (worked in the week before interview). Self-employed workers not included.

* considered "blue collar" in estimates.

Tobacco Control 1997;6:199–206

Workplace smoking policies in the United States: results from a national survey of more than 100 000 workers

Karen K Gerlach, Donald R Shopland, Anne M Hartman, James T Gibson, Terry F Pechacek

Abstract

***Objective*—To determine the prevalence of smoking policies in indoor work environments as reported by a nationally representative sample of workers in the United States.**

***Design*—Cross-sectional survey of households within the United States.**

***Setting*—All 50 states and the District of Columbia, 1992–93.**

***Participants*—Currently employed indoor workers 15 years of age and older who responded to the National Cancer Institute's Tobacco Use Supplement to the Current Population Survey (n = 100 561).**

***Main outcome measures*—The prevalence and restrictiveness of workplace smoking policies as reported by workers currently employed in indoor workplaces in the United States.**

***Results*—Most of the indoor workers surveyed (81.6%) reported that their place of work had an official policy that addressed smoking in the workplace; 46.0% reported that their workplace policy did not permit smoking in either the public/common areas—for example, restrooms and cafeterias—or the work areas of the workplace. The reporting of these "smoke-free" policies varied significantly by gender, age, race/ethnicity, smoking status, and occupation of the worker.**

***Conclusions*—Although nearly half of all indoor workers in this survey reported that they had a smoke-free policy in their workplace, significant numbers of workers, especially those in blue-collar and service occupations, reported smoke-free rates well below the national average. If implemented, the US Occupational Safety and Health Administration's proposed regulation to require worksites to be smoke-free has the potential to increase significantly the percentage of American workers covered by these policies and to eliminate most of the disparity currently found across occupational groups.**

(*Tobacco Control* 1997;6:199–206)

Keywords: workplace smoking policy; smoke-free worksites; United States

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Introduction

The possibility that ambient tobacco smoke could harm non-smokers was first articulated in January 1971 by then US Surgeon General Jesse L Steinfeld, who called for a national "Nonsmokers' Bill of Rights."[1] Twenty years later Dr Steinfeld reflected, "No other action or suggestion regarding cigarette use had elicited such a torrent of mail as the call for a nonsmokers' bill of rights. The tally [of responses] was almost 20 to 1 in favor of the proposal."[1] Steinfeld also directed the National Clearinghouse for Smoking and Health (predecessor to the Office on Smoking and Health) to include in the next report of the Surgeon General a review of the available scientific evidence on the health effects of environmental tobacco smoke (ETS).[2]

In 1986 reports from both the US Surgeon General and the National Academy of Sciences again addressed the hazardous nature of ETS and concluded that ETS was a major health risk to non-smokers.[3 4] Six years later, the US Environmental Protection Agency (EPA) issued a landmark report that further detailed the health hazards of ETS, classifying it as a group A (known human) carcinogen and estimating that each year 3000 cases of lung cancer in non-smokers were attributable to ETS exposure.[5] Reflecting the growing evidence that ETS poses a health risk, the US Public Health Service included in its national health goals that 75% of worksites either prohibit or severely restrict smoking by the year 2000.[6]

This report presents a comprehensive estimate of the number of American workers covered by official workplace smoking policies based on a survey of currently employed workers. The Current Population Survey (CPS), which has been in existence since 1947, is designed to obtain labour force indicators for the US Bureau of Labor Statistics, and, as such, provides a good vehicle for obtaining workplace-related information from American workers. In 1992 and 1993 the National Cancer Institute (NCI) appended to the CPS a Tobacco Use Supplement, which assessed, among other things, the presence and restrictiveness of workplace smoking policies. The data from this survey, obtained from interviews with more than 100 000 workers, are presented by age, gender, race/ethnicity, and occupational groups.

Methods

The CPS is a continuous monthly survey, which focuses on labour force indicators for the civilian, non-institutionalised American

State-Plan States Smoking Regulations - State Government Worksites - Updated to 9/2/97

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alaska			☒		☒	☒
Arizona			☒		☒	
California	☒				☒	
Connecticut			☒			
Hawaii			☒		☒	☒
Indiana			☒			
Iowa			☒		☒	☒
Kentucky				☒		
Maryland		☒				
Michigan	☒					
Minnesota			☒			☒
Nebraska			✔			✔
Nevada			☒		☒[2]	☒[2]
New Mexico			☒		☒	☒
New York			☒		☒	☒
North Carolina				☒		
Oregon			☒			
South Carolina			☒		☒	☒
Tennessee				☒		
Utah	☒				☒	☒
Vermont		☒				
Virginia			☒		☒	☒
Washington	☒					
Wyoming		☒				

*Adapted from State Tobacco Control Highlights—1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not specifically address worksites
[2]No smoking allowed or designated smoking areas allowed if separately ventilated
[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.

State-Plan States Smoking Regulations -Private Worksites - Updated to 9/02/97

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alaska				☑	[1]	[1]
Arizona				☑		
California	☑				☑	
Connecticut			☑			
Hawaii	☑					☑
Indiana				☑		
Iowa			☑		☑	☑
Kentucky				☑		
Maryland		☑			☑	
Michigan				☑		
Minnesota			☑			☑
Nevada			[2]	☑	[2]	
New Mexico				☑		
New York			☑		☑	☑
North Carolina				☑		
Oregon				☑		
South Carolina				☑		
Tennessee				☑		
Utah			☑		☑	☑
Vermont			☑		☑	
Virginia				☑	☑	☑
Washington	☑	☑			[5]	
Wyoming				☑		

*Adapted from State Tobacco Control Highlights---1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not specifically address worksites
[2]No smoking allowed or designated smoking areas allowed if separately ventilated
[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.
[5]. Except bars and restuarants.

State-Plan Smoking Regulations -Restaurants - Updated to 9/02/97

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alaska			☒		☒	☒
Arizona				☒		
California	☒				☒	
Connecticut			☒			☒
Hawaii			☒		☒	
Indiana				☒		
Iowa			☒		☒	☒
Kentucky				☒		
Maryland		‡	☒		☒	
Michigan			☒	‡	☒	
Minnesota			☒			☒
Nevada				☒		
New Mexico				☒		
New York			☒		☒	☒
North Carolina				☒		
Oregon			☒		☒	
South Carolina				☒		
Tennessee				☒		
Utah	☒				☒	☒
Vermont	☒				☒	
Virginia			☒		☒	☒
Washington				☒		
Wyoming				☒		

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[1]Restricts smoking in government buildings but does not specifically address worksites
[2]No smoking allowed or designated smoking areas allowed if separately ventilated
[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.
[5] Except bars, taverns, and hotel lobbies.

Federal State Smoking Regulations - State Government Worksites - Updated to 9/2/97

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alabama				✔		
Arkansas				✔		
Colorado	✔[2]				✔	✔
Delaware			✔		✔	✔
D.C.			✔		✔	✔
Florida			✔[4]		✔	✔
Georgia				✔		
Idaho	✔[3]					
Illinois			✔			
Kansas		✔			✔	✔
Louisiana			✔			
Maine	✔				✔	
Massachusetts			✔			
Mississippi				✔		
Missouri			✔		✔	✔
Montana			✔			
Nebraska			✔			✔
New Hampshire			✔		✔	✔
New Jersey			✔			✔
North Dakota			✔		✔	
Ohio			✔			✔
Oklahoma			✔			
Pennsylvania			✔		✔	✔
Rhode Island			✔		✔	
South Dakota	✔[2]				✔	✔
Texas	✔				✔	
West Virginia				✔		
Wisconsin			✔		✔	✔

*Adapted from State Tobacco Control Highlights—1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not specifically address worksites
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[3]By executive order
[4]Restricts smoking in government buildings but does not specifically address worksites.

Federal State Smoking Regulations -Private Worksites - Updated to 9/02/97

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alabama				✔		
Arkansas				✔		
Colorado				✔		
Delaware			✔		✔	✔
D.C.			✔		✔	✔
Florida			✔		✔	✔
Georgia				✔		
Idaho	✔ in all areas public access					
Illinois			✔			
Kansas		✔			✔	✔
Louisiana			✔			
Maine		✔	✔ "allowed" not required		✔	
Massachusetts				✔		
Mississippi				✔		
Missouri			✔		✔	✔
Montana			✔		✔	
Nebraska			✔			✔
New Hampshire			✔		✔	✔
New Jersey			✔			
North Dakota				✔		
Ohio				✔		
Oklahoma				✔		
Pennsylvania			✔		✔	✔
Rhode Island			✔		✔	
South Dakota				✔		
Texas				✔		
West Virginia				✔		
Wisconsin			✔		✔	✔

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[5]. Except bars and restuarants.

Federal State Smoking Regulations -Restaurants - Updated to 9/02/97

	Restrictions				Penalties	
State	100% Smokefree	Designated Smoking Areas with Separate Ventilation	Designated Smoking Areas Required or Allowed	None	To Businesses	To Smokers
Alabama				✔		
Arkansas				✔		
Colorado				✔		
Delaware			✔		✔	✔
D.C.			✔		✔	✔
Florida			✔		✔	✔
Georgia				✔		
Idaho			✔With seating capacity of 30+		✔	✔
Illinois			✔			✔
Kansas		✔			✔	✔
Louisiana				✔		
Maine			✔ "allowed"			
Massachusetts			✔			
Mississippi				✔		
Missouri			✔		✔	✔
Montana			✔		✔	
Nebraska			✔			✔
New Hampshire			✔		✔	✔
New Jersey				✔		
North Dakota			✔		✔	
Ohio				✔		
Oklahoma			✔			
Pennsylvania			✔		✔	✔
Rhode Island			✔		✔	✔
South Dakota				✔		
Texas				✔		
West Virginia				✔		
Wisconsin			✔		✔	✔

*Adapted from State Tobacco Control Highlights--1996. Published by the U.S. Department of Health and Human Services, Centers for Disease Control.
[1]Restricts smoking in government buildings but does not speciffically address worksites
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Tob-acr-Env tob smoke 002

Richard Durbin

UNITED STATES SENATOR ■ ILLINOIS

FAX

TO: Larry Stein or Janet Murguia

OFFICE:

FAX NO: ( ) 456-6220

FROM: Tom Faletti

PHONE: (2 0 2)

DATE:

PAGES *(including this cover sheet):* 6

NOTE: Please pass on to McCain's staff. I think they would want to incorporate this rather than deal with it on the floor. It is language to apply the ETS section to Congress. Thanks.

364 Russell Senate Office Building • Washington, D.C. 20510 • (202) 224-2152

AMENDMENT NO. ____ Calendar No. ____

Purpose: To apply to the legislative branch of the Federal Government certain requirements of the National Tobacco Policy and Youth Smoking Reduction Act.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

At the appropriate place, insert the following:

SEC. ___. CONGRESSIONAL ACCOUNTABILITY.

(a) APPLICATION OF LAWS.—Section 102 of the Congressional Accountability Act of 1995 (2 U.S.C. 1302) is amended by adding at the end the following:

"(12) Section 502 of the National Tobacco Policy and Youth Smoking Reduction Act.".

(b) PROCEDURES.—Title II of the Congressional Accountability Act of 1995 (2 U.S.C. 1311 et seq.) is amended—

(1) by redesignating parts E and F as parts F and G, respectively; and

(2) by inserting after part D the following:

"PART E—TOBACCO SMOKE EXPOSURE REDUCTION REQUIREMENTS

"SEC. 222. RIGHTS AND PROTECTIONS UNDER THE NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT.

"(a) REDUCTION OF EXPOSURE.—

"(1) RIGHTS AND PROTECTIONS.—Each responsible entity shall comply with section 502 of the National Tobacco Policy and Youth Smoking Reduction Act.

"(2) DEFINITION.—For the purpose of this section and the application of such section 502 under this section—

"(A) the term 'public facility' means a building owned by or leased to an entity of the legislative branch of the Federal Government, that is not a building or portion excluded under section 501(2)(B) of the National Tobacco Policy and Youth Smoking Reduction Act; and

"(B) the term 'responsible entity' means an employing office, the General Accounting Office, the Government Printing Office, the Library of Congress, and any other entity of the legislative branch.

"(b) REMEDY.—The remedy for a violation of subsection (a) shall be such order enjoining the violation or such civil penalty as would be appropriate if issued under subsection (b) or (e) of section 503 of the National Tobacco Policy and Youth Smoking Reduction Act.

"(c) PROCEDURES.—

"(1) HEARINGS AND REVIEW.—After providing notice as described in section 503(c) of the National Tobacco Policy and Youth Smoking Reduction Act, an aggrieved person may file a complaint alleging a violation of subsection (a) with the Office against the responsible entity. The complaint shall be submitted to a hearing officer for decision pursuant to subsection (b) through (h) of section 405, subject to review by the Board pursuant to section 406.

"(2) JUDICIAL REVIEW.—A party aggrieved by a final decision of the Board under paragraph (1) may file a petition for review with the United States Court of Appeals for the Federal Circuit pursuant to section 407.

"(d) REGULATIONS TO IMPLEMENT SECTION.—

"(1) IN GENERAL.—The Board shall, pursuant to section 304, issue regulations to implement this section.

"(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.

"(3) OFFICE RESPONSIBLE FOR CORRECTION.—The regulations issued under paragraph (1) shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (a), the office responsible for correction of a particular violation.

"(e) EFFECTIVE DATE.—Subsections (a) through (c) shall be effective on January 1, 1999.".

(c) CONFORMING AMENDMENTS.—

(1) The table of contents of the Congressional Accountability Act of 1995 is amended by striking

the items relating to parts E and F of title II of such Act and inserting the following:

(2) Section 407(a)(1)(C) of the Congressional Accountability Act of 1995 (2 U.S.C. 1407(a)(1)(C)) is amended by inserting before the comma the following: ", or a party aggrieved by a final decision of the Board under section 222(c)".

(3) Section 414 of such Act (2 U.S.C. 1414) is amended by inserting "222," after "220,".

(4) Section 415(c) of such Act (2 U.S.C. 1415(c)) is amended—

(A) in the subsection heading, by striking "AND ACCESS" and inserting "ACCESS, AND TOBACCO SMOKE EXPOSURE REDUCTION"; and

(B) by striking "or 215" and inserting "215, or 222".

U.S. Department of Labor
Occupational Safety and Health Administration
Office of the Assistant Secretary
200 Constitution Avenue, N.W.
Room S-2315
Washington, D.C. 20210

Facsimile Transmission

Date: May 15, 1998

To: Elena Kagan

Phone: 456-5565

Fax: 456-2878

Number of Pages (including cover sheet): 2 pgs

From: Emily Sheketoff, Deputy Assistant Secretary

Phone: 202-219-6104

Fax: 202-219-4761

Message: Call me if you need a change

SEC. 507. STATE CHOICE

Any State or locality may opt out of this section by promulgating a State or local law which is more protective to the public's health, subject to certification by the Assistant Secretary. Any State or locality may opt to enforce TITLE V OF S. 1415 - STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE themselves, subject to certification by the Assistant Secretary that the enforcement is as effective as enforcement by the Occupational Safety and Health Administration.

this title

5

enhancement such will effectively protect the public's health.

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is an eff

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Phone No. (Partial) (1 page)	05/14/1998	P6/b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Elena Kagan
OA/Box Number: 14367

FOLDER TITLE:
Tobacco - Settlement: Environmental Tobacco Smoke

2009-1006-F
rc88

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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

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

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

TO ELENA KAGAN

FROM: EMILY SHEKETOFF

SUBJECT: OSHA'S PROPOSED LANGUAGE ON OPT OUT

SEC. 507. STATE CHOICE

, by law,

Any State or locality may opt out of this section by promulgating a State or local law or regulation which is more protective to the public's health, subject to certification by the Assistant Secretary ~~of Labor for Occupational Safety and Health Administration~~.

(3)

Any state or loc may opt to enhance — by their own enhancement certification

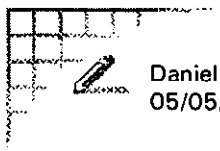
[001]

P6/(b)(6)

1st - tel #
3rd - operator - text mis

Tob-mr-GTS

ok for public health round?



Daniel J. Chenok 57316
05/05/98 06:44:02 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP

cc: Joshua Gotbaum/OMB/EOP, Donald R. Arbuckle/OMB/EOP, Richard J. Turman/OMB/EOP, Lori Schack/OMB/EOP

Subject: ETS Opt-out fallback

In thinking through other strategies on the State opt-out provision in McCain: the State opt-out could be rewritten to allow opt-out for States that pass laws that are "at least as effective" as the provision and the implementing OSHA standard. This would essentially allow Federally-enforced OSHA States to come up with OSHA state plans for tobacco only, while being consistent with the way current OSHA State plan States do business. It preserves the concept of an opt-out, which may be important to McCain, while ensuring that States don't replace it with a weaker approach, and OSHA has experience ensuring that the "at least as effective" structure works (they approve the State Plan)).

If it's helpful I can call Emily Shekitoff at OSHA and bounce this off.

State plan e.g. to address ergonomics
OSHA reviews
gives state flexibility
even now, st plan could opt out in this way.

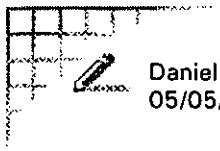
State plan states - just like now for other workplace issues (OSHA approval)

OSHA plan states - could do same way for tobacco only

→ allow states that are generally OSHA plan to do too

a standard at least as effective as std in McC

Tob-mr-ETS



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Tobac - ext - environmental tobacco smoke

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE
ADMINISTRATOR

March 26, 1998

MEMORANDUM FOR ELENA KAGAN, DOMESTIC POLICY COUNCIL

FROM: Gary Guzy, Counselor to the Administrator
Doug Tsao, Special Assistant to the Administrator

SUBJECT: Environmental Tobacco Smoke

We understand that the legislation being drafted by Senator Chafee and the Senate Environment and Public Works Committee seeks to target exposures to environmental tobacco smoke (ETS). We believe this could be an attractive approach because it addresses children's exposures to ETS in the home and exposures associated with the hospitality industry (restaurants, bars, and casinos).

The Chafee approach would differ from the Waxman legislation, which bans smoking in public buildings although exempts the hospitality industry. Current thinking appears to be that the Chafee legislation would not include a ban, recognizing that a ban exempting the hospitality industry produces few public health gains. Most public buildings already ban smoking, and a ban exempting the hospitality industry would produce a system where the federal government would regulate churches, for example, but would not address ETS exposures in bars.

In lieu of a ban, the Chafee bill would create a scheme for rewarding states for progressively lowering exposures. Each year, $100 million would be allocated for the reduction of ETS in public places, including bars, restaurants, and casinos. Almost all of these funds would be divided among the states, which would implement their own programs. However, these funds would be given to a state contingent upon its progress in lowering ETS exposures. We believe that this scheme could be effective, although we would want assurances that the state programs were designed properly. We also believe that there should be assurances that states will make legitimate efforts to achieve reductions in ETS exposures, with the ultimate goal of eliminating all involuntary exposures. If implemented properly, by not exempting the hospitality industry, this scheme has the potential to achieve public health benefits greater than the Waxman bill.

Of equal importance, the Chafee legislation would address ETS in the home and the health effects upon children. Roughly 27 percent of children face daily exposure to ETS in the home. ETS exposures to children cause asthma, respiratory tract infections, and roughly 7 million lost days of school. Senator Chafee is contemplating including an authorization for $100 million annually to address children's exposure to ETS. The states would receive $75 million and the federal

government would receive $25 million; EPA would work with HHS and CDC in implementing the federal program. The resources provided in the Chafee bill would give the federal government important resources it now lacks to further its work to address this public health problem.

We believe that tobacco settlement legislation should set an ultimate goal of eliminating all involuntary exposures to ETS. Because it exempts the hospitality industry, the Waxman bill may not achieve this standard. While not relying on a regulatory mandate, the Chafee approach may incorporate the ultimate goal of eliminating all involuntary exposures to ETS. Moreover, the Chafee bill takes a pragmatic approach by addressing the most serious exposures to ETS -- children in the home and by not exempting the hospitality industry. These are two important public health issues that EPA strongly prefers be addressed in any comprehensive tobacco settlement legislation.

- opt-out
- restaurant
- OSHA
- Chafee model?
- airline smoking ban - international

II jurisdictional issue

ME to draft leg - we have to get to econ/int'l people

TOB-set - env. tobacco smoke

1. Opt-out provision

OSHA - horrible. #1 priority to get out

BR: CBO says most ~~states~~ people already covered. True?

-> review of settlement - early April

ME/ES to review this finding / also to do a st-by-st side

37 have some kind of ETS

[Priv rt of action - included in McC.

Very good - ~~[illegible]~~ Waxman likes]

2. Jurisdiction

OSHA jurisdiction - better in-the-field ability.

EPA consult on standard-setting.

Need anything on paper?

GG - get us draft language

3. Hospitality -

Our position - phase-in hosp ind.

give 5 yrs - w/ benchmarks

Not in testimony.

In Q+A, we stressed flexibility (phase-in)

-> said it should be included, but

Pub health commun - vocal: shouldn't have exception

Draw line b/w restaurants + everything else - or separate

4. Preemption/OSHA

OSHA enforcement state - 29

Can state go further?   ES: Yes + st. would enforce additional restriction.

Could OSHA be given auth? Thanks, but no thanks.

But OK to make clear that states have auth to enforce.

5. Chafee – Harkin-Graham –

EHG bill: a) children exposed to harms – most signif ETS issue
c. wants to address
but can't reg.
100m per yr authorizes outreach ted campaigns.

Can raise alone should try to fold in

b) warn than fed req of pub bldgs
coop fed-st effort
provide incentives to bldg owners + states to dev. policies
100 m per yr.
grant program for states mtg certain standards
clear fed'l benchmark-eliminating exposures.
question whether is really enough to get states to do something real.

PBR-broaden: educate parents on how to keep kid from smoking, as well as...

warn than MCL w/out opt-out
better " " w/ opt-out

DR: what about take away some of their $ if they opt out?
Depends on how much is at stake.

Issue: "combustion" of tobacco –
new-gen cigs don't burn
replace w/ "combustion or heating"

Exposure of Casino Employees to Environmental Tobacco Smoke

Douglas Trout, MD, MHS
John Decker, MS
Charles Mueller, MS
John T. Bernert, PhD
James Pirkle, MD, PhD

Environmental and medical evaluations were performed to evaluate occupational exposure to environmental tobacco smoke (ETS) among casino employees. Air concentrations of both nicotine and respirable dust were similar to those published in the literature for other non-industrial indoor environments. The geometric mean serum cotinine level of the 27 participants who provided serum samples was 1.34 nanograms per milliliter (ng/mL) (pre-shift) and 1.85 ng/mL (post-shift). Both measurements greatly exceeded the geometric mean value of 0.65 ng/mL for participants in the Third National Health and Nutrition Examination Survey (NHANES III) who reported exposure to ETS at work. This evaluation demonstrates that a sample of employees working in a casino gaming area were exposed to ETS at levels greater than those observed in a representative sample of the US population, and that the serum and urine cotinine of these employees increased during the workshift.

In 1995 the National Institute for Occupational Safety and Health (NIOSH) received an employee request for a health hazard evaluation (HHE) concerning exposure to second-hand (environmental) tobacco smoke (ETS) among employees at a casino in Atlantic City, New Jersey. In response to this request, NIOSH performed a field study to evaluate the exposure of gaming floor employees to ETS using both environmental and biologic measures of exposure.[1]

Environmental Tobacco Smoke

Occupational exposure to ETS is recognized as an important public health issue.[2,3] NIOSH has determined that ETS poses an increased risk of lung cancer, other lung disease, and possibly heart disease to occupationally exposed workers and recommends eliminating or restricting tobacco use in the workplace.[4] Although many workplaces are adopting policies that restrict smoking, occupational exposure to ETS remains a concern among some of the 110 million Americans who work outside the home.[5,6] Occupational ETS exposures have not been evaluated to the extent that home exposures have.[6] In particular, there is very little information available concerning the exposure of casino employees in the United States to ETS.

In this survey, vapor-phase nicotine and respirable particulate were monitored as marker substances for exposure to ETS. Vapor-phase nicotine, which accounts for approximately 95% of nicotine in ETS, is currently a widely accepted marker

From the Division of Surveillance, Hazard Evaluation and Field Studies, National Institute for Occupational Safety and Health, Atlanta, Ga., and Cincinnati, Ohio (Dr. Trout Mr Decker, Mr Mueller) and the Division of Environmental Health Laboratory Sciences, National Center for Environmental Health, Atlanta, Ga. (Dr Bernert, Dr Pirkle), Centers for Disease Control and Prevention.

Address correspondence to: Douglas Trout, MD, MHS, NIOSH, 4676 Columbia Parkway, R-10, Cincinnati, OH 45226.

1076-2752/98/4003-0270$3.00/0

for ETS exposure.[7-9] One potential drawback of vapor-phase nicotine is that the physical properties of vapor-phase nicotine on indoor surfaces can alter (increase or decrease) its concentration relative to other ETS components.[9] Respirable particulate has also been used as a marker of ETS, but it may be difficult to separate the ETS-associated particulate from that of other indoor sources.[7-9] The concentrations of these markers in ETS are consistently lower than their respective occupational airborne exposure criteria, which were based primarily on acute effects. The NIOSH Recommended Exposure Limit (REL) and the American Conference of Governmental Industrial Hygienists' (ACGIH) threshold limit value (TLV) for nicotine, used primarily for exposure assessments in agriculture, are 500 micrograms per cubic meter of air ($\mu g/m^3$), and are not applicable in evaluations of ETS exposure.[10,11] A model used to derive a health-based standard for ETS has shown that an eight-hour, time weighted average exposure to 2.3 $\mu g/m^3$ of nicotine would correspond to 3 lung cancer deaths among 10,000 exposed over a working lifetime.[12] The US Department of Labor, Occupational Safety and Health Administration (OSHA) general industry permissible exposure limit (PEL) for respirable particulate not composed of a substance that has its own PEL is 5000 $\mu g/m^3$ (the ACGIH TLV is 3000 $\mu g/m^3$; there is no REL).[11,13] In contrast, the mean area air nicotine concentrations reported in ETS studies of public buildings have ranged from 0.7–37 $\mu g/m^3$, concentrations in restaurants and bars have ranged from 2.3–65.5 $\mu g/m^3$, and concentrations in gaming parlors and betting shops have ranged from 11–19 $\mu g/m^3$.[7,12] One study found that the median air nicotine concentration was 8.6 $\mu g/m^3$ in offices at worksites that allowed smoking.[6] Respirable particulate measurements have ranged up to 115 $\mu g/m^3$ in office buildings and up to 843 $\mu g/m^3$ in restaurants.[7]

Biologic monitoring of exposure to ETS is most commonly conducted by measuring cotinine in the serum and/or urine of potentially-exposed persons.[3,8,14-16] Cotinine, which is the major metabolite of nicotine, has a half-life of approximately 16–20 hours, reflecting exposure to nicotine from the previous one to two days.[3] There are no NIOSH, ACGIH, or OSHA criteria for cotinine in blood or urine. Although studies reporting cotinine levels in non-smokers exposed to ETS have been summarized,[12] differences in laboratory methods sometimes make it difficult to compare cotinine levels determined in different laboratories.[17] A study of more than 600 non-smokers attending a medical clinic found a mean urine cotinine level of 8.8 ng/mL (range, 0–85), with increased levels correlating with reported exposures.[14] Another study found a mean urine cotinine level of 9.2 ng/mL among non-smokers exposed to ETS at home or work.[18] A recent US population survey measuring serum cotinine in over 2600 working adults reported the following geometric means by category: (1) no reported ETS exposure: 0.132 ng/mL; (2) reported ETS exposure at work: 0.318 ng/mL; (3) reported ETS exposure at home: 0.651 ng/mL; and (4) reported ETS exposure at home and work: 0.926 ng/mL.[3]

Although some foods, including tea, tomatoes, potatoes, and cauliflower, may contain nicotine in measurable quantities and therefore have been suggested as a source of cotinine in the body,[19] the amount of cotinine in serum as a result of food intake has been shown to be extremely low relative to that resulting from ETS exposure.[3]

Workplace Description

The casino that was evaluated was constructed in 1979 and offers a variety of gaming activities, including slot machines, roulette, blackjack, baccarat, craps, and poker. The gaming floor has an area of 71,380 square feet (ft^2); a separate poker area has an area of 8679 $ft.^2$ Gaming activities are in operation 24 hours per day, seven days a week. The maximum occupancy of the casino is 9560 persons. The casino employs approximately 800 persons who work on the casino floor; approximately 330 are full-time dealers and approximately 180 are full-time dealer supervisors. Specific game or area assignments for dealers and supervisors were made at the start of each shift and changed daily (and sometimes within a given work shift). Other casino floor employees include waitresses, cashiers, and security personnel.

The heating, ventilating, and air-conditioning system was controlled by a Honeywell building management system (Honeywell Inc., Minneapolis, MN). There were 17 air handling units, each rated to supply 47,000 cubic feet per minute of conditioned air. Assuming a maximum casino capacity (9560 persons) and a reported minimum 30% outdoor air intake, an outside air rate of 25 cubic feet per minute per person (cfm/person) can be calculated. Although the ventilation system was not inspected, carbon dioxide (CO_2) measurements (which ranged from 425 to 850 parts per million) were consistent with the calculated outdoor air supply rates.

Tobacco smoking by customers is permitted throughout the casino floor; employees do not smoke while on duty. Although some gaming tables are designated as non-smoking, the non-smoking tables are generally located adjacent to tables where smoking is permitted. The employee cafeteria has smoking and non-smoking areas, but these areas are not physically partitioned, and tobacco smoke is evident in the non-smoking area. Employee lounges are designated non-smoking areas.

Methods

The field study was performed in March 1996 and consisted of environmental and medical evaluations. Employee representatives and man-

agement were notified in advance of the NIOSH site visit. The study population consisted of dealers and supervisors; there were 279 dealers and supervisors, including both smokers and non-smokers, scheduled to work the second shift (generally the busiest shift of the day) during the two days of the evaluation (Thursday and Friday nights). Dealers and supervisors were chosen as the study population because these were the only employees for whom adequate work schedule information was available. During the evening prior to the evaluation, NIOSH investigators were present in the casino cafeteria to distribute information sheets describing the HHE and to talk to employees. Although the goal was to contact and explain the HHE to each of the 279 employees who were nonsmokers, the actual number of nonsmokers in the population and the actual number contacted is unknown. Each non-smoking dealer and supervisor contacted was asked to participate in the HHE on one of the two nights (either Thursday or Friday night). Management presence at the time of employee recruitment and employee concern over management disapproval of the evaluation was likely an important factor negatively affecting employee participation. Participants were not paid.

Environmental

Personal breathing zone (PBZ) and general area (stationary) air samples for nicotine vapor were collected by drawing air through XAD-4 sorbent tubes (SKC® #226-93; SKC Inc., Eighty Four, PA) with battery-powered SKC Pocket Pumps® at air flow rates of 150 milliliters per minute (mL/min) for personal samples and 200 mL/min for area samples. Sampling was conducted for approximately eight hours. The analyses for nicotine were conducted in the NIOSH laboratory using a modified version of American Society for Testing and Materials (ASTM) method D5075-90a, *Standard Test Method for Nicotine in Indoor Air*.[1,20] The total mass of respirable particulate was collected according to NIOSH Method 0600 using pre-weighed polyvinyl chloride (PVC) filters installed in Dorr-Oliver (Milford, CT) nylon cyclones (which collect particulates less than ten microns in diameter).[1,21] Sampling was conducted at a flow rate of 1.7 liters per minute (L/min) for approximately eight hours. Nine area samples were collected at the center tables in various gaming pits (locations in the casino gaming area are referred to as pits). Instantaneous measurements of CO_2 concentrations were obtained using a Gas Tech Model RI-411A Portable (direct reading) CO_2 monitor (Gas Tech Inc., Newark, CA). CO_2 measurements were obtained at various intervals and locations throughout the building.

Medical

The medical evaluation included a self-administered questionnaire and biologic monitoring for exposure to cigarette smoke. After giving informed consent and confirming that they did not currently use tobacco products, employees filled out a questionnaire that included questions on work history, tobacco use history, and exposure to ETS. Participants were asked to estimate the amount of time (hours/minutes) that they were exposed to ETS on the day of the evaluation and for the four previous days. The work practices and activities of all participants were observed by NIOSH personnel during the course of the evaluation.

Pre- and post-shift blood and urine specimens were collected from each participant. All samples were blind-coded and sent to the National Center for Environmental Health, Division of Environmental Health Laboratory Sciences. Serum cotinine was determined for each serum sample in duplicate by high-performance liquid chromatography/atmospheric-pressure chemical ionization tandem mass spectrometry (LC APCI MS/MS) according to a standard protocol.[3] This method has been shown to be a specific and sensitive method for cotinine measurements.[22] The limit of detection (LOD) was 0.050 ng/mL. The mean of two determinations is reported as the final result for all individual samples.

Urine cotinine analyses were made by using a similar LC tandem mass spectrometric procedure with the same LOD. However, for these samples, a preliminary hydrolysis of the cotinine glucuronides was carried out. Thus the urine cotinine results are the total (free cotinine + cotinine glucuronide) levels in the sample. The mean of two determinations is reported as the final result for all individual samples. Both serum and urine cotinine values are reported in units of ng/mL.[23-25] Four samples of both serum and urine from each night of testing were split and sent to the laboratory as additional samples not identified as duplicates. Analysis of these samples indicated an overall method coefficient of variation of 2% for both the serum and urine assays in this study.

For the two sample t tests and correlations, serum and urine cotinine levels were log-transformed because of the skewness in their distributions. Statistical analyses were performed using Epi Info, Version 6[26] and SAS.[27] A P value ≤ 0.05 was considered statistically significant.

Results

Environmental

Eighteen PBZ samples for nicotine and ten area samples each for nicotine vapor and respirable dust were collected. PBZ nicotine exposures for the Thursday evening monitoring ranged from 6-12 $\mu g/m^3$ (geometric mean, 8 $\mu g/m^3$), expressed as time-weighted averages (TWAs). The highest PBZ sample concentration (12 $\mu g/m^3$) was from a dealer working a poker game. Area TWA air concentrations (range, 6-12 $\mu g/m^3$; geometric mean, 8 $\mu g/m^3$) were similar to the PBZ sample concentra-

TABLE 1
Serum and Urine Cotinine and Nicotine Air Sampling Results Among Casino Employees Reporting Exposure to Tobacco Smoke at Work Only

Participant No.	Job*	PBZ† Nicotine (μg/m³)	Serum (ng/mL) Pre-Shift Cotinine	Serum (ng/mL) Post-Shift Cotinine	Urine (ng/mL) Pre-Shift Cotinine	Urine (ng/mL) Post-Shift Cotinine
1‡	D	7	2.74	2.62	159	197
2	D	NA§	1.19	1.45	37.7	54.4
3	D	10	1.58	2.22	16.7	39.1
4	S	6	0.885	1.36	21	28.4
5	S	NA	1.07	1.21	5.76	20.7
6	D	NA	0.987	1.32	23.7	26.7
7	S	NA	2.81	2.61	51.4	50.5
8	S	10	1.14	1.95	27.3	35.9
9	D	15	0.23	2.70	7.83	58.0
10	D	12	0.768	1.54	16.4	22.6
11	S	4	1.15	1.41	37.0	43.2
12	D	9	2.19	2.57	44.9	52.6
13	D	14	1.35	1.96	35.8	51.2
14	S	NA	2.38	2.58	26.8	31.2
15‡	D	NA	2.89	3.19	19.5	21.7
16	S	NA	0.659	0.917	23.0	24.1
17	D	NA	1.16	1.42	27.2	33.3

* Job titles: D, dealer; S, supervisor.
† Personal breathing zone sampling for nicotine vapor (time-weighted average).
‡ Some or all of workshift on day of sampling was spent at non-smoking table.
§ NA, test not performed.

TABLE 2
Serum and Urine Cotinine and Nicotine Air Sampling Results Among Casino Employees Reporting Exposure to Tobacco Smoke at Work and Outside of Work

Participant No.	Job*	PBZ Nicotine† (μg/m³)	Serum (ng/mL) Pre-Shift Cotinine	Serum (ng/mL) Post-Shift Cotinine	Urine (ng/mL) Pre-Shift Cotinine	Urine (ng/mL) Post-Shift Cotinine
1	D	9	NA‡	NA	47.6	54.0
2	S	6	0.928	1.47	16.2	23.6
3§	D	8	2.72	2.56	21.2	45.3
4	D	12	2.78	2.91	42.4	58.6
5¶	D	6	113	73	4884	4137
6§	D	8	1.30	1.57	14	7.21
7	S	NA	4.24	3.52	61.1	59.3
8	D	10	1.37	1.77	28.4	33.9
9	D	11	1.38	1.16	23.4	25.3
10	S	NA	1.48	2.03	7.98	28.1
11	D	12	1.06	2.33	17.4	32.5
12	S	NA	0.516	0.959	2.54	3.87

* Job titles: D, dealer; S, supervisor.
† Personal breathing zone sampling for nicotine vapor (time-weighted average).
‡ NA, test not performed.
§ Some or all of workshift on day of sampling was spent at non-smoking table.
¶ Based on high cotinine levels, this participant was determined to be an active smoker; results are excluded from all analyses.

tions. For the Friday evening monitoring, the PBZ concentrations were slightly higher than those of Thursday evening, ranging from 4–15 μg/m³ as TWAs (geometric mean, 10 μg/m;³ $P = 0.11$). The highest PBZ exposure (15 μg/m³) was again found on a dealer working a poker game. TWA area air concentrations on Friday ranged from 8–16 μg/m³ (geometric mean, 11 μg/m³). The two highest area air concentrations on each night were at poker registration and the poker tables. On both evenings, area air concentrations of respirable dust ranged from nondetected (detection limit, 20–30 μg/m³) to 90 μg/m³. CO_2 concentrations ranged from 425–650 ppm (geometric mean, 527 ppm) on Thursday and from 475–850 ppm (geometric mean, 597 ppm) on Friday. Outdoor CO_2 measurements ranged from 275–300 ppm.

Medical

Twenty-nine persons (10% of the total number of dealers and supervisors [279] at work during the evaluation) participated in the evaluation, including 18 dealers and 11 supervisors. Of the 29 participants, 11 (38%) were supervisors; among the total number of full-time dealers and supervisors employed for all shifts at the casino, 180 (35%) were supervisors. Twenty of the 29 were men; the average age of all participants was 37 years (range, 21–53). No participants reported current tobacco use; 15 reported having never smoked cigarettes, 13 reported having their last cigarette more than 1 year prior to the evaluation, and one reported smoking a last cigarette two weeks prior to the evaluation. Seventeen (59%) of the participants reported no exposure to ETS outside the workplace over the four days prior to the evaluation. All participants provided pre- and post-shift urine samples; 28 provided pre- and post-shift blood samples. All participants were observed to perform their usual work duties during the course of the study.

Individual serum and urine cotinine levels, with the corresponding PBZ nicotine concentrations (when available), are presented in Tables 1 (for employees reporting exposure to ETS at work only) and 2 (for employees reporting exposure to ETS at work and outside of work). One participant (No. 8) was found to have

TABLE 3
Summary of Serum and Urine Cotinine Measurements of Casino Employees*

Parameter	Pre-shift Cotinine GM* in ng/mL (GSD)†	Post-Shift Cotinine GM in ng/mL (GSD)	P Value (Paired t Test)
Serum	1.34 (1.9)	1.85 (1.4)	<0.01
Urine	23.0 (2.2)	33.3 (2.0)	<0.01

* GM, geometric mean; GSD, geometric standard deviation.

cotinine levels approximately 100 times the levels of all other participants and above the 15 ng/mL serum level used as an indicator of active smoking[3]; this person was therefore considered to be an active smoker, and the corresponding results were excluded from all analyses. The geometric means and standard deviations are presented in Table 3.

Post-shift cotinine levels for both serum ($P < 0.01$) and urine ($P < 0.01$) were significantly greater than pre-shift levels. Pre-shift serum and urine cotinine values were correlated with each other ($r = 0.63$, $P < 0.01$), as were post-shift serum and urine cotinine values ($r = 0.58$, $P < 0.01$). For workers who had PBZ air sampling performed during their shift, there were positive correlations (not statistically significant) between post-shift serum cotinine and the corresponding air nicotine concentration ($r = 0.43$, $P = 0.1$) and post-shift urine cotinine and the corresponding air nicotine concentration ($r = 0.05$, $P = 0.86$). The correlation between the cross-shift change in serum cotinine concentration and the PBZ air nicotine concentration was also not statistically significant ($r = 0.45$, $P = 0.08$). There were no statistically significant differences between dealers and supervisors with respect to post-shift serum and urine cotinine levels.

Four persons worked all or part of their shift at non-smoking tables (see Tables 1 and 2). The post-shift serum cotinine concentrations of these four individuals (geometric mean, 2.41 ng/mL) were higher than the corresponding cotinine concentrations of those who worked at smoking tables (geometric mean, 1.77 ng/mL). However, those four individuals working at non-smoking tables began the shift with higher serum cotinine concentrations as well (geometric means, 2.30 ng/mL versus 1.22 ng/mL).

There was no significant difference in the mean post-shift serum cotinine values between those reporting ETS exposure at work only (Table 1–17 participants, geometric mean, 1.82 ng/mL) and those reporting ETS exposure at home and work (Table 2–10 participants, geometric mean, 1.91 ng/mL). There were no statistically significant relationships between cotinine levels and hours of reported exposure to ETS (both occupational and non-occupational, as reported in the questionnaire) on the day the sample was taken ($r = .09$ [post-shift serum cotinine]; $r = .18$ [post-shift urine cotinine]; mean exposure, 7 hours; range, 2–10 hours) or for hours of reported exposure to ETS on the day of collection and two days prior to the collection ($r = -.18$ [post-shift serum cotinine]; $r = -.23$ [post-shift urine cotinine]; mean exposure, 17.6 hours; range, 6.5–24 hours).

Discussion and Conclusions

This evaluation demonstrates that a small sample of employees working in the gaming area of a large casino have greater ETS exposure than a representative sample of the US population, as measured in the Third National Health and Nutrition Examination Survey (NHANES III).[3] The geometric mean serum cotinine levels of the casino employees in our evaluation were 1.34 (pre-shift) and 1.85 (post-shift) ng/mL. These levels are substantially higher than the geometric mean of 0.65 ng/mL for those participants of NHANES III reporting exposure to ETS at work and the geometric mean of 0.93 ng/mL for those reporting exposure to ETS at both home and work. A strength of our evaluation is that our laboratory analysis for serum cotinine was identical to that performed in the NHANES study, making such a comparison valid. The urine cotinine values in our evaluation are more difficult to compare with those in other studies since most methods for determining urine cotinine measure only free cotinine, whereas the method used in this study measured both free cotinine and cotinine glucuronide and can yield significantly higher values.

Five participants had a decrease in serum cotinine level from pre-shift to post-shift. None of these participants had a serum cotinine level less than 1.16 ng/mL, and four of the five had serum cotinine levels greater than 2.5 ng/mL in *both* their pre- and post-shift samples. Since individual exposure might be expected to vary from day to day within the workplace, it is conceivable that those whose cotinine levels declined slightly during the shift included people who—although exposed during the shift—were less exposed than on the previous day(s) and thus had somewhat lower serum cotinine levels at the end of their shifts than at the beginning. Three of these five participants reported exposure to ETS outside the workplace.

The airborne levels of nicotine and respirable particulates found in our evaluation are similar to those measured in other non-industrial indoor environments.[6,7,13] Our evaluation of the ventilation system at this casino suggested that it would meet the American Society of Heating, Refrigeration, and Air-conditioning Engineers' (ASHRAE) recommended outside air ventilation rate for casinos of 30 cfm/person, except under conditions of maximal occupancy

and extreme outdoor weather conditions (when the ventilation rate was estimated to be 25 cfm/person [see "Workplace Description"]). This is a greater ventilation rate than what is generally found in office spaces, where ASHRAE recommends 20 cfm/person.[28] The CO_2 levels measured during our evaluation (geometric means, 527 and 597 ppm on the two days), which are well below the levels of 800-1000 ppm (levels used to indicate adequacy of fresh air intake),[28,29] suggest that adequate outside air was being provided to the casino floor at the time of our evaluation. Our evaluation indicates that providing adequate ventilation in the workplace can help dilute air contaminants, including nicotine. Although there were anecdotal reports of an increased ventilation rate during the survey, it is not possible from the data we collected to accurately predict what affect this, or changes in other variables (such as occupancy rates) would have on measured levels of cotinine.

Based on both air and biological monitoring, employees working at the "non-smoking" tables did not have decreased exposure to ETS, compared with those working at smoking tables. This finding is not surprising since these non-smoking tables were generally located directly adjacent to other tables where smoking was allowed. Generalized exposure to ETS appears to occur throughout the gaming area, suggesting that other groups of casino employees not participating in this evaluation, such as waitresses, cashiers, and security personnel, are likely exposed to ETS at levels similar to the dealers and supervisors.

Similar post-shift serum cotinine values from employees reporting exposure to ETS at work only, compared with those reporting exposure both at home and at work, suggest that the ETS exposure among the group of participants is primarily work-related. This finding supports the findings of others who have demonstrated that occupational ETS exposure is comparable to domestic ETS exposure (which is the setting in which epidemiological evidence has demonstrated the adverse effects of ETS).[6]

In this small study we found positive, but not statistically significant, correlations between PBZ air nicotine concentration and both post-shift serum cotinine and cross-shift change in serum cotinine. The duration of ETS exposure reported in the questionnaires was not significantly correlated with serum or urine cotinine concentrations. This could be due to a number of factors, including the small number of persons evaluated, the relatively narrow range of cotinine levels, and the narrow range of hours of reported ETS exposure. Although the range of cotinine levels was narrow, the levels were high, compared with non-smokers in NHANES III who reported exposure to ETS at home and work.

A limitation of this study is that the percentage of the 279 dealers and supervisors working during the time of our evaluation who were non-smokers (and thus eligible to take part in the evaluation) is unknown; therefore the participation rate for our evaluation is unknown. Factors that likely affected the participation rate include active discouragement of employee participation by casino management, insufficient employee notification regarding the HHE, and concern over medical testing. Although we were not able to gather demographic or other information about non-participants, we have no reason to believe our participants differed from non-participants in any way that would have affected potential exposure to ETS at the workplace. For example, the wide age range of participants (21–53 years) and the fact that dealers and supervisors took part in numbers proportionate to the number of dealers and supervisors employed at the casino, suggests that a representative mix of employees took part in our evaluation.

There are more than 300,000 persons employed in approximately 450 large casinos in the United States (personal communication, American Gaming Association, October 1997); this figure does not include a potentially larger number of persons employed in smaller casino or gaming operations, as well as persons employed in casino or gaming operations operated on Native American property. The study described here provides the first quantitative data describing exposure to ETS among a small sample of workers in this industry. Further study is needed to determine how generalizable the exposures observed in this study are to the gaming industry as a whole. In the meantime, NIOSH recommends that workers not be involuntarily exposed to tobacco smoke.[4] The best method for controlling worker exposure to ETS is to eliminate tobacco use from the workplace and to implement a smoking cessation program for employees. The "non-smoking" tables, as currently situated, did not measurably decrease employee exposure to ETS. Until tobacco use can be completely eliminated, employers should make efforts to protect employees from ETS by isolating areas where smoking is permitted. Separate smoking areas with dedicated ventilation are a means to accomplish this. Restricting smoking to the outdoors (away from building entrances and air intakes) is another method to protect employees from ETS.

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environmental tobacco
smoke

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Policy Analysis No. 15

ENVIRONMENTAL TOBACCO SMOKE

By

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Table of Contents

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ENVIRONMENTAL TOBACCO SMOKE

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EXECUTIVE SUMMARY

Exposure to environmental tobacco smoke (ETS) should be regulated for five major reasons:

- ETS causes acute and chronic diseases in otherwise healthy nonsmokers;
- the majority of the public experiences annoyance and discomfort from ETS exposure and views ETS as a health hazard;
- most nonsmokers do not take personal action to avoid exposure to ETS when smokers light up in their vicinity;
- employers may realize lower maintenance and repair costs, insurance costs, and higher nonsmoker productivity when smoking is prohibited in the workplace; and
- restricting smoking in public settings increases the likelihood that smokers in these settings smoke fewer cigarettes or quit smoking entirely.

There are three major policy options available to address ETS exposure:

- Policies that allow designated smoking areas
- Policies that allow smoking only in separately ventilated areas
- Policies requiring a complete smoking ban

Among these options, total smoking bans are the most efficient and effective in reducing ETS exposure on a population basis.

Presently, five major pieces of legislation are pending before the US Congress. Four of these have the following common features:

- The Administrator of the OSHA is given authority to establish standards for separately ventilated smoking areas
- Smoking is prohibited or limited to separately ventilated areas in most worksites in the United States
- Posting of a clear and prominent notice of smoking prohibition is required
- Some form of an enforcement mechanism is put in place

Additional implementation and enforcement issues should be taken into account, including:

- The need to ensure no preemption of stronger state and local laws and regulations addressing ETS exposure
- Enforcement mechanisms that include both federal, state, and local components
- Methods to encourage educational efforts from existing state and local tobacco control coalitions

ENVIRONMENTAL TOBACCO SMOKE

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INTRODUCTION

Over the past two decades, the health hazards resulting from exposure to environmental tobacco smoke (ETS) have been increasingly recognized. Among the best-established of these health effects are lung cancer in healthy adult nonsmokers and childhood disorders such as respiratory tract ailments[2]. ETS is a complex mixture of nearly 5,000 chemical compounds, including 43 chemicals that are known human or animal carcinogens[3].

In 1986, the US Surgeon General and the National Academy of Sciences reached similar conclusions regarding the relationship between ETS and lung cancer: ETS is a cause of lung cancer in healthy nonsmokers[4]. Presently, there are 37 studies on the relationship between ETS exposure and lung cancer in nonsmokers. The most recent meta-analysis of these studies showed a statistically significant excess risk of 24% among nonsmokers who lived with a smoker[5].

Strong evidence has shown that children who are exposed to ETS in their home environment are at considerably higher risk for acute lower respiratory tract illnesses.[6] Data also are supportive of a causal relationship between ETS exposure and middle-ear disease, including acute otitis media and persistent middle-ear effusion. In addition, there is considerable evidence that ETS is a cause of heart disease in nonsmokers, with nonsmokers' exposure resulting in an approximate 30% increase in heart disease risk.[7] ETS may account for as many as 62,000 annual ischemic heart disease deaths in the United States.[8]

As scientific knowledge of the health risks due to ETS exposure has increased, public understanding of such risks also has increased. For example, studies among diverse populations indicate that the public is well aware of the health hazards of ETS exposure. There have been substantial changes in attitudes toward ETS since the 1970s. In a 1978 Roper Organization survey, 58% of respondents considered ETS hazardous.[9] In contrast, a 1993 survey found that 72% of Americans believed that ETS causes cancer and other serious diseases in nonsmokers[10]. Included in the change in public attitudes toward ETS is the re-framing of smoking as a wider public health and social issue beyond a personal behavior. Public policies to eliminate ETS exposure have similarly increased in frequency and scope over the past decade—perhaps more than any other tobacco control policy, clean indoor air laws have benefited nonsmokers in their day-to-day lives.

Numerous studies have shown substantial levels of exposure to ETS among the US population. Several investigators have examined employees' exposure to ETS in the workplace, some of whom have used the biochemical marker cotinine to validate exposure. In a review of existing studies[11], wide variation was noted in ETS concentrations by location, measured by mean levels of nicotine in the ambient air of offices (4.1 $\mu g/m^3$), restaurants (6.5 $\mu g/m^3$), bars (19.7 $\mu g/m^3$), and residences (4.3 $\mu g/m^3$)

with at least one smoker. Other studies have examined exposure on a population-wide basis. US data have shown that 37% of adult non-tobacco users lived in a home with at least one smoker or reported ETS exposure at work.[12] Among non-tobacco users, 88% had detectable serum cotinine levels, indicating widespread exposure to ETS in the US population.[13] In a recent study of US indoor workers, 46% reported their worksite did not permit smoking in any public or common areas (a total smokefree policy), yet the majority of blue collar and service workers were not adequately protected from ETS exposure.[14]

The major source of exposure to ETS among young children is from smoking by parents in the home. One national study, based on 5,300 interviews, found that approximately 49% of children ages 5 years and younger were exposed to ETS in the home.[15] Recent data show that among US children, aged 2 months to 11 years, 43% lived in a home with at least one smoker.[16] For more than a quarter of the children, ETS exposure begins before birth.[17]

California data indicate that nonsmokers employed in workplaces with no policy or a policy not covering the workplace were eight times more likely to be exposed to ETS than those employed in smokefree workplaces.[18] Among subgroups, younger persons, males, Hispanics, and persons with less than a high school education have shown higher workplace exposure to ETS.[19]

The primary purposes of this review are to describe: 1) approaches and effectiveness of policies to reduce exposure to ETS, 2) the merits of specific legislative proposals before the US Congress, and 3) enforcement issues related to these proposals.

DESCRIPTION

Governmental efforts to regulate exposure to ETS have occurred at the federal, state, and local levels. To date, most of the activity to restrict public smoking has occurred at the state and local levels.

Overview of Governmental Actions

Federal. Presently, the most notable federal regulation of ETS is the ban on smoking on domestic airline flights. The ban was first enacted in 1988 as a ban on smoking on flights of two hours or less and was renewed in 1989 as a six-hour ban. Other federal actions have included bans on smoking in federal office buildings, the ban on smoking in the White House, and bans on smoking in childcare facilities that receive federal funds. The Occupational Safety and Health Administration (OSHA) has proposed regulations that would either prohibit smoking or limit it to separately ventilated areas.[20]

State. Forty-eight states and the District of Columbia require smoke-free indoor air to some degree or in some public places, although these restrictions vary widely from limited restrictions on public transportation to comprehensive restrictions in workplaces and public places. Among state clean indoor air laws and amendments, workplace restrictions have consistently been more common than restaurant regulations. In 18 states, the tobacco industry has successfully countered clean indoor air efforts by supporting passage of "preemptive" state laws that prohibit local jurisdictions from enacting restrictions more stringent than the state law. The trend in tobacco industry-supported preemption laws has accelerated dramatically in the past several years. These preemption laws are detrimental to the health of the public.[21]

Local. Clean indoor air ordinances at the local level first appeared in the early 1970s. Following release of the 1986 Surgeon General's report, the rate of passage of local ordinances accelerated. By 1988, nearly 400 local ordinances to restrict smoking had been enacted throughout the United States.[22] The trend toward smoke-free local ordinances has accelerated since 1990, although since 1996 this trend has leveled. Currently, there are over 800 local ordinances that restrict public smoking. Among existing local ordinances, enforcement is addressed through a variety of agencies including health departments or boards of health (50.8%); city managers (29.0%); police and sheriffs' departments (4.7%); environmental health agencies (1.8%); fire departments (1.8%); and an assortment of other agencies (11.9%). Comprehensive data are currently lacking on the relative effectiveness of various enforcement mechanisms. However, it appears that self-enforced no-smoking laws are generally effective.[23]

Policy Options

Policies that allow designated smoking areas. Designated smoking sections within a restaurant, workplace, or other public place have often been used as a method to address ETS exposure. In restaurants, for example, these designated smoking areas are often part of the same room as nonsmoking areas. When there is no physical separation of smokers and nonsmokers, ETS rapidly diffuses throughout the room resulting in substantial exposure among nonsmokers.[24] Other attempts have been made to establish smoking areas in physically separated rooms on the same ventilation system. The notion underlying this approach is that the air volume of the building and the associated "dilution factor" will reduce ETS exposures to acceptable levels. Unfortunately, approximately one million square feet of building area per smoker is required to achieve minimal, acceptable exposure levels among nonsmokers.[25] Recirculation of ETS in central ventilation systems results in unacceptably high levels of exposure.

Policies that allow smoking only in separately ventilated areas. In some cases, designated smoking areas have been established in rooms with separate ventilation systems. In order to avoid "backstreaming" of ETS, these rooms must maintain an adequate amount of negative air pressure with respect to nonsmoking areas. When these conditions are met and designated smoking areas do not leak, these provide adequate protection for nonsmokers. However, there are two concerns with these smoking areas. First, there is preliminary evidence that designated smoking areas may increase risk of lung cancer among smokers.[26] And second, installation of separately ventilated smoking lounges is extremely costly.

Policies requiring a complete smoking ban. Complete bans on smoking in buildings have become increasingly popular in recent years and are the only way to completely eliminate ETS exposure among nonsmokers. Workplace smoking bans have been effective in reducing nonsmokers' exposure to ETS. A recent study of 25 Massachusetts workplaces [27]found a strong correlation between distributions of nicotine concentrations and smoking policies. Median nicotine concentrations varied from 8.6 $\mu g/m^3$ in open offices that allowed smoking, to 1.3 $\mu g/m^3$ in workplaces that restricted smoking, to 0.3 $\mu g/m^3$ in sites that banned smoking. It has been estimated that these concentrations would need to be reduced to 0.0075 $\mu g/m^3$ in order to correspond to a minimal risk from ETS.[28]

Effectiveness of smoking bans. Effectiveness of smoking bans has been measured by the perceived air quality in the workplace following a smoking ban and by active measurement of nicotine vapor. In studying the effects of a smoking ban in the Johns Hopkins Medical Institutions, nicotine vapor concentrations declined in all areas except restrooms at 1 to 8 months following the ban. In most areas, nicotine concentrations were below the detectable level of 0.24 $\mu g/m^3$.[29]

Workplace smoking bans have been shown to decrease smoking intensity and prevalence among affected employees. Numerous studies of these effects have been conducted in health care settings, government agencies, insurance companies, telecommunication companies, and among random samples of the working population. Most of the hospital- and HMO-based studies show a decrease in the average number of cigarettes smoked per day. In addition, several of the hospital studies show significant declines in the overall prevalence of smoking among employees with 6 to 20 months follow-up.[30] Studies of smoking behavior in other industries have shown similar results, with most studies showing lower daily consumption and/or reduced overall smoking prevalence at 6 to 20 months after the smoking ban.

Numerous studies have shown that the vast majority of nonsmokers and smokers favor restrictions on smoking in public places.[31] In studies of hospital smoking bans, patients, employees, and physicians overwhelmingly support the policy.

Costs and Benefits of Workplace Smoking Bans

There also are likely cost savings to employers by implementing smoke-free workplace policies. Such savings include those associated with fire risk, damage to property and furnishings, cleaning costs, workers' compensation, disability, accidents, life insurance, absenteeism, productivity loses, and occupational risks related to synergism with other risk factors such as asbestos.[32] In a recent report on the saving associated with a nationwide, comprehensive clean indoor air, the US EPA estimated such a law would save $4 billion to $8 billion per year in operational and maintenance costs of buildings.[33] The EPA analysis concluded that a national ban on smoking in the workplace would be a highly cost-beneficial social investment, with benefits exceeding costs by $39 to $72 billion per year.[34]

EVALUATION

This section briefly describes the merits and limitations of five major pieces of legislation currently before the US Congress. Each of the bills included several similarities—most importantly four of these ban smoking in most worksites in the United States. In addition, there are important differences between the bills in the extensiveness of regulation and in enforcement approaches.

S. 1414 – The Universal Tobacco Settlement Act

S. 1414 would ban smoking or restrict it to separately ventilated smoking areas in most public buildings and worksites. It includes several important exclusions that are outlined below.

The merits of S. 1414:

- A total smoking ban is permitted in affected areas.
- The Administrator of OSHA is given authority to establish standards for separately ventilated smoking areas. General specifications for these areas specify that air must be directly

exhausted to the outside and that negative pressure must be maintained in the smoking areas.
- Posting of a clear and prominent notice of smoking prohibition is required.
- Actions related to violations of the act can be brought by any aggrieved person, state or local government agency, or by the Administrator of OSHA. In any US district court, civil penalties of up to $5,000 per day of violation may be levied.
- State and local laws are not preempted from enacting stronger protections from ETS.

Limitations of S. 1414:
- Excluded from these standards are restaurants (other than fast food restaurants), bars, casinos, bingo parlors, prisons, and businesses whose primary function is tobacco product sales. Lack of regulation of these locations would result in substantial ETS exposure in the population.
- Smokefree policies for schools, school grounds, and child care providers are not specifically outlined.
- Although action can be brought for violations as outlined above, these must be acted on through US District Courts. With extensive backlogs in many of these courts, it is unlikely that complaints could be handled on an expeditious time line.

S. 1492 - The Healthy and Smokefree Children Act

S. 1492 would ban smoking or restrict it to separately ventilated smoking areas in most public buildings and worksites. It includes several exclusions that are outlined below.

The merits of S. 1492:
- A total smoking ban is permitted in affected areas.
- The Administrator of OSHA is given authority to establish standards for separately ventilated smoking areas. General specifications for these areas would require that air must be directly exhausted to the outside and that negative pressure must be maintained in the smoking areas.
- All types of tobacco use are prohibited for schools, school grounds, and non-home based child care providers.
- All types of tobacco use are prohibited on public transportation, including bus, rail, aircraft, or boat.
- Posting of a clear and prominent notice of smoking prohibition is required.
- State and local laws are not preempted from enacting stronger protections from ETS.

Limitations of S. 1492:
- Excluded from these standards are bars, tobacco merchants, hotel guest rooms, or prisons.
- Enforcement of the provisions of this title is delegated to the states with little detail on how this enforcement is carried out. If a state does not carry out effective enforcement funds under title XXVIII of the Public Health Service Act are put in jeopardy.

S. 1530 - The PROTECT Act

S. 1530 would ban smoking or restrict it to separately ventilated smoking areas in most public buildings and worksites. It includes several important exclusions that are outlined below.

The merits of S. 1530:
- A total smoking ban is permitted in affected areas.

- The Administrator of the OSHA is given authority to establish standards for separately ventilated smoking areas. General specifications for these areas specify that air must be directly exhausted to the outside and that negative pressure must be maintained in the smoking areas.
- All types of tobacco use are prohibited for schools, school grounds, and non-home based child care providers.
- Posting of a clear and prominent notice of smoking prohibition is required.
- State and local laws are not preempted from enacting stronger protections from ETS.

Limitations of S. 1530:

- Excluded from these standards are bars, casinos, bingo parlors, businesses whose primary function is tobacco product sales, and restaurants with indoor seating capacities of 50 or fewer individuals. Excluding these types of worksites and public places would thousands of individuals at substantial risk of ETS exposure.
- Enforcement of the provisions of this title is delegated to the states with little detail on how this enforcement is carried out. Within 6 months of the enactment of this act, the Administrator of OSHA is called upon to promulgate regulations specifying how enforcement will be carried out.

S. 1638 – The Healthy Kids Act

S. 1638 would ban smoking or restrict it to separately ventilated smoking areas in most public buildings and worksites. It amends the OSHA Act of 1970 and includes several important exclusions that are outlined below.

The merits of S. 1638:

- A total smoking ban is permitted in affected areas.
- Specifications are to be established by the Secretary of Labor, in Consultation with the Administrator of the Environmental Protection Agency. General specifications for these areas require that air must be directly exhausted to the outside and that negative pressure must be maintained in the smoking areas.
- Posting of a clear and prominent notice of smoking prohibition is required.
- Schools and other facilities serving children are specifically required to adopt and implement smoke-free policies.
- State and local laws are not preempted from enacting stronger protections from ETS.

Limitations of S. 1638:

- Excluded from these standards are restaurants that seat fewer than 50 individuals (other than fast food restaurants), bars, casinos, bingo parlors, hotel guest rooms, prisons, and businesses whose primary function is tobacco product sales. Lack of regulation of these locations would result in substantial ETS exposure in the population.
- Enforcement may be diffuse since states are required to enforce the provisions of this legislation. States that fail to meet enforcement standards become ineligible to receive funds under the Healthy Kids Act.

S. 1648 – The PAST Act

S. 1648 has a very brief mention of measures to reduce ETS exposure. The bill simply amends the OSHA Act of 1970 by adding the following:

"Not later than 12 months after the date of enactment of this subsection, the Secretary shall promulgate a final standard on indoor air quality in indoor work environments in accordance with subsection (b). Such standard shall include provisions addressing control of environmental tobacco smoke in both industrial and nonindustrial indoor or enclosed worksites."

Limitation of S. 1648:

- This legislation depends entirely on OSHA to promulgate and carry out restrictions on smoking in worksites. This is a *severe limitation* and many more details are needed.

Overall Implementation and Enforcement Issues

It is also important to note that at least four bills specifically prohibit preemption of stronger laws and regulations at the state and local level. Specific detrimental effects of preemption have been noted:[35] 1) elimination of local control of public health policy; 2) establishment of weak public health standards that can never be strengthened; 3) elimination of community-based tobacco control interventions; and 4) division of tobacco control coalitions. Despite the anti-preemptive language in each bill, the establishment of federal law, especially OSHA regulation, may result in *de facto* preemption in some areas. In addition, unless the OSHA Act is amended, OSHA standards may preempt local worksite policies. All bills except the Kennedy bill would not override *existing* premptive state legislation. The policies that allow smoking only in separately ventilated areas will create a myriad of monitoring and compliance issues, making a total smoking ban preferable.

Earlier public health experience has shown that many laws and regulations related to ETS are self-enforcing. However, violations will occur and the optimal method for dealing with these infractions should be determined. One viable approach to evaluation may be a "mixed" approach in which certain powers rely with OSHA and others are delegated to state and local public health agencies (provided that these mandates are adequately funded). Since OSHA already has extensive purview over the workplace, promulgation and enforcement of rules by the Administrator of OSHA is sensible. In addition, state and local public health agencies already conduct extensive inspection of certain public places such as restaurants. The inspection of the restaurants for compliance to ETS regulations would not appear to be an undue burden.

Implementation and education related to any bill enacted by Congress should be closely coordinated with existing tobacco control coalitions in states and localities. These coalitions have largely resulted from three major programs: ASSIST (from NCI), IMPACT (from CDC), and Smokeless States (from RWJ). While these coalitions may not be directly involved in the enforcement of new federal laws, they can provide invaluable assistance in educating the public, state and local policy makers, the media, and business owners about ETS regulations.

CONCLUSIONS

In summary, there are five major reasons for eliminating ETS exposure:[36]

- ETS causes acute and chronic diseases and death in otherwise healthy nonsmokers;
- the majority of the public experiences annoyance and discomfort from ETS exposure and views ETS as a health hazard;

- many nonsmokers do not take personal action to avoid exposure to ETS when smokers light up in their vicinity;
- employers may realize lower maintenance and repair costs, insurance costs, and higher nonsmoker productivity when smoking is prohibited in the workplace; and
- restricting smoking in public settings increases the likelihood that smokers in these settings smoke fewer cigarettes or quit smoking entirely.

The body of scientific evidence is large and clearly sufficient to warrant comprehensive actions to restrict smoking in areas where nonsmokers may be exposed to ETS. In light of these issues and the current policies under consideration, several conclusions are warranted:

1. Despite population-based data showing declining ETS exposure in the workplace over time, ETS exposure remains a common public health hazard that is entirely preventable.

2. Certain sociodemographic subgroups such as minorities, men, persons of lower socioeconomic status, and rural residents are at highest risk for ETS exposure. These groups should be specifically targeted for policy and risk reduction efforts.

3. Exposure to ETS among children in the home environment remains widespread. Since public smoking regulations do not cover the home, new research is needed to determine the most effective intervention strategies for decreasing youth ETS exposure in the home.

4. State and local clean indoor air laws currently in place reduce, but do not eliminate, nonsmokers' exposure to ETS; total smoking bans are the most effective method for reducing ETS exposure.

5. Beyond eliminating ETS exposure among nonsmokers, smoking bans have additional synergistic benefits including reduced smoking intensity, reduced smoking prevalence, and cost savings to employers.

6. The tobacco industry strategy of supporting preemptive tobacco control regulations at the state and local levels undermines public health. Any new legislation must contain anti-preemptive language.

7. Most of the bills pending in Congress exempt all or part of the hospitality industry. These workers in restaurants, nightclubs, bars, and casinos should be afforded the full health protections available to workers in other industries.

8. More research on ETS is needed, specifically on the dose of ETS to nonsmokers in areas where policies are enacted and in the home environment.

NOTES

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Tob - sec - environmental tobacco smoke

U.S. Department of Labor

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FAX COVER SHEET

March 20, 1998

TO: Elena Kagan

FAX: 456-2878

FROM: Stacey Grundman
Emily Shekatoff

MESSAGE: As follow up to our 3-18 meeting, suggestions for delayed implementation of ETS requirements for the hospitality industry are attached. Gary Guzy (EPA) and Michael Eriksen (CDC/HHS) have reviewed and ok'd these suggestions. CDC, however, had some additional comments. They are attached as well. Call either of us if you have any questions.

PAGES: 4 + cover

DRAFT 3-20-98

OSHA Suggestions for Program for Delayed Implementation of ETS Requirements in the Hospitality Industry

1. Phased approach for facilities that want to continue to permit smoking:

   - *(within 6 months after passage of legislation)* restrict smoking to a designated area (e.g., the seats at the bar plus any tables within 10 feet of the bar, or certain gaming tables and slot machines at a casino); implement work practice controls (allow workers to rotate jobs so no one spends a full shift inside the smoking area);
   - *(within 36 months)* install space pressurization controls to prevent ETS from entering nonsmoking areas (this could be as simple as locating the smoking area along a wall or window and installing a fan to keep the smoking area at negative pressure relative to the non-smoking area;
   - *(within 60 months)* install additional controls to reduce ETS concentrations within the smoking areas (e.g., floor-to-ceiling ventilation in new construction or existing buildings where retrofitting is feasible, local source capture ventilation otherwise. For example, casinos can install downdraft ventilation underneath ashtrays as part of the blackjack or other tables).

2. Financial incentives to encourage compliance more promptly:

   Option 1: offer some money from the settlement fund to provide grants or no-interest loans (targeted to small business) to purchase engineering controls on a "first come, first served" basis. This policy would reward businesses that act promptly;

   Option 2: make engineering control expenditures eligible for tax credit, accelerated depreciation, etc. On a double basis-credit the business with 2 months for each month engineering controls installed before the implementation date.

3. The Health Standards Programs directorate at OSHA has already done substantial planning for a scientific workshop—open to any interested member of the public—where experts will discuss the effectiveness and cost

of a variety of engineering controls for the hospitality industry, and prepare a workshop report (the workshop will probably occur in May through collaboration with the American Industrial Hygiene Association). Congress could mandate that the specific requirements for acceptable controls and their parameters (e.g., air exchange rates) be developed through the workshop and subsequent public comment thereon.

CDC's Office on Smoking and Health

National Center for Chronic Disease Prevention& Health Promotion

ROUTING AND TRANSMITTAL SLIP	Date March 20, 1998	
TO:	Initials	Date
1. Art Buchanan (202-219-9216)		
2. Emily Sheketoff (202-219-6064)		
3. Gary Guzy (202-260-3684)		
4.		
5.		
6.		
7.		
8.		

	Action		File		Note and Return
	Approval		For Clearance		Per Conversation
	As Requested		For Correction		Prepare Reply
	Circulate	X	For Your Information		See Me
	Comment		Investigate		Signature
	Coordination		Justify		

Attached are comments from HHS regarding OSHA's draft. Basically, we want to make sure that lagged implementation provides technical assistance and incentives, not just to provide ventilation and engineering controls, but also to assist the hospitality industry to achieve smoke-free conditions in most cases by eliminating the source of the exposure - i.e., prohibiting smoking entirely.

FROM:	Room No.-Bldg.
Michael P. Eriksen, Sc.D. Director, Office on Smoking and Health (K-50) National Center for Chronic Disease Prevention and Health Promotion Centers for Disease Control and Prevention Atlanta, Georgia 30341-3724 E-mail: mpe0@cdc.gov	5067 Rhodes Building Phone No. 770-488-5701 Fax No. 770-488-5767

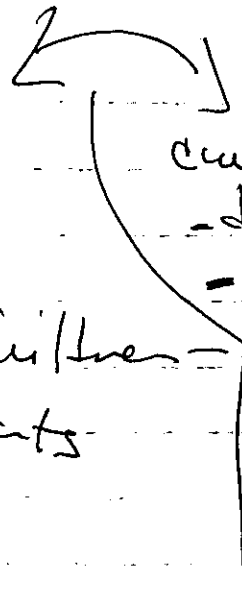
Requirements to Limit ETS exposure in the Hospitality Industry

The goal of the ETS provision of national legislation is to provide for smoke-free public places and smokefree work environments. In order to accomplish this goal, the hospitality industry must either prohibit smoking or establish separate adequately ventilated smoking lounges, or smoking rooms within which employees are not required to enter. Recognizing that this is a complicated endeavor, delayed implementation of smokefree work environments in the hospitality sector is needed. During the delayed time frame, incentives and programs are recommended to encourage and assist the hospitality industry to comply with this statute.

Incentives should give priority to creating a totally smokefree environment. They should be simple and inexpensive while adhering to the principles of inustrial hygiene. This recognizes that the least complex intervention focuses on eliminating the source of the exposure. This can most efficiently and effectively be done by prohibiting smoking completely. However, some incentives may be used to create separate smoking environments in which patrons may smoke but hospitality workers would not enter to provide service. This statute does not envision utilizing technology to reduce ETS exposure in an environment in which smokers, nonsmokers, and hospitality industry workers interact side-by-side.

In addition to incentives, programs should be offered to assist with the transition to smokefree work environments. Programs should provide technical assistance and training to hospitality industry representatives thus creating the skills and comfort-level necessary to comply with these requirements.

Tobacco – set – environmental
tob smoke



how implementation?

couple w/ incentives?
- developing new techs

not compromising protections for children – fast food restaurants

Conrad – exempts hosp int : || children's restaurants
Kennedy – also exempts

Tobac - sr - env, tobacco smoke
ironmental

ETS
3-18-98

HHS - no exception

OSHA political concerns.

EPA - as long as ventilation provision is in...

1. Hospitality.
2. Industry suits against EPA dismissed.
3. Facilities covered? — gov's employees
4. 3/31 Chafee hearing. Browner/Eriksen — st/loc/county
5. E.O. update

21 v 29 states

Any way to avoid the question?

legal q's - cost / scope

tobacco - settlement - environmental tobacco smoke

DRAFT - DO NOT CITE OR QUOTE **2/20/98 (6:13 PM)**

STATEMENT OF CHARLES N. JEFFRESS
ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY & HEALTH
U.S. DEPARTMENT OF LABOR
BEFORE THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
February 24, 1998

Mr. Chairman and members of the committee, thank you for inviting me to share the views of the Occupational Safety and Health Administration (OSHA) on OSHA's potential role in furthering the President's goal of reducing involuntary exposure to environmental tobacco smoke. As you know, OSHA has a statutory responsibility to ensure that America's workers have safe and healthful workplaces. Exposure to environmental tobacco smoke (ETS), or "secondhand smoke," can pose a serious health risk to workers, and unlike methylene chloride or ammonia, chemicals for which OSHA has set permissible exposure limits, ETS is not a necessary component of any manufacturing process or job.

Involuntary exposure to ETS is a public health issue that merits Congressional action. Legislation could protect a broader spectrum of the population than an OSHA regulation, since OSHA's mandate covers only workers. OSHA supports Congressional efforts to include workplace smoking restrictions in the national settlement with the tobacco industry.

To be most effective, any smoking restrictions enacted by Congress should be clear with respect to the scope of coverage, jurisdiction, enforcement, and definitions. Legislation must also be complete, to avoid costly and time-consuming litigation and agency rulemaking efforts. If Congress desires quick action by OSHA to issue regulations restricting smoking or a final standard on indoor air quality, I urge you to provide a statutory framework that helps OSHA

move expeditiously. My testimony will describe how Congress can best help OSHA implement any settlement it enacts.

The Hazard of Environmental Tobacco Smoke

The hazards of exposure to ETS are well-documented and quantifiable. ETS contains over 4,000 chemical compounds, including such poisons and irritants as carbon monoxide, formaldehyde, ammonia, nitrogen oxides, and hydrogen cyanide. It contains at least 43 known or suspected carcinogens, including benzene, nickel, 2-naphthylamine, and polonium-210. According to reports published by the Environmental Protection Agency, the National Institute for Occupational Safety and Health, the National Research Council, and the Department of Health and Human Services, many of the damaging elements in tobacco smoke are even more concentrated in sidestream smoke than in the smoke which enters smokers' lungs.

Exposure to ETS has been associated with many adverse health effects in nonsmokers, including lung cancer, heart disease, asthma, reproductive effects, and mucous membrane irritation. Of the more than 70 million employees working indoors, OSHA estimates that 21 million are exposed to ETS at work. Among nonsmoking American workers exposed to ETS, OSHA's preliminary estimate is that there will be up to 700 cases of lung cancer per year and between 2,000 - 13,000 deaths from heart disease per year.

The significant health risks of exposure to ETS led OSHA to commence rulemaking efforts.

History and Status of OSHA's Indoor Air Quality Rulemaking

Following petitions from public interest groups requesting an Emergency Temporary Standard prohibiting smoking in indoor workplaces, OSHA published a Request for Information (RFI) on indoor air quality problems on September 20, 1991. OSHA sought information necessary to determine whether it would be appropriate and feasible to pursue regulatory action concerning Indoor Air Quality (IAQ). Issues on which the RFI requested comments included health effects attributable to indoor pollution, ventilation systems performance, exposure assessment, and abatement methods.

In response to the RFI, interested persons, groups, unions, and industries submitted over 1,200 comments. Commenters both supported and opposed regulating ETS in the workplace. Many urged the Agency either to ban smoking in the workplace or to allow it only in separately ventilated, designated, isolated areas.

The Agency's risk assessment and preliminary economic analysis found sufficient scientific information to support proposing a regulation on IAQ, including exposure to ETS. Therefore, on April 5, 1994, OSHA published a proposal to require employers to restrict smoking to designated smoking areas that are either outdoors or in separate, enclosed rooms that are exhausted directly to the outside of the building. The public comment period ended August 13, 1994, and was followed by public hearings from September, 1994, through March, 1995. The post-hearing comment period ended February 9, 1996.

Since then, the Agency has been reviewing and analyzing the more than 115,000 comments received, identifying and addressing issues that need to be resolved before a final rule

can be promulgated. The IAQ rulemaking record is the largest ever in the Agency's history. No other issue has generated such an overwhelming response. Because of the complexity of indoor air quality issues and the unprecedented size of the rulemaking docket, organizing and responding to the comments in the record is a lengthy process.

Many steps remain before a final IAQ standard could be published. OSHA must complete the preamble to the final rule, finish the final economic impact analysis, respond to comments in the record, prepare compliance assistance materials, obtain legal and policy review within the Department, work with the Small Business Administration to minimize any potentially significant small business impacts identified, and obtain OMB review. Modifications will occur throughout these reviews. Some reviews, such as OMB's, may be quite lengthy. Also, OSHA is considering reopening the IAQ rulemaking record, which would add months to the process. Moreover, OSHA must ensure that it has complied with all applicable laws related to the rulemaking process, such as the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Administrative Procedure Act. OSHA's current regulatory agenda does not anticipate the Agency promulgating a final standard in the near future, and any final rule would be subject to judicial challenge.

It should be noted that ETS is only one part of OSHA's IAQ proposal. OSHA intends to continue promulgation of a standard to address the broader issue of indoor air quality even if Congress chooses to address ETS by law. There are many other pollutants in indoor work environments that must be controlled in order to provide safe and healthful workplaces.

Congressional Action to Address ETS

Proposed legislation to implement the tobacco settlement takes two distinct approaches that involve OSHA in reducing involuntary exposure to ETS. The first, and more common approach, has been to declare, in the law, that public facilities must have and implement smoke-free environment policies. Examples of this type of bill include "The Healthy Kids Act" (S.1638), "The PROTECT Act" (S. 1530), and "The Universal Tobacco Settlement Act" (S.1415). Most of these bills call on OSHA to enforce their requirements. The Agency favors this approach, because we believe that OSHA should have jurisdiction to enforce smoking restrictions in workplaces, most of which would be considered "public facilities" as defined in these bills. Each of these bills would be more effective and more readily implemented if the following provisions were included:

First, a Congressional finding that exposure to ETS causes health consequences that impose a substantial burden upon interstate commerce in terms of lost production, lost wages, medical expenses and disability compensation payments;

Second, clarification that the enforcement mechanisms in Sections 8 - 15 and 17 of the Occupational Safety and Health Act (OSH Act) will apply to all smoking restrictions. OSHA would expect its State Plan partners to enforce smoking restrictions equivalent in scope and content to those in Congressional legislation. Congressional direction to this effect would allow the states who operate their own occupational safety and health programs to expedite their assumption of this responsibility. And, since OSHA's enforcement authority would be broadened by the legislation to cover building owners and lessees who are not necessarily employers, and building entrants who are not necessarily employees, Congress should clarify OSHA's enforcement authority for smoking restrictions.

Third, a clear statement that any legislation does not preempt any existing or future federal, State or local ordinance or regulation that is more protective. In this area with broad public as well as workplace implications, it is necessary and appropriate to specify that OSHA coverage does not preempt overlapping state and local regulation where another entity's smoking regulations are at least as protective as those in the legislation.

Fourth, clarification as to whether OSHA's jurisdiction to enforce the legislation is preempted by Section 4(b)(1) of the OSH Act. The intent of Congress to have OSHA enforce smoke-free policies on public transportation could be frustrated by Section 4(b)(1) of the OSH Act, which preempts OSHA jurisdiction over workplace conditions where another federal agency has exercised its statutory authority to prescribe or enforce regulations (as the Department of Transportation has done with respect to smoking on aircraft). Where Congress wants OSHA to enforce in areas beyond its current jurisdiction, it must specify such coverage.

Fifth, a clear and specific designation of covered facilities. S. 1638 and S. 1530, for example, do not clearly define "fast-food restaurant" and do not specify which facilities are considered "primarily maintained for children."

The main advantage of legislation that regulates ETS directly, and is not dependent upon further OSHA rulemaking, is that the requirements can be implemented expeditiously and enforced by OSHA. OSHA regulation of ETS, in contrast, would require the Agency to meet the many time-consuming requirements of the OSH Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Administrative Procedure Act.

The Chairman's proposal, "The Preventing Addiction to Smoking among Teens Act" (S. 1648), directs OSHA to issue a final rule on indoor air quality within one year. Although OSHA

has already proposed a standard on IAQ and is in the process of developing a final rule, it is unrealistic to expect that a final rule can be published within one year, for two reasons. First, the rulemaking record for the IAQ proposal is enormous, containing over 115,000 comments. There are also new studies and information that must be considered. Analyzing a record of this size takes a great deal of time. And as I stated earlier, OSHA still has to complete the preamble to the final rule and the final economic impact analysis, prepare compliance assistance materials, obtain legal and policy review within the Department, work with the Small Business Administration, and obtain OMB review.

Second, the Agency must meet the requirements of the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Administrative Procedure Act (APA). The burdens imposed by these laws on the regulatory process require extensive effort. OSHA would have difficulty complying with all of these obligations if held to a short timeframe for promulgation.

In addition, as I noted earlier, any OSHA rule is subject to pre-enforcement challenge on the basis that one or more of these many requirements have not been satisfied. Congress has recognized this difficulty in the past, and, in at least two instances, has waived certain procedural requirements. For example, in 1992, Congress passed legislation ("The Housing and Community Development Act", Pub. L. 102-550) requiring OSHA to issue a lead in construction standard within six months. In that bill, Congress specified that neither the procedural requirements of Section 6 of the OSH Act nor the notice-and-comment provisions of the APA would apply. In another instance, Congress waived notice-and-comment provisions when it directed OSHA to promulgate an interim standard on Hazardous Waste and Emergency Response Operations within 60 days ("Superfund Amendments and Reauthorization Act of 1986", Pub. L. 99-499). However,

none of the current pending bills on ETS includes such provisions.

Additional Considerations

Resources

The resource impact on OSHA of ETS legislation will depend on several factors, including the scope and timeframe of required OSHA regulatory action. A Congressional mandate for the Agency to publish a final rule on IAQ in 12 months would seriously disrupt Agency priorities and would almost certainly require OSHA to divert resources from other important health and safety initiatives. However, by limiting OSHA's required tasks during this timeframe, Congress could reduce the additional resources necessary to carry out the tasks.

Enforcement

Where enforcement is required, Congress should consider the resulting penalties for violations of smoking restrictions. If the existing OSHA enforcement mechanism is used, penalties could range from zero dollars for a first-time, other-than-serious violation, to thousands of dollars for a serious, willful or repeat violation. For example, if OSHA responded to a complaint that an employee was violating the no-smoking policy of a workplace that was otherwise in compliance, then OSHA would likely classify that violation as "other-than-serious" and issue no monetary penalty. On the other hand, if OSHA found a facility without a no-smoking policy, where individuals were being exposed to ETS involuntarily, or where contaminated air from specially designated smoking areas was recirculated into the rest of the

building, then OSHA could classify that as a serious violation, and propose a penalty of up to $7,000. In a case where a facility owner had repeatedly or willfully violated the law, OSHA could propose a fine of up to $70,000.

Conclusion

OSHA is very supportive of Congressional efforts to reduce involuntary exposure to ETS. The legislation Congress considers can do much to prevent ETS-related heart disease, cancer, asthma, eye, nose and throat irritation, and other conditions. With its experience in protecting workers, OSHA is particularly well situated to assist. If the legislation is clear and specific, it will expedite OSHA's efforts.

Thank you again for the opportunity to present OSHA's views. I would be happy to answer any questions.

Tobacco - settlement - environmental tob smoke

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

JAN 6 1998

BR/Ek-
I asked OSHA to come up numbers of folks hurt by indoor air pollution. This includes those figures, the cost of fixing, and how tobacco bill or a new standard might work. They haven't done this last piece TOM

MEMORANDUM TO THOMAS FREEDMAN

FROM: EMILY SHEKETOFF ES
GREG WATCHMAN GW

DEPARTMENT OF LABOR/OSHA

At our meeting December 15, you asked about the situation for Indoor Air Quality and Environmental Tobacco Smoke. We didn't forget, here are some facts that might help you:

STATISTICS ON INDOOR AIR POLLUTION

A wide range of signs and/or symptoms of illnesses are reported by workers inside buildings. It has been reported that five to ten percent of these workers (1-2 million) suffer from building-related illnesses, such as hypersensitivity pneumonitis, Legionnaire's Disease, asthma (it is estimated that approximately 200,000 to 1.5 million Americans could be affected by occupational asthma), and exacerbation of existing diseases by identifiable exposures in buildings. Some further estimate that an additional 10-25% of workers (2.1 to 5.25 million) suffer from "Sick Building Syndrome." Symptoms reported include irritation of the eyes, nose and throat; dry mucous membranes and skin; erthema; mental fatigue and headache; respiratory infections and cough; hoarseness and wheezing; hypersensitivity reactions; and nausea and dizziness. Generally, these conditions are not easily traced to a specific substance, but are probably due to some unidentified exposures to an unidentified contaminant or combination of contaminants. Symptoms are generally relieved when the employee leaves the building and may be reduced or eliminated by modifying the ventilation system.

COSTS

OSHA estimated that its Indoor Air Standard could cost up to $8.069 billion and cover 70 million workers. We have since modified it somewhat, bringing the cost down to $4 billion, which works out to $57 per worker.

Most of the cost of an OSHA Indoor Air Standard would be related to the indoor air pollutant elements, requiring engineering controls and maintenance and training. The elements restricting smoking can be very inexpensive, such as No Smoking signs.

BENEFITS

OSHA would expect a significant reduction in chronic diseases such as asthma, hypersensitivity pneumonitis, Legionnaire's Disease, cardiovascular disease, and lung cancer. It has been estimated that headaches (serious enough to leave work or seek medical attention) could decrease by 3,025,358 and 4,511,499 upper respiratory cases could be avoided with an Indoor Air Standard.

By only restricting smoking, as suggested in OSHA's Indoor Air Proposal, it is estimated that between 97,000 and 577,818 fatal cases of coronary heart disease would be avoided and between 5,583 and 32,502 fatal cases of lung cancer would be avoided for non-smokers.

OSHA would expect worker productivity to increase due to a reduction of negative health effects related to the decreased indoor air pollution.

WHAT THE ADMINISTRATION COULD DO

The Administration could work closely with the Congress and endorse the Tobacco Settlement, as modified this past summer.

OSHA could split its Indoor Air Quality Standard and focus on Environmental Tobacco Smoke. This piece of the standard has the lowest cost (no cost for restricting smoking, some cost for supplying a separately ventilated area); highest benefits (reduction of cardiovascular disease and lung cancer); but the issue of coverage of the hospitality industry must be decided.

Tobacco - settlement — env. tobacco smoke

Bruce / EK,
In case
you missed
it - Pam

THE WALL STREET JOURNAL.

MONDAY, OCTOBER 13, 1997 B1

MARKETPLACE

Advertising: *Auto makers step up marketing of their sold-out models* ... *Page B8.*

Law: *ADM whistle-blower Whitacre admits $9 million theft* ... *Page B10.*

Secondhand-Smoke Case May Kindle New Suits

By Suein L. Hwang
And Ann Davis
Staff Reporters of The Wall Street Journal

Once confident it could snuff out the first class-action lawsuit on secondhand smoking, the tobacco industry suddenly had second thoughts.

The major cigarette companies, their defense weakening four months into the long-shot liability case filed by flight attendants, settled by agreeing to pay $300 million for research on tobacco and disease.

LEGAL BEAT

The outcome Friday could kindle new litigation brought not by ailing smokers but by anyone claiming illness from regular exposure to the curling smoke of cigarettes in confined workplaces. Though such suits still face significant hurdles, the settlement "could be an invitation to narrow, well-defined classes" of secondhand smokers, says Brian Wolfman, a lawyer at Public Citizen, a consumer advocacy group in Washington.

Legal critics called the settlement mostly advantageous to the defendants. The tobacco industry, they say, conceded little; shielding itself from punitive damages that could have snowballed into hundreds of billions of dollars or more.

If approved, the agreement would award plaintiffs nothing, but pay their two attorneys, Stanley and Susan Rosenblatt, $49 million in fees and expenses—a high-altitude total that sparked immediate criticism.

Still, the outcome was a big surprise. The lawsuit, hardly taken seriously when filed six years ago, had a Herculean task: to prove that secondhand smoke causes heart and lung disease and other illnesses—and that the tobacco industry committed fraud by concealing that information.

If the Rosenblatts managed to succeed in that task, the judge would devise a complex procedure for individual trials on damages. The class included 60,000 current and former nonsmoking flight attendants.

But once the trial got under way this summer in Miami's Dade County Courthouse, Judge Robert Kaye appeared annoyed with the industry, represented by 10 lawyers from nine different law firms. "They did a lot of objecting and I think he grew angry with them," says one industry lawyer familiar with the trial.

Industry attorneys really began to sweat in recent days, when Judge Kaye denied their request to present extensive evidence during the initial phase of the trial that the flight attendants' illnesses could have been caused by other sources like cosmic radiation and the ozone.

Another tobacco company setback: The judge barred an industry witness from testifying about a secondhand-smoke study because some of the field work and analysis had been conducted at an R.J. Reynolds lab. It was reminiscent of "a fox in the henhouse," lawyers say Judge Kaye remarked. The comment so infuriated industry lawyers that they made a motion for the judge to recuse himself from the case; he refused.

Polls of mock juries conducted by the tobacco camp during the trial were turning out worrisome results, people familiar with the situation say. "The litigators down there had really big concerns," says one person. "They were giving terrible odds, and things kept getting worse."

A loss could have risked the $368.5 billion national-settlement proposal, which would grant broad immunity to the tobacco companies from liability for illnesses related to smoking. That proposal, which was developed by state attorneys general and cigarette companies, has yet to be taken up by Congress. That in mind, settlement talks in Miami began quickly.

What evolved from weeks of negotiations was an agreement to put $300 million

Please Turn to Page B10, Column 1

Terms of the Settlement

- **Tobacco companies pay $300 million** over three years for research on smoking illnesses.
- **Plaintiffs' lawyers receive $49 million** in fees and expenses. Plaintiffs don't receive any money at this stage.
- **Companies don't admit connection** between secondhand smoke and illness, but flight attendants may try in individual trials to prove they were harmed.
- **Plaintiffs may seek only compensatory**, not punitive damages in individual trials.
- **Companies in individual trials bear burden** of proving no link between secondhand smoke and illness. Companies agree not to raise certain statute of limitations defenses.

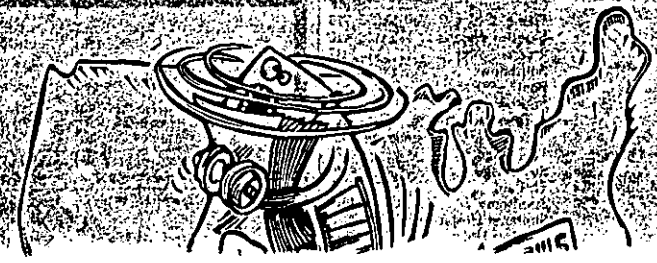
TRANSPORTATION

An Unsolved Mystery: Where Are Shippers' Rail Cars?

By Anna Wilde Mathews
And Daniel Machalaba
Staff Reporters of The Wall Street Journal

Have you seen Ed Shineberger's rail car?

It's nearly two stories tall, 60 feet long and crammed with 120,000 pounds of carbon soot—the stuff that makes tires black. For a month now, the rolling behemoth has been caught up in Union Pacific Corp.'s unprecedented tie-up of rolling aimlessly around Louisiana and Arkansas and stopping twice in the same



Bromley, adding that the company has ordered or leased 300 more locomotives and plans to hire hundreds of additional train operators. He says Union Pacific expects to put both railroad systems under the same computer system by early next year.

But that's little consolation to the hundreds of companies and transportation managers swapping horror stories. Carloads have disappeared for days when they were moved without being picked up by Union Pacific's computers. Some transpor-

peared to be in great jeopardy in mid-1995.

Secondhand-Smoke Settlement

Continued From Page B1

into a new foundation to research all diseases related to cigarette smoking. Future flight-attendant plaintiffs would be barred from bringing class actions. And although plaintiffs would still be allowed to pursue their cases individually, they could pursue only compensatory — but not punitive — damages.

In future cases, the tobacco industry agreed to assume the burden of proof on whether secondhand smoke can cause disease. But experts downplay the concession, since individual plaintiffs will still have the difficult task of proving that smoke — rather than other factors — primarily caused their particular ailments.

The companies agreed not to raise statute-of-limitations defenses in any individual suits filed within a year after final approval of the settlement. "Over half the flight attendants would have been out of the box on the statute of limitations," says Mr. Rosenblatt, the plaintiffs' attorney. "And now they're in the ball game. And that to us is a tremendous concession."

Some legal experts disagree. For many members of the class who haven't yet fallen ill, the statute of limitations might be irrelevant. Many attendants won't sue until they actually get sick sometime in the future, as was the case with many workers who were exposed to asbestos in the 1940s and 1950s but only sued decades later.

An attendant who might develop cancer five years from now would still be able to file an individual suit at that time, according to Mr. Wolfman. "It's hard to see the benefit this settlement brings" for those who get sick in the future. "All the settlement does for them is take away their chance at punitive damages."

"It's great to get the research money and [waive] the statute of limitations," says Joseph Rice, a tobacco-plaintiffs attorney with Ness Motley Loadholt Richardson & Poole in Charleston, S.C. "But other than that, I don't think it moved the ball down the court on winning the individual cases."

A successful medical-malpractice lawyer, Mr. Rosenblatt was considered something of an outsider, refusing to join a consortium of powerful plaintiffs' lawyers who launched class-action suits against the industry a few years later. And while a number of high-profile plaintiffs lawyers haggled with the cigarette makers over a national tobacco settlement, Mr. Rosenblatt appeared content to pursue his own case.

Mr. Rosenblatt, who runs a small family law firm with his wife Susan, stresses there was only a slim chance that they would have been awarded any money in the first phase of the trial, since the judge hadn't yet decided whether to allow the jury to consider whether there should be any punitive-damage awards. The issue of compensatory damages was to be taken up in later phases of the trial.

Mr. Rosenblatt notes that the industry was sure to appeal any monetary awards anyway. "Even if we were successful, no one would have had any money in their pockets," he says. "This settlement agreement, to us, represented certainty," he added.

The flight attendants can still object to the settlement at a hearing expected in a few months. Norma Broin, the lead plaintiff, defended the deal and said class members will get a huge head start bringing their individual suits, because they can introduce evidence already collected by Mr. Rosenblatt for the class-action trial. "The flight attendants didn't get the short end of the stick," she insists.

A statement issued by the four major cigarette makers calls the settlement a "common sense approach" to resolving the case "in a way that is consistent with the much broader legislative resolution now pending before Congress." It added that the companies "remain confident of their respective positions on this issue and intend to present compelling evidence to juries in any individual cases that may be filed."

The statement was issued by Philip Morris Cos.; R.J. Reynolds Tobacco Co., a unit of RJR Nabisco Holdings Corp.; Brown & Williamson Tobacco Corp., a unit of B.A.T Industries; and Lorillard Tobacco Co., a unit Loews Corp.

Some proponents of the national settlement called the terms of the Miami settlement proposal onerous, arguing that tobacco issues are better resolved in Congress than in the courtroom. "We wanted to do away with class actions because they are so susceptible to abuse like this, where the lawyers get paid and the class loses its rights without anything to show for it," says Richard Scruggs, a plaintiffs lawyer who participated in the national-settlement talks.

EXXON CORP.

Accord Set With Mobil, Indonesian Energy Firms

Exxon Corp. said it signed an agreement with Mobil Corp. and Indonesia's state oil, power and natural-gas distribution companies to study the development of the Natuna gas field in the South China Sea. The Irving, Texas, oil company said the study will be conducted with an eye to supplying markets in West Java with about 960 million cubic feet of natural gas a day. In August Exxon had said it was considering the creation of a venture to build a multibillion-dollar power plant in Indonesia. Exxon has a 50% interest in the Natuna field and is its operator, while Mobil and Pertamina, Indonesia's state oil company, hold 26% and 24% stakes, respectively.

UBS, a Swiss Bank, Blasts Boycott by New York City

Special to The Wall Street Journal

ZURICH — Union Bank of Switzerland lashed back at New York City Comptroller Alan G. Hevesi after being removed last week as lead manager of a $1.08 billion loan for the city.

After a consortium led by UBS won the New York financing, Mr. Hevesi said he insisted UBS be dropped. He said he was unhappy with UBS's attitude toward an investigation into the role of Swiss banks during World War II, in which they are accused by Jewish claimants of willfully retaining assets entrusted to them by Holocaust victims.

"Mr. Hevesi's actions are taking on the characteristics of a vindictive and targeted campaign to single out and punish UBS," said Richard C. Capone, New York-based executive vice president and chief operating officer of UBS's Americas region, in a news release Friday.

Over the weekend, U.S. State Department spokesman James Rubin expressed the department's disapproval of the New York City boycott of UBS, saying the move was inappropriate and counterproductive.

U.S. Department of Justice

Office of the Associate Attorney General

Deputy Associate Attorney General

Washington, D.C. 20530

July 23, 1997

MEMORANDUM

TO: Elena Kagan
Domestic Policy Council

FROM: L. Anthony Sutin
Deputy Associate Attorney General

SUBJECT: **Tobacco Settlement/Pending ETS Litigation**

We received the attached July 17, 1997 letter from the Environmental Protection Agency recommending that the proposed tobacco resolution encompass a dismissal of a pending case challenging the EPA's issuance of a 1993 report on the health effects of second-hand smoke.

The Department of Justice concurs with EPA that it would be appropriate and beneficial to provide for the voluntary dismissal of this case if that could be accomplished under the rubric of the proposed resolution.

If you have any questions, please call me at 514-8950.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 17 1997

OFFICE OF
GENERAL COUNSEL

John C. Dwyer
Associate Attorney General
Department of Justice
10th & Constitution Ave., N.W., Rm. 5214
Washington, D.C. 20530

Re: Dismissal of tobacco industry litigation regarding EPA report on the health effects of passive smoking as part of overall tobacco settlement

Dear Mr. Dwyer:

As you know, the White House Domestic Policy Council is coordinating an interagency review of the proposed tobacco settlement. This letter is to call to your attention pending litigation between the tobacco industry and EPA over the health effects of passive smoking, and to ask your assistance in ensuring that dismissal of this meritless litigation be included as an element in any global tobacco settlement.

Acting under the authority of the Radon Gas and Indoor Air Quality Research Act of 1986, Pub. L. No. 99-499, 100 Stat. 1758-60 (1986), EPA issued a report on the health effects of environmental tobacco smoke, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders, EPA/600/6-90/006F, in January 1993. Based on an exhaustive and peer-reviewed analysis of the large body of available data concerning the health effects of second hand smoke, EPA concluded in its report that environmental tobacco smoke causes lung cancer in adult nonsmokers and impairs the respiratory health of children.

In June 1993, EPA was sued in the U.S. District Court for the Western District of North Carolina by a number of tobacco industry parties, including Philip Morris Inc. and R.J. Reynolds Tobacco Co., over the agency's issuance of the report. Flue-Cured Tobacco Cooperative Stabilization Corp., et al. v. U.S. Environmental Protection Agency, Civ. Action No. 6:93CV370 (M.D. N.C.). The tobacco industry parties allege that EPA's issuance of the report exceeded its authority and violated the procedures required under the Radon Act, that EPA's conclusion that environmental tobacco smoke is a Class A carcinogen was arbitrary and capricious, and that EPA failed to follow its guidelines for carcinogen risk assessment. The district court denied EPA's motion to dismiss the case on the grounds that its action was not

final agency action subject to review under the Administrative Procedure Act. The parties have now briefed cross-motions for summary judgment, which are pending before the district court.

EPA believes that the tobacco industry's suit regarding its report on environmental tobacco smoke is entirely without merit, and expects to prevail on its motion for summary judgment. The industry's continued maintenance of this case, however, and particularly its challenge to EPA's finding that second-hand smoke is a human carcinogen, seems indefensible in the face of the industry's acknowledgements to the contrary in the proposed tobacco settlement. EPA asks, therefore, that the Justice Department include dismissal of this meritless litigation as a term of any overall settlement with the tobacco industry.

Please call me at 360-8040, or have your staff call Greg Foote, Assistant General Counsel, at 260-7619, if you need additional information on this matter. The case is being defended by the Environment and Natural Resources Division; the Justice Department attorney responsible for the matter is Alice L. Mattice.

Sincerely,

Robert G. Dreher
Deputy General Counsel

cc: Elena Kagan
Deputy Assistant to the President
for Domestic Policy

Lois Schiffer
Assistant Attorney General
for Environment and Natural Resources

JUL 30 1997

MEMORANDUM FOR: ELENA KAGAN
ELIZABETH DRYE

FROM: EMILY SHEKETOFF Emily Sheketoff

SUBJECT: TOBACCO SETTLEMENT

The Public Health Service of HHS has raised an objection to the Environmental Tobacco Smoke Work Group comments on the Settlement.

They completely disagree with our recommendation to exempt the Hospitality Industry; i.e. restaurants, bars, hotel bars, private clubs, hotels, casinos, bingo parlors; tobacco merchants and prisons. Ripley Forbes felt that the public health community would not be supportive of our position and would criticize us for not trying to be more protective. They would understand if the Congress exempted these groups, but that we should at least try to have them included in the restrictions.

I am attaching the final draft document and the side by side as you last saw it. If you agree with the public Health Service proposal, I will change these two documents to reflect the change. I have checked those passages which would be affected.

cc: Ripley Forbes

FINAL DRAFT ENVIRONMENTAL TOBACCO SMOKE WORKING GROUP

INTRODUCTION

The Administration is trying on several fronts to reduce the incidence of lung cancer and cardiovascular disease by reducing exposure to Environmental Tobacco Smoke. Title IV of the Tobacco Settlement contains provisions addressing the same goal. There are some clarifications and additions needed to Title IV, which are discussed below.

Title IV would restrict smoking in buildings to areas with separate ventilation. There are exemptions for the hospitality industry and prisons. Title IV does not discuss residential housing.

On balance, the legislation contemplated by the settlement appears to be a positive step towards reducing disease caused by ETS because it will finally address the dangers of exposure to second-hand smoke.

BENEFITS OF THE TOBACCO SETTLEMENT

1. It would actually go into effect. The Congressional direction to implement regulations restricting smoking in buildings within one year would overcome the administrative difficulties in promulgating an OSHA standard and the uncertain fate of any standard in the judicial system.

2. It would cover more places.

Unlike OSHA's standard, this one covers:

Locations with state and local government employees
Small businesses with fewer than 10 employees, but more people who enter the establishment
Buildings that are regulated by other safety and health agencies [4 (b) (1)], such as Department of Energy facilities and mines
Private contractors

3. The settlement would allow more protective state and local restrictions to remain in effect because unlike OSHA's standard, it doesn't pre-empt more protective coverage.

DISADVANTAGES OF THE TOBACCO SETTLEMENT

1. Clarify the jurisdiction issues between EPA and OSHA (EPA agrees OSHA is the logical agency to enforce this).

2. Hospitality exemption is very broad and these are the people at the greatest risk

from exposure. The hospitality industry is the most potent political group on record opposing any ban on smoking in their establishments.

3. It may pre-empt OSHA's ability to protect employees in the hospitality industry and prisons.

4. It does not protect people in facilities which have 10 or fewer people enter per day in a given week.

5. There is no money earmarked for enforcement. The state of Maryland already has a state law restricting smoking; using the formula of comparing the percentage of complaints related to smoking that their safety and health agency receives overall, we can postulate how many complaints OSHA will need to respond to yearly, and how many additional inspectors OSHA will need to respond to those complaints.

6. Realistically, this will make it impossible for OSHA to complete and implement a final Indoor Air Quality standard. Which means that OSHA will be unable to regulate the other indoor air contaminates which cause diseases such as Legionaires, etc.

ADDITIONS

1. Clarify OSHA jurisdiction

2. Strengthen section on pre-emption:

   No state or local law pre-emption of a more protective standard
   Any further OSHA activity on issues addressed in settlement
   Any new OSHA action on any issue not specifically mentioned in settlement

3. Clarify OSHA's enforcement role

4. Add money for educational program

July 7, 1997

ISSUE	OSHA INTERPRETATION	NEEDED CHANGES
The responsible entity for each public facility (entered by 10 or more individuals at least one day per week) shall adopt and implement at such facility a smoke-free environment policy."	Appears to come from **sec. 2701 of HR 3434. Although the bill's authors apparently intended to refer to any building entered by 10 or more individuals per week, the vague language could** create a small employer exemption for at least some small employers. A small employer in a large office building appears to be subject to the provisions (although the lessee provision makes this unclear), but an employer with 9 employees in a free-standing building may not be covered. "Responsible entity" is defined in Sec. 2706 as meaning, "with respect to any public facility, the owner or lessee." The lessee provision applies where any facility or portion thereof is leased. This provision appears to render employers liable for the actions of subcontractors on the premises, since subcontractors will not have "leased" a portion of the facility." Does not sufficiently address whether, in a "public" facility, the "less than 10" exemption would apply to the specific offices of the "lessee employer." May render the "lessee" employer liable for the actions of someone smoking in the hallway outside its door, as the employer has "leased" that premises.	Clarify treatment of small employers, both in office buildings and in their own free-standing facilities. Clarify that "individuals" includes <u>any</u> persons who enter at any time during the week, including delivery persons, postal workers, the public, etc. Define "building." What about ships, trains, mines, etc.? Clarify that the provision renders the hiring entity liable for the actions of subcontractors--the building owner if it hires the subcontractor, or the lessee if it does so.
Residential Homes applicability unclear	The definitions of "responsible entity" and "public facility" exempt residential homes--**sec. 2706(2) and (3)**. The text of the agreement does not specify whether these definitions are contemplated. Neither sufficiently addresses the residences and public corridors in apartment buildings.	Add explicit exemption for residential homes that addresses apartment building issues. Clarify how home-based businesses are affected. Clarify how Nursing Homes should be addressed.

ISSUE	OSHA INTERPRETATION	NEEDED CHANGES
Policies must ensure that no employee shall be required to enter a designated smoking area while smoking is occurring. Cleaning and maintenance work in such area shall be conducted while no smoking is occurring. Includes requirements for exhaust to the outside, "negative pressure" and preventing recirculation within the facility.	Appears to relate to **sec. 2701(b) of HR 3434**. However, silent on paragraph (1) provision that renders a responsible entity--i.e. owner or lessee--to control others who may smoke around its entrance. Subjects lessee employer in an office building to assessment of fines for employees/tenants not in that employer's control. Includes vague definition of "immediate vicinity" of the doorway What happens to employees/janitors, etc in residential apartment buildings or other such facilities that are exempted? Ventilation provisions come from **Sec. 2701 (c)(1) and (2)**. Does not prohibit children under the age of 15 from entering the area, unlike HR 3434.	Clarify when a tenant or building owner is liable, or allow OSHA to do this through regulation. OSHA must have authority to enforce and draft standards on varying ventilation needs/specifications in differing types of workplaces, and protect minors. Must address the costs issue. Clarify there are no costs, ventilation not required. "Immediate vicinity" should be defined by OSHA as anywhere from 20 to 50 feet away. Should prohibit smoking outside the building from occurring in the vicinity of air intakes for the building's ventilation system.

ISSUE	OSHA INTERPRETATION	NEEDED CHANGES
Exempt restaurants (**excluding** fast food) and bars (**including** hotel bars), private clubs, hotel guest rooms, casinos, bingo parlors, tobacco merchants and prisons.	These are defined in **sec. 2706 of HR 3434,** with the exception of bingo parlors, casinos and hotel guest rooms. Therefore, the proposal goes beyond HR 3434. These need further definition. Allows states to enact standards or legislation covering such facilities, but not OSHA Does not address ventilation or other requirements related to tobacco merchants located in malls or other buildings with multiple employers. "Private Club" may be difficult to define in a way that can not be easily manipulated by restaurants and other businesses in order to avoid coverage.	The major purpose of a building in which bingo is played should determine coverage. Bingo parlors are generally established in buildings used for other purposes. Define whether individuals operating bingo parlors are volunteers or employees covered by OSHA. Better define casinos, fast food, private clubs to avoid abuses. Define tobacco merchant as selling primarily tobacco products. Address separate ventilation requirements for tobacco merchants in facilities with multiple businesses. Do not preempt state laws re prisons. Allow states and/or localities to pass more protective laws. May include this legislation's excluded entities.

ISSUE	OSHA INTERPRETATION	NEEDED CHANGES
Allows OSHA to issue regulations clarifying the definition of a "fast food" restaurant to the extent necessary to ensure that the intended inclusion of establishments catering largely to minors is achieved.	**HR 3434 did not include** a fast food exemption. While this could enable OSHA to prohibit smoking in a greater number of "fast food" restaurants, the definition of "fast food" is not sufficiently clear. For example, this might exempt cafeterias.	Clarify definition of "fast food," to ensure that cafeterias are not exempt. Include language which broadly interprets those establishments not exempt. Clarify that OSHA can conduct regulatory efforts to protect employees in restaurants, bars, the most high risk establishments, from exposure to environmental tobacco smoke short of a complete ban. Maybe require more ventilation in hospitality industry.
Direct OSHA to issue, within one year, regs implementing and enforcing these provisions, with enforcement costs paid out of the Industry Payments. However, the restrictions take place regardless of whether regulations have actually been promulgated.	Directly conflicts with **HR 3434.** HR 3434 defines Administrator as the EPA administrator. The summary of the proposed resolution only refers to OSHA, and is silent on EPA's involvement. OSHA and EPA roles inside and outside buildings must be defined. We assume, consistent with OSHA's traditional responsibilities, that the intention here is for OSHA, not EPA, to have sole jurisdiction over workplaces.	Clarify that this is an OSHA, not an EPA, responsibility.
No preemption of state or local laws or regulations that are more restrictive. No preemption of federal rules that restrict smoking in federal facilities.	Although preemption is not explicitly stated, could preempt OSHA action on the tobacco-related aspects of its Indoor Air Quality rule as it relates to anything other than federal facilities. This would **expand preemption beyond that proposed in HR 3434,** which did not "preempt or otherwise affect any other Federal, State or local law which provides protection from health hazards from ETS." May allow states to preempt localities from enacting more strict standards	Do not preempt OSHA from taking additional action to establish tobacco-related standards in the workplace. Preempt states from prohibiting localities from enacting more strict enforcement standards.

ISSUE	OSHA INTERPRETATION	NEEDED CHANGES
OSHA may issue regulations implementing and enforcing standards.	This provision is silent on penalties. HR 3434 provided for civil penalties of $5000 per day of violation. The bill also allowed any aggrieved person to file a court action. The settlement summary is silent regarding OSHA's ability to assess penalties to enforce the prohibitions. HR 3434 did not contemplate assessment of fines by EPA. This might only provide a remedy if an aggrieved individual files suit. The most appropriate remedy would be OSHA citation and penalties	Clarify that OSHA may conduct all of its traditional enforcement activities, including the issuance of penalties, in connection with the settlement. OSHA will need money from the trust fund for inspectors to enforce these provisions.
Other issues	The settlement could limit the practical ability of OSHA to protect workers from other airborne hazards which would be implicated by its proposed Indoor Air Quality rule.	Strong pre-emption ban.
✓ Clarifications Needed	References to HR 3434, WISHA workplace smoking rule and state law exemptions for the "hospitality sector" are confusing. It is unclear whether the provisions of these laws/policies would apply without explicit statements to the contrary.	Confusing references should be stricken.

Tobacco - settlement -
ETS

ETS 7/1/97

10 people vs. 10 workers

slamdunk to do This.
our rule - hard to do politically
legal ?'s
and can't reg. anyplace w/ less than 10 wkrs.

Parties won't care about This -
Just need to make clear, understandable

Does preempt

bus. commun generally would think OK given this exemption

wkrs here (in Their reds) most affected (in terms of pub. health)

Rule doesn't exempt prisons, hosp. ctrs, restaurants

May want to address ventil syst here (lesser reqs)
States can go forward too.

Lg businesses won't care. Small will bec They won't be able to afford ventil.

No $ for enforcement - $100m - including for personnel.

Preamble - refer to ETS
Also in Art 8 - doc disclosure

[OSHA juris. over transport, mines
settlement talks abt bldgs

DOT - consid. req'ing airports to be smoke-free

Enforcement - include priv rt of action?
OSHA - would oppose.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210

July 21, 1997

MEMORANDUM FOR EMILY SHEKETOFF
JENNIFER O'CONNOR

FROM: ANN ROSENTHAL
SUSAN SHERMAN
JOHN COLWELL

SUBJECT: Proposed Tobacco Litigation Settlement and OSHA Preemption

This memorandum analyzes the possible effect of the proposed settlement of tobacco litigation on the authority of OSHA, states, and localities to regulate workplace exposures to environmental tobacco smoke (ETS). It supplements our June 27, 1997 memorandum to you.

Under the proposal, it appears that a legislated OSHA standard--comparable to a rule already proposed by OSHA--would preempt further action by OSHA, but would preserve state and local authority to regulate ETS. Under current law, in contrast, if OSHA issued a standard addressing ETS, state and local regulations likely would be preempted.

Provisions of the Proposed Settlement

The proposed settlement (Title IV, pp. 30-31) envisions federal legislation that would "direct OSHA to issue . . . regulations implementing and enforcing" a specified standard governing indoor smoking in "public facilities."

This standard is similar to a proposed rule addressing indoor air quality issued by OSHA in April 1994, with one major distinction: the settlement's standard would exempt restaurants, hotels, and similar businesses (the "hospitality industry"). In other respects, the settlement's standard offers broader coverage than OSHA's proposed rule. Unlike the proposed rule, the standard would cover: locations with state and local government employees, small businesses with fewer than 10 employees, buildings regulated by other federal safety and health agencies, and private contractors.

The proposal states that the legislation would not "preempt or otherwise affect any other state or local law or regulation that restricts smoking in public facilities in an equal or stricter manner" (p. 31). By implication, further action by OSHA to address ETS would be preempted. (The effect of the legislation would, of course, depend on the actual wording of a statute.)

The proposed bargain, then, would offer an OSHA standard narrower in some ways than OSHA's proposed rule, in exchange for preserving state and local regulatory authority. This bargain turns

on the fact that issuing an OSHA standard likely would preempt stricter state and local regulation of ETS. We discuss the legal background below.

Preemption of State and Local Authority under the OSH Act

Section 18 of the Occupational Safety and Health Act (OSH Act), 29 U.S.C. §667, generally precludes states from enforcing occupational protections directed at a hazard also addressed by an OSHA standard. That section requires a state that wishes to assume such responsibility for enforcing its own occupational safety and health standards to implement a "state plan" that is at least as effective at assuring occupational safety and health as the OSH Act. About half the states currently have state plans approved by OSHA in effect. There is no mechanism for a state to implement a plan addressing only certain hazards.

In Gade v. National Solid Wastes Management Ass'n, 505 U.S. 88, 112 S. Ct. 2374 (1992), the Supreme Court held that Congress intended the OSH Act to be broadly preemptive, so that any federal OSHA standard results in "exclusive" federal coverage of the hazard addressed by that standard.[1] 505 U.S. at 101; 112 S. Ct. at 2383. Specifically, the Court stated that the OSH Act evinced a Congressional intent "to promote occupational safety and health while at the same time avoiding duplicative, and possibly counterproductive regulation." It concluded that allowing a State "selectively to 'supplement' certain federal regulations with ostensibly nonconflicting standards would be inconsistent with this federal scheme." 505 U.S. at 103; 112 S. Ct. at 2385.

The Gade Court also held that the fact that a state law may be intended both to protect workers and to serve the nonoccupational purposes of protecting the environment and public health and safety does not save it from preemption. For purposes of preemption analysis, a state law is an occupational safety or health standard if it "directly, substantially, and specifically regulates occupational safety and health," even if the law also has an additional purpose. This inquiry looks to the state law's effect, not only to its purpose. "The key question is thus at what point the state regulation sufficiently interferes with federal regulation that it should be deemed preempted under the Act." 505 U.S. at 107; 112 S.Ct. at 2387. Under this holding, even a state law that does not articulate an occupational safety or health purpose at all could be preempted if it directly and substantially regulates occupational safety and health. Id.

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[1] A four-member plurality of the Court held that the OSH Act "impliedly" preempts such state standards. Under general principles of legal analysis, a state law that conflicts with a federal requirement is described as "impliedly" preempted by the federal mandate. A fifth member of the Court would have held that Section 18 of the OSH Act expressly preempts all state occupational safety and health standards, outside the context of an approved state plan, directed at hazards as to which a federal standard is in effect. Thus a majority of the Gade Court agreed that an OSHA standard preempts more stringent state and local laws. All five justices in that majority agreed with the portion of the decision addressing how to determine whether a state law is a preempted occupational safety and health standard.

The issue is not completely clear, however, because the Gade Court also stated that "state laws of general applicability (such as laws regarding traffic safety or fire safety)" would not be preempted as long as they do not directly conflict with an OSHA standard, even if they have a "'direct and substantial' effect on worker safety." 505 U.S. at 107; 112 S.Ct. at 2387-2388. The Court did not provide much guidance on how to classify state laws that might not be classified easily as either laws of general applicability or occupational safety and health standards. It is likely that a number of state and local smoking restrictions would fall into this gray area. Whether particular restrictions would be preempted by an OSHA standard would have to be determined on a case-by-case basis. This inquiry could occur either in a state court, in the context of a state enforcement action, or in federal court, in the context of a declaratory judgment, mandamus, or injunction action directed at declaring the state law unenforceable. Neither OSHA nor the federal government would be a necessary party to these cases.

Elena - FYI (not sure you have this) - Eliz

JUL 7 1997

MEMORANDUM FOR: ELENA KAGAN
ELIZABETH DRYE

FROM: EMILY SHEKETOFF Emily Sheketoff

SUBJECT: TOBACCO SETTLEMENT

At the last meeting of the Environmental Tobacco Smoke Working Group, Elena asked for a list of those who had opposed OSHA's Indoor Air Quality Standard, not including the tobacco interests.

Attached is a list of groups who opposes any smoking restriction. Many small businesses, such as beauty salons and nursing homes wrote in opposing the smoking control provision in the proposal. Many of these businesses are represented by national organizations and small business representatives.

I also edited the two draft papers that were distributed at the last meeting to reflect the comments expressed at that meeting.

National Representatives of Businesses that may Oppose OSHA Regulation of ETS.

Group	Representative	Phone
Bowling Proprietor's Associations	Kurt Brose	817-649-5105
U.S. Chambers of Commerce and state chapters	Richard L. Lesher	202-659-6000
Small Business Representatives, SBA	Anita Drummond	202-205-6532
Some unions, such as the Bakery, Confectionary, and Tobacco Workers		
Clean Air Device Manufacturing Association[2]	Dennis Lauchner	703-691-4612
Billiard Congress of America	Bruce Cottew	319-351-2112
Health Care Financing Administration[3]	Bruce Vladeck	410-786-3000
National Funeral Directors Association[4]	?	1-800-228-6332 1-414-541-2500

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[2]This group represents manufacturers of air filtration equipment. They may not be in favor of the language in Title IV that states that air from the smoking rooms shall not be recirculated (thus reducing the perceived need for filtration equipment).

[3]HCFA did not comment directly on the proposal. Many nursing homes wrote in form letters opposed to the smoking provision. HCFA may be involved in this whole settlement issue since the states Attorneys General sued to be reimbursed for Medicare payments. Is it possible that they could require smoke-free nursing homes as part of the Medicare payment requirement?

[4]The Agency received many form letters from Funeral Home Directors opposing the smoking provision.

National Cosmetology Association[5]	?	1-800-527-1683
Some State governments, such as North and South Carolina, Louisiana, Alabama, Mississippi, and North and South Dakota.		

[5]The Agency received many form letters from owners of beauty salons opposing the smoking provision.

Elena — hope these are helpful.

Questions for Environmental Tobacco Smoke Group

1. What are our goals with respect to ETS? Kids? Workplace smokers? public buildings?. (CDC)

2. What is the scope of the pending OSHA workplace smoking rule? Timing? Costs and benefits?
(OSHA)

3. How do the scope/costs/benefits compare to the Waxman legislation included in the settlement?
(OSHA)

4. Which approach or combination of approaches best meets public health goals?
(OSHA)

5. What are the critical issues raised by the Waxman legislation? What fixes should we consider? (One key question is who has jurisdiction to set standards -- OSHA or EPA.)
(OSHA)

6. What is the status of our EO in Federal buildings? What's its scope? What are the next steps and how quickly could we complete it? (I've let this group know we should be prepared to move ahead on the EO in short order.)
(GSA/HHS)

Do Should we have the economic agencies on this group?

Yes – let's not let OIRA drag this into too much detail about less flex... etc.