

THE TOBACCO INSTITUTE

1875 I STREET, NORTHWEST
WASHINGTON, DC 20006
202/457-4800 • 800/424-9878

SAMUEL D. CHILCOTE, JR.
President

April 22, 1993

MEMORANDUM

TO: The Members of the Executive Committee

FROM: Samuel D. Chilcote, Jr. 

Officials of the Occupational Safety and Health Administration (OSHA), testifying today at a hearing on legislation to ban smoking in federal buildings, provided no new information on OSHA's plans for an ETS regulation but said they see little potential that concerns about the health effects of ETS will lead to increased liability exposure for the federal government.

The OSHA representatives were among seven witnesses who appeared before the House Subcommittee on Public Buildings and Grounds during the panel's second hearing on H.R. 881, sponsored by Subcommittee Chairman James Traficant (D-OH). Other Subcommittee members in attendance included Reps. Jim Clyburn (D-SC), John Duncan (R-TN), Bill Emerson (R-MO), Tom Petri (R-WI), Walter Tucker (D-CA), and D.C. Delegate Eleanor Holmes Norton. Rep. Tim Valentine (D-NC), a member of the full Committee on Public Works and Transportation, also participated.

Media attention to the hearing was light. Copies of the agenda and testimony are enclosed.

The Subcommittee first heard testimony from Dr. John Hoyt, representing the Society of Critical Care Medicine, and Dr. Alfred Munzer, representing the Coalition on Smoking OR Health, who repeated standard anti-smoking claims about the health effects of active and "passive" smoking. During questioning following their testimony, an aside from Munzer regarding the effects on youth smoking of advertising by a "predatory industry" brought a prompt and vigorous response from Rep. Emerson, who reminded the Subcommittee of "the rights of free Americans to advertise."

Industry consultants Dr. Gio Gori and Gray Robertson of Healthy Buildings International (HBI) returned to the Subcommittee to testify on problems in the Environmental Protection Agency's (EPA) risk assessment of ETS and on the role of ETS in indoor air quality. HBI's testimony again was generally well received, prompting Rep. Tucker to remark that HBI's approach seemed "reasonable" from both sides of the workplace smoking debate.

TI DN 0024387

THE TOBACCO INSTITUTE

1875 I STREET, NORTHWEST
WASHINGTON, DC 20006
202/457-4800 • 800/424-9878

SAMUEL D. CHILCOTE, JR.
President

April 22, 1993

MEMORANDUM

TO: The Members of the Executive Committee

FROM: Samuel D. Chilcote, Jr. 

Officials of the Occupational Safety and Health Administration (OSHA), testifying today at a hearing on legislation to ban smoking in federal buildings, provided no new information on OSHA's plans for an ETS regulation but said they see little potential that concerns about the health effects of ETS will lead to increased liability exposure for the federal government.

The OSHA representatives were among seven witnesses who appeared before the House Subcommittee on Public Buildings and Grounds during the panel's second hearing on H.R. 381, sponsored by Subcommittee Chairman James Traficant (D-OH). Other Subcommittee members in attendance included Reps. Jim Clyburn (D-SC), John Duncan (R-TN), Bill Emerson (R-MO), Tom Petri (R-WI), Walter Tucker (D-CA), and D.C. Delegate Eleanor Holmes Norton. Rep. Tim Valentine (D-NC), a member of the full Committee on Public Works and Transportation, also participated.

Media attention to the hearing was light. Copies of the agenda and testimony are enclosed.

The Subcommittee first heard testimony from Dr. John Hoyt, representing the Society of Critical Care Medicine, and Dr. Alfred Munzer, representing the Coalition on Smoking OR Health, who repeated standard anti-smoking claims about the health effects of active and "passive" smoking. During questioning following their testimony, an aside from Munzer regarding the effects on youth smoking of advertising by a "predatory industry" brought a prompt and vigorous response from Rep. Emerson, who reminded the Subcommittee of "the rights of free Americans to advertise."

Industry consultants Dr. Gio Gori and Gray Robertson of Healthy Buildings International (HBI) returned to the Subcommittee to testify on problems in the Environmental Protection Agency's (EPA) risk assessment of ETS and on the role of ETS in indoor air quality. HBI's testimony again was generally well received, prompting Rep. Tucker to remark that HBI's approach seemed "reasonable" from both sides of the workplace smoking debate.

TI DN 0024387

The Members of the Executive Committee
April 22, 1993
Page 2

In his testimony, Lawrence Rogers, Director of the Department of Labor's Office of Workers' Compensation Programs, stated that relatively few workers' compensation claims have been filed against the federal government based on injuries from ETS, and added that the EPA risk assessment will not "necessarily result in the acceptance of a large number of additional claims." Rogers further suggested that workers' compensation awards actually may decrease in future years since nonsmoker exposures to ETS have been greatly reduced among federal employees as restrictive smoking policies have been adopted.

Despite repeated questioning by Traficant on the issue of increasing future ETS compensation awards, Rogers refused to modify his opinion, finally stating, "I just can't answer in the affirmative because of the reduced exposures that have occurred." However, he agreed to provide for the Subcommittee record calculations of the costs associated with handling claims filed through the federal workers' compensation program.

In response to liability concerns raised at the previous hearing on H.R. 881, Rep. Emerson submitted for the record a legal analysis prepared by Covington & Burling that suggests liability exposure is unlikely to increase based solely on the EPA report.

Rogers' testimony was followed by a statement from Acting OSHA Administrator David Zeigler, who described OSHA's activity to date on ETS and indoor air quality but provided no information on whether OSHA will proceed separately with regulation of ETS. Zeigler described ETS as "a serious health issue" and EPA's risk assessment as "a significant study which was developed using a credible methodology." However, he added only that the risk assessment "will be considered by the agency, along with all other comments, in order to determine further agency action."

Dr. Douglas Dockery of the Harvard School of Public Health, the Subcommittee's final witness, described the ETS risk assessment as "a comprehensive, rigorous, balanced and scholarly summation of the current state of the [ETS] science." Following Dockery's statement, he was questioned extensively by Rep. Valentine regarding EPA's omission of the Brownson and Stockwell studies, its failure to adhere to Agency guidelines in the ETS risk assessment and its use of a less rigorous statistical standard in evaluation of the ETS data. Dockery did not defend EPA against suggestions that the Agency "changed the rules" with respect to ETS. Without providing any documentation, however, he did state that EPA consideration of the Brownson and Stockwell studies would not have changed their results, and that "there is a

TI DN 0024388

The Members of the Executive Committee
April 22, 1993
Page 2

In his testimony, Lawrence Rogers, Director of the Department of Labor's Office of Workers' Compensation Programs, stated that relatively few workers' compensation claims have been filed against the federal government based on injuries from ETS, and added that the EPA risk assessment will not "necessarily result in the acceptance of a large number of additional claims." Rogers further suggested that workers' compensation awards actually may decrease in future years since nonsmoker exposures to ETS have been greatly reduced among federal employees as restrictive smoking policies have been adopted.

Despite repeated questioning by Traficant on the issue of increasing future ETS compensation awards, Rogers refused to modify his opinion, finally stating, "I just can't answer in the affirmative because of the reduced exposures that have occurred." However, he agreed to provide for the Subcommittee record calculations of the costs associated with handling claims filed through the federal workers' compensation program.

In response to liability concerns raised at the previous hearing on H.R. 881, Rep. Emerson submitted for the record a legal analysis prepared by Covington & Burling that suggests liability exposure is unlikely to increase based solely on the EPA report.

Rogers' testimony was followed by a statement from Acting OSHA Administrator David Zeigler, who described OSHA's activity to date on ETS and indoor air quality but provided no information on whether OSHA will proceed separately with regulation of ETS. Zeigler described ETS as "a serious health issue" and EPA's risk assessment as "a significant study which was developed using a credible methodology." However, he added only that the risk assessment "will be considered by the agency, along with all other comments, in order to determine further agency action."

Dr. Douglas Dockery of the Harvard School of Public Health, the Subcommittee's final witness, described the ETS risk assessment as "a comprehensive, rigorous, balanced and scholarly summation of the current state of the [ETS] science." Following Dockery's statement, he was questioned extensively by Rep. Valentine regarding EPA's omission of the Brownson and Stockwell studies, its failure to adhere to Agency guidelines in the ETS risk assessment and its use of a less rigorous statistical standard in evaluation of the ETS data. Dockery did not defend EPA against suggestions that the Agency "changed the rules" with respect to ETS. Without providing any documentation, however, he did state that EPA consideration of the Brownson and Stockwell studies would not have changed their results, and that "there is a

TI DN 0024388

The Members of the Executive Committee
April 22, 1993
Page 3

growing body of scientific thought that...drawing a red line at 95 percent" is not required in the evaluation of epidemiologic research. Rep. Valentine asked Dockery to provide documentation to support his assertions with respect to the impact of the Brownson and Stockwell studies.

The Subcommittee gave no indication of a timetable for further consideration of H.R. 881. We will keep you informed of any progress.

Enclosures

SDC:ktp

cc: The Members of the Management Committee
The Members of the Committee of Counsel
The Members of the EPA/OSHA Task Force
TI Senior Staff

TI DN 0024389

The Members of the Executive Committee
April 22, 1993
Page 3

growing body of scientific thought that...drawing a red line at 95 percent" is not required in the evaluation of epidemiologic research. Rep. Valentine asked Dockery to provide documentation to support his assertions with respect to the impact of the Brownson and Stockwell studies.

The Subcommittee gave no indication of a timetable for further consideration of H.R. 881. We will keep you informed of any progress.

Enclosures

SDC:ktp

cc: The Members of the Management Committee
The Members of the Committee of Counsel
The Members of the EPA/OSHA Task Force
TI Senior Staff

TI DN 0024389