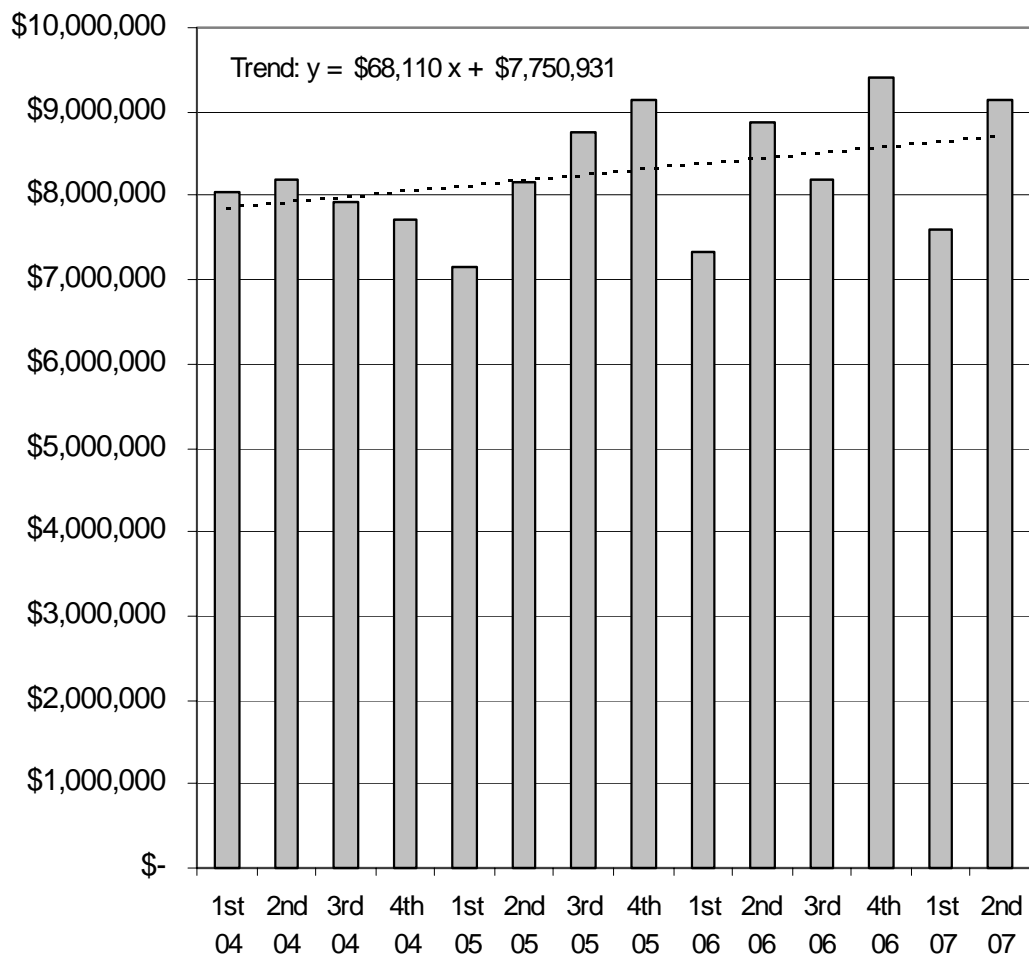


## Colorado Quarterly Liquor Excise Taxes (When Posted Not Necessarily Received)



Source: Colorado Department of Revenue Web site

## Alcoholic Beverages

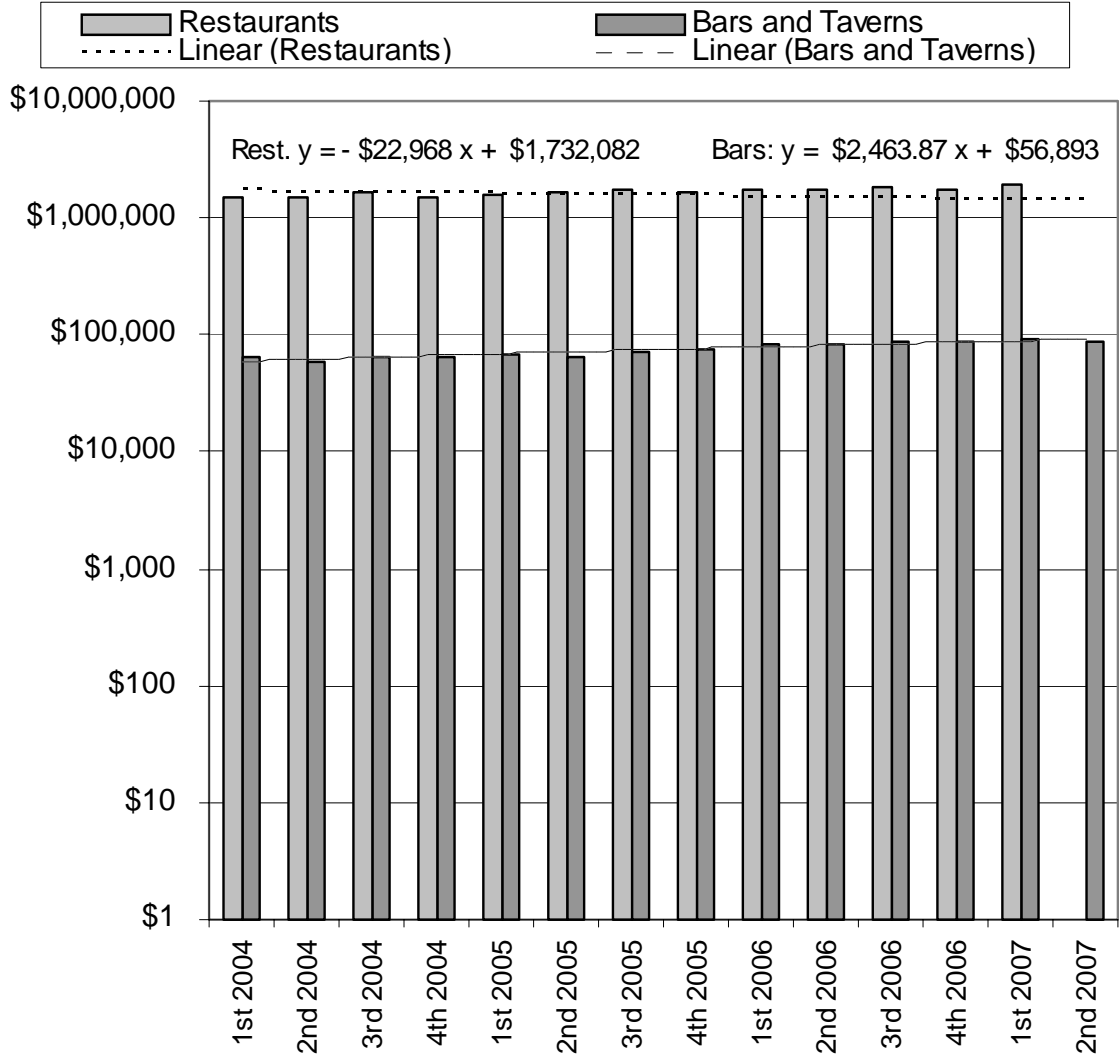
### Alcoholic beverage excise taxes and license fees

#### Fiscal Years 2002 to 2006 Excise Tax Revenues

<b>Fiscal Years 1997 to 2006</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
State License Fees	\$2,203,245	\$2,584,852	\$2,858,548	\$2,753,906	\$2,859,654
85% Liquor Licenses (local gov.)	\$2,588,996	\$2,650,221	\$2,853,866	\$2,831,179	\$2,921,028
<b>Total Net License Fees</b>	<b>\$4,792,241</b>	<b>\$5,235,073</b>	<b>\$5,712,414</b>	<b>\$5,585,085</b>	<b>\$5,780,682</b>
3.2% Beer Tax	\$608,190	\$625,249	\$588,339	\$569,287	\$590,164
Repeal Beer Tax	8,170,605	8,029,206	8,077,452	7,902,061	8,231,398
Hard Cider Tax	8,966	13,736	9,612	10,104	11,941
Wine Tax	3,379,343	3,573,243	3,758,001	3,734,418	4,101,175
Spirituous Liquors Tax	17,681,280	18,264,261	18,954,753	18,728,430	21,174,905
<b>Total Net Tax Receipts</b>	<b>\$29,848,384</b>	<b>\$30,505,694</b>	<b>\$31,388,157</b>	<b>\$30,944,300</b>	<b>\$34,109,583</b>
<b>TOTAL NET REVENUES</b>	<b>\$34,640,625</b>	<b>\$35,740,767</b>	<b>\$37,100,571</b>	<b>\$36,529,385</b>	<b>\$39,890,265</b>

(See Transparency Of Page From Report)

## Colorado Hospitality Sales 2004 - 2007 (\$1,000s)



Source: Colorado Department of Revenue Web Site and Request

## LIQUOR LICENSES IN FORCE BY TYPE

## Fiscal Years 2002 to 2006

	2002	2003	2004	2005	2006
3.2% Beer Importers License (non-resident)	8	8	15	15	15
3.2% Beer Importers License (resident)	5	5	0	0	0
3.2% Beer Manufacturer	8	6	7	6	6
3.2% Beer Manufacturer (non-resident)	7	6	6	5	6
3.2% Retail Beer	1,913	1,889	1,792	1,776	1,757
3.2% Special Events Permit	85	101	118	98	102
3.2% Wholesale Beer	50	45	41	40	43
Arts Liquor	29	30	34	36	40
Bed and Breakfast Permit	55	51	53	58	56
Beer and Wine	299	309	299	309	339
Beer, Wine, & Spiritous Liquor Special Events Permit	1,781	1,848	2,039	2,078	1,956
Brew Pub	79	75	75	81	75
Club Liquor	224	218	215	216	215
Hotel & Restaurant Liquor	3,560	3,712	3,892	4,060	4,237
Hotel & Restaurant—Optional Premises	207	216	222	242	245
Importer—Malt Liquor	60	59	56	57	58
Importer—Vinous & Spiritous Liquor	327	354	352	380	396
Limited Winery	43	51	59	70	87
Liquor-License Drug Store	30	28	22	20	17
Malt Liquor Manufacturer (non-resident)	23	22	23	26	27
Manufacturer—Brewery	18	23	21	20	23
Manufacturer—Distillery/Rectifier		1	2	3	5
Manufacturer—Winery	4	6	2	5	3
Optional Premises	26	30	34	43	46
Public Transportation Liquor	38	37	37	35	33
Racetrack Liquor	7	8	8	7	8
Resort Complex	7	9	9	10	9
Retail Gaming Tavern	22	25	26	27	26
Retail Liquor Store	1,433	1,501	1,554	1,587	1,638
<b><u>Tavern Liquor</u></b>	<b><u>1,336</u></b>	<b><u>1,364</u></b>	<b><u>1,390</u></b>	<b><u>1,452</u></b>	<b><u>1,462</u></b>
Wholesale Beer	58	62	62	57	67
Wholesale Liquor	55	58	61	62	67
Wine Delivery Permit	150	102	232	331	460
<b>TOTAL LICENSES</b>	<b>11,947</b>	<b>12,319</b>	<b>12,758</b>	<b>13,212</b>	<b>13,524</b>

(See Transparency Of Page In Annual Report -- Underline, bold added.)

## Colorado Liquor Excise Taxes

(Month Processed Not Necessarily Month Received)

Source: Colorado Department of Revenue

[http://www.revenue.state.co.us/Stats\\_dir/wrap.asp?incl=liquorexcisetaxes](http://www.revenue.state.co.us/Stats_dir/wrap.asp?incl=liquorexcisetaxes)

### One Year Post Smoking Ban Summary

October 16, 2007 Copyright© Norman E. Kjono 2007

Month	Spiritous	Vinous	Beer	Month Total	Quarter Total	\$ Change Prev.	% Change Prev.	Cal. Year Total
Jan 04	N/A	N/A	N/A	\$ 2,657,643				
Feb 04	N/A	N/A	N/A	\$ 2,121,259				
Mar 04	N/A	N/A	N/A	\$ 3,272,935	\$ 8,051,837	N/A		
Apr 04	N/A	N/A	N/A	\$ 2,529,134				
May 04	N/A	N/A	N/A	\$ 2,788,253				
Jun 04	N/A	N/A	N/A	\$ 2,881,722	\$ 8,199,109	\$ 147,272	1.83%	
Jul 04	N/A	N/A	N/A	\$ 2,440,519				
Aug 04	N/A	N/A	N/A	\$ 2,820,480				
Sep 04	N/A	N/A	N/A	\$ 2,662,159	\$ 7,923,158	\$ (275,951)	-3.37%	
Oct 04	N/A	N/A	N/A	\$ 1,754,166				
Nov 04	N/A	N/A	N/A	\$ 3,395,965				
Dec 04	N/A	N/A	N/A	\$ 2,561,228	\$ 7,711,359	\$ (211,799)	-2.67%	\$ 31,885,463
Jan 05	\$ 1,387,513	\$ 204,111	\$ 589,000	\$ 2,180,624				
Feb 05	\$ 1,326,075	\$ 272,826	\$ 680,717	\$ 2,279,618				
Mar 05	\$ 1,709,145	\$ 371,066	\$ 613,897	\$ 2,694,108	\$ 7,154,350	\$ (557,009)	-7.22%	
Apr 05	\$ 1,374,546	\$ 266,033	\$ 773,412	\$ 2,413,991				
May 05	\$ 2,335,602	\$ 273,424	\$ 762,362	\$ 3,371,388				
Jun 05	\$ 1,171,670	\$ 343,414	\$ 854,972	\$ 2,370,056	\$ 8,155,435	\$ 1,001,085	13.99%	
Jul 05	\$ 2,107,156	\$ 313,633	\$ 805,775	\$ 3,226,564				
Aug 05	\$ 1,949,231	\$ 349,634	\$ 856,184	\$ 3,155,049				
Sep 05	\$ 1,403,801	\$ 286,584	\$ 695,505	\$ 2,385,890	\$ 8,767,503	\$ 612,068	7.51%	
Oct 05	\$ 1,787,719	\$ 356,559	\$ 708,761	\$ 2,853,039				
Nov 05	\$ 1,680,684	\$ 389,791	\$ 686,586	\$ 2,757,061				
Dec 05	\$ 2,395,983	\$ 465,354	\$ 666,072	\$ 3,527,409	\$ 9,137,509	\$ 370,006	4.22%	\$ 33,214,797
Jan 06	\$ 1,243,735	\$ 260,023	\$ 616,016	\$ 2,119,774				
Feb 06	\$ 1,419,498	\$ 315,011	\$ 641,773	\$ 2,376,282				
Mar 06	\$ 1,774,710	\$ 332,053	\$ 726,479	\$ 2,833,242	\$ 7,329,298	\$ (1,808,211)	-19.79%	
Apr 06	\$ 1,517,038	\$ 310,768	\$ 711,375	\$ 2,539,181				
May 06	\$ 1,896,543	\$ 369,237	\$ 861,573	\$ 3,127,353				
Jun 06	\$ 1,998,807	\$ 364,471	\$ 845,463	\$ 3,208,741	\$ 8,875,275	\$ 1,545,977	21.09%	
Jul 06	\$ 1,520,234	\$ 303,516	\$ 794,579	\$ 2,618,329				
Aug 06	\$ 1,856,578	\$ 362,875	\$ 859,006	\$ 3,078,459				
Sep 06	\$ 1,500,594	\$ 327,984	\$ 677,965	\$ 2,506,543	\$ 8,203,331	\$ (671,944)	-7.57%	
Oct 06	\$ 1,979,030	\$ 412,021	\$ 713,518	\$ 3,104,569				
Nov 06	\$ 1,238,809	\$ 299,885	\$ 484,994	\$ 2,023,688				
Dec 06	\$ 2,888,745	\$ 594,519	\$ 785,755	\$ 4,269,019	\$ 9,397,276	\$ 1,193,945	14.55%	\$ 33,805,180
Jan 07	\$ 1,337,757	\$ 303,002	\$ 691,605	\$ 2,332,364				
Feb 07	\$ 1,544,053	\$ 340,521	\$ 633,374	\$ 2,517,948				
Mar 07	\$ 1,688,034	\$ 346,607	\$ 725,934	\$ 2,760,575	\$ 7,610,887	\$ (1,786,389)	-19.01%	
Apr 07	\$ 1,745,719	\$ 331,768	\$ 684,157	\$ 2,761,644				
May 07	\$ 1,990,383	\$ 378,429	\$ 834,510	\$ 3,203,322				
Jun 07	\$ 1,946,518	\$ 393,148	\$ 843,621	\$ 3,183,287	\$ 9,148,253	\$ 1,537,366	20.20%	
Jul 07	\$ 1,668,599	\$ 354,726	\$ 834,233	\$ 2,857,558				

PLEASE NOTE TREND LINES ON PAGE 2:

January 2004 to July 2007 liquor excise taxes are modestly positive:

January 2004 to July 2006 liquor excise taxes are more positive:

January 2005 to July 2006 liquor excise taxes are even more positive:

July 2006 to July 2007 Increase in liquor excise taxes levels off, declines:

Increasing \$8,192 Per Month

Increasing \$9,356 Per Month

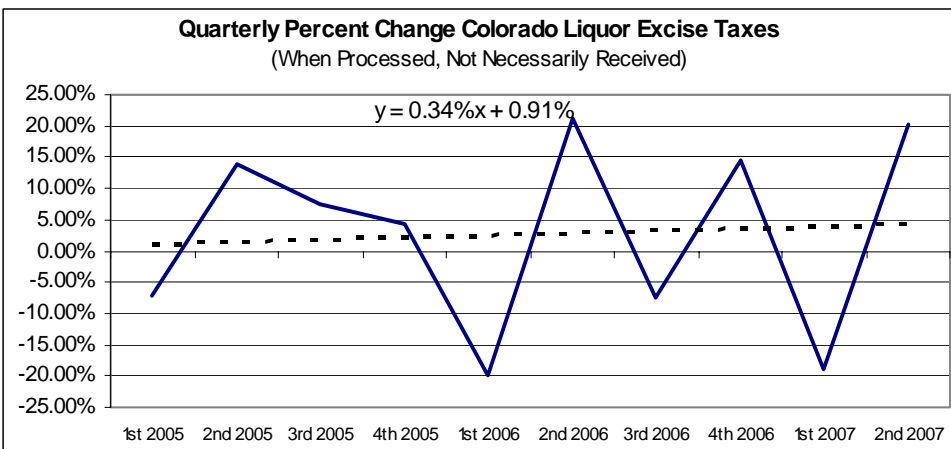
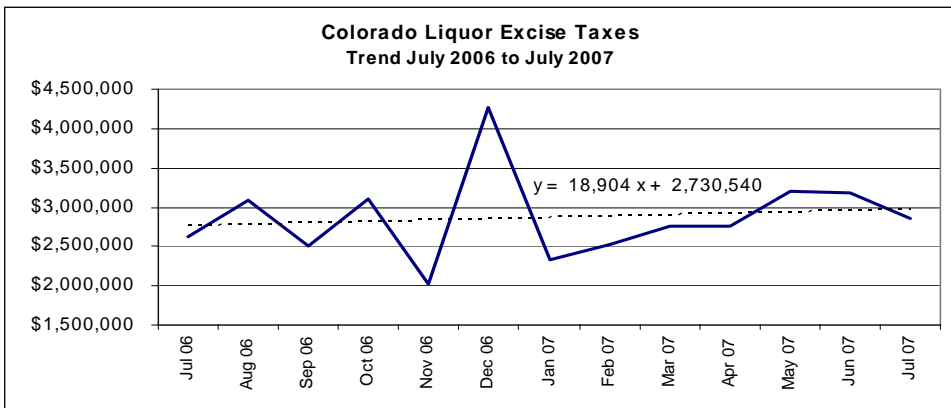
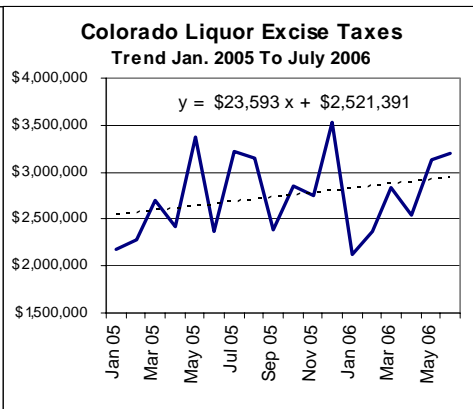
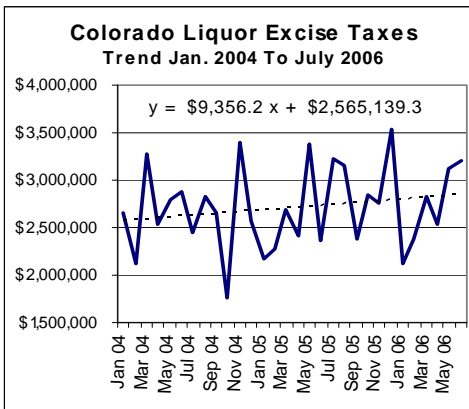
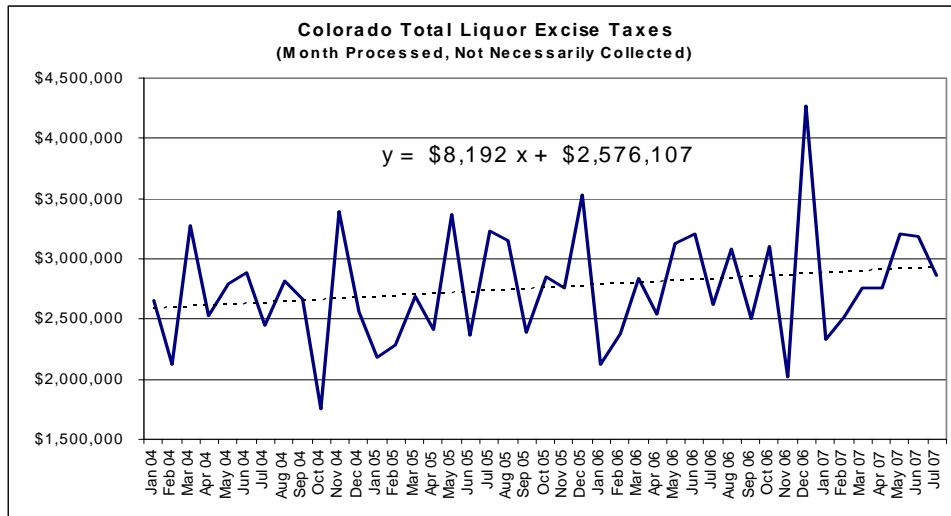
Increasing \$23,593 Per Month

Increasing \$18,904 Per Month

Conclusion: **Overall trend hides a NEGATIVE impact of the Colorado smoking ban on excise tax collection. If more consumers would flock to bars and restaurants when smoking ban was passed the January 2005 to July 2006 \$23,593 per month trend increase in liquor excise taxes would have accelerated, not declined.**

1. Consistent with bar sales increases in 2006 the rate of state liquor excise taxes also accelerated in 2006.
2. Consistent with decline in rate of bar sales increases aftersmoking ban, excise tax collections increases leveled off.
3. The Colorado smoking ban has had a discernible, though modest, negative impact on state excise tax revenues.
4. The adverse impact of the Colorado smoking ban will be felt most acutely by small independent tavern license holders.
5. If Liquor excise taxes are on a trend of \$18,904 per month Colorado residents are consuming more alcoholic beverages.

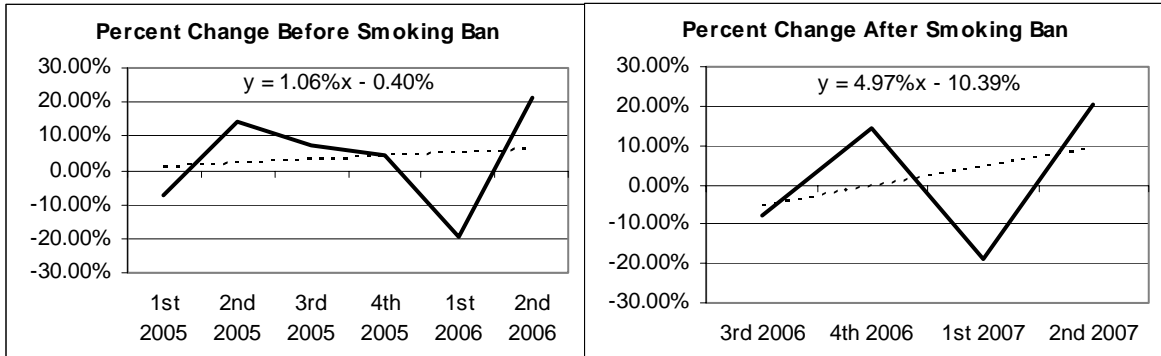
- Questions:
1. If Colorado residents are consuming more alcoholic beverages, but previous increases in bar and tavern revenues before the smoking ban are sharply declining, where are alcoholic beverages being purchased and/or consumed?
  2. Are restaurants and retail liquor stores benefitting from increased alcoholic beverage sales at the expense of bars and taverns?
  3. Does a change in the competitive structure of the hospitality trade account for the discernible change in purchases?



**Quarterly Data**

1st 2005	\$ (557,009)	-7.22%
2nd 2005	\$ 1,001,085	13.99%
3rd 2005	\$ 612,068	7.51%
4th 2005	\$ 370,006	4.22%
1st 2006	\$ (1,808,211)	-19.79%
2nd 2006	\$ 1,545,977	21.09%
3rd 2006	\$ (671,944)	-7.57%
4th 2006	\$ 1,193,945	14.55%
1st 2007	\$ (1,786,389)	-19.01%
2nd 2007	\$ 1,537,366	20.20%

Quarterly percent change data show a +0.34 percent per quarter change in liquor excise tax receipts. That trend is misleading, however because it does not distinguish periods before and after the July 1, 2006 Colorado smoking ban.



Before Smoking Ban		
1st 2005	\$ (557,009)	-7.22%
2nd 2005	\$ 1,001,085	13.99%
3rd 2005	\$ 612,068	7.51%
4th 2005	\$ 370,006	4.22%
1st 2006	\$ (1,808,211)	-19.79%
2nd 2006	\$ 1,545,977	21.09%
After Smoking Ban		
3rd 2006	\$ (671,944)	-7.57%
4th 2006	\$ 1,193,945	14.55%
1st 2007	\$ (1,786,389)	-19.01%
2nd 2007	\$ 1,537,366	20.20%

**Conclusions:**

1. Quarterly revenue from State Liquor Excise Taxes were increasing at 1.06 percent per quarter trend before July 1, 2006 Colorado the smoking ban
2. Quarterly revenue from State Liquor Excise Taxes are now increasing 4.97 percent per quarter trend after the July 1, 2006 Colorado smoking ban.
3. The trend increase in liquor excise taxes is confirmed by Department of Revenue 2006 Annual Report data that show increased sales of alcoholic beverages in the state. Where are patrons purchasing and consuming more alcoholic beverages?

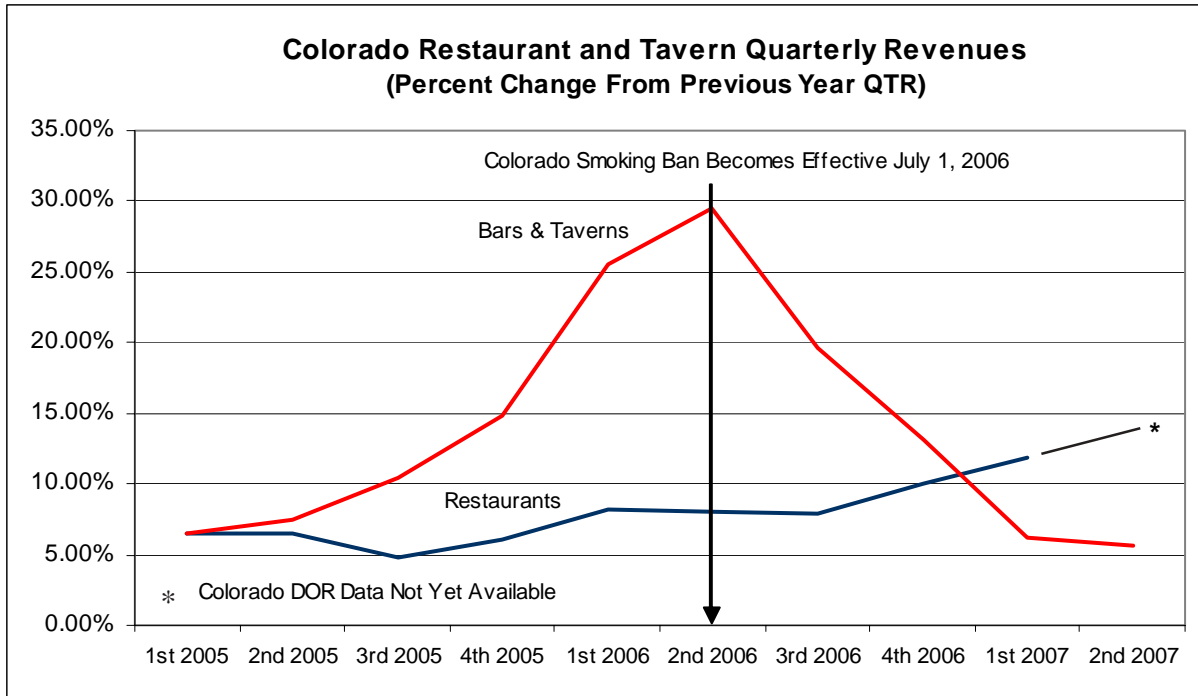
**The Bottom Line Questions**

1. If State of Colorado Liquor Excise Tax receipts increased after the smoking ban why are previous increases in Colorado bar and tavern sales revenues sharply declining?
2. Are Colorado bar and tavern small business owners to conclude that so long as the state gets its liquor excise taxes their legitimate interests are not of consequence?
3. Are smoking bans an anti-competitive public policy tool applied to reward preferred trade sectors, while predictably penalizing others?

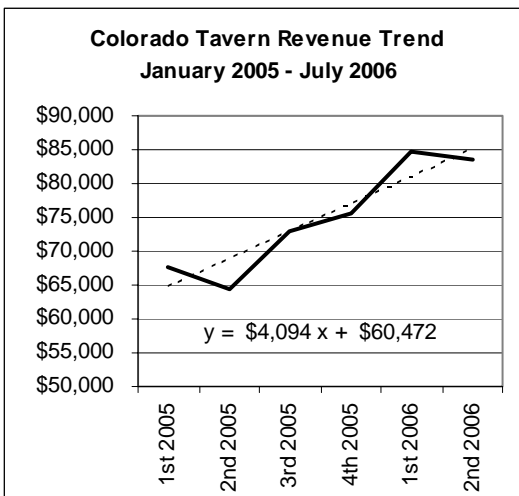
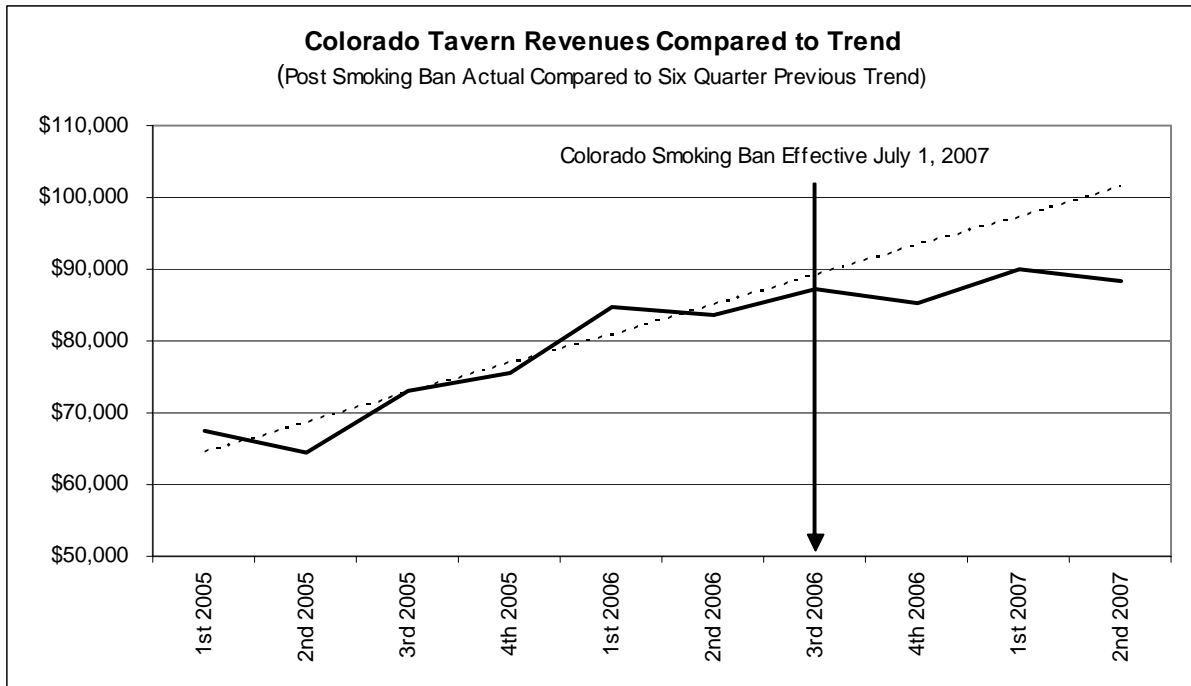
## Colorado Restaurant and Tavern Sales Quarterly Data

Restaurant: Colorado DOR Restaurant Selected Retail Sales Reports  
[http://www.revenue.state.co.us/Stats\\_dir/wrap.asp?incl=retailsalesreport](http://www.revenue.state.co.us/Stats_dir/wrap.asp?incl=retailsalesreport)  
Tavern: Spreadsheet provided on request June 21, 2007 by Colorado DOR  
 (Data NOT Adjusted For NEW Tavern Licenses That May Have Been Issued)  
 Prepared by Norman E. Kjono June 21, 2007 (Updated September October 25, 2007)

	Restaurant Sales (\$1,000s)			Drinking Services Sales (72241) (\$1,000s)		
	For QTR.	Change From QTR One Year Prior	Percent Change	For QTR.	Change From QTR One Year Prior	Percent Change
1st 2004	\$ 1,495,167	N/A	N/A	\$ 63,418	N/A	N/A
2nd 2004	\$ 1,522,808	N/A	N/A	\$ 59,997	N/A	N/A
3rd 2004	\$ 1,657,879	N/A	N/A	\$ 66,134	N/A	N/A
4th 2004	\$ 1,528,324	N/A	N/A	\$ 65,801	N/A	N/A
1st 2005	\$ 1,592,574	\$ 97,407	6.51%	\$ 67,501	\$ 4,083	6.44%
2nd 2005	\$ 1,622,546	\$ 99,738	6.55%	\$ 64,497	\$ 4,500	7.50%
3rd 2005	\$ 1,736,308	\$ 78,429	4.73%	\$ 73,025	\$ 6,891	10.42%
4th 2005	\$ 1,621,136	\$ 92,812	6.07%	\$ 75,523	\$ 9,722	14.77%
1st 2006	\$ 1,722,840	\$ 130,266	8.18%	\$ 84,768	\$ 17,267	25.58%
2nd 2006	\$ 1,752,821	\$ 130,275	8.03%	\$ 83,499	\$ 19,002	29.46%
3rd 2006	\$ 1,874,229	\$ 137,921	7.94%	\$ 87,328	\$ 14,303	19.59%
4th 2006	\$ 1,784,703	\$ 163,567	10.09%	\$ 85,415	\$ 9,892	13.10%
1st 2007	\$ 1,926,178	\$ 203,338	11.80%	\$ 90,049	\$ 5,281	6.23%
2nd 2007	N/A	N/A	N/A	\$ 88,262	\$ 4,763	5.70%
2004 Quarterly Avg.	\$ 1,551,045	N/A	N/A	\$ 63,838	N/A	N/A
2005 Quarterly Avg.	\$ 1,643,141	\$ 92,097	5.94%	\$ 70,137	\$ 6,299	9.87%
2006 Quarterly Avg.	\$ 1,783,648	\$ 140,507	8.55%	\$ 85,253	\$ 15,116	21.55%



Colorado tavern owners enjoyed at least six consecutive quarters where the rate of revenue increases compared to previous year's income consistently accelerated. That favorable business pattern abruptly ended when the statewide smoking ban became effective in July 2006. Subsequent to the smoking ban, however, restaurant revenue increases accelerated. Colorado's smoking ban materially changed the competitive structure of the hospitality trade.



	Trend Revenues	Actual Revenues	Revenue Difference
(Revenues in \$1,000s)			
1st 2005	\$ 64,566.3	\$ 67,501	N/A
2nd 2005	\$ 68,660.6	\$ 64,497	N/A
3rd 2005	\$ 72,754.9	\$ 73,025	N/A
4th 2005	\$ 76,849.2	\$ 75,523	N/A
1st 2006	\$ 80,943.5	\$ 84,768	N/A
2nd 2006	\$ 85,037.8	\$ 83,499	N/A
3rd 2006	\$ 89,132.1	\$ 87,328	\$ 1,804.1
4th 2006	\$ 93,226.4	\$ 85,415	\$ 7,811.4
1st 2007	\$ 97,320.7	\$ 90,049	\$ 7,271.7
2nd 2007	\$ 101,414.7	\$ 88,262	\$ 13,152.7
<b>3rd 2006 - 2nd 2007 Totals:</b>		<b>\$ 262,792</b>	<b>\$ 30,039.9</b>
<b>Economic Impact Pct. Of 4 QTR Totals:</b>			<b>11.43%</b>

1. The U.S. Occupational Safety and Health Administration (OSHA) defines economic feasibility by at least three criteria:
  - a.) Industry or sector economic impact greater than 1 percent of annual revenues.
  - b.) Industry or sector economic impact greater than 10 percent of annual profits.
  - c.) Material change in competitive structure of the industry or sector affected.
  
2. Economic impact of the Colorado statewide smoking ban directly affects and influences each of the three OSHA criteria:
  - a.) The impact on tavern revenues is six and one-half times OSHA's threshold of 1 percent of revenues.
  - b.) All of the \$16,887,200 economic impact directly reduced profits, which will exceed OSHA's 10 percent.
  - c.) Tavern revenues are principally dependent on the sale of alcoholic beverages for revenue whereas restaurants enjoy more diverse revenue streams. Smoking is uniquely associated with consumption of alcoholic beverages for many tavern patrons, whereas smoking is not equally associated with consumption of food.
  - d.) Alcoholic beverages are a high mark-up item for full-service restaurants, whereas price is a competitive issue for the tavern sector of the hospitality trade.
  
3. Each of the above factors directly confirm OSHA's August 2001 conclusion: "In industries where there is substantial contact between customers who smoke and workers, such as some sectors of the food, beverage and gaming industries (including bars and casinos), the proposed rule's prohibition on smoking except in separately ventilated areas may not be economically feasible."

—Original Message—

**From:** Duenas, Ann  
[mailto:aduenas@spike.dor.state.co.us]  
**Sent:** Thursday, June 21, 2007 9:50 AM  
**To:** 'Norm Kjono'  
**Subject:** pdf file attached

Norm,  
She's actually in today! Your file is attached.  
Ann

—Original Message—

**From:** Cox, Marguerite  
**Sent:** Thursday, June 21, 2007 10:48 AM  
**To:** Duenas, Ann  
**Subject:**

Hi Ann,

I am better, thank you for asking.  
Enclosed is the PDF file you wanted.

Marguerite Cox  
Administrative Assistant III  
Office of Research and Analysis  
303-866-3080

—Original Message—

**From:** Duenas, Ann [mailto:aduenas@spike.dor.state.co.us]  
**Sent:** Thursday, June 21, 2007 8:38 AM  
**To:** 'normkarl@earthlink.net'  
**Subject:** data request

Hello Norm,

The data you requested is attached. Please let me know if you have any questions.

Thank you.

**Ann M. Dueñas**  
Office of Research and Analysis  
Colorado Department of Revenue  
1375 Sherman Street, Rm 403  
Denver, CO 80261  
Phone: 303-866-5777  
Fax: 303-866-3087  
email: aduenas@spike.dor.state.co.us

Colorado Department of Revenue  
NAICS Code 72241  
Retail Sales in Thousands (\$000)

Month	2004	2005	2006	2007
January	\$ 20,499	\$ 20,863	\$ 26,403	\$ 27,500
February	\$ 19,428	\$ 20,714	\$ 27,170	\$ 27,318
March	\$ 23,491	\$ 25,924	\$ 31,195	\$ 35,231
April	\$ 19,389	\$ 20,948	\$ 26,791	
May	\$ 19,141	\$ 19,887	\$ 26,840	
June	\$ 21,467	\$ 23,662	\$ 29,868	
July	\$ 22,258	\$ 23,735	\$ 29,493	
August	\$ 20,410	\$ 25,280	\$ 28,190	
September	\$ 23,466	\$ 24,010	\$ 29,645	
October	\$ 21,754	\$ 24,536	\$ 28,689	
November	\$ 19,567	\$ 22,670	\$ 23,585	
December	\$ 24,480	\$ 28,317	\$ 33,141	

Original File Received June 2007

Colorado Department of Revenue  
NAICS Code 72241  
Retail Sales in Thousands (\$000)

	2004	2005	2006	2007	
January	\$ 20,499	\$ 20,863	\$ 26,403	\$ 27,500	
February	\$ 19,428	\$ 20,714	\$ 27,170	\$ 27,318	
March	\$ 23,491	\$ 25,924	\$ 31,195	\$ 35,231	
April	\$ 19,389	\$ 20,948	\$ 26,791	\$ 28,191	9/10/2007
May	\$ 19,141	\$ 19,887	\$ 26,840	\$ 29,370	9/10/2007
June	\$ 21,467	\$ 23,662	\$ 29,868	\$ 30,701	10/23/2007
July	\$ 22,258	\$ 23,735	\$ 29,493	\$ 33,734	10/23/2007
August	\$ 20,410	\$ 25,280	\$ 28,190		
September	\$ 23,466	\$ 24,010	\$ 29,645		
October	\$ 21,754	\$ 24,536	\$ 28,689		
November	\$ 19,567	\$ 22,670	\$ 23,585		
December	\$ 24,480	\$ 28,317	\$ 33,141		

Subsequent Updates Received  
September and October 2007

—Original Message—

**From:** Norm Kjono [mailto:normkarl@earthlink.net]  
**Sent:** Monday, September 10, 2007 1:08 PM  
**To:** 'Duenas, Ann'  
**Subject:** Data request UPDATE

Ms. Duenas,

In June you provided monthly data regarding Bar and Tavern (NAICS Code 72241) retail sales data for the period of January 2004 to March 2007 pursuant to my request.

1. Can you please provide most current monthly data for that NAICS code (as far forward toward September 2007 and at the least the April, May and June 2007)?

2. I note the data for restaurant sales published in DOR's Web site was recently updated to include the 1<sup>st</sup> quarter of 2007. Is restaurant sales data available for the 2<sup>nd</sup> (April to June) even though it is not yet published on the departments site? If so, I would appreciate that data.

The client has requested an update of the previous report I prepared for this analysis. Data for both bar and tavern and restaurant sales through the end of 2<sup>nd</sup> quarter would be most helpful and appreciated.

Thank you,

Norman E. Kjono  
(425) 497-8187

—Original Message—

**From:** Duenas, Ann [mailto:aduenas@spike.dor.state.co.us]  
**Sent:** Monday, September 10, 2007 1:40 PM  
**To:** 'Norm Kjono'  
**Subject:** RE: Data request UPDATE

Hi Norm,

It appears that I was incorrect, and that the June 2007 data cards are not yet available.

Here are the next two months for you. As soon as June comes in, I will update that and send it to you.

Let me know if you have any questions.

Thank you,  
Ann

—Original Message—

**From:** Duenas, Ann [mailto:aduenas@spike.dor.state.co.us]  
**Sent:** Tuesday, October 23, 2007 8:15 AM  
**To:** 'Norm Kjono'  
**Cc:** 'alcambell\_9@msn.com'  
**Subject:** RE: September 10, 2007 Follow-up: Data request UPDATE

Good morning,

The following information is Retail Sales for the State of Colorado, 1997 NAICS code 72241

June 2007: \$30,701,153.00  
July 2007: \$33,734,315.00

Again, barring any legislative revenue analysis, I hope to have the liquor store data to you next week. Please let me know if you have any questions.

Thank you,  
Ann Dueñas  
303-866-5777

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

Smoking and Health (ASH)  
Petitioner

AUG 10 2001

RECEIVED

No. 01-1199

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

FILED

AUG 10 2001

CLERK

THE SECRETARY OF LABOR'S RESPONSE  
TO ASH'S PETITION FOR A WRIT OF MANDAMUS

CD (11-10)

Action on Smoking and Health (ASH) has petitioned this Court for a writ of mandamus to the Department of Labor, the Secretary of Labor, Elaine L. Chao, and the Occupational Safety and Health Administration ("OSHA") compelling the issuance of a final rule regulating occupational exposure to environmental tobacco smoke ("ETS") within 90 days of the Court's order. The Secretary of Labor<sup>1</sup> responds as follows:

BACKGROUND

I. Legal and regulatory background: 1991-1996

This is the seventh time ASH has asked this Court to order OSHA to promulgate a rule regulating occupational exposure to ETS. In ASH v. OSHA, No. 89-1656 (May 10, 1991) (ASH I), this Court upheld OSHA's denial of ASH's request for an Emergency Temporary Standard under section 6(c) of the Act, 29 U.S.C. 655(c). In ASH v. OSHA, No. 91-1037 (ASH II), and

<sup>1</sup> The Occupational Safety and Health Act of 1970, 29 U.S.C. 651-678 (1994 & Supp. V 1999) ("OSH Act" or "Act") authorizes the Secretary of Labor to issue occupational safety and health standards to address, *inter alia*, toxic substances present in workplaces. 29 U.S.C. 655 (b) (5). The Secretary has delegated rulemaking authority to the Assistant Secretary for Occupational Safety and Health, who heads OSHA. In this response, the terms "Secretary" and "OSHA" are used interchangeably. A/C Elec. Co. v. OSHRC, 956 F.2d 530 (6th Cir. 1991).

literature. *Id.* at 310-311. OSHA would then be able to determine more reliably whether ETS exposure in the workplace is a significant hazard to workers and to evaluate the consequences of different control measures. *Id.* at 310.

OSHA sponsored a second workshop in July, 1998 to address the health effects of exposure to ETS in the workplace, including issues related to OSHA's proposed quantitative risk assessment. As noted above, the proposal had stated that there was no established method for quantifying exposure to ETS, so it was not possible to perform the type of dose response calculations that could determine the likelihood of illness or death at any particular exposure level, or to determine an exposure level that would eliminate significant risk. 59 Fed. Reg. 15995-15996, 16001. The participants found that by 1998, however, new approaches were available that might be used to assess the health effects of exposure to ETS at various levels in workplaces. In addition, although the participants did not address whether the proposal's residential-analogy method of quantifying risk was sound, they made clear that accurate data on ETS exposures in workplaces would be a fundamental component of such an assessment of the occupational hazard. Health Risk Assessment Report at 823.

Actual  
Exposure  
Testing  
Fundamen-  
tally  
Important

The June 1998 workshop on ventilation controls addressed the feasibility of the proposed rule in certain industry sectors. In industries where there is substantial contact between customers who smoke and workers, such as some sectors of the food, beverage and gaming industries (including bars and casinos), the proposed rule's prohibition on smoking except in separately ventilated areas may not be economically feasible. See Preface to Ventilation Control Report. The workshop panelists sought to identify feasible engineering controls that could be used in these industries to protect workers. *Id.* However, the panelists concluded that more

Smoking Ban  
Compliance  
By Bars May  
Not Be  
Economically  
Feasible For  
Bars

information needs to be gathered, by research or documented experience, before engineering solutions can be evaluated. Engineering Control Report, Executive Summary at 2. Accordingly,

OSHA's preliminary finding that the rule is feasible in all industries to which it applies is not supported. 59 Fed. Reg. 16021.

All of these factors combined to convince the agency that the IAQ rulemaking, and particularly the portion addressing ETS, could not be concluded as quickly as had originally been hoped. Accordingly, the agency categorized the IAQ proceeding as a long-term action with no projected date for completion. 62 Fed. Reg. 21939 (April 25, 1997).

#### 4. The future of the rulemaking

The current Administration has not yet determined the future course of the IAQ rulemaking. As explained in the latest Regulatory Agenda, the new Secretary is still developing her own regulatory priorities for OSHA. The new Assistant Secretary for OSHA was not confirmed until late last Friday, August 3, 2001. Although he has not yet had the opportunity to address all of the issues facing OSHA, he obviously will have substantial input into the development of its regulatory priorities.

Nevertheless, the background discussed in the prior sections demonstrates that it is now clear OSHA cannot proceed simply to promulgate a final rule on ETS. Evidence indicates that the assumptions underlying OSHA's original risk and exposure estimates are not valid at this time, even if they were appropriate when the proposal was issued. For example, it now appears that, contrary to the assumption in the proposal, it may be possible to perform dose-response analyses for the ETS risk assessment. This may allow selection of a permissible exposure level

New Data  
Suggests  
PEL May  
Be Possible

OSHA  
Original  
Conclusions  
About ETS  
“Simply  
Wrong”

for ETS, something that was not possible at the time of the proposal. 59 Fed. Reg. at 16001.

Similarly, it also appears that OSHA's critical assumption that workplace exposures to ETS are similar to spousal exposures is simply wrong.

These problems and the others described above are significant, and correcting them will require substantial agency resources that are usually only available to a few high-priority rulemaking projects. These new analyses, moreover, would be different enough from the proposal that the Secretary believes a new risk assessment, a new opportunity for public comment, and possibly a completely new proposal, could be warranted if OSHA decides to make issuing a standard that would be upheld on review a high agency priority. Thus continuation of this proceeding is the equivalent of beginning an entirely new rulemaking. In light of this, in her development of Departmental priorities, the Secretary is considering whether such an undertaking is an appropriate use of OSHA resources and consistent with Agency priorities, or whether she should exercise her discretion to terminate the proceeding without issuing a final standard. Cf. Consumer Federation v. Consumer Product Safety Commission, 990 F.2d 1298, 1305 (D.C. Cir. 1993) (applying “highly respectful” standard of review to agency decision to terminate a rulemaking proceeding without promulgating a rule).

#### ARGUMENT

##### OSHA HAS NOT UNREASONABLY DELAYED THE RULEMAKING

###### A. The TRAC decision does not support issuance of a writ of mandamus

Relying on TRAC v. FCC, 750 F.2d 70 (D.C. Cir. 1984) ASH argues that OSHA's pace in the IAQ rulemaking is so unreasonably protracted as to warrant judicial intervention to compel issuance of a final rule within 90 days. ASH Petition at 7. TRAC established an analytical

framework for resolving claims of unreasonable agency delay. The Court emphasized that the exercise of equitable powers, particularly the issuance of a writ of mandamus, is an intrusive step to be taken sparingly. *Id.* at 79 ("In the context of a claim of unreasonable delay, the first stage of judicial enquiry is to consider whether the agency's delay is so egregious as to warrant mandamus.") See also *In re Hart Laboratories, Inc.*, 930 F.2d 72, 74 (D.C. Cir. 1991) (respect for autonomy and comparative institutional advantage of the executive branch has traditionally made courts slow to assume command of agency priorities through mandamus).

TRAC identified six factors to aid the Court in determining when mandamus is an appropriate remedy:

(1) the time agencies take to make decisions must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

750 F.2d at 80 (citations omitted). As we demonstrate below, neither TRAC's rule of reason nor the remaining listed factors support issuance of a writ of mandamus in this case, and OSHA could not, in any case, complete action addressing ETS within the 90 days suggested by ASH.

1. Before the Secretary may issue a final rule regulating ETS, she must determine, on the basis of the best available evidence, that there currently exists a "significant risk" of material health impairment to employees, that the new standard is "reasonably necessary or appropriate to eliminate or substantially reduce that risk," and that compliance with the standard is feasible.

OSHA  
Regulatory  
Standards

American Textile Mfrs. Inst. v. Donovan, 452 U.S. 490, 506 (1981); Industrial Union Dep't. AFL-CIO v. American Petroleum Inst., 448 U.S. 607, 614-615, 639, 642-643 (1980). To make these risk findings, the Secretary typically relies upon mathematical techniques for quantifying the risk posed by the particular substance. See International Union. UAW v. Pendergrass, 878 F.2d 389, 392 (D.C. Cir. 1989) ("OSHA necessarily seeks to quantify the risk posed by each toxic threat").

To withstand judicial scrutiny, OSHA's quantitative risk assessments and feasibility findings must be carefully performed and thoroughly explained in each final rule's preamble. Id. at 395-396 (remanding standard because of unexplained inconsistency in OSHA's risk analysis). Moreover, OSHA must evaluate competing analytical methodologies and explain its rejection of significant contrary evidence and argument. Public Citizen Health Research Group v. Tyson, 796 F.2d 1479, 1485, citing United Steelworkers of America AFL-CIO-CLC v. Marshall, 647 F.2d 1189, 1206-1207, 1272-1308 (D.C. Cir. 1980) cert. denied 453 U.S. 913 (1981).

Old ETS  
Risk Assessment  
Based On  
Invalid  
Assumptions

As explained in the background section, the Secretary now has strong indications that the proposed risk and exposure assessments are based on invalid assumptions. There is no longer any basis to believe that ETS exposure conditions in workplaces are, on average, similar to those reflected in studies of residential exposures during the 1980s and early 1990s. In fact, the evidence strongly suggests that ETS exposure levels have declined substantially in workplaces as a result of restrictive smoking policies implemented during the last decade.<sup>4</sup> While it is possible

<sup>4</sup> OSHA is not fully informed as to the breadth and nature of state and local laws restricting smoking, or of policies voluntarily implemented by private employers. According to information current through March, 1999, 45 states restrict smoking in state buildings, and 21 states restrict smoking in private worksites. In addition, 33 states restrict smoking in restaurants.

Weight Of Evidence Now Does Not Support ETS Risk As Assumed that ETS exposures remain high in some workplaces in some industry sectors, the proposal's central finding that risk estimates based on residential exposures could be expected to accurately reflect occupational risks in most -- or even in many -- workplaces is not supported by the weight of the evidence currently available.

In addition, new risk assessment methodologies may now permit construction of the type of dose-response model that is the basis for most quantitative risk assessments, and for the establishment of permissible exposure levels for many toxic substances. And to conduct an accurate risk assessment, under any methodology, OSHA would have to obtain new data on ETS exposure conditions that would reflect the impact of smoking restrictions implemented in the last decade and would take advantage of modern risk assessment methodologies. See Exposure Assessment Report at 310-311. OSHA's analysis would also have to account for the fact that compliance with a standard may not be feasible in some of the industries where ETS exposure is highest.

Faced with the prospect of having to develop an entirely new record to determine the magnitude of the risk posed by ETS, and the appropriate means of controlling that risk, the Secretary under the prior Administration decided to downgrade the priority of the IAQ proceeding pending completion of other projects. 64 Fed. Reg. 64656. Thus, after concluding the ETS health risk assessment workshop in July, 1998, OSHA focused its resources on projects that could be completed within the Administration's remaining term. By allocating its limited resources in this manner, OSHA completed three major projects by January 19, 2001: a final Ergonomics standard; 65 Fed. Reg. 68261 (Nov. 14, 2000) (resolution of disapproval under the Congressional Review Act (5 U.S.C. 801 et seq.) signed into law on March 20, 2001, P.L.

ETS Health  
Risks Are  
Not So  
Egregious  
As To Demand  
Instant OSHA  
Action

to those faced by a nonsmoking spouse of a smoker at home. See 59 Fed. Reg. 15995, 16001; ASH Petition at 16. Nor does OSHA believe that issuance of an ETS rule would prevent between 2,234 and 13,723 excess deaths annually, or anything like those numbers. See 59 Fed. Reg. 16001; ASH Petition at 14. Health risks arising from ETS exposure are likely to be concentrated in certain jobs and industries, as suggested by the ETS Exposure Assessment Report. Exposure Assessment Report at p. 310. This potential hazard is not, as ASH's Petition suggests, so egregious as to demand instant action, especially to the exclusion of all other safety and health matters before the Agency.

ASH is also wrong in suggesting that with judicial intervention, OSHA could resolve any remaining problems quickly and issue a final rule. ASH points to the ergonomics rulemaking as an example of the agency's ability to resolve complex matters quickly, and argues that OSHA could complete the rulemaking "relatively easily" if ETS were addressed separately from other indoor air contaminants. ASH Petition at 14. We demonstrate in the following section that ASH's challenge to the omnibus nature of the rulemaking does not raise a justiciable issue. Moreover, as discussed earlier, addressing ETS in a separate proceeding would not enable the Agency to shortcut the additional procedural steps, outlined above, that would be necessary to produce a legally sustainable final rule. Indeed, the ergonomics example counsels against, rather than for, judicial intervention. OSHA received substantial criticism for issuing that rule too quickly, thereby depriving interested parties an adequate opportunity to comment, and the Agency adequate time to evaluate the issues. Complaints about OSHA's rush-to-judgment were also a major factor in Congress's disapproval of the ergonomics rule under the Congressional Review Act. See e.g., 147 Cong. Rec. S1839 (March 6, 2001) (remarks of Senator Enzi).

**12/14/2001 - OSHA Withdraws Indoor Air Proposal With Support Of Anti-Smoking Groups -- Will focus on the WTC Project Staten Island Recovery Operation**

OSHA News Release - Table of Contents OSHA News Release - Table of Contents  
Trade News Release Banner Image

TRADE NEWS RELEASE: USDL 01-476  
Dec. 14, 2001  
Contact: Stuart Roy  
Phone: (202) 693-4650

OSHA Withdraws Indoor Air Proposal With Support Of Anti-Smoking Groups

WASHINGTON -- Assistant Secretary for Occupational Safety and Health John Henshaw announced that OSHA is withdrawing an inactive indoor air quality regulation proposed in 1994. The decision was reached with the support of major anti-smoking public health groups including the American Heart Association, the American Cancer Society, the American Lung Association, Americans for Nonsmokers' Rights and the Campaign for Tobacco-Free Kids. (Underline added.)

"Most of the activity on workplace smoking restrictions is now taking place at the state and local level," Henshaw said. "Today's action takes the positive step of setting aside what had become a contentious and unproductive effort. Of course, this action does not preclude future agency action if the need arises."

According to the American Lung Association, there has been a 50 percent increase in workplaces that have a smoke-free policy since 1994. Today, nearly 70 percent of employees work in businesses that have instituted smoke-free workplace policies.

"The urgency for federal action that existed when the rule making began has been changed by the actions of local communities, private employers and the states," Matthew Myers, president of the Campaign for Tobacco-Free Kids said in a letter to OSHA.

For more information, please go to <http://www.osha.gov>.

###

## 02/24/2003 - Reiteration of Existing OSHA Policy on Indoor Air Quality: Office Temperature/Humidity and Environmental Tobacco Smoke.

Standard Interpretations - Table of Contents Standard Interpretations - Table of Contents

• Standard Number: 1910.1000

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

February 24, 2003

MEMORANDUM FOR: REGIONAL ADMINISTRATORS STATE PLAN DESIGNEES

THROUGH: R. DAVIS LAYNE  
DEPUTY ASSISTANT SECRETARY

FROM: RICHARD E. FAIRFAX, DIRECTOR  
DIRECTORATE OF ENFORCEMENT PROGRAMS

SUBJECT: OSHA Policy on Indoor Air Quality: Office Temperature/Humidity and Environmental Tobacco Smoke

On December 17, 2001 OSHA withdrew its Indoor Air Quality (IAQ) proposal and terminated the rulemaking proceeding (66 FR 64946). However, the Agency still receives public inquiries about IAQ, primarily office temperature/humidity and smoking in the workplace. For that reason, we have summarized the Agency's position and guidance on these topics. We are including language in the form of letters you can utilize when responding to complainants on these topics. (Underline added.)

Office Temperature/Humidity

*(Text for This Section Redacted)*

Environmental Tobacco Smoke (ETS)

Because the organic material in tobacco doesn't burn completely, cigarette smoke contains more than 4,700 chemical compounds. Although OSHA has no regulation that addresses tobacco smoke as a whole, 29 CFR 1910.1000 Air contaminants, limits employee exposure to several of the main chemical components found in tobacco smoke. In normal situations, exposures would not exceed these permissible exposure limits (PELs), and, as a matter of prosecutorial discretion, OSHA will not apply the General Duty Clause to ETS. (Underline added.)

For further information to offer to employers/employees as guidance, you may wish to review a document published by the U.S. Environmental Protection Agency (EPA) about the health effects from environmental tobacco smoke, A Fact Sheet: Respiratory Health Effects of Passive Smoking. Additional information on indoor air quality in general can be found on the Indoor Air Quality Technical Links page on the OSHA website.

We hope you find this information helpful. If you have any questions, please feel free to contact the Office of Health Enforcement at (202) 693-2190

Attachments

## **ASH Nixes OSHA Suit To Prevent Harm to Movement [12/14-6]**

Action on Smoking and Health (ASH) has agreed to dismiss its law suit against the Occupational Safety and Health Administration [OSHA] to avoid serious harm to the nonsmokers' rights movement from an adverse action OSHA had threatened to take if forced by the law suit to do so.

In its court filing, OSHA had argued that it might not be feasible to ban smoking in restaurants, and that developing some hypothetical measurement of tobacco smoke pollution might be a better remedy than prohibiting smoking.

However, in its court response, ASH noted that smoking bans in California, Maryland, and many other jurisdictions clearly prove that smoking bans are feasible, and that there is no evidence that any level of tobacco smoke however measured would ever meet OSHA's regulatory mandate to prevent worker deaths.

Nevertheless, it became clear that OSHA would use this (and perhaps even stronger) language in a formal OSHA decision if ASH continued to press its law suit, and that such language could seriously hurt efforts to pass nonsmokers' rights legislation at the state and local level, and to get relief for nonsmokers in court suits and administrative proceedings

Another major threat was that, if the agency were forced by ASH's law suit to promulgate a rule regulating smoking in the workplace, OSHA -- at least under this administration -- would be likely to pass a very weak one. This weak rule in turn could pre-empt future and possibly even existing nonsmokers' rights law -- a risk no one is willing to take.

ASH therefore reluctantly agreed to dismiss the law suit after consultation with other leaders in the nonsmokers' rights movement.

As a result of ASH's dismissal of its law suit, OSHA will now withdraw its rulemaking proceeding related to workplace smoking, but will do so without using any of the damaging language which they had threatened to include. Indeed, the notice of dismissal, which is scheduled to appear shortly in the Federal Register, will note three things of importance to ASH and to the nonsmokers' rights movement:

1. that a great many state and local laws have already curtailed smoking in workplaces and public places;
2. that OSHA's decision now does not foreclose further action in this issue at some future time; AND
3. that evidence supporting the non-ETS portion of the proposal is sparse - and, therefore, by implication, that the evidence supporting the ETS portion of the proposal was not sparse.

ASH Executive Director John Banzhaf also noted that the decision does not preclude Action on Smoking and Health from taking other actions involving federal and/or state OSHA to protect nonsmokers in smoky workplaces. He noted that ASH had been a major force in helping to persuade Maryland's OSHA [MOSH] to ban smoking in workplaces; a major victory considering that Maryland is a major tobacco growing state, and one which might be fruitful if pursued in other states.

He also noted that ASH continues to supply nonsmokers with forms under which they can complain about workplace smoking -- a project which may become more effective once the rulemaking proceeding is dismissed and can no longer be used as an excuse for OSHA to refuse to act on individual complaints.

(Underlines Added.)

Below is a press release which ASH has issued, followed by the Withdrawal of Proposal by OSHA which will be published shortly in the Federal Register.

ASH's PRESS RELEASE:

LAW SUIT OVER OSHA'S WORKPLACE SMOKING RULE DISMISSED  
ACTION FORESTALLS HARM TO MOVEMENT, AND MAY INCREASE NONSMOKER PROTECTION

A law suit seeking to force the Occupational Safety and Health Administration (OSHA) to take some final action on its long-delayed workplace smoking proceeding has been dismissed as moot since the agency is terminating the proceeding entirely as a result of the law suit.

The plaintiff, Action on Smoking and Health (ASH), says the suit's dismissal will avoid forcing OSHA to take the action it had suggested in its court filings which could have been very harmful to the nonsmokers' rights movement.

In those papers OSHA suggested that it might not be feasible to ban smoking in restaurants, and that developing some hypothetical measurement of tobacco smoke pollution might be a better remedy than prohibiting smoking.

However, in its court response ASH noted that smoking bans in California, Maryland, and many other jurisdictions clearly prove that smoking bans are feasible, and that there is no evidence that any level of tobacco smoke would meet OSHA's regulatory mandate to prevent worker deaths.

The U.S. Court of Appeals apparently accepted ASH's arguments. Rather than ruling in OSHA's favor as the agency had requested, the court ordered OSHA to submit a timetable for taking action on the proceeding, thereby prompting OSHA to terminate the rulemaking proceeding effective next week.

"Thus, even though we are confident that we could have persuaded the court to overrule OSHA if it sought to rely upon those nonsensical arguments in terminating its rulemaking proceeding, we are happy that OSHA is not going to be pressured into having to take such a position in a formal document," says law professor John Banzhaf, ASH's Executive Director. OSHA also could have issued a very weak rule, and one which would have preempted very strong existing and future state and local laws prohibiting smoking, he said.

"We might now be even more successful in persuading states and localities to finally ban smoking on their own once they no longer have the OSHA workplace smoking rulemaking to hide behind," Banzhaf predicted.

(Underlines Added)

## Robert Wood Johnson Foundation

### Active Grants

#### Public Health Project:

#### Colorado Youth Access Project Grant Detail:

\$102,409, (awarded on Nov 30, 2006, starting Dec 1, 2006 ending Dec 31, 2007) ID# 59322  
Grantee:

#### Colorado Tobacco Education and Prevention Alliance

1900 Grant Street, #1120

Denver, CO 80203-4301

(303) 756-6114

#### Summary:

The Foundation's initiative, Tobacco Policy Change: A Collaborative for Healthier Communities and States, was designed to provide resources and technical assistance for community, regional, and national organizations and tribal groups interested in advocating for effective tobacco prevention and cessation policy initiatives. The Colorado Tobacco Education and Prevention Alliance (CTEPA) will prevent youth access to tobacco products by supporting efforts to require all tobacco products be sold from behind the counter and that all tobacco retailers obtain a license to sell tobacco products. CTEPA will continue to provide overall guidance and coordination of the project, and provide direct services to the targeted districts and communities. Groups representing Latino communities, such as Padres Unidos, Groundwork Denver and the Latino/a Research and Policy Center, have become very active in smoke-free education and policy efforts. Padres Unidos will educate and mobilize the Latino community to support retailer licensing and products placement policies. This project contributes substantially to building a sustainable base for tobacco control in Colorado by involving new partners that have not traditionally worked in tobacco control.

#### Contact Information:

Kimberly Hills (Project Director)

khills@ctepa.org

Phone: (303) 756-6163

<http://www.rwjf.org/programareas/grant.jsp?id=59322&pid=1141&gsa=1>

(Underline and URL added.)

## Robert Wood Johnson Foundation

States Rake In Big Tobacco Revenues, But Most Spend Little on Prevention

Program Areas

Public Health

Published: Dec 6, 2006

Between tobacco taxes and proceeds from the 1998 tobacco settlement, the states stand to collect a record \$21.7 billion in tobacco-generated revenue this year. All of which would be very good news indeed if a substantial portion of the revenues were to be applied to tobacco prevention and cessation efforts.

That's not the case, according to "A Broken Promise to Our Children: The 1998 State Tobacco Settlement Eight Years Later," a report released by the Foundation-supported Campaign for Tobacco-Free Kids, along with the American Heart Association, American Cancer Society and American Lung Association. In fact, the states don't even come close to spending the minimal amount of \$1.6 billion recommended by the U.S. Centers for Disease Control and Prevention (CDC). Instead, they're expected to spend just 37 percent of that amount—an anemic \$597.5 million.

The report finds that only three states—Maine, Delaware and Colorado—currently fund tobacco prevention programs at minimum levels recommended by the U.S. Centers for Disease Control and Prevention (CDC). Five states in particular—Michigan, Mississippi, Missouri, New Hampshire and Tennessee—spend no significant state funds on tobacco prevention at all.

Learn more about the report findings:

- \*  
Download full text of the report.
- \*  
View an RWJF Broadcast Health Series Video Webcast.
- \* Use interactive map to track your state.

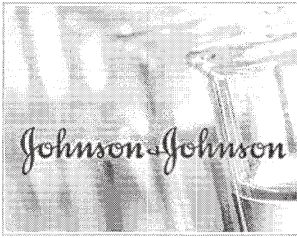
<http://www.rwjf.org/newsroom/feature.jsp?id=21103&typeid=151>

(Underline and URL Added.)



NOTE: The reported cost to Johnson & Johnson to acquire ALZA Corp. was \$10.5 billion.

## 2001 Timeline and History



**ALZA Becomes a Member of the Johnson & Johnson Family of Companies**

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Robert Wood Johnson Foundation Annual Report 2000

### "President's Message: Grantee Testimonials"

Matthew Myers, President National Center for Tobacco-Free Kids  
[www.rwjf.org/files/publications/annual/2000/president-grantee-1.html](http://www.rwjf.org/files/publications/annual/2000/president-grantee-1.html)

"The Center's use of social marketing and paid advertising have broken new ground for the movement."

Robert Wood Johnson Foundation 2003 Anthology, Chapter 5

### "The Center for Tobacco-Free Kids and the Tobacco-Settlement Negotiations."

[www.rwjf.org/files/publications/books/2003/chapter\\_05.html](http://www.rwjf.org/files/publications/books/2003/chapter_05.html)

Page 2: "In 1991 the foundation awarded a grant to Stop Teen-age Addictions to Tobacco. Two years later, it began funding the SmokeLess States® National Tobacco Policy Initiative. . . . Among other techniques, the program seeks to increase the excise tax on cigarettes and the number of places having a smoke-free environment." (Underline added.)

#### TOP INSTITUTIONAL HOLDERS

Holder	Shares	% Out	Value*	Reported
STATE STREET CORPORATION	125,443,462	4.33	\$7,729,826,128	30-Jun-07
Barclays Global Investors UK Holdings Ltd	112,815,684	3.90	\$6,951,702,448	30-Jun-07
VANGUARD GROUP, INC. (THE)	81,739,809	2.82	\$5,036,807,030	30-Jun-07
FMR CORPORATION (FIDELITY MANAGEMENT & RESEARCH CORP)	76,573,444	2.65	\$4,718,455,619	30-Jun-07
BERKSHIRE HATHAWAY, INC	53,145,848	1.84	\$3,274,847,153	30-Jun-07
<b>JOHNSON, ROBERT WOOD FOUNDATION</b>	<b>51,683,690</b>	<b>1.79</b>	<b>\$3,184,748,977</b>	<b>30-Jun-07</b>
Mellon Financial Corporation	41,570,774	1.44	\$2,561,591,093	30-Jun-07

Source Yahoo Finance: <http://finance.yahoo.com/q/mh?s=JNJ>

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 TAG AREA**