

AUGUST 1993
REPORT FOR GOVERNMENT AFFAIRS

On **tax matters**, the WRO worked to ensure that no provision to change the tax treatment of foreign source income or increases to the corporate rate above 35% were added during the conference negotiations on the **deficit reduction/budget reconciliation package**. Both objectives were realized. In addition, the WRO coordinated efforts with R.J. Reynolds in developing a list of U.S. Senators and Representatives to be contacted by lobbyists from our respective organizations during the August recess on **tobacco excise taxes**. The WRO also continued to monitor the **health care reform** financing issue. At our urging, several key members of Congress expressed concern directly to President Clinton about raising tobacco excise taxes to fund health care reform.

The Administration continues preparations for the unveiling of the **President's health care reform package**, which is now expected to occur at a joint session of Congress during the latter part of September. The President and his senior advisors are in the process of making the final major decisions on the scope of his plan including how to pay for it. The President touched on the broad outlines of his plan in a speech before the National Governors Association on August 16, where he revealed that an employer mandate will be the central component of his package. He made no mention of new taxes during his speech, but Health Care Task Force Executive Director Ira Magaziner told the governors in private briefings that increased **tobacco taxes** will be the "only new major tax needed." The tobacco tax will likely be used to finance a long term care program for the elderly. The Administration has been highlighting tobacco taxes as the sole new tax needed as part of a broader political effort to play down the costs of its program and other financing sources such as employer mandates and insurance premium cap price controls. Reports continue to indicate, however, that higher **beer taxes** will not be included in the Administration's final package.

The business community is gearing up for a possible Senate floor vote on **striker replacement legislation** in September. The measure passed the House in June, but proponents are still several votes shy of the 60 necessary to beat back an expected filibuster. While organized Labor and its supporters have not yet decided whether to advance compromise legislation in an effort to gain the necessary votes, the business community is unified against the bill and any compromises offered by Labor. At this point, the legislation is highly unlikely to pass.

The full Senate is expected to vote in early September on an **FTC reauthorization bill** passed by the Commerce Committee on August 3. In contrast to the House-passed bill, the Senate measure would permanently ban the use of the **FTC's unfairness rulemaking authority** and codify a pro-advertiser definition of "unfairness" that would apply to unfairness proceedings the FTC brings under its case-by-case authority. Upon passage by the Senate, efforts will be made in conference by both House Energy and Commerce Committee Chairman John Dingell (D-MI) and Senate Commerce Committee Chairman Ernest Hollings (D-SC) to reach a compromise on the FTC's use of unfairness rulemaking authority against commercial advertising. The WRO has worked with the PM operating companies to develop a consensus position and has opened discussions with key staff.

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Limiting the deductibility of general advertising expense will be the subject of a hearing before the House Ways and Means Committee's Select Revenue Measures Subcommittee in September. The hearing will focus on revenue sources that may be looked to fund tax bills being proposed by various individual members of the Ways and Means Committee. The WRO is working with the advertising community to educate Members on why such a proposal is unwarranted.

On **federal tort reform issues** the House Judiciary Committee's Subcommittee on Intellectual Property and Judicial Administration marked up a bi-partisan bill supported by PM that would delete a **mandatory, pre-discovery disclosure rule** from a package of changes to the Federal Rules of Civil Procedure that will otherwise become law automatically on December 1, 1993. The full House Judiciary Committee is expected to set a markup for this bill shortly after Congress returns from its August recess. Similar legislation is expected to be introduced in the Senate sometime in September. The WRO is working behind the scenes to push this legislation through Congress in the face of the December 1, 1993 deadline and a tight legislative calendar for the fall. In addition, Senator Herb Kohl (D-WI) introduced a bill on August 6 that would severely limit the availability of **protective order and sealed settlements** in federal court cases. Senator Kohl's staff has indicated that he will seek hearings on his measure this fall. The WRO will be working behind the scenes to oppose Kohl's legislation.

With regard to **environmental tobacco smoke (ETS)** and **indoor air quality (IAQ)**, the WRO has continued to support adherence to the principles of sound science in risk assessments as well as an OSHA regulation of workplace air based on ventilation standards. Although we have made some progress in advancing sound science and preventing OSHA from separating ETS from the broader IAQ issues, our challenge will intensify this fall. As previously reported, Senator Lautenberg (D-NJ) attached his **smoking ban legislation** to the Treasury and Postal Service Appropriations bill on the Senate floor. The WRO has been working to have such language deleted during the conference between the House and the Senate. Regarding an **executive order to ban smoking**, Carol Browner's congressional testimony indicated that the Administration was actively reviewing such an order. To date, our sources have been unable to confirm or refute a reactivated review of an executive order. However, earlier reports disclosed that an executive order announcing a goal of a federal workplace smoking ban was being considered as part of the release of the Clinton Health Care Plan. An executive order would certainly reinforce the prevailing view that smoking needs to be restricted, if not banned, to protect the health of non smokers. Issues of sound science notwithstanding, given increased public perception of risk/potential risk of ETS, the debate is not whether there will be smoking restrictions, but what kind of smoking restrictions. Rep. Joseph Kennedy (D-MA), working with Rep. Henry Waxman (D-CA), has introduced new indoor air quality legislation, H.R. 2919. The bill was drafted to be referred only to the Energy and Commerce Committee and thus Rep. Waxman's Health and Environment Subcommittee. The legislation not only makes EPA the central regulatory authority on indoor air quality, but requires the agency to promulgate guidelines for identifying and eliminating indoor air

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hazards, certifying indoor air contractors, as well as establishing a federal civil action for violations. Reportedly, Rep. Waxman is working on his own indoor air legislation to protect school children from the allegedly adverse effects of ETS and other indoor air pollutants. Waxman is expected to combine his proposal with Kennedy's, perhaps after a hearing, and move to a quick subcommittee markup. His effort will be to avoid/minimize multiple committee jurisdiction in the House in order to go to conference with Majority Leader Mitchell's (D-ME) legislation, which is currently awaiting action by the full Senate. Our challenge is to focus on amendments requiring the application of sound scientific principles to the proposed indoor air legislation while responding to the continued urges to ban or severely restrict indoor smoking by arguing for a broader ventilation solution, referencing the number of schools which are sick buildings where smoking has already been eliminated/restricted as well as the current air problems on domestic airplanes where smoking has already been banned. Originally, our work on legislating the principles of sound science were targeted at the **EPA cabinet status bill**. In the Senate, Senator Bennett Johnston (D-LA) amended the cabinet status bill to require the EPA to public comparative analyses of risks and perform cost benefit analyses. As part of the House debate on cabinet status, Chairman John Dingell (D-MI) has proposed language requiring the EPA to publish guidelines on the use of the best and most credible science, the process of peer review, and a quality assurance program. Rep. Carlos Moorehead (R-CA) has introduced free standing legislation, H.R. 2910, the **Risk Communication Act of 1993**, which would, most importantly, require the EPA to establish a process for re-review of a risk assessment when confronted with new information. Although all of these bills need substantial improvement, the groundwork has been laid for a debate. The WRO will be exploring the potential of a congressional hearing on Safeguarding the Future and the problems of the ETS risk assessment, in the Technology, Environment and Aviation Subcommittee of the House Science, Space and Technology Committee chaired by Rep. Tim Valentine (D-NC).

With regard to **OSHA reform**, the expected confirmation of the Administration's OSHA nominee Joe Deere, as well as, its support of legislative reform will likely lead to committee approval along party lines in both the Senate and the House this fall. Last Congress, PM was prepared to endorse OSHA reform with some amendments since the legislation contained a mandate that OSHA adopt certain regulations on IAQ. This year's version does not contain such a provision and includes a definition of significant risk as "one death in a million" which would create a major problem for all the operating companies. The WRO has provided analysis of the legislation to the operating companies in order to be able to discuss the legislation with organized labor and make a timely decision on our legislative strategy.

Additional hearings on **food safety legislative reform** were held in the House on August 2, by Rep. Charlie Stenholm (D-TX) in his House Agriculture Subcommittee. The hearing focused on H.R. 627, which is supported by KGF and other members of the Food Chain Coalition. Witnesses included the principal sponsors of the legislation, Reps. Richard Lehman (D-CA), Tom Bliley (R-VA) and

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Roy Rowland (D-GA) as well as representatives of agricultural interests, the food processing industry, environmentalist, and chemical interests. At the conclusion of the hearing, Chairman Stenholm announced that the subcommittee would solicit the Administration's views on the bill and then proceed to mark up the measure.

Later in the month, the Clinton Administration announced that its pesticide reform legislative package will be defined by a "white paper," or a set of principles, that will be released in early September. On August 18, a draft of these principles was circulated to interested parties for comment. The draft proposed to replace the **Delaney Clause** with a negligible risk standard defined in narrative rather than rigid numerical terms but neglected to include a provision for **national uniformity of pesticide tolerances**, an issue crucial to obtain KGF's support. In a related development, Rep. Henry Waxman (D-CA) and Sen. Edward Kennedy (D-MA) will hold a joint hearing on pesticide reform in September. The focus of this hearing will be the NAS report "Pesticides in the Diets of Infants and Children." At that hearing, Administration witnesses will be asked to appear to outline its pesticide policy.

A broad coalition of FDA regulated industries and consumer groups mounted a successful effort to have \$175 million in **FDA user fees** deleted from the Agriculture, Rural Development and Independent Agencies FY 1994 Appropriations bill. The conference report was cleared by the House on August 6 and the Senate is expected to take it up in September. While defeated this year, user fees remain an attractive revenue raising option.

During August, the WRO organized a number of **plant tours for Members of Congress**. Rep. Rick Lazio (R-NY) visited the Entenmann's headquarters and bakery in Bayshore, Long Island, Rep. David Minge (D-MN) visited the KUSA plant in New Ulm, Minnesota, Rep. Gene Green (D-TX) visited the Maxwell House plant in Houston, Texas, and Rep. John Spratt (D-SC) visited the Louis Rich plant in Newberry, South Carolina. In each case the focus of these visits was the importance of the individual facility to its local community as well as its role as part of the Philip Morris family of companies. In addition to the congressional plant tours, on August 16, Assistant Secretary of Agriculture for Marketing and Inspection Programs, Eugene Branstool, was the guest at Oscar Mayer's bacon plant in Coschocton, Ohio. The focus of his visit was regulatory proposals now pending to **reform the meat and poultry inspection system**. Finally, Kraft General Foods was one of the corporate sponsors of the **National Food Processors Annual Congressional Staff Field Trip** to central California. The three day tour included visits to the GF/Post cereal plant in Modesto, the NFPA Food Science Laboratory in Dublin, and Del Monte and Frito Lay facilities.

A **90-day moratorium on the sale of BST**, effective upon FDA approval, was included in the final budget reconciliation legislation. Senator Russell Feingold (D-WI), who had successfully pushed for a one-year moratorium on BST, insisted on inclusion of some moratorium language as a key to his support for the broader budget package.

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On **beer**, Miller is continuing to work with a broad-based coalition to oppose the **Sensible Advertising and Family Education (SAFE) Act**, which would require **rotating warning messages** on all electronic and print advertisements. In an effort to diffuse support for the legislation, the Board of Directors of the National Association of Broadcasters endorsed a stepped-up public service announcement campaign regarding several alcohol abuse issues.

On August 19, President Clinton appointed veteran Democratic Party political activist William Daley (currently a partner in the Chicago law firm of Mayer, Brown and Platt) to lead "a positive, bipartisan campaign to explain the benefits of the **North American Free Trade Agreement** to the country and to the Congress." Daley will serve as chairman of the **Administration's Task Force on NAFTA**. This appointment comes less than a week after the three governments announced that they had concluded side agreements to the NAFTA to cover labor, environment, and import surges. Immediately following the announcement, House Majority Leader Richard Gephardt announced his opposition to NAFTA, raising a significant obstacle to its approval by Congress. The Administration expects to have the legislation ready for congressional consideration by early October.

On **state solid waste issues**, Oregon Governor Barbara Roberts signed into law industry-supported legislation, which delays enforcement of the **rigid plastic container provisions of the "rates and dates" law**, SB66, until January 1, 1996, and until the Department of Environmental Quality (DEQ) publishes the 1995 rigid plastic container recycling rate.

The **California** Assembly Natural Resources Committee reported industry-supported legislation, sponsored by Senator Boatwright, to provide a two-year extension for FDA regulated food and cosmetic products of the **rigid plastic container "rates and dates" law** (SB235) from January 1, 1995 to January 1, 1997. The bill also establishes a recycling rate methodology and calls for an industry report, due January 1, 1996, on "best efforts" to achieve the goals. Due to technical drafting problems, it is unclear whether or not the Waste Board can block the extension if the industry report is unsuitable. At this time, the industry coalition is working to resolve this technical discrepancy so that the Waste Board cannot block the extension. SB466 must be acted upon prior to the September 10 adjournment date.

In a surprise legal maneuver, **Massachusetts** Attorney General Scott Harshbarger, a supporter and former member of **MassPIRG**, issued a controversial ruling concerning the state legislature's July action eliminating the MassPIRG negative check-off funding mechanism. The Attorney General ruled that because the MassPIRG provision included in the state's final budget bill was unrelated to a state appropriation, it is open to the referendum process. To qualify for a referendum, thus suspending the law, MassPIRG must collect 46,868 signatures by October 18. It is likely that MassPIRG will succeed in collecting the required signatures, thus placing the issue on the November 1994 ballot. The legislature's

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action eliminating the negative check-off was estimated to have reduced MassPIRG revenue by \$300,000 to \$400,000.

In **Florida**, the Department of Revenue has issued a ruling which eliminates many food containers from the list of containers subject to the state's one cent **advance disposal fee (ADF)**. The industry effort, led by Kraft General Foods, to ensure that the Department's interpretation remained consistent with the statutory language, means that KGF will not be competitively disadvantaged by the ADF law.

On other issues, Kraft General Foods succeeded in leading an industry effort to persuade Governor Edgar of **Illinois** to issue an amendatory veto of legislation, which would make broad changes to laws governing **product promotions, contests, and sweepstakes**. Though HB1687 is aimed at curbing illegitimate contests and promotion, the provisions of the bill severely affect the legal and legitimate promotional activities of product manufacturers and retailers. The legislature will consider the veto in late September. The industry is mounting an effort to ensure that the veto is sustained.

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