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## BNA MANAGEMENT BRIEFING

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## Job Safety

OSHA DEFENDS PROPOSAL, SMOKING BAN;  
TOBACCO INDUSTRY, HEALTH GROUPS FACE OFF

WASHINGTON (BNA) -- The Occupational Safety and Health Administration Sept. 19 defended its proposal to protect workers from poor indoor air quality, including a controversial provision that would require employers to either ban smoking or provide separately ventilated smoking areas.

"We believe that the evidence we have before us supports our conclusion that air contaminants present a significant risk to employees working in indoor environments," OSHA Administrator Joseph A. Dear said. Dear stressed that the agency regulations are at the proposed rule stage--with hearings set to run several weeks beginning Sept. 20--and sought to portray the rulemaking as consistent with past efforts to protect workers from airborne pollutants, including asbestos and cotton dust.

The OSHA press conference, which preceded similar forums held Sept. 19 by public health groups and the tobacco industry, represented the latest in an increasing agency effort to defend itself and the indoor air rulemaking from industry criticism. The agency published an unusual Federal Register announcement Sept. 16 to counter what OSHA believes is a misconception among the public concerning the scope and intent of the smoking provision.

OSHA "is not proposing to regulate smoking or indoor air quality in private homes, and does not intend to do so," the agency said in the notice. The agency also does not intend its regulation, should it become final, to pre-empt local or state laws that ban or regulate smoking, the notice said.

Local and state regulations that ban or restrict smoking in the workplace and public buildings have become increasingly common following the release of an Environmental Protection Agency report in January 1993. The report labeled secondhand smoke a Class A known human carcinogen and linked it to 3,000 annual lung cancer deaths in non-smokers.

## Options Stressed

Dear said Sept. 19 that OSHA is not proposing to ban smoking under its rulemaking, since its proposal would allow employers the option of building and operating separately ventilated rooms. The tobacco industry has painted the provision as a de facto ban, arguing that most employers would simply bar smoking rather than pay the costs of building a ventilated room.

Dear also argued that the agency has a clear responsibility to protect workers from secondhand smoke and other airborne pollutants under the

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Occupational Safety and Health Act of 1970, which delegated the agency authority for promulgating and enforcing job safety and health standards. According to OSHA, secondhand smoke contains over 4,000 chemical compounds, of which at least 43—including benzene and formaldehyde—are known to cause cancer in humans or animals, according to OSHA.

Legionnaires Disease, a form of pneumonia linked to bacteria detected in poorly maintained ventilation systems, also represents a serious threat to worker health that would be addressed under the rulemaking, according to OSHA.

The OSHA proposal, published in April, would require virtually all the nation's employers to ban smoking or provide separately ventilated smoking areas. Non-industrial employers, such as those operating out of office buildings, health care centers, and other indoor environments, also would be required to design and implement a plan to address poor indoor air quality.

## Tobacco Industry Concerns

Patrick R. Tyson, a former OSHA acting administrator during the Reagan administration and currently an attorney representing Phillip Morris U.S.A., said OSHA's proposal to eliminate second-hand smoke from the workplace is inconsistent with the agency's policy of setting permissible exposure limits for other hazardous substances. Tyson said a 1980 Supreme Court case concerning the benzene standard established that the agency could only limit hazardous exposures to the "lowest feasible" limit (Industrial Union Department, AFL-CIO v. American Petroleum Institute, 8 OSHC 1586).

The Supreme Court ruled in the benzene case that OSHA has a responsibility to determine "what it considers to be a 'significant' risk." For its proposed smoking provision, OSHA sought to eliminate exposure to secondhand smoke—citing research linking it to lung cancer and heart disease—but virtually none of the studies it cited were based on exposures in the workplace, according to Richard Carchman, a researcher and director of scientific affairs for Phillip Morris.

Tyson added that the smoking provision also would create a practical problem for OSHA inspectors, who are too few in number to inspect every workplace to ensure workers are protected. Because OSHA is required under the OSH Act to respond to formal worker complaints, "the potential is for OSHA to be a smoking cop" if it eventually has to investigate workplace smoking complaints, he said.

## Health Groups Respond

Those arguments were countered by representatives from the Coalition on Smoking OR Health, which is comprised of the American Lung Association, the American Heart Association, and the American Cancer Society. The groups spoke in strong support of OSHA's rulemaking and repeatedly challenged what they called tobacco industry "rhetoric" on the issue.

The OSHA rulemaking is appropriate for an agency entrusted with protecting the health and safety of the nation's workforce, which is "the very essence of their statutory mission," according to Fran Du Melle, deputy managing director of the American Lung Association. Du Melle said non-smokers exposed to secondhand smoke while at work are 34 percent more likely to develop lung

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cancer than those in smoke-free workplaces.

Alfred Munzer, a former president of the lung association, said the tobacco industry's repeated criticism of research linking secondhand smoke to lung cancer and other health effects in exposed non-smokers is only part of a "longstanding campaign of misinformation, scare tactics, and questionable interpretation of the science" that he said has repeatedly linked secondhand smoke to lung cancer and heart disease.

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