

Withdrawal/Redaction Sheet

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COLLECTION:

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Domestic Policy Council
Elizabeth Drye
OA/Box Number: 13020

FOLDER TITLE:

Tobacco Congressional Outreach

2014-0046-S

rc1426

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]

Domestic Policy Council
Elizabeth Drye - DPC

Box #9

Tobacco Congressional Outreach
Tobacco Budget Request
Final Q&A, Erskine Memo
Tobacco - Legislation
Tobacco - Polls
Tobacco - Industry Contacts
Tobacco Rosters
Tobacco - Working Groups
Strategy - Tobacco
Tobacco - Program and Budget
To Do - Tobacco
Meeting Requests
POTUS Tobacco Remarks
Tobacco Outreach Public
Tobacco Review Planning
Settlement Document
Settlement Talking Points
Settlement Review Process
Tobacco - Regulatory Group
FDA Regulation - Reg Group
Advertising Issues - Regulatory Group
Environmental Tobacco Smoke - Regulatory Group
Legal - Licensing - Regulatory Group
Access - Regulatory Group
Labeling - Regulatory Group
Info. On Nicotine/Tar - Regulatory Group
Program & Budget
Kid's Health Insurance & Other Investments - Program & Budget Group
Cessation/Education - Program & Budget Group
Public Health Research - Program and Budget Group
Tobacco - Legal Issues
Legal - Company Liability (Punitive Damages)
Legal - Penalties for Violations
Legal - Constitutional Problems
Legal - Financial Concerns
Legal - Document Disclosure
Legal - Liability
Economic Effects of Settlement
International/Trade
Tobacco - International
Tobacco - Farmers
VA's Tobacco Policy
Youth & Tobacco

ENCLOSURES FILED OVERSIZE ATTACHMENTS

3 boxes filed 12/4/98
rr

13020

NARA 10436

Tobacco - Native Americans

Tobacco & Hispanics

Cigars/FDA Reg of

Cigar Smoke

Smokeless Tobacco

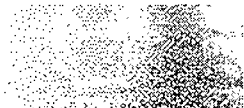
Tobacco Legislation

Waxman Legislation

Proposed Legislation

Asbestos Workers

Tobacco Litigants



Jerold R. Mande

08/08/97 09:15:01 AM

Record Type: Record

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

cc:

Subject: Lugar stmts on tobacco.

The following statement was in a story about Helms v. Lugar:

Lugar said, however, that he favored a "very substantial tax on the order of \$1.50" per pack on cigarettes to discourage smoking and was in favor of the Food and Drug Administration's having power to control tobacco and nicotine.

The story also noted that Lugar has scheduled hearings on the settlement for Sept. 11 and 18.

DATE: 7-23

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
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WASHINGTON, D.C. 20201

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OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION
ROOM 416-G HUMPHREY BUILDING

FROM:

TO

Elizabeth Dwyer

OFFICE

White House - Dom. Pol.

PHONE NO

FAX NO

456-7028

TOTAL PAGES

(INCLUDING COVER):

2-

- [] RICHARD J. TARPLIN
[] HELEN MATHIS
[X] KEVIN BURKE
[] SANDI EUBANKS BROWN
[] ROSE CLEMENT LUSI
[] STEPHANIE WILSON
[] HAZEL FARMER

REMARKS:

This is the current membership list of the House Tobacco Task Force. They have told Vice Fazio that they will attend tomorrow's meeting.

HOUSE DEMOCRATIC TASK FORCE ON THE TOBACCO SETTLEMENT

Rep. Vic Fazio (D-CA), Chairman

Rep. Neil Abercromie (D-HI)
Rep. Scotty Baesler (D-KY)
Rep. Rick Boucher (D-VA)
Rep. Diana DeGette (D-CO)
Rep. Lloyd Doggett (D-TX)
Rep. Bob Etheridge (D-NC)
Rep. Virgil Goode (D-VA)
Rep. Bart Gordon (D-TN)
Rep. Bill Hefner (D-NC)

Rep. William Jefferson (D-LA)
Rep. Nita Lowey (D-NY)
Rep. Mike McIntyre (D-NC)
Rep. Marty Meehan (D-MA)
Rep. Frank Pallone (D-NJ)
Rep. David Price (D-NC)
Rep. Charlie Stenholm (D-TX)
Rep. Henry Waxman (D-CA)

(as of 7/23/97)



U.S. DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

Telephone (202) 720-3631 Fax (202) 720-5437

FAX COVER SHEET

DATE:

7/16

NUMBER OF PAGES

8

INCLUDING COVER SHEET

PLEASE DELIVER TO:

JOM

FAX NUMBER: ()

PHONE NUMBER: ()

FROM:

Charlie Rawls - As discussed

Re: Tobacco &
Farm Income

MESSAGE:

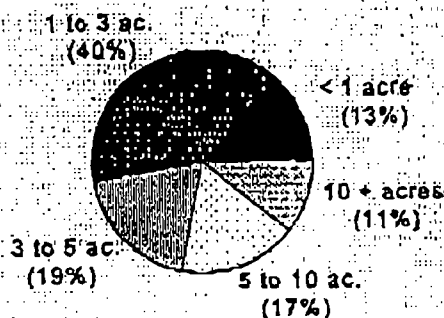
Financial Structure of Tobacco Farms In Kentucky and North Carolina

U.S. tobacco production is primarily concentrated in Kentucky/Tennessee (burley) and the southeastern States (flue-cured), although other States grow small amounts. The 1992 Census of Agriculture reported 59,373 farms in Kentucky (268,140 tobacco acres) and 17,625 farms in North Carolina (283,900 tobacco acres) growing of tobacco.

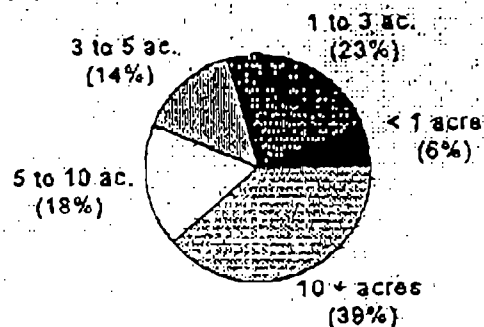
Tobacco acreage on Kentucky and North Carolina farms differs dramatically in size of plantings. Over 50 percent of farms with tobacco in Kentucky have less than 3 acres planted to the crop, compared with just under 30 percent in North Carolina. In Kentucky, the largest number of farms (40 percent) plant 1-3 acres, while in North Carolina the largest number of farms (39 percent) plant 10 or more acres to tobacco.

Distribution of Farms By Tobacco Acreage

Kentucky



North Carolina



Source: 1992 Census of Agriculture

Prepared by Economic Research Service/USDA

Importance of Tobacco

According to USDA's 1994 Farm Costs and Returns Survey (FCRS), tobacco accounts for an average 51.2 percent of total farm value of production on Kentucky farms growing tobacco. This compares with 57.3 percent in North Carolina. In Kentucky cattle were ranked second while in North Carolina hogs ranked second.

With farms defined as SIC tobacco farms (more than 50 percent of total farm value of production comes from tobacco), the importance of tobacco grows. SIC tobacco farms in Kentucky had an average 81.4 percent of total value of production from tobacco, compared with 80.0 percent in North Carolina. For Kentucky SIC tobacco farms, crops played only a minor role in the farms' commodity mix, but cattle were still important. In North Carolina, however, hogs were a minor enterprise but soybeans and corn remained important.

The FCRS showed an average farm size of 124 acres in Kentucky and 156 acres in North Carolina. Tobacco acreage accounted for an average 3.7 acres and 12.7 acres in the 2 States, respectively.

Value of selected farm products for farms with tobacco, 1994

	Kentucky		North Carolina	
	All farms with tobacco	SIC tobacco farms 1/	All farms with tobacco	SIC tobacco farms 1/
Number of farms	35,937	25,576	16,878	14,535
Average dollars per farm				
Farm value of production	33,476	22,632	86,811	64,811
Crop value of production	21,951	19,929	64,096	64,105
Tobacco value of production	17,134	18,417	49,747	51,830
Corn value of production	2,406	427	2,243	1,594
Soybean value of production	1,461	575	7,561	7,781
Cotton value of production	0	0	1,692	501
Wheat value of production	257	110	1,315	1,019
Livestock value of production	11,525	2,703	22,715	706
Hogs value of production	1,858	68	16,678	99
Cattle value of production	4,622	2,484	1,310	607
Poultry value of production	20	0	4,727	0

Source: Farm Costs and Returns Survey, ERS/USDA.

1/ Tobacco accounts for over 50 percent of farm total value of agricultural production.

Farm Income

The 1994 income statements for Kentucky and North Carolina farms with tobacco show an average net cash income of \$6,409 in Kentucky and \$3,523 in North Carolina. For SIC tobacco farms, these levels rise to \$18,783 and \$16,383 for Kentucky and North Carolina, respectively. Regardless of the State or the level of specialization in tobacco, direct Government payments (deficiency payments) played a small role in determining the level of farm income. However, the Government tobacco programs are designed as an indirect control mechanism. Tobacco production is regulated by a Federal poundage quota price support program. Growers are guaranteed a minimum price through supports in exchange for their limiting production. Therefore, tobacco program support is reflected in tobacco receipts rather than in Government payments.

On the expense side, chemicals and hired labor accounted for the greatest expense. Equipment-related expenses for fuels and repairs also ranked high. For farms with livestock, feed expenses became important.

Income statements for farms with tobacco, 1994

	Kentucky		North Carolina	
	All farms with tobacco	SIC tobacco farms 1/	All farms with tobacco	SIC tobacco farms 1/
Average dollars per farm				
Gross cash income	25,668	59,011	16,551	54,412
Crop sales	14,168	53,434	13,150	52,244
Livestock sales	10,165	1,663	2,437	706
Government payments	172	526	70	292
Other farm-related income	1,163	3,389	894	1,170
Less: Cash expenses	19,259	40,229	13,029	38,030
Variable	15,093	32,110	9,964	31,049
Livestock purchases	249	149	60	34
Feed	3,392	223	1,198	164
Other livestock expenses	394	33	272	26
Seed and plants	698	1,693	520	1,514
Fertilizer and chemicals	3,177	9,131	2,498	8,938
Labor	2,347	7,916	2,108	7,424
Fuels and oils	1,032	5,364	685	5,512
Repairs and maintenance	1,903	3,833	1,323	3,851
Machine-hire and custom work	419	859	159	927
Utilities	635	1,656	557	1,507
Other variable expenses	847	1,254	584	1,152
Fixed	4,165	8,118	3,064	6,981
Real estate, property taxes	505	817	337	789
Interest	1,856	1,914	1,335	1,372
Insurance premiums	993	2,081	840	2,015
Rent and lease payments	811	3,306	553	2,805
Equals: Net cash farm income	6,409	18,783	3,523	16,383
Less:				
Depreciation	2,412	3,128	1,359	2,953
Labor, non-cash benefits	125	199	128	184
Plus:				
Value of inventory change	-574	3,644	-236	4,016
Nonmoney income	4,282	4,363	4,255	4,375
Equals: Net farm income	7,580	23,463	6,054	21,637

Source: Farm Costs and Returns Survey, ERS/USDA.

1/ Tobacco accounts for over 50 percent of farm total value of agricultural production.

Tobacco Costs of Production

Estimates of the costs of producing the 1994 tobacco crop are available at the national level only. These estimates show average per-planted-acre variable cash costs of \$2,446.04 for burley and \$1,884.68 for flue-cured. While fuel and curing expenses are much higher for flue-cured tobacco, burley's high post-harvest labor costs are more than offsetting. Net returns over variable cash costs averaged \$1,847.86 per acre for burley tobacco and \$2,205.12 for flue-cured tobacco. When all costs are included, net returns averaged negative \$468.89 for burley and positive \$415.42 for flue-cured.

U.S. costs of production for tobacco, 1994

	Burley	Flue-cured
Dollars per acre		
Cash receipts	4,293.90	4,089.80
Variable Costs:		
Labor	1,409.06	705.17
Noncash benefits	15.31	23.79
Fertilizer and lime	243.89	296.27
Plant bed materials	76.28	45.49
Chemicals	92.78	212.80
Custom operations	10.86	7.81
Fuel and lubrication	101.63	55.26
Curing and heating fuel	7.19	274.97
Repairs	103.62	140.33
Marketing (burley) & warehousing (flue-cured)	225.43	108.38
No-net-cost & marketing assessment	105.30	72.60
Inspection and grading fee	16.38	16.94
Interest	17.08	21.13
Other	21.23	3.74
Total, variable costs	2,446.04	1,884.68
Machinery and barn ownership costs:		
Capital replacement	273.31	289.72
Return to nonland capital	109.81	98.78
Taxes and insurance	125.06	134.32
Total ownership costs	508.18	522.72
Other Costs:		
General farm overhead	425.10	289.72
Land and quota charge	1,383.47	977.26
Total excluding land and quota	3,379.32	2,697.12
Returns:		
Receipts less variable cash costs	1,847.86	2,205.12
Receipts less total costs	-468.89	415.42
Yield (lbs./acre)	2,108	2,420

Costs and Returns for Selected Vegetables and Field Crops

Tobacco growers are currently growing a mix of other field and specialty crops such as corn, soybeans, cotton, and wheat. Between 1 and 2 percent of FCRS farms with tobacco reported harvesting vegetables. Data from North Carolina are available that allow comparisons among costs and returns for major vegetable crops. Kentucky data were not available.

Except for tomatoes, other vegetable crops are more likely to be grown in flue-cured tobacco areas than in burley areas. Returns vary widely from year to year, depending on growing conditions and market conditions in a specific season.

The gross returns are based on yields and prices reported by NASS for 1994. Cash variable costs are based on enterprise budget estimates developed at the North Carolina State University and have been adjusted to represent average production practices for 1994. The net returns represent earnings to land, labor, capital, machinery, overhead, and management.

Although some tobacco producers could produce vegetables on tobacco acreage, the majority of any displaced tobacco land would likely go into field crops. The demand for vegetables is relatively inelastic, meaning that even small increases in the quantity results in relatively large price declines. Because the vegetable acreage is so small relative to tobacco, a small percentage shift of tobacco land would represent a substantial increase in vegetable acreage. This would lower prices and reduce vegetable returns.

In contrast, tobacco acreage represents a relative small percentage of field crop acreage. Consequently, a relative large shift could occur from tobacco to field crops without having a noticeable impact on either field crop prices or returns.

Estimated average costs and returns for selected vegetable and field crops in North Carolina, 1994

Crop	Gross revenue ¹	Cash variable ² expenses	Net above cash variable expenses
Dollars per acre			
Sweet potatoes	1,627.50	1,118.92	508.58
Cucumbers, Processing	992.00	1,041.62	95.63
Cucumbers, Fresh market	440.00	466.61	-26.61
Bell peppers, Fresh market	717.50	864.81	-62.56
Snap beans, Fresh market	983.50	600.06	383.44
Watermelon	675.00	485.86	190.63
Cabbage, Fresh market	1,900.00	1,016.36	883.64
Tomatoes, Fresh market	4,332.00	3,735.50	596.50
Corn (Southeast region)	278.20	157.86	120.34
Soybeans (Southeast region)	170.91	95.10	75.81
Cotton (Southeast region)	623.60	291.70	331.90
Flue-cured tobacco	4,089.80	1,884.68	2,205.12

¹ Average price times average yield per acre. Source: USDA, NASS.

² Vegetable expenses are based on Extension enterprise budgets from North Carolina State University. Budgets modified to represent average production practices for 1994. Field crop expenses are from USDA's costs-of-production accounts.

To. Monday 7/14/95

- setup

- Conf. call on Industry mty
- Schedule researchers mty - expand to valuing scientists?
- confirm farmers mty - Wickham's schedule, gender?
 - Governors (Lynn Currier, Fred Doral)

Executive Order

- who is around - surgeons general

Legislation

Non-tobacco

- Call Harvard re. student housing
- COS re prison centers
- Counsel re.

- ① review notes
- ② wine labeling
- ③ FTC. —

- how tough
- rough on what
- stakeholders

Barbara's List - retailers/advertisers

7/15

Leg Strategy

✓ Elena's call

July - Conrad

Ford

Leiterberg

Burgum

Bonert

Durbin

Dallus

Reid

Robb

Wyden

Baucus

Wahner

Spurge

Kennedy

Leahy

Moranhan

Tanzelli

- July 10th reference article. -

- Julie Green needs info.

Leg Progress

7/16

Dan Tate - talked last week with Cephardt's people. - said they wanted to do it on a test - force basis. - If you do commits. - at least 6.

- Der task force just convened. -

Murica ~~Monday~~

→ having met yet. - [Friday] - As soon as

House

Republicans - Gingrich's person / two times slot.

→ Throws it back to them.

Fazio's office

Paul Carey 6-6782

To DO 7/9

Amtes for Friday mrgs-

AG details - 9-10:30 Roosevelt } 12:30-2:00
- VP staff 9 in } 13 in
- Strahan morning } afternoon.
Chris - debrief. Just Kevin Thoms
VA mrgs Kevin / Corr Fri
Letter to POTUS - to Bruce Elms (Staff. there.)

Phil 703-532-1336
- return calls - no answers
- Organizing themselves < Democrats Republican >
- Conrad mrgs

Democrat - Gephardt feels like he has to do some thing
Henry likely to do be co-chair, tobacco-state
Gephardt - Barror will follow Henry -

Phil talked to Pete Reuss - no coordination w/ House -
NOT asking them to do anything

- Mtn. w/ Lautenberg yesterday - Henry wanted
to help him get press. -

- Phil urged Lautenberg to set up
B. Parkinson Meehan-Kamen type grp.

House

RS will defer to Bliley - Hyde has said may or may
not want to act.

- Companies have asked Bliley to hold hearings -
Bliley said no. -

- President says here what I want, here's
what I'll sign. - get it to me.

[POCUS approval ratings at 64%]

- So it's now get out of the way - JD./Rohr talking
Friday

- We're specific

- Dynamic to keep it the way it is -

- sets a bottomline

= If we come out with something vague -

- All the companies' friends on the Hill are mad at them

Bliley - a strong performance standard,
he doesn't would support -

- but ads - companies already gave

Thalley - visit w/ Bliley and JD. -

- committed -

If nothing happens? -

- DoJ - if they proceed. - indict. -

- January - Minnesota -

- Time period

- 1 minute past / 1 minute turn

- coming specific

- experts - can't sell.

DATE: 7-7-97

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
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OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION
ROOM 416-G HUMPHREY BUILDING

FROM:

TO :

See Below

OFFICE :

☐ RICHARD J. TARPLIN

PHONE NO :

☐ HELEN MATHIS

FAX NO :

☐ KEVIN BURKE

TOTAL PAGES

☐ SANDI EUBANKS BROWN

(INCLUDING COVER) :

2☐ ROSE CLEMENT LUSI☐ STEPHANIE WILSON☐ HAZEL FARMER

REMARKS:

Material for 12:30 pm Conference Call.

Addressees: Dan Tate - 456-2604

Elizabeth Dwyer -

Traci Johnston 456-6468

PROPOSED CONGRESSIONAL CONSULTATIONS
ON THE TOBACCO SETTLEMENT

Goal: To inform key Members of Congress about the Administration's process for reviewing the tobacco settlement and to offer them the opportunity to share their views of the settlement with the senior Administration officials conducting that review.

Summary: Over the next 2-3 weeks, Secretary Shalala and Bruce Reed would meet with groups of members to describe the Administration's review process and solicit the members' views of the details of the settlement. Shalala and Reed would not offer the Administration's views on elements of the settlement other than to describe the types of questions and issues being considered for key provisions.

Meetings/briefings would be offered at three levels. First, we would offer House and Senate Republican and Democratic leaders the opportunity to put together groups of members for leadership sponsored meetings (Daschle already has a tobacco task force in place). Second, we would offer bipartisan meetings to the four "main" authorizing committees (House Commerce and Judiciary; Senate Labor and Judiciary). Third, we would contact "secondary" committees by telephone to describe the Administration's review process. They may request briefings at that time.

Process: We would proceed in the following manner:

- 1) Call leadership staff to inform them that we will be offering bipartisan briefings to relevant committees. We will also tell them that we are happy to participate in leadership sponsored meetings if they are interested in setting them up.
- 2) Call staff of the Chairs and Ranking Members of the four "main" committees to offer bipartisan committee briefings. The Chairs and Ranking Members would host the briefings and be responsible to inviting members of the committees.
- 3) Call staff of "secondary" committees to describe Administration review process and inform them of our briefings for the "main" committees. We would not offer a briefing, but at that point the committee staff could request one.

Note: It may also be a good idea to reach out to some key pro and anti tobacco members to give them a "heads up" about this consultation process.

Rich Tarplin —

offer briefings —

commerz / judiciary labor / judiciary

— briefings for committees — ~~not~~ bipartisan. —

— be available to second tier of committees

— Ag

— Approps

— Commerce

— even foreign affairs

— leaderships. — interested in putting together groups for us to deal with.

Conrad Chair — Ford, Lautenberg on.

— Dan / Tracy — go through chairman / members

— Notify ~~chair~~ leadership that we're talking to Committee Chairs

— let the leadership decide ~~ask~~ ask for a meeting.

Lott putting in for refusal. —

- Some of the leadership staff, —
- Need to do this consultation —
- any thoughts? want to follow up with you

4 leadership conversations

- (1) we will request mtgs w/ committees of jurisdiction
- (2) happy to meet w/ any groups you put together.

Chairs: offer bipartisan mtg. — consult w/ ranking.

Do the meetings now — before we have a policy — describe the internal review process, issues we're considering — ask open-ended questions about what they think about the settlements.
(Do key members of Congress think this is an achievable goal?)

Members are lukewarm
[12:30 — 1:30]

leg. strategy

7/7/7

Tarphu / Mande / Tate / Kevin Burke. —

[Donna, Bruce]

Who calls

Heller's movement.

- Gephardt's office has said work with the Comts. —

Dan - push the leadership - Gephardt is
provide ~~help~~ with guidance —
even on process.

Senate Daschle — Run to / w / Daschle

Dan
policy

Gephardt — Andy King — doesn't have resources to do Daschle's

— — confirmed Commerce / Judiciary principle

Army
Ginsburg

→ will have conversation w / Craig (Gephardt) and
Army — get them to less a cont outreach
strategy. —



DATE: 6-25-97

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
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WASHINGTON, D.C. 20201

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OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION
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TO: ☒ ~~Bruce Reed~~
☒ Dan Tate
☒ Tracy Thornton

OFFICE : _____

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FROM:

6-26041

☒ RICHARD J. TARPLIN

[] HELEN MATHIS

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[] STEPHANIE WILSON

[] HAZEL FARMER

REMARKS:

From Elizabeth Dye

6-5573

TOBACCO SETTLEMENT

Congressional Discussions

(Names in bold are members of Congressional Task Force on Tobacco and Health or signers of last year's "Commitment to Our Children" letter of support for FDA regulation.)

General Issues

Congressional Leadership

- | | |
|-------------------------------------|-----------------------------------|
| ✓ Senator Lott - Majority Leader | Speaker Gingrich |
| Senator Nickles - Majority Whip | Rep. Armey - Majority Leader |
| ✓ Senator Daschle - Minority Leader | Rep. DeLay - Majority Whip |
| ✓ Senator Ford - Minority Whip | ✓ Rep. Gephardt - Minority Leader |
| | Rep. Bonior - Minority Whip |

Committee Leadership

Senator Jeffords - Chairman, Labor and Human Resources Com.
Senator Kennedy - Ranking Member of Labor and Human Resources Com.
Senator Frist - Chairman, Public Health and Safety Subcommittee
Senator Stevens - Chairman, Appropriations Committee
Senator Byrd - Ranking Member of Appropriations Committee
Senator Specter - Chairman, Labor/HHS Appropriations Subcommittee
Senator Harkin - Ranking Member of Labor/HHS Approps. Subcommittee
Senator Cochran - Chairman, Agriculture Appropriations Subcommittee
Senator Bumpers - Ranking Member, Agriculture Appropriations Subcommittee
Rep. Bliley - Chairman, Commerce Committee
Rep. Dingell - Ranking Member of Commerce Committee
Rep. Bilirakis - Chairman, Health and the Environment Subcommittee
Rep. Sherrod Brown - Ranking Member, Health Subcommittee
Rep. Livingston - Chairman, Appropriations Committee
Rep. Obey - Ranking Member, Appropriations Committee & Labor/HHS Subcom.
Rep. Porter - Chairman, Labor/HHS Appropriations Subcommittee
Rep. Skeen - Chairman, Agriculture Appropriations Subcommittee
Rep. Kaptur - Ranking Member, Agriculture Appropriations Subcommittee

Other Interested Members

Senator Lautenberg	Rep. Waxman
Senator Durbin	Rep. Meehan
Senator Bingaman	Rep. Hansen
Senator Hatch	Rep. McHale
	Rep. DeGette
	Rep. Baesler
	Rep. Gordon

FDA Regulation

- ✓ Senator Jeffords - Chairman, Labor and Human Resources Committee
- Senator Kennedy - Ranking Member, Labor and Human Resources Committee
- Senator Frist - Chairman, Public Health and Safety Subcommittee
- Senator Cochran - Chairman, Agriculture Appropriations Subcommittee
- Senator Bumpers - Ranking Member, Agriculture Approps. Subcommittee
- ✓ Rep. Bliley - Chairman, Commerce Committee
- ✓ Rep. Dingell - Ranking Member of Commerce Committee
- Rep. Bilirakis - Chairman, Health and the Environment Subcommittee
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Environmental Tobacco Smoke

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Senator Hagel - Chairman, International Economic Policy Subcom.
Senator Sarbanes - Ranking Member, International Econ. Policy Subcom.
Rep. Gilman - Chairman, International Relations Committee
Rep. Hamilton - Ranking Member, International Relations Committee
Rep. Ros-Lehtinen - Chairwoman, International Economic Policy & Trade Sub.
Rep. Gejdenson - Ranking Member, International Economic Policy & Trade Sub.



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TOBACCO SETTLEMENT

Congressional Discussions

(Names in bold are members of Congressional Task Force on Tobacco and Health or signers of last year's "Commitment to Our Children" letter of support for FDA regulation.)

General Issues

Congressional Leadership

Senator Lott - Majority Leader
Senator Nickles - Majority Whip
Senator Daschle - Minority Leader
Senator Ford - Minority Whip

Speaker Gingrich
Rep. Armey - Majority Leader
Rep. DeLay - Majority Whip
Rep. Gephardt - Minority Leader
Rep. Bonior - Minority Whip

Committee Leadership

Senator Jeffords - Chairman, Labor and Human Resources Com.
Senator Kennedy - Ranking Member of Labor and Human Resources Com.
Senator Frist - Chairman, Public Health and Safety Subcommittee
Senator Stevens - Chairman, Appropriations Committee
Senator Byrd - Ranking Member of Appropriations Committee
Senator Specter - Chairman, Labor/HHS Appropriations Subcommittee
Senator Harkin - Ranking Member of Labor/HHS Approps. Subcommittee
Senator Cochran - Chairman, Agriculture Appropriations Subcommittee
Senator Bumpers - Ranking Member, Agriculture Appropriations Subcommittee
Rep. Bliley - Chairman, Commerce Committee
Rep. Dingell - Ranking Member of Commerce Committee
Rep. Bilirakis - Chairman, Health and the Environment Subcommittee
Rep. Sherrod Brown - Ranking Member, Health Subcommittee
Rep. Livingston - Chairman, Appropriations Committee
Rep. Obey - Ranking Member, Appropriations Committee & Labor/HHS Subcom.
Rep. Porter - Chairman, Labor/HHS Appropriations Subcommittee
Rep. Skeen - Chairman, Agriculture Appropriations Subcommittee
Rep. Kaptur - Ranking Member, Agriculture Appropriations Subcommittee

Other Interested Members

Senator Lautenberg
Senator Durbin
Senator Bingaman
Senator Hatch

Rep. Waxman
Rep. Meehan
Rep. Hansen
Rep. McHale
Rep. DeGette
Rep. Baesler
Rep. Gordon

FDA Regulation

Senator Jeffords - Chairman, Labor and Human Resources Committee
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GOVERNMENT & COMMERCE

COMMERCE

Congress Casting a Wary Eye At Tobacco Deal's Details

Wary members of Congress are combing the fine print of the landmark settlement between tobacco companies and officials from 40 states — defining their problems with the deal and quietly preparing for a legislative battle almost certain to be one of the most memorable of the 105th Congress.

The \$368.5 billion deal, negotiated by tobacco industry lawyers and state attorneys general who are suing the companies for the states' health care costs resulting from tobacco-related illnesses, was greeted with a flurry of congressional statements when it was announced June 20. (*Tobacco deal highlights, box, p. 1510*)

But over the following week, members grew reticent as they scoured the 68-page document and waited for President Clinton to state his position on the deal.

Presidential cover would be vital for lawmakers who are anxious to look as if they are not giving away too much to the tobacco companies. House Speaker Newt Gingrich, R-Ga., advised members not even to look at the agreement until the White House issues a recommendation and said the deal will be taken up in the House no earlier than this fall.

"It's all up to the president," conceded a Republican tobacco-state senator. "We're like a wagon train in a wide circle around the president, watching him with binoculars."

Despite such wariness, fault lines have already begun to appear. Much of the agreement, including its most contentious elements, cannot go into effect without approval by Congress and the president, and the attorneys general who negotiated the deal have vowed to lobby for swift action.

Among the provisions that need legislative approval are changes to, and possible curbs on, the Food and Drug Administration's ability to regulate tobacco, and restrictions on litigants' abil-



Kessler, left, and Koop at a June 25 meeting on the agreement between states and the tobacco industry.

ity to seek punitive damages against tobacco companies.

Those items alone will provoke huge fights. "You just stick around and watch. There's going to be a lot of action around here soon," said Sen. Wendell H. Ford, D-Ky., a fervent supporter of his state's tobacco growers.

It is not surprising that anti-tobacco lawmakers have already identified critical elements in the settlement they will challenge as too soft on the industry. What is perhaps more noteworthy is the growing sense among lawmakers from tobacco-growing states that they have been betrayed.

Rep. Scotty Baesler, D-Ky., who once raised tobacco himself, said the industry has always used the tobacco farmer to put a human face on its battles with Congress. But when the deal was cut, the farmer was abandoned, he said. "We're being asked to take a pig in a poke here," he said.

"The agriculture people feel they were left out of the negotiations completely," said Sen. Bill Frist, R-Tenn.

Those bruised feelings could produce a rift between allies of the tobacco products industry and lawmakers who feel more allegiance to the tobacco farmers. Such a split would be similar to that which developed in the past over efforts by cigarette companies to use imported

tobacco that was cheaper than domestic leaf.

The sense of abandonment could also give lawmakers from tobacco states an opening to tinker with the delicately crafted and fragile settlement.

A focal point for such members may be a proposal by the attorneys general of Kentucky and North Carolina, offered just days before the settlement was announced, that tobacco companies set aside \$6 billion a year in perpetuity.

Most of that money would be used either to buy domestic tobacco, possibly for export, or to simply pay off tobacco farmers forced by declining sales to give up the

crop; \$1 billion a year would go toward helping tobacco farmers move to alternative employment. And tobacco companies would assume the full cost of federal tobacco farm support programs, including crop insurance and extension services for tobacco growers, which cost about \$83 million a year.

However, tobacco-state members concede that there are problems with the Kentucky-North Carolina plan. Sen. Mitch McConnell, R-Ky., said it would be difficult to justify paying farmers not to grow tobacco, especially since last year's rewrite of federal farm law (PL 104-127) did away with such programs for all other crops.

Worse yet, if the FDA labels nicotine a drug and eventually bans it, the United States could not easily defend its officially sanctioned export, said Sen. John W. Warner, R-Va.

"We'd be no better than the Colombians," he said, a reference to Colombia's history as a source of cocaine.

But tobacco-state lawmakers seem to agree that the settlement should at least include a provision to force tobacco companies to pay the full cost of federal programs.

Foes Get Leverage

More troubling for the tobacco companies is the power that the settle-

By Jonathan Weisman

ment gives their traditional enemies in Congress.

In past years, anti-tobacco measures in Congress could be quietly killed in committee or behind closed doors in conferences between House and Senate negotiators. (*Background, Weekly Report*, p. 1059)

This time, however, it will be the tobacco companies that need congressional action, and that puts their foes at a distinct advantage. If the companies balk at the legislation that Congress ultimately devises regarding their settlement, the anti-tobacco members could withhold their support for the existing plan.

That could leave the industry worse off than it would be with a deal. On April 25, a U.S. District Court judge in Greensboro, N.C., ruled that the FDA has the jurisdiction to regulate the nicotine in tobacco products as a drug. And without a deal, the companies would be left to fight the separate lawsuits by 40 state attorneys general and numerous class action suits.

"These companies don't want to spend every day litigating against everyone about everything," said Meyer G. Kopolow, an attorney for Philip Morris, the largest tobacco company in the United States. "There must be a better way."

"I don't think they'll walk away," said Rep. Henry A. Waxman, D-Calif., an ardent foe of the tobacco industry.

Besides, Congress still has the power to pass any law it wants, with or without tobacco industry support, and momentum may be building.

"I think the tobacco companies should have only the power our elected representatives give them. They should not be controlling the agenda," said David A. Kessler, the former FDA commissioner who first moved to regulate tobacco as a drug.

Washington's official scrutiny of the tobacco settlement got off to an inauspicious start June 25 when a congressionally appointed advisory panel of health advocates declared key provisions of the deal unacceptable.

The findings of the Advisory Committee on Tobacco Policy and Public Health are not legally binding but will hold great weight. The committee, chaired by Kessler and former U.S. Surgeon General C. Everett Koop, questioned seven broad issues in the deal:

- Whether the FDA's ability to regulate nicotine and tobacco products would be inhibited under the deal.
- The adequacy of measures to enforce a dramatic reduction in use of tobacco products by children.
- Whether the amount of money desig-

nated for public health initiatives to reduce tobacco use is adequate.

- The adequacy of \$1 billion in annual funding to help any American smoker who wants to quit.
- The settlement's lack of international tobacco control measures.
- Constraints on disclosure of tobacco industry documents.
- Constraints on the ability of individuals, organizations and government officials to sue tobacco manufacturers in

"You just stick around and watch. There's going to be a lot of action around here soon."



— Sen. Wendell H. Ford, D-Ky.

the future.

Of the seven, the first item appears the most problematic, both with the panel and with members of Congress. Under the terms of the accord, FDA may regulate — and eventually ban — nicotine, but only after clearing procedural hurdles that the advisory committee believes are set impossibly high.

Under the deal, FDA must show that the reduction in health risks produced by a regulation would be significant and would actually result from the ingredient being reduced. Critics see this as a loophole: Many scientists say nicotine itself is not carcinogenic, but it is only the substance in tobacco that produces an addiction, allowing other elements such as tar to cause illness.

Any regulation also would have to be technologically feasible, meaning the FDA could not simply set a standard and require the companies to find a way to meet it.

And most troubling to the advisory panel, the FDA must show its actions would not increase the sale of high-nicotine "black market" contraband.

"That's ridiculous," said Rep. Martin T. Meehan, D-Mass., another tobacco foe. "There's no way we can go along with that."

The tobacco companies may have tipped their hand on that issue. Martin Broughton, chief executive of B.A.T. Industries PLC, the parent company of Brown & Williamson Tobacco Corp., told *The Wall Street Journal* he has no wor-

ries about the FDA's ever regulating nicotine. "The contraband part gives me the most comfort," he said.

The panel also debated whether it was advisable for Congress to get involved at all, since a federal court had already ruled the FDA could regulate tobacco. But Stephan Lawton, an attorney with the law firm Hogan & Hartson, advised the panelists that a federal law enshrining that position "would save Americans years of lawyers' time."

On June 26, Senate Judiciary Committee Chairman Orrin G. Hatch, R-Utah, a perennial tobacco critic, began official action on Capitol Hill with a hearing on the terms of the settlement. Settlement negotiators passionately implored Congress to ratify their accord, saying that no successes in court could yield the scope of the deal's provisions.

"It is our responsibility now to seize this opportunity. Our children are counting on this opportunity," said Mississippi Attorney General Mike Moore.

Immediately, senators received a taste of the battle to come when an anonymous colleague tried to halt the hearing after two hours through a procedural motion. Hatch circumvented the ploy by declaring the hearing over and continuing it as a "briefing."

Smoke and Mirrors?

In the byzantine world of tobacco politics, foes of industry see ulterior motives everywhere and trap doors lurking in every clause.

For instance, Philip M. Schilliro, Waxman's chief of staff, sees the restrictions on FDA's authority as diversions thrown in by the tobacco companies to shake their foes from the trail of other insidious provisions.

Among other provisions that have come to tobacco opponents' attention are restrictions on future litigation against the tobacco companies, exemptions from regulations of "second-hand" tobacco smoke inhaled by bystanders, and penalties for companies that miss the targets set for reducing teen tobacco use that the critics see as inadequate.

Meehan cautioned, though, that there are positive elements to the deal that could not be wrought from separate legal actions, such as the provisions mandating large labels with more graphic warnings of tobacco's health effects; public disclosure of ingredients in tobacco products; and broad restrictions on tobacco advertising. It will take some time to determine whether the positives outweigh the negatives, he said, and how far Congress can bend the settlement before it breaks. ■

April 14, 1997

POTENTIAL TOBACCO ACTIVITIES

Enforcement of broadcast advertising ban. Request the Department of Justice to investigate whether there are other situations similar to that addressed in its consent order with Philip Morris (the Marlboro logo placed in a position at Madison Square Garden so that it appeared frequently during telecasts of New York Knicks games) and encourage the Department to continue its efforts to enforce the ban of broadcast advertising of tobacco products. Enforcement would prevent the broadcast of tobacco brand logos during televised events, particularly sporting events. Sporting events, including auto races, are increasingly popular events with families and are therefore seen by large numbers of young people either in person or on television.

works if
you have
another
example.

Treatment of adolescent nicotine addiction. Direct DHHS to develop and carry out a federal research plan focusing on the prevention and treatment of adolescent addiction to nicotine. To date, virtually all research that has been conducted on nicotine addiction has focused on adults. It is not known whether currently available prevention strategies and treatments are effective with children and adolescents or whether different approaches are necessary for this group.

focus
on
minors,
adults

State assistance. Direct DHHS to provide technical assistance to states to help develop individual action plans focused on preventing and treating adolescent nicotine addiction. This initiative could build on the results of the federal research in this area described above and could include publication and distribution of guides for states - such as smoking cessation materials aimed at adolescents. It could also involve creating or highlighting public-private partnerships with schools or non-profit groups.

Improved teen surveys. Direct the Office on Smoking and Health, Centers for Disease Control and Prevention, DHHS, to expand its research efforts, especially teen surveys, to include more questions concerning teens' tobacco brand preference and advertising awareness. Further direct the Office of Management and Budget (OMB) to expedite the clearance of the questionnaires used in these surveys. Information on teen preference and awareness is essential to the development of more effective addiction prevention and treatment approaches for adolescents. In the past, OMB has refused to allow certain questions concerning teens' tobacco brand preference and awareness of marketing strategies and slogans to be asked, or if asked, to be publicly reported.

State interventions. Fully fund tobacco intervention programs in all 50 states. This would require a minimum budget increase of \$25 million over the President's 1998 budget. Currently, only 17 states participate in NCI's ASSIST program through which each state receives annual awards that range from \$650,000 a year to \$1.8 million. The remaining 33 states receive annual grants ranging from \$75,000 to \$210,000 through CDC's IMPACT program.

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campaigns

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April 14, 1997

OTHER POTENTIAL TOBACCO ACTIVITIES

Synar regulations. After consulting with the Department of Justice, direct SAMSHA to revisit its Synar regulations and consider making changes that would tighten the standards that States are required to meet in order to qualify for substance abuse block grants.

Smoke-free federal facilities. Issue an Executive Order making all federal facilities smoke-free. GSA could be involved in implementing the Order.

Smoking in the workplace. Encourage the Department of Labor to issue final regulations addressing smoking in the workplace.

Reimbursement for nicotine addiction treatment. Direct DHHS to reimburse for the treatment of nicotine addiction for Federally-funded health care programs and to encourage private sector coverage as well.

Health-focused foreign policy. Direct the U.S. Trade Representative and the State Department to develop trade and foreign policy that emphasizes the Administration's concerns about the health consequences of tobacco use.

Smoke-free transportation facilities. Direct the Department of Transportation to issue regulations making airports (and other transportation facilities under its jurisdiction) smoke-free. Direct the Department to also begin negotiating with foreign governments to obtain an agreement that international flights to the U.S. be made smoke-free.

Conversion of tobacco crop. Announce a program designed to end the tobacco states' dependence on the tobacco economy. Assist and provide incentives to farmers to convert from tobacco crops to other agricultural products, as well as non-agricultural alternatives.