

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. fax	To: Mac Reed (1 page)	07/22/1997	P3/b(3)
001b. letter	To: Mac Reed [CIA Act] [partial] (1 page)	07/22/1997	P3/b(3)
002. memo	Micahel Cushing to Elizabeth Drye re: Union Briefing [partial] (2 pages)	07/25/1997	b(6)
003. memo	Micahel Cushing to Elizabeth Drye re: Union Briefing [partial] (2 pages)	07/25/1997	b(6)
004a. fax	To: Mac Reed (1 page)	07/22/1997	P3/b(3)
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005b. letter	To Mac Reed [CIA Act] [partial] (1 page)	07/22/1997	P3/b(3)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 13021

FOLDER TITLE:

EO -Agency Comments

2014-0046-S

rc1421

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]
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL'S OFFICE
FAX TRANSMITTAL SHEET

TO: Elizabeth Dwyer

AGENCY: _____

TELEPHONE: _____

FAX NUMBER: 67028

FROM:

TELEPHONE NUMBER:

☐ ROZ RETTMAN

202-395-4778

☒ STEVE AITKEN

202-395-4728 ←

☐ MAC REED

202-395-3563

☐ BESS WEAVER

202-395-3556

☐ CARLA STONE

202-395-9177

FAX NUMBER: (202) 395-7294

DATE: 8/8/97

NO. OF PAGES (INCLUDING COVER): 4

COMMENTS:

Here are the W.H. Clark's
office edits.

Only non-trivial change is
at end of §6, but no
substantive change is made
(folds two sentences into
one)

EXECUTIVE ORDER

PROTECTING FEDERAL EMPLOYEES AND THE PUBLIC FROM
EXPOSURE TO TOBACCO SMOKE IN THE FEDERAL WORKPLACE

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to protect Federal Government employees and members of the public from exposure to tobacco smoke in the federal workplace, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the Executive branch to establish a smoke-free environment for federal employees and members of the public visiting or using federal facilities.

The smoking of tobacco products is thus prohibited in all interior space owned, rented, or leased by the Executive branch of the Federal Government, and all outdoor areas under Executive branch control at entrances of federal buildings, at air intake ducts, or within courtyards.

Sec. 2. Exceptions. The general policy established by this order is subject to the following exceptions: ?

- (a) The order does not apply in designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area. Agency officials shall not require workers to enter such areas during business hours while smoking is ongoing.
- (b) The order does not extend to any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased, or rented by the Federal Government.
- (c) The order does not extend to federally owned buildings leased, rented, or

otherwise provided in their entirety to nonfederal parties.

- (d) The order does not extend to places of employment in the private sector or in other nonfederal governmental units that serve as the permanent or intermittent duty station of one or more ~~F~~ederal employees.
- (e) The head of any agency may establish limited and narrow exceptions that are necessary to accomplish agency missions. Such exception shall be in writing.

flert's
edit
8-7-97

approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

Sec. 3. Smoking Cessation Programs. The heads of agencies are encouraged to use existing authority to establish programs designed to help employees stop smoking.

Sec. 4. Responsibility for Implementation. The heads of agencies are responsible for implementing and ensuring compliance with the provisions of this order. "Agency" as used in this order means an Executive agency, as defined in 5 U.S.C. 105, and includes any employing unit or authority of the Federal Government, other than those of the Legislative and Judicial branches. Independent agencies are encouraged to comply with the provisions of this order.

Sec. 5. Phase-In of Implementation. Implementation of the policy set forth in this order shall be achieved no later than ^{the date} ~~one year after issuance~~ of this order. This ¹ ~~one~~ year phase-in period is designed to establish a fixed but reasonable time for implementing this policy. Agency heads are directed during this period to inform all employees and visitors to Executive branch facilities about the requirements of this order, inform their employees of the health risks of exposure to environmental tobacco smoke, and undertake related activities as necessary.

Sec. 6. Consistency with Other Laws. The provisions of this order shall be implemented consistent with applicable law, including the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 ^(italics) et seq.) and the National Labor Relations Act (29 U.S.C. 151 ^(italics) et seq.) Provisions of existing collective bargaining agreements shall be honored and agencies shall consult with employee labor representatives about the implementation of this order. Nothing herein shall be construed to impair or alter the powers and duties of Federal agencies established under law. Nothing herein shall be construed to replace any agency policy currently in effect, if such policy is legally established, in writing, and consistent with the terms of this order. Agencies ~~are~~ ^{shall} ~~not~~

required to review their current policy to confirm that agency policy comports with this order, *and*
policy
Agency policies found not in compliance shall be revised to comply with the terms of this order. ~~_____~~

Sec. 7. Cause of Action. This order does not create any right to administrative or judicial

review, or any other right or benefit, substantive or procedural, enforceable by a party against the

United States, its agencies or instrumentalities, its officers or employees, or any other person or

to let's

affect in any way the liability of the ~~Executive~~ branch under the Federal Tort Claims Act.

Sec. 8. Construction. Nothing in this order shall limit an agency head from establishing
more protective policies on smoking in the ~~federal~~ workplace for employees and members of the
public visiting or using ~~federal~~ facilities.

THE WHITE HOUSE,



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MEMORANDUM

AUG 12 1997

To: Hima Vatti or Elizabeth Drye
White House, Domestic Policy Council

From: Anne Shields
Chief of Staff

Subject: Proposed Executive Order on Smoking in the Federal Workplace

We have reviewed the proposed Executive Order, and we have discussed it with representatives of the Office of Acquisition and Property Management in the Office of the Secretary, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management. The consensus is that the proposed Executive Order will have minimal impact on the Department. The Office of Acquisition and Property Management has been working for some time on the development of a Secretarial Order to prohibit smoking in Interior-controlled spaces, and our bureaus presently either ban smoking within their buildings altogether or they strongly discourage smoking.

A number of our Collective Bargaining Agreements with unions that hold exclusive recognitions with us mention smoking, and those agreements could not be changed during their term without the voluntary agreement of the unions unless there is a statutory requirement. The Executive Order also specifies that smoking can be permitted within a building only where "... smoking areas which are enclosed and exhausted directly to the outside and away from air intake ducts and are maintained under negative pressure. . . ." We understand that compliance with this requirement, should we need to maintain indoor smoking areas, would necessitate the purchase of new equipment.

We believe the positive benefits far outweigh costs, and we are in favor of the issuance of the Executive Order.

**DEPARTMENT OF DEFENSE POLICY
FOR A SMOKE FREE WORK PLACE**

during the Clinton Administration

The Department of Defense has established comprehensive programs that control worker exposure to Environmental Tobacco Smoke (ETS). These programs seek to eliminate smoking in the workplace; provide smoking cessation programs at all levels of command; place program emphasis on primary prevention practices that motivate individuals not to start smoking as well as to quit smoking; and provide information on the health risks posed by involuntary inhalation of ETS. Department of Defense Instruction 1010.15, "Smoke-Free Workplace" was issued on March 7, 1994 by then Under Secretary of Defense for Acquisition and Technology John Deutch. The Instruction established policy, assigned responsibilities, and prescribed procedures for a smoke-free workplace. The policy is applicable to all DoD components; all DoD military and civilian personnel; and all visitors, contractors and personnel of other agencies and businesses that operate within or visit DoD workplaces. Under the DoD Instruction, facilities such as bachelor and family housing and clubs are not considered workplaces.

Amplifying directives of the Military Departments include Army Regulation 600-63, "Army Health Promotion," issued by Secretary of the Army Togo West on May 28, 1995; ALNAV Message 131/93, "Smoking Policy for Department of the Navy Controlled Spaces," issued by Secretary of the Navy John H. Dalton on October 21, 1993; and Air Force Instruction 40-102, "Tobacco Use in the Air Force," issued by the Surgeon General of the Air Force on June 3, 1994. The Military Department directives all include policies covering bachelor and family housing and recreation facilities. These directives provide that installation commanders can authorize smoking in housing and at recreational activities subject to certain requirements. For example, Army regulations provide that smoking is permitted in individually assigned family and unaccompanied personnel living quarters (as long as the quarters do not share a common heating/ventilation/air conditioning (HVAC) system or, in quarters with common HVAC systems, air quality surveys establish that air quality protects non-smokers from ETS). Army installation commanders must determine whether or not to allow designated smoking areas within recreational areas such as clubs and bowling centers.

The Department of Defense is currently in substantial or full compliance with the terms of the proposed Executive Order. The Department will review its current directives and regulations and include specific rules pertaining to recreational areas in Department wide policy to ensure compliance with the Executive Order. Mission needs relevant to the morale of service members serving around the world will be addressed in a context that conforms to the extent practical DoD facility smoking restrictions with those of other similar federal facilities.



DEPARTMENT OF HEALTH AND HUMAN SERVICES
U.S. PUBLIC HEALTH SERVICE
OFFICE OF PUBLIC HEALTH AND SCIENCE
200 INDEPENDENCE AVENUE, S.W.
ROOM 719-H

WASHINGTON, D.C. 20201

Phone: (202) 260-2549

Fax: (202) 260-1570

DATE:

7-29-97

NAME:

Elizabeth Dye

FAX NUMBER:

456-5581

FROM:

Ripley Forbes

Senior Advisor to the Assistant Secretary for Health

Total Number of Pages (Including Cover):

2

Additional Comments:

DoD health folks should oppose
"recreation" exceptions for indoor smoking,

FH

Commentary on Veterans and Smoking

Stephen C. Joseph, MD MPH

Drs. McKinney et al.¹ have described a disturbing, yet not entirely surprising, situation among the nation's military veterans—namely, that the likelihood of ever having smoked cigarettes and the likelihood of being a current smoker are higher among veterans than among nonveterans. Unfortunately, smoking has been a commonly accepted behavior among military personnel for many years. Our past military culture condoned and even encouraged this harmful behavior through subsidized tobacco sales, free cigarette packs in field rations, and the “smoke ‘em if you got ‘em” philosophy.

However, current military health care policies reflect a new attitude and a new awareness of the hazards and

costs associated with the use of tobacco products. The Inspector General of the Department of Defense (DoD) recently reported that health care and lost productivity costs attributable to tobacco use by the military were \$930 million in Fiscal Year 1995.² This is an un-

use of tobacco products and, where indicated, recommend appropriate cessation activities.

As the authors correctly point out, the pricing policies of the DoD retail system encourage the sale of tobacco products and provide beneficiaries with significant tobacco-related savings compared to the commercial retail market. However, a recent pricing change in military commissaries no longer allows tobacco products to be sold at cost. While still available through the commissaries, tobacco products are now being sold at the higher prices found in military exchanges—an increase of approximately 25% to 30%. This change is indicative of DoD's commitment to discouraging the use of tobacco products by all its members.

The good news is that we are making progress. The percentage of smokers in the military has declined steadily, from 51% in 1980 to 33% in 1995. Heavy smoking, defined as one or more packs of cigarettes per day, has declined in a similar manner: from 34% in 1980 to 15% in 1995. As encouraging as these trends are, we know we still have a long way to go to meet our goal of no more than 20% smokers by the year 2000. Because DoD's current policies encourage healthy lifestyle choices by discouraging harmful behaviors such as smoking, the veterans of the future will be healthier and less likely to suffer from smoking-related diseases.

The Defense Department Responds

necessary and unacceptable waste of taxpayer dollars—to say nothing of the cost of human suffering—and we now have an increasing array of guidelines and procedures in place to drive these losses down.

It is DoD policy to provide personnel with effective tobacco cessation programs and to protect all personnel from the health hazards caused by exposure to tobacco smoke. To this end, we have banned smoking in all DoD workplaces. Installation commanders may designate smoking areas outdoors that are reasonably accessible to personnel and that provide a measure of protection from the elements.

Tobacco cessation programs should be effective and encouraged by commanders. These programs are designed not only to motivate current users to quit but also to encourage DoD personnel not to start using tobacco. Anti-tobacco education messages are routinely made available to all personnel. High risk personnel, such as those with chronic respiratory and cardiac conditions, receive special medical counseling about the risks of smoking. Physicians and other health care providers are expected to evaluate all of their patients for

Dr. Joseph is the Assistant Secretary of Defense for Health Affairs.

Address correspondence to Dr. Joseph, Assistant Secretary of Defense, 1200 Defense Pentagon, Washington DC 20301-1200; tel. 703-697-2111; fax 703-614-3537.

References

1. McKinney WP, McIntire DD, Carmody TJ, Joseph A. Comparing the smoking behavior of veterans and nonveterans. *Public Health Rep* 1997;112:212-7.
2. Office of the Inspector General, Department of Defense (US). Economic impact of the use of tobacco in DoD. Arlington (VA): DoD; 1996 Dec 31. Report No. 97-060.

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John Mazurki —

- General Council
- Fore management

— recreation areas —

Mission needs —

bn Casotti — DoD views. —

where you work
sleep
eat
get a beer
bowling

[barracks]
[operational deployment]
DoD — workplace —
[MWR]

residences

Asst. Secy

Frank Rush

→ "moral, welfare, and recreation activities"

want them to go to our facilities ~~and~~ or go off base.

- ventilation adequate / people will not be exposed to second hand smoke.

- standard rule will apply

examples —

Lodges / Hotels —

Indoor Facilities, under Nat Park Service — causes the war this worded.

- Minimal change —
main change would be in residences

Asst Dir External Affairs
Destry
Garris

EO

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF LEGAL COUNSEL
WASHINGTON, D.C. 20530**

FACSIMILE TRANSMISSION SHEET

DATE: JULY 28, 1997

FROM:  ROSEMARY HART
SENIOR COUNSEL

OFFICE PHONE: 202/514-2027

TO: MAC REED
OMB

OFFICE PHONE: 395-3563

FACSIMILE NUMBER: 395-7294

NUMBER OF PAGES: 5 SHEETS (PLUS COVER SHEET)

MAC -- HERE ARE OUR COMMENTS ON THE SMOKING EO. WE ARE STILL DISCUSSING THE EXCEPTION PROVISION (§2(E)), WHICH MAY NOT WORK WELL FOR OUR LAW ENFORCEMENT PURPOSES. WE ARE SPECIFICALLY DISCUSSING WHETHER THE PROHIBITION ON DELEGATION IS FEASIBLE. I WILL CALL YOU TOMORROW WITH OUR POSITION.

ANY QUESTIONS, PLEASE CONTACT OUR ADMINISTRATIVE OFFICE ON 514-2067
OFFICE OF LEGAL COUNSEL FACSIMILE MACHINE NUMBER - 514-0563

URKAT

7-25-97

4:30 p.m.

EXECUTIVE ORDER

PROTECTING FEDERAL EMPLOYEES AND THE PUBLIC FROM
EXPOSURE TO TOBACCO SMOKE IN THE FEDERAL WORKPLACE

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to protect Federal Government employees and members of the public from exposure to tobacco smoke in the federal workplace, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the Executive Branch to establish a smoke-free environment for federal employees and members of the public visiting or using federal facilities.

The smoking of tobacco products is thus prohibited in all interior space owned, rented or leased by the Executive Branch of the Federal Government, and all outdoor areas under Executive Branch control at entrances of Federal buildings, at air intake ducts, or within courtyards.

Sec. 2. Exceptions. The general policy established by this order is subject to the following exceptions:

- (a) The order does not apply in designated smoking areas ^{that} which are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area. Agency officials shall not require workers to enter such areas during business hours while smoking is ongoing.
- (b) The order does not extend to any enclosed residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased, or rented by the federal government.
- (c) The order does not extend to federally-owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.

- (d) The order does not extend to places of employment in the private sector or in other nonfederal governmental units that serve as the permanent or intermittent duty station of one or more federal employees.
- (e) The head of any agency may establish limited and narrow exceptions that are necessary to accomplish agency missions. Such exception shall be in writing.

approved by the agency head and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to approve such exceptions may not be delegated. ✓

Sec. 3. Smoking Cessation Programs. The heads of agencies are encouraged to establish programs designed to help employees stop smoking. ✓ L.C.

Sec. 4. Responsibility for Implementation of Order. The heads of agencies are responsible for implementing and ensuring compliance with the provisions of this order. ✓ L.C.

"Agency" as used in this order means an Executive Agency, as defined in 5 U.S.C. 105, and include any employing unit or authority of the Federal Government, other than those of the Legislative and Judicial Branches. ✓ L.C.

Sec. 5. Phase-In of Implementation of Order. Implementation of the policy set forth in this order shall be achieved no later than one year after issuance of this order. This one year phase-in is designed to establish a fixed but reasonable time for implementing this policy. Agency heads are directed during this period to inform all employees and visitors to Executive Branch facilities about the requirements of this order and the health risks of exposure to environmental tobacco smoke, and to undertake related activities as necessary. All heads of agencies should consult with employee labor representatives about the implementation of this order. ✓ L.C.

Sec. 6. Consistency with Other Law. The provisions of this order shall be implemented consistent with applicable law, including the Federal Service Labor-Management Relations Act, 5 U.S.C. 7101 ^{and} at seq. the National Labor Relations Act, 29 U.S.C. 151 et seq. [Provisions of existing collective bargaining agreements shall be honored.] Nothing herein shall be construed to impair or alter the powers and duties of federal agencies established under law. Nothing herein shall be construed to replace any agency policy currently in effect, if such policy is legally established, in writing, and consistent with the terms of this order. Agencies are ✓

required to review their current policy to confirm that agency policy comports with this order.

Agency policies found not in compliance shall be revised to comply with the terms of this order.

Sec. 7. Cause of Action. This order does not create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable by a party

against the United States, its agencies or instrumentalities, its officers or employees, or any other person, or to affect in any way the liability of the Executive branch under the Federal Tort Claims Act.

Sec. 8. Construction. Nothing in this order shall limit an agency head from establishing more protective policies (on smoking in the federal workplace) for employees and members of the public visiting or using federal facilities.

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Office of General Counsel

July 22, 1997

Mr. Mac Reed, Esquire
Assistant General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Reed:

As we discussed yesterday morning, the Central Intelligence Agency concurs with the proposed Executive Order on Smoking in the Federal Workplace as currently drafted.

We also would support your suggested change to section 2(b) of the proposed Order, replacing the 50 foot standard with one that permitted agencies to establish reasonable boundaries for nonsmoking areas. In addition, we suggest deleting the prohibition on the delegation of authority to make exceptions to the Order set forth at section 2(f). In our view, these types of decisions could be made by appropriate high level officials within federal agencies without requiring the personal attention of agency heads.

Thank you for including us in the review of this proposed Order and please contact me at (b)(3) if I may be of any further assistance to you in this matter.

Sincerely,

(b)(3)

C0016J



United States
Office of
Personnel
Management

FAX
TRANSMITTAL
SHEET

OFFICE OF THE DIRECTOR

Number of Pages

73

Please
Deliver
To:

Name:	ELIZABETH DRYE	456-5581
Office:	DPC	Room:
Telephone:		

From:

Name:	LEIGH SHEIN	
Office:	Deputy Chief of Staff and Director of Interagency Affairs	Room: 5315
Telephone:	202-606-1000	FAX Number: 202-606-2183

Remarks



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

July 22, 1997

**MEMORANDUM FOR ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL**

FROM: *Janice R. Lachance*
**JANICE R. LACHANCE
CHIEF OF STAFF**

SUBJECT: Proposed Executive Order on Smoking

To follow-up on yesterday's briefing with the federal labor unions, here is language responding to the three issues raised:

1. The following language requires that provisions of existing collective bargaining agreements remain in effect for the remainder of their terms. It serves the same purpose, in a more explicit fashion, as the language we sent previously, and could be added to Section 5 of the draft.

Provisions of collective bargaining agreements inconsistent with this Executive Order remain in effect for the term of the agreement by operation of 5 U.S.C. §7116(a)(7).

2. The following language provides that agency head discretion concerning implementation of the Executive Order should be exercised in accordance with collective bargaining obligations, and could be added to Section 4 of the draft.

In implementing this Executive Order, agency officials should consult with their labor relations officials to determine to what extent, if any, there is a duty to give notice and, upon request, bargain concerning the impact and implementation of this order. Agency heads shall exercise discretion consistent with their bargaining obligations.

3. The following language encourages agency heads to establish smoking cessation programs.

Memorandum for Elizabeth Drye
July 22, 1997
Page 2

programs designed to help employees stop smoking. Programs designed to help employees stop smoking are in the best health interests of those Federal employees who smoke and those who do not smoke. These programs may also contribute to improved organizational performance and productivity. However, before authorizing payment for a smoking cessation program, agencies are encouraged to carefully review the nature of the program and the credentials of the organization offering it.

From our perspective, although yesterday's briefing covered the issues in the proposed Executive Order of most interest to the unions informing them more specifically about the exceptions would increase their comfort. If you approve, we would be happy to do so, without discussing the draft or any specific language. If more information would be helpful, please feel free to call Michael Cushing at (202) 606-2714.



**United States
Office of
Personnel
Management**

**FAX
TRANSMITTAL
SHEET**

OFFICE OF THE DIRECTOR

Number of Pages

7

**Please
Deliver
To:**

Name:	ELIZABETH DRYE	456-5581
Office:	DPC	Room:
Telephone:		

From:

Name:	LEIGH SHEIN	
Office:	Deputy Chief of Staff and Director of Interagency Affairs	Room: 5315
Telephone:	202-606-1000	FAX Number: 202-606-2183

Remarks



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

JUL 18 1997

MEMORANDUM FOR ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL

FROM:


JANICE R. LACHANCE
CHIEF OF STAFF

SUBJECT:

Comments on Proposed Executive Order

We have reviewed the proposed Executive order entitled "Smoking in the Federal Workplace" and offer the following comments.

1. In our opinion, Executive orders are really Presidential regulations and should be used to provide specific direction pursuant to a specific law or to extend requirements beyond the Federal establishment. There is no need for the President to use this form to direct his subordinate officials. Therefore, a Presidential Memorandum to heads of departments and agencies seems to be sufficient and more appropriate.
2. To clarify possible ambiguity about the relationship between this proposed Executive order and the existing Federal Service Labor-Management Relations Statute, we recommend deleting the reference to the statute in Section 5 and adding the following language:

"Provisions of existing collective bargaining agreements shall be honored."

3. We also recommend the standard provision creating no enforceable rights be added (e.g., see E.O. 12871).
4. As you are aware, smoking policy is now a subject for collective bargaining and the effect of an Executive order banning smoking is to make this issue non-negotiable for future contracts (although it would not change smoking policies during the life of current contracts). As a general matter, the public employee unions have taken the position that smoking policy is one of the workplace issues that should be collectively bargained.

We have contacted all major Federal employee unions regarding this proposed Executive order and, given their reaction, feel that a briefing at the White House might be useful to bring them into the process. We would be glad to arrange this event.

5. Comptroller General decisions have authorized the use of appropriated funds to pay the costs incurred by employees participating in agency-authorized smoking cessation programs. We suggest mentioning this in the Executive order. Suggested language:

"Heads of agencies are reminded that agencies may establish programs designed to help employees stop smoking. However, before authorizing payment for a smoking cessation program, agencies are encouraged to carefully review the nature of the program and the credentials of the organization offering it."

6. Several reviewers expressed confusion over the definition of "courtyard," Section 2, (b). Does it pertain to enclosed courtyards only? We suggest incorporating clarifying language.

If you need any additional information, please contact Leigh Shein, Deputy Chief of Staff, at (202) 606-1000.

cc:

Ann McGuire

Special Assistant to the President
for Cabinet Affairs



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600



July 22, 1997

MEMORANDUM FOR MAC REED, OFFICE OF GENERAL COUNSEL, OFFICE OF
MANAGEMENT AND BUDGET

FROM: SAM BRICK, LEGISLATIVE REFERENCE SERVICE,
DEPARTMENT OF DEFENSE

SUBJECT: Proposed Smoking Executive Order

The Department of Defense has further examined the proposed order and withdraws its comment of last Friday evening, 18 July. Instead, in conjunction with discussions with you on this issue, we suggest a broad authority to the head of each Federal agency to authorize exceptions that may be necessary to support their mission. The exception should provide the Secretary of Defense authority to except circumstances unique to military life such as smoking in a bar area of a military club, in a designated section of a naval ship at sea, or bowling alleys. Specifically, the following language is offered in lieu of that in paragraph (f) of the proposed order:

"(f) The head of any agency may establish exceptions as are necessary and appropriate for the accomplishment of the agency's mission."





DEPARTMENT OF DEFENSE
LEGISLATIVE REFERENCE SERVICE

DATE/TIME:

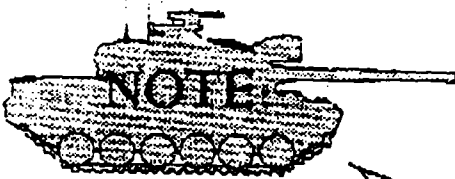
TO:

MAC REED OMB GC

FROM:

Sam Brick DOD

Pages to follow: 1



ON SMOKEING EO
REQUEST EXCEPTION AS
FOLLOWS.

TX



THE PENTAGON, ROOM 3D282
WASHINGTON, D.C. 20301-1600
TELEPHONE: (703) 697-1305
FAX: (703) 614-8391
E-MAIL: DODLRS@OSDGC.OSD.MIL

Workplace Smoking Executive Order

Recommend including an exception as follows:

"The Secretary of Defense may establish exceptions to allow smoking in the bar areas of military clubs".

Reasons for the exception are as follows:

Many club patrons will not use the on-base clubs if they are not able to smoke in the bar areas. They will instead go to civilian bars off-base. The result will be less control over the service members drinking since they are off the base. The volume of drinking, and potentially disruptive behavior can be better monitored and controlled on the military base. In addition, if the service members begin to drive in larger numbers to civilian clubs to drink alcoholic beverages, we can expect the result will be increased drunk driving incidents and accidents.

Patrons of military clubs expect to be able to smoke in the bar areas of their clubs just like their civilian counterparts. Undue restriction of this privilege will have a negative impact on the morale of service members who smoke. They will see that they cannot smoke while in their club on-base as they would be able to in the civilian community representing a significant departure from the prevailing customs of contemporary society.

07/18/97 FRI 15:46 FAX 202 219 6064
DOE/OSHA/ASSISTANT SECRETARY
U.S. DEPARTMENT OF LABOR
Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

FACSIMILE TRANSMISSION

DATE: 7/18/97

TO: Hima Vatti

FAX: 202-456-7028

NUMBER OF PAGES, INCLUDING COVER SHEET:

FROM: Tom Gmlassi

TELEPHONE NUMBER: (202) 219-6091

FAX NUMBER: (202) 219-6064

SPECIAL INSTRUCTIONS: Review of Executive Order on
Smoking in Federal Workplace.

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:



MEMORANDUM FOR:

HIMA VATTI

FROM:


GREG WATCHMAN
ACTING ASSISTANT SECRETARY

SUBJECT:

REVIEW OF THE E.O. ON SMOKING IN THE
FEDERAL WORKPLACE

We have reviewed the proposed executive order to prohibit smoking in federal executive branch facilities. OSHA has no comments to offer regarding the proposed language of the executive order. We must point out that the enforcement of the Executive Order in federal workplaces would require OSHA resources. Should you have any questions, please call Tom Galassi at 202-219-6091.



GSA Office of Real Property

F A X C O V E R S H E E T

DATE: July 21, 1997 TIME: 10:18 AM
TO: Mac Reed PHONE:
OMB FAX: (202) 395-7294
FROM: John D. Thomas PHONE: (202) 501-0365
GSA FAX: (202) 219-0104
RE: GSA Comments on Proposed Executive Order on Smoking in the Federal
Workplace

Number of pages including cover sheet: 7



U.S. GENERAL SERVICES ADMINISTRATION
Office of Governmentwide Policy

JUL 18 1997

MEMORANDUM FOR MAC REED

ASSISTANT GENERAL COUNSEL
OFFICE OF MANAGEMENT AND BUDGET

ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL
THE WHITE HOUSE

EMILY SHEKETOFF
DEPUTY ASSISTANT SECRETARY
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION
DEPARTMENT OF LABOR

FROM:

G. MARTIN WAGNER *G. Martin Wagner*
ASSOCIATE ADMINISTRATOR
OFFICE OF GOVERNMENTWIDE POLICY
GENERAL SERVICES ADMINISTRATION

SUBJECT:

General Services Administration (GSA) Comments on Proposed
Executive Order on Smoking in the Federal Workplace

We have reviewed the proposed Executive Order on Smoking in the Federal Workplace and offer the following comments:

- Section 2(a), line 4, replace the word "Employers," with the words "Agency officials."
- Section 2(b) should be revised in its entirety to read: "The order does not extend to outdoor areas under Executive Branch control except areas near the entrance of federal buildings, near air intake ducts or within courtyards."
- Section 2(d) should be revised in its entirety to read: "The order does not extend to those portions of federally-owned buildings leased, rented, or otherwise provided to nonfederal entities." We believe that Section 2(d) should be revised as shown to clarify that this order does not apply to nonfederal entities such as restaurants, which may occupy portions of federally-owned buildings.

- Section 3, line 4, insert the word "includes" between the words "and" and "any."
- Section 4, line 7, insert the word "labor" between the words "employee" and "representatives."

In addition, in response to Ms. Drye's request, we have attached a copy of the GSA Smoking Policy which pertains to all GSA controlled space occupied by our customer agencies and is enunciated in FPMR § 101-20.105-3; and GSA Order, ADM 5800.1A, dated July 8, 1993, entitled "Smoking in GSA-Occupied Space and Government-Owned or -Leased Vehicles Assigned to GSA," which pertains to space occupied by GSA. Also, we have determined that the proposed Executive Order would apply to 100 percent of the Federal agencies and workforce housed in GSA controlled space.

Finally, we believe that issuance of the proposed Executive Order by the President is timely, and would send a strong signal to employees of the Federal Government and members of the public visiting or using Federal facilities that they will be protected from exposure to environmental tobacco smoke.

If you have any questions regarding any issues discussed in this memorandum, please call Mr. Stanley C. Langfeld, Director, Real Property Policy Division, at (202) 501-1737.

Thank you for giving GSA the opportunity to comment on the proposed Executive Order on Smoking in the Federal Workplace.

Attachments

OFFICE OF THE GENERAL COUNSEL/LEGISLATION
U.S. DEPARTMENT OF TRANSPORTATION
400 Seventh Street, S.W.
C-40, Room 10100
Washington, DC 20590
Telephone: 202-366-4687
Telefax: 202-366-7153

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TO: MAC REED

FROM: Mary Crouter
202-366-9300

395-7294

Pages (including this page): 1

Date/Time: 7/21/97

Date Comment/Response (If Any) is Due:

REMARKS: Draft EO on Smoking in the Federal
workplace -

DOT concurs, but suggests the EO should
require GSA to make appropriate changes
to the Federal Property Management Regulations
that deal with smoking (41 CFR §101-20.105.3).



Debra J. Bond

07/18/97 03:45:39 PM

Record Type: Record

To: McGavock D. Reed/OMB/EOP, Elizabeth Drye/OPD/EOP

cc: John F. Morrall III/OMB/EOP, Lori Schack/OMB/EOP, Wendy A. Taylor/OMB/EOP, Daniel J. Chenok/OMB/EOP

Subject: Comments on the EO regarding smoking in the Federal workplace

We have the following comments/concerns.

Memorandum for the President (from HHS)

1. Page 1, second paragraph, third sentence: We suggest inserting the following "ETS, in all environments, is responsible for approximately 3,000 lung cancer deaths each year in nonsmoking adults."

- This change is requested because it is our understanding that the 3,000 deaths includes deaths attributable to both home as well as workplace exposure. We should be specific that it is not just workplaces.

2. Page 1, third paragraph, second sentence: We suggest deleting "most recently" given that DOL issued their proposed rule on indoor air quality in 1994.

E.O. on Smoking in the Federal Workplace

1. Page 1, first paragraph, seventh sentence: Please provide the name of and information about the study that produced the 56,000 per year estimate for deaths among nonsmokers. This estimate is much higher than what we have seen in the past. We believe that it overestimates the number of deaths that can currently be attributed to ETS and is thus an unsubstantiated number. It implies that ETS is 1/8 as lethal as actually smoking. We suggest deleting this number and inserting a number that is more commonly accepted.

2. Page 1, Section 2.a.: INFORMATIONAL Comment: This exception has the potential of having a substantial cost on the Federal government. OSHA estimated (in their 94 NPRM) that the cost of retrofitting a 150 square foot room was \$4,000 (10 persons) and a 1000 square foot room was \$25,000 (30-65 persons) per room.

3. Page 1, Section 2.b.: Please provide evidence supporting the 50 feet standard. How will this be enforced? Also, what evidence is there to support a ban in courtyards? Will there be shelters provided on rainy days 50 feet from the buildings? Our concern is that if the standard is too strict, it will not be enforced and may back fire. If it is too difficult to go outside and smoke, smokers may decide to smoke inside the building (especially on bad weather days).



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

Division of Legislative Counsel
(Telephone # - 401-8313)

Telefax Transmittal Sheet
(Telefax # - 401-5391)

TO: Mac Reed
FROM: Jack Krusty
DATE/TIME: 7/18
PAGES SENT (including transmittal) 1
COMMENTS:

Re: "Smoking in the Federal Workplace"

Well, it looks okay to me, but no one else in ED, including the people who manage the buildings, will be able to see it in the time you've permitted us, i.e. 3 hours. You ought to be ashamed.

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. memo	Micahel Cushing to Elizabeth Drye re: Union Briefing [partial] (2 pages)	07/25/1997	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 13021

FOLDER TITLE:

EO -Agency Comments

2014-0046-S

rc1421

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]
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- 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]
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- 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]

July 25, 1997

MEMORANDUM FOR ELIZABETH DRYE, Domestic Policy Council**FROM: Michael Cushing****SUBJECT: Union Briefing on Executive Order on Smoking****1. Attendees****(a) American Federation of Government Employees, AFL-CIO (AFGE).**

AFGE is the largest Federal employee union representing approximately 600,000 employees. AFGE President John Sturdivant is currently undergoing treatment for leukemia. He has been a leader and supporter of the Administration's partnership and reinventing government initiatives.

Contact: Terry Rosen 639-6407

- Terry Rosen: US- [REDACTED] (b)(6) 002 }

(b) National Treasury Employees Union (NTEU), Independent.

NTEU represents approximately 150,000 employees in several non-defense agencies. NTEU's largest number of unit employees is in the Internal Revenue Service.

Contact: Cary Sklar 508-3765 or 783-4444

- Cary Sklar: US- [REDACTED] (b)(6)

- Elaine Kaplan: US- [REDACTED] (b)(6)

(c) National Federation of Federal Employees (NFFE), Independent.

The National Federation of Federal Employees (NFFE) is the third largest union of Federal employees, representing approximately 140,000 employees mostly in the Department of Defense and the Forest Service.

Contact: Sean Safford: 862-4400 ext. 455

- James C. Cunningham (President): US- [REDACTED] (b)(6)

- Sean Safford [REDACTED] (b)(6)

Memorandum for Elizabeth Drye
July 25, 1997
Page 2

(d) AFL-CIO Public Employee Department (PED).

The (PED) of the AFL-CIO is an umbrella organization which represents 37 other Federal labor unions. The PED represents about 129,000 Federal employees from a variety of agencies, including the metal trades unions of approximately 25,000 Federal employees and the machinists with 20,000 employees.

Contact: Paula Lucak 393-2820

Paula Lucak: US-

(b)(6)

(e) Michael Cushing OPM Center for Partnership and Labor Relations 606-2714

US-

(b)(6)

2. Issues

- (a) Federal workplace smoking policy is currently subject to bargaining with recognized federal unions. Smoking in the workplace is considered a working condition subject to collective bargaining.
- (b) The prospective Executive Order would make smoking policy non-negotiable. In the Federal sector, the Federal Service Labor-Management Relations Statute (5 U.S.C. Chapter 71) dictates that the duty to bargain between agency management and employee representatives exists to the extent not inconsistent with Federal law or Governmentwide rule or regulation. An Executive Order creates a Governmentwide rule, therefore making the subject non-negotiable. However, existing agreements covering the subject of the Executive Order remain in effect until they expire. At that time, the parties would be required to bring their agreement into compliance with the Executive Order.
- (c) As matter of principle, federal generally do not support removing issues from collective bargaining. Irrespective of the merits of any particular issue, federal unions generally oppose unilateral action, such as an Executive Order, that have the effect of making a matter that was formerly subject to collective bargaining non-negotiable. Smoking in the workplace has been a contentious issue for unions. Many bargaining unit employees support no smoking policies, while a not insignificant number oppose them, placing union representatives in a quandary about whose interests they should represent. In the past, negotiations over smoking policies have been especially acrimonious with unions representing employees of military bases, depots, and other installations.

Copy: Leigh Shein, Deputy Chief of Staff

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003. memo	Micahel Cushing to Elizabeth Drye re: Union Briefing [partial] (2 pages)	07/25/1997	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 13021

FOLDER TITLE:

EO -Agency Comments

2014-0046-S

rc1421

RESTRICTION CODES

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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)]

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Barbara —
here are the

July 25, 1997

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- Terry Rosen: US-

(b)(6)

[003]

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- Cary Sklar: US-

- Elaine Kaplan: U

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Contact: Sean Safford: 862-4400 ext. 455

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- Sean Safford: US-

(b)(6)

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Memorandum for Elizabeth Drye
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 Page 2

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Contact: Paula Lucak 393-2820

Paula Lucak: US-

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(e) Michael Cushing, OPM Center for Partnership and Labor Relations 606-2714
 US-

(b)(6)

2. Issues

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Copy: Leigh Shein, Deputy Chief of Staff



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600



July 22, 1997

MEMORANDUM FOR MAC REED, OFFICE OF GENERAL COUNSEL, OFFICE OF
MANAGEMENT AND BUDGET

FROM: SAM BRICK, LEGISLATIVE REFERENCE SERVICE, 
DEPARTMENT OF DEFENSE

SUBJECT: Proposed Smoking Executive Order

The Department of Defense has further examined the proposed order and withdraws its comment of last Friday evening, 18 July. Instead, in conjunction with discussions with you on this issue, we suggest a broad authority to the head of each Federal agency to authorize exceptions that may be necessary to support their mission. The exception should provide the Secretary of Defense authority to except circumstances unique to military life such as smoking in a bar area of a military club, in a designated section of a naval ship at sea, or bowling alleys. Specifically, the following language is offered in lieu of that in paragraph (f) of the proposed order:

"(f) The head of any agency may establish exceptions as are necessary and appropriate for the accomplishment of the agency's mission."



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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004a. fax	To: Mac Reed (1 page)	07/22/1997	P3/b(3)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 13021

FOLDER TITLE:

EO -Agency Comments

2014-0046-S

rc1421

RESTRICTION CODES

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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004b. letter	To: Mac Reed [CIA Act] [partial] (1 page)	07/22/1997	P3/b(3)
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Clinton Presidential Records
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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]

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Office of General Counsel

July 22, 1997

Mr. Mac Reed, Esquire
Assistant General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Reed:

As we discussed yesterday morning, the Central Intelligence Agency concurs with the proposed Executive Order on Smoking in the Federal Workplace as currently drafted.

We also would support your suggested change to section 2(b) of the proposed Order, replacing the 50 foot standard with one that permitted agencies to establish reasonable boundaries for nonsmoking areas. In addition, we suggest deleting the prohibition on the delegation of authority to make exceptions to the Order set forth at section 2(f). In our view, these types of decisions could be made by appropriate high level officials within federal agencies without requiring the personal attention of agency heads.

Thank you for including us in the review of this proposed Order and please contact me at (b)(3) if I may be of any further assistance to you in this matter.

Sincerely,

(b)(3)

[0046]



United States
Office of
Personnel
Management

FAX
TRANSMITTAL
SHEET

OFFICE OF THE DIRECTOR

Number of Pages

73

Please
Deliver
To:

Name:	ELIZABETH DRYE	456-5581
Office:	DPC	Room:
Telephone:		

From:

Name:	LEIGH SHEIN	
Office:	Deputy Chief of Staff and Director of Interagency Affairs	Room: 5315
Telephone:	202-606-1000	FAX Number: 202-606-21 3

Remarks



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

July 22, 1997

MEMORANDUM FOR ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL

FROM: *Janice R. Lachance*
JANICE R. LACHANCE
CHIEF OF STAFF

SUBJECT: Proposed Executive Order on Smoking

To follow-up on yesterday's briefing with the federal labor unions, here is language responding to the three issues raised:

1. The following language requires that provisions of existing collective bargaining agreements remain in effect for the remainder of their terms. It serves the same purpose, in a more explicit fashion, as the language we sent previously, and could be added to Section 5 of the draft.

Provisions of collective bargaining agreements inconsistent with this Executive Order remain in effect for the term of the agreement by operation of 5 U.S.C. §7116(a)(7).

2. The following language provides that agency head discretion concerning implementation of the Executive Order should be exercised in accordance with collective bargaining obligations, and could be added to Section 4 of the draft.

In implementing this Executive Order, agency officials should consult with their labor relations officials to determine to what extent, if any, there is a duty to give notice and, upon request, bargain concerning the impact and implementation of this order. Agency heads shall exercise discretion consistent with their bargaining obligations.

3. The following language encourages agency heads to establish smoking cessation programs.

Memorandum for Elizabeth Drye
July 22, 1997
Page 2

programs designed to help employees stop smoking. Programs designed to help employees stop smoking are in the best health interests of those Federal employees who smoke and those who do not smoke. These programs may also contribute to improved organizational performance and productivity. However, before authorizing payment for a smoking cessation program, agencies are encouraged to carefully review the nature of the program and the credentials of the organization offering it.

From our perspective, although yesterday's briefing covered the issues in the proposed Executive Order of most interest to the unions informing them more specifically about the exceptions would increase their comfort. If you approve, we would be happy to do so, without discussing the draft or any specific language. If more information would be helpful, please feel free to call Michael Cushing at (202) 606-2714.



United States
Office of
Personnel
Management

FAX
TRANSMITTAL
SHEET

OFFICE OF THE DIRECTOR

Number of Pages

7

Please
Deliver
To:

Name:	ELIZABETH DRYE	456-5581
Office:	DPC	Room:
Telephone:		

From:

Name:	LEIGH SHEIN	
Office:	Deputy Chief of Staff and Director of Interagency Affairs	Room: 5315
Telephone:	202-606-1000	FAX Number: 202-606-2183

Remarks



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

JUL 18 1997

MEMORANDUM FOR ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL

FROM:


JANICE R. LACHANCE
CHIEF OF STAFF

SUBJECT: Comments on Proposed Executive Order

We have reviewed the proposed Executive order entitled "Smoking in the Federal Workplace" and offer the following comments.

1. In our opinion, Executive orders are really Presidential regulations and should be used to provide specific direction pursuant to a specific law or to extend requirements beyond the Federal establishment. There is no need for the President to use this form to direct his subordinate officials. Therefore, a Presidential Memorandum to heads of departments and agencies seems to be sufficient and more appropriate.
2. To clarify possible ambiguity about the relationship between this proposed Executive order and the existing Federal Service Labor-Management Relations Statute, we recommend deleting the reference to the statute in Section 5 and adding the following language:

"Provisions of existing collective bargaining agreements shall be honored."
3. We also recommend the standard provision creating no enforceable rights be added (e.g., see E.O. 12871).
4. As you are aware, smoking policy is now a subject for collective bargaining and the effect of an Executive order banning smoking is to make this issue non-negotiable for future contracts (although it would not change smoking policies during the life of current contracts). As a general matter, the public employee unions have taken the position that smoking policy is one of the workplace issues that should be collectively bargained.

We have contacted all major Federal employee unions regarding this proposed Executive order and, given their reaction, feel that a briefing at the White House might be useful to bring them into the process. We would be glad to arrange this event.

5. Comptroller General decisions have authorized the use of appropriated funds to pay the costs incurred by employees participating in agency-authorized smoking cessation programs. We suggest mentioning this in the Executive order. Suggested language:

"Heads of agencies are reminded that agencies may establish programs designed to help employees stop smoking. However, before authorizing payment for a smoking cessation program, agencies are encouraged to carefully review the nature of the program and the credentials of the organization offering it."

6. Several reviewers expressed confusion over the definition of "courtyard," Section 2, (b). Does it pertain to enclosed courtyards only? We suggest incorporating clarifying language.

If you need any additional information, please contact Leigh Shein, Deputy Chief of Staff, at (202) 606-1000.

cc:

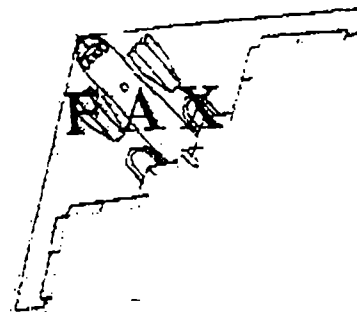
Ann McGuire

Special Assistant to the President
for Cabinet Affairs



DEPARTMENT OF DEFENSE
LEGISLATIVE REFERENCE SERVICE

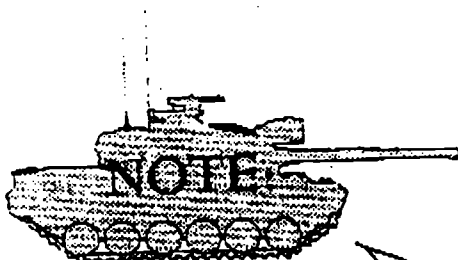
DATE/TIME:



TO: MAC REED OMB GC

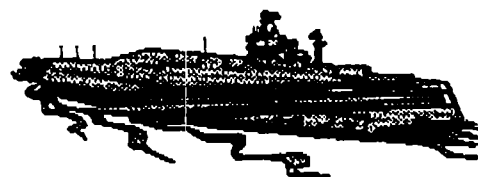
FROM: SAM BRICK AD

Pages to follow: 1



ON SMOKING EO
REQUEST EXCEPTION AS
FOLLOWS.

fx
[Signature]



THE PENTAGON, ROOM 3D282
WASHINGTON, D.C. 20301-1600
TELEPHONE: (703) 697-1305
FAX: (703) 614-8391
E-MAIL: DODLRS@OSDGC.OSD.MIL

Workplace Smoking Executive Order

Recommend including an exception as follows:

"The Secretary of Defense may establish exceptions to allow smoking in the bar areas of military clubs".

Reasons for the exception are as follows:

Many club patrons will not use the on-base clubs if they are not able to smoke in the bar areas. They will instead go to civilian bars off-base. The result will be less control over the service members drinking since they are off the base. The volume of drinking, and potentially disruptive behavior can be better monitored and controlled on the military base. In addition, if the service members begin to drive in larger numbers to civilian clubs to drink alcoholic beverages, we can expect the result will be increased drunk driving incidents and accidents.

Patrons of military clubs expect to be able to smoke in the bar areas of their clubs just like their civilian counterparts. Undue restriction of this privilege will have a negative impact on the morale of service members who smoke. They will see that they cannot smoke while in their club on-base as they would be able to in the civilian community representing a significant departure from the prevailing customs of contemporary society.



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600



July 22, 1997

MEMORANDUM FOR MAC REED, OFFICE OF GENERAL COUNSEL, OFFICE OF
MANAGEMENT AND BUDGET

FROM: SAM BRICK, LEGISLATIVE REFERENCE SERVICE,
DEPARTMENT OF DEFENSE

SUBJECT: Proposed Smoking Executive Order

The Department of Defense has further examined the proposed order and withdraws its comment of last Friday evening, 18 July. Instead, in conjunction with discussions with you on this issue, we suggest a broad authority to the head of each Federal agency to authorize exceptions that may be necessary to support their mission. The exception should provide the Secretary of Defense authority to except circumstances unique to military life such as smoking in a bar area of a military club, in a designated section of a naval ship at sea, or bowling alleys. Specifically, the following language is offered in lieu of that in paragraph (f) of the proposed order:

"(f) The head of any agency may establish exceptions as are necessary and appropriate for the accomplishment of the agency's mission."



U.S. DEPARTMENT OF LABOR
Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

FACSIMILE TRANSMISSION

DATE: 7/18/97

TO: Hima Vatti

FAX: 202-456-7028

NUMBER OF PAGES, INCLUDING COVER SHEET:

FROM: Tom Gmlassi

TELEPHONE NUMBER: (202) 219-6091

FAX NUMBER: (202) 219-6064

SPECIAL INSTRUCTIONS: Review of Executive Order on
Smoking in Federal Workplace.

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:



MEMORANDUM FOR:

HIMA VATTI

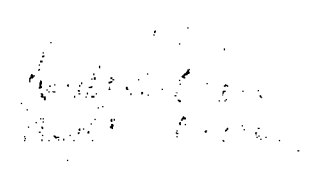
FROM:


GREG WATCHMAN
ACTING ASSISTANT SECRETARY

SUBJECT:

REVIEW OF THE E.O. ON SMOKING IN THE
FEDERAL WORKPLACE

We have reviewed the proposed executive order to prohibit smoking in federal executive branch facilities. OSHA has no comments to offer regarding the proposed language of the executive order. We must point out that the enforcement of the Executive Order in federal workplaces would require OSHA resources. Should you have any questions, please call Tom Galassi at 202-219-6091.



GSA Office of Real Property

F A X C O V E R S H E E T

DATE: July 21, 1997 TIME: 10:18 AM
TO: Mac Reed PHONE:
OMB FAX: (202) 395-7294
FROM: John D. Thomas PHONE: (202) 501-0365
GSA FAX: (202) 219-0104
RE: GSA Comments on Proposed Executive Order on Smoking in the Federal
Workplace

Number of pages including cover sheet: 7



U.S. GENERAL SERVICES ADMINISTRATION
Office of Governmentwide Policy

JUL 18 1997

MEMORANDUM FOR MAC REED

ASSISTANT GENERAL COUNSEL
OFFICE OF MANAGEMENT AND BUDGET

ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL
THE WHITE HOUSE

EMILY SHEKETOFF
DEPUTY ASSISTANT SECRETARY
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION
DEPARTMENT OF LABOR

FROM:

G. MARTIN WAGNER
ASSOCIATE ADMINISTRATOR
OFFICE OF GOVERNMENTWIDE POLICY
GENERAL SERVICES ADMINISTRATION

A handwritten signature in dark ink, reading "G. Martin Wagner", is written over the typed name.

SUBJECT:

General Services Administration (GSA) Comments on Proposed
Executive Order on Smoking in the Federal Workplace

We have reviewed the proposed Executive Order on Smoking in the Federal Workplace and offer the following comments:

- Section 2(a), line 4, replace the word "Employers," with the words "Agency officials."
- Section 2(b) should be revised in its entirety to read: "The order does not extend to outdoor areas under Executive Branch control except areas near the entrance of federal buildings, near air intake ducts or within courtyards."
- Section 2(d) should be revised in its entirety to read: "The order does not extend to those portions of federally-owned buildings leased, rented, or otherwise provided to nonfederal entities." We believe that Section 2(d) should be revised as shown to clarify that this order does not apply to nonfederal entities such as restaurants, which may occupy portions of federally-owned buildings.

- Section 3, line 4, insert the word "includes" between the words "and" and "any."
- Section 4, line 7, insert the word "labor" between the words "employee" and "representatives."

In addition, in response to Ms. Drye's request, we have attached a copy of the GSA Smoking Policy which pertains to all GSA controlled space occupied by our customer agencies and is enunciated in FPMR § 101-20.105-3; and GSA Order, ADM 5800.1A, dated July 8, 1993, entitled "Smoking in GSA-Occupied Space and Government-Owned or -Leased Vehicles Assigned to GSA," which pertains to space occupied by GSA. Also, we have determined that the proposed Executive Order would apply to 100 percent of the Federal agencies and workforce housed in GSA controlled space.

Finally, we believe that issuance of the proposed Executive Order by the President is timely, and would send a strong signal to employees of the Federal Government and members of the public visiting or using Federal facilities that they will be protected from exposure to environmental tobacco smoke.

If you have any questions regarding any issues discussed in this memorandum, please call Mr. Stanley C. Langfeld, Director, Real Property Policy Division, at (202) 501-1737.

Thank you for giving GSA the opportunity to comment on the proposed Executive Order on Smoking in the Federal Workplace.

Attachments

JUL 21 1997 09:11AM P.171

OFFICE OF THE GENERAL COUNSEL/LEGISLATION
U.S. DEPARTMENT OF TRANSPORTATION
400 Seventh Street, S.W.
C-40, Room 10100
Washington, DC 20590
Telephone: 202-366-4687
Telefax: 202-366-7153

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TO: MAC REED

FROM: Mary Crouter
202-366-9300

395-7294

Pages (including this page): 1

Date/Time: 7/21/97

Date Comment/Response (If Any) is Due:

REMARKS: Draft EO on Smoking in the Federal
Workplace -

DOT concurs, but suggests the EO should
require GSA to make appropriate changes
to the Federal Property Management Regulations
that deal with smoking (41 CFR §101-20.105.3).



Record Type: Record

To: McGavock D. Reed/OMB/EOP, Elizabeth Drye/OPD/EOP
cc: John F. Morrall III/OMB/EOP, Lori Schack/OMB/EOP, Wendy A. Taylor/OMB/EOP, Daniel J. Chenok/OMB/EOP
Subject: Comments on the EO regarding smoking in the Federal workplace

We have the following comments/concerns.

Memorandum for the President (from HHS)

1. Page 1, second paragraph, third sentence: We suggest inserting the following "ETS, in all environments, is responsible for approximately 3,000 lung cancer deaths each year in nonsmoking adults."

- This change is requested because it is our understanding that the 3,000 deaths includes deaths attributable to both home as well as workplace exposure. We should be specific that it is not just workplaces.

2. Page 1, third paragraph, second sentence: We suggest deleting "most recently" given that DOL issued their proposed rule on indoor air quality in 1994.

E.O. on Smoking in the Federal Workplace

1. Page 1, first paragraph, seventh sentence: Please provide the name of and information about the study that produced the 56,000 per year estimate for deaths among nonsmokers. This estimate is much higher than what we have seen in the past. We believe that it overestimates the number of deaths that can currently be attributed to ETS and is thus an unsubstantiated number. It implies that ETS is 1/8 as lethal as actually smoking. We suggest deleting this number and inserting a number that is more commonly accepted.

2. Page 1, Section 2.a.: INFORMATIONAL Comment: This exception has the potential of having a substantial cost on the Federal government. OSHA estimated (in their 94 NPRM) that the cost of retrofitting a 150 square foot room was \$4,000 (10 persons) and a 1000 square foot room was \$25,000 (30-65 persons) per room.

3. Page 1, Section 2.b.: Please provide evidence supporting the 50 feet standard. How will this be enforced? Also, what evidence is there to support a ban in courtyards? Will there be shelters provided on rainy days 50 feet from the buildings? Our concern is that if the standard is too strict, it will not be enforced and may back fire. If it is too difficult to go outside and smoke, smokers may decide to smoke inside the building (especially on bad weather days).

345-7294



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

Division of Legislative Counsel
(Telephone # - 401-8313)

Telefax Transmittal Sheet
(Telefax # - 401-5391)

TO: Mac Reed
FROM: Jock Kristy
DATE/TIME: 7/18
PAGES SENT (including transmittal) 1
COMMENTS:

Re: "Smoking in the Federal Workplace"

Well, it looks okay to me, but no one else in ED, including the people who manage the buildings, will be able to see it in the time you've permitted us, i.e. 3 hours. You ought to be ashamed.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-2110

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.



Record Type: Record

To: McGavock D. Reed/OMB/EOP, Elizabeth Drye/OPD/EOP
cc: John F. Morrall III/OMB/EOP, Lori Schack/OMB/EOP, Wendy A. Taylor/OMB/EOP, Daniel J. Chenok/OMB/EOP
Subject: Comments on the EO regarding smoking in the Federal workplace

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U.S. GENERAL SERVICES ADMINISTRATION
Office of Governmentwide Policy

JUL 18 1997

MEMORANDUM FOR MAC REED

**ASSISTANT GENERAL COUNSEL
OFFICE OF MANAGEMENT AND BUDGET**

**ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL
THE WHITE HOUSE**

**EMILY SHEKETOFF
DEPUTY ASSISTANT SECRETARY
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION
DEPARTMENT OF LABOR**

FROM:

G. MARTIN WAGNER *G. Martin Wagner*
**ASSOCIATE ADMINISTRATOR
OFFICE OF GOVERNMENTWIDE POLICY
GENERAL SERVICES ADMINISTRATION**

SUBJECT:

**General Services Administration (GSA) Comments on Proposed
Executive Order on Smoking in the Federal Workplace**

We have reviewed the proposed Executive Order on Smoking in the Federal Workplace and offer the following comments:

- Section 2(a), line 4, replace the word "Employers," with the words "Agency officials."
- Section 2(b) should be revised in its entirety to read: "The order does not extend to outdoor areas under Executive Branch control except areas near the entrance of federal buildings, near air intake ducts or within courtyards."
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- 2 -

- Section 3, line 4, insert the word "includes" between the words "and" and "any."
- Section 4, line 7, insert the word "labor" between the words "employee" and "representatives."

In addition, in response to Ms. Drye's request, we have attached a copy of the GSA Smoking Policy which pertains to all GSA controlled space occupied by our customer agencies and is enunciated in FPMR § 101-20.105-3; and GSA Order, ADM 5800.1A, dated July 8, 1993, entitled "Smoking in GSA-Occupied Space and Government-Owned or -Leased Vehicles Assigned to GSA," which pertains to space occupied by GSA. Also, we have determined that the proposed Executive Order would apply to 100 percent of the Federal agencies and workforce housed in GSA controlled space.

Finally, we believe that issuance of the proposed Executive Order by the President is timely, and would send a strong signal to employees of the Federal Government and members of the public visiting or using Federal facilities that they will be protected from exposure to environmental tobacco smoke.

If you have any questions regarding any issues discussed in this memorandum, please call Mr. Stanley C. Langfeld, Director, Real Property Policy Division, at (202) 501-1737.

Thank you for giving GSA the opportunity to comment on the proposed Executive Order on Smoking in the Federal Workplace.

Attachments

§101-20.105-3

41 CFR Ch. 101 (7-1-96 Edition)

Federal Property Management Reg

of the space it assigns, including hazards related to building features, fixtures, and systems. GSA is also responsible for correcting hazards in common, joint, and public use spaces. Occupant agencies are responsible for correcting hazards associated with their use of assigned space, including those related to the operation of their program equipment.

(b) Hazardous conditions within the occupant agency's responsibility to correct shall be corrected within 30 workdays when possible. Imminently dangerous conditions shall be corrected immediately upon their discovery. If more than 30 workdays are required for correction, an abatement plan shall be prepared in accordance with 29 CFR part 1960. Corrective alteration measures may be undertaken in accordance with §101-20.106, Reimbursable services.

(c) Conditions within GSA's responsibility to correct shall be identified, documented and presented to the GSA buildings manager. Imminently dangerous conditions shall be corrected immediately upon their discovery. When an imminently dangerous condition as defined by 29 CFR 1960.23 exists, this report shall be made by telephone. Upon receipt of a properly documented report of hazardous conditions, GSA will promptly investigate, determine a plan to resolve the problems, and inform the occupant agency. Such reports shall state the hazardous condition and cite references to specific OSHA standards violated. In cases involving health problems, agencies shall provide to GSA an industrial hygienist's report of an investigation of the alleged problem, which must include a description of the problem, results of testing, and recommendations for correction. When resolution will take more than 30 workdays, GSA shall prepare an abatement plan in accordance with 29 CFR part 1960, shall furnish this plan to the occupant agency for review and subsequent follow-up, and shall give priority to prompt abatement of the conditions.

§101-20.105-3 Smoking.

(a) Regulations for controlling smoking in GSA-controlled buildings and facilities, including leased space and delegated facilities, are set forth below.

Smoking is defined as a lighted cigar, cigarette, pipe, or any other lit tobacco product. These regulations reflect the following considerations:

(1) In recognition of the increased health hazards of passive smoke on the non-smoker, smoking is to be held to an absolute minimum in areas where there are non-smokers.

(2) In recognition of the needs of smokers, smoking areas should be designated in Federal buildings which are convenient, do not negatively impact worker productivity, and do not impinge on the health of those who do not smoke.

(3) Agency heads are to be given the responsibility to determine which areas are to be smoking areas and which areas are to be non-smoking areas. In exercising this responsibility, agency heads are to give appropriate consideration to the views of the employees affected and/or their representatives and are to take fully into consideration the health issues involved. Note—Agencies are encouraged to develop additional guidelines for internal use for action when violations of these regulations occur. Nothing in these regulations precludes an agency from establishing more stringent guidelines. For purposes of these regulations, general office space is defined as space occupied by personnel performing their daily work functions; this includes, but is not limited to: ADP areas, mail rooms, file rooms, duplication areas, court and jury rooms, office space, etc.

(b) Smoking is prohibited in the following areas:

(1) General office space, except as permitted under paragraph (c)(2)(iii) of this section;

(2) Auditoriums, classrooms, and conference rooms;

(3) Elevators ("No Smoking" signs shall be posted in elevators and adequate receptacles shall be placed outside the entrances if designated as a smoking area);

(4) Corridors, lobbies, restrooms, and stairways, except as permitted under paragraph (c)(2)(iv) of this section;

(5) Medical care facilities such as medical clinics and units;

(6) Libraries; and

(7) Hazardous areas. Each agency shall post and enforce "No Smoking"

rules in any location under its jurisdiction which involves flammable liquid, flammable gases, or flammable vapor or in all other locations where there is a collection of readily ignitable, combustible materials.

(c) Designated smoking area shall be established as follows:

(1) Smoking areas in cafeterias.

(1) Each agency head shall establish "smoking areas" in cafeterias.

(11) The areas designated shall be based upon an estimate of the number of smoking and non-smoking persons served. This may be adjusted on the basis of local experience. The designated "smoking" areas shall be identified by appropriate signs.

(2) "Designated smoking areas" shall be established by agency heads.

(1) Agency heads shall establish "designated smoking areas" except in areas set forth under paragraph (3) of this section. Agency heads will be responsible for monitoring and controlling these areas, and for ensuring "designated smoking areas" are identified by proper signs. Suitable, uniform signs reading "Designated Smoking Area" shall be furnished and installed by the agency.

(11) Agencies in multi-tenant buildings are encouraged to work together to identify "designated smoking areas".

(111) Office space may be designated as a smoking area providing that the office space is configured so as to prevent the involuntary exposure of non-smokers to secondhand smoke to a minimum; e.g., the office space involved must be large enough and sufficiently ventilated to provide separate smoking and non-smoking sections which protect the non-smokers against involuntary exposure to smoke.

(iv) An agency head may designate corridors, lobbies, or restrooms as smoking areas when it is not possible to designate a sufficient number of other smoking areas.

(d) Agencies are responsible for providing adequate ash-trays or receptacles in the designated smoking areas.

(e) Suitable, uniform signs reading "No Smoking Except in Designated Areas" shall be placed on or near entrance doors of buildings subject to these regulations. These signs shall

101 (7-1-96 Edition)

ned as a lighted cigar, or any other lit tobacco regulations reflect the erations:

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ices space, except as paragraph (c)(2)(iii) of

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obbies, restrooms, and t as permitted under v) of this section:

re facilities such as d units;

areas. Each agency urforce "No Smoking"

Federal Property Management Regulations

§ 101-20.106

rules in any location under its jurisdic-tion which involves flammable liquids, flammable gases, or flammable vapors, or in all other locations where there is a collection of readily ignitable, com-bustible materials.

(c) Designated smoking area shall be established as follows:

(1) Smoking areas in cafeterias.

(i) Each agency head shall establish "smoking areas" in cafeterias.

(ii) The areas designated shall be based upon an estimate of the number of smoking and non-smoking patrons served. This may be adjusted on the basis of local experience. The des-ignated "smoking" areas shall be iden-tified by appropriate signs.

(2) "Designated smoking areas" es-tablished by agency heads.

(i) Agency heads shall establish "des-ignated smoking areas" except those areas set forth under paragraph (b) of this section. Agency heads will be re-sponsible for monitoring and control-ling these areas, and for ensuring that "designated smoking areas" are iden-tified by proper signs. Suitable, uniform signs reading "Designated Smoking Area" shall be furnished and installed by the agency.

(ii) Agencies in multi-tenant build-ings are encouraged to work together to identify "designated smoking areas".

(iii) Office space may be designated as a smoking area providing that the office space is configured so as to limit the involuntary exposure of non-smok-ers to secondhand smoke to a mini-mum; e.g., the office space involved must be large enough and sufficiently ventilated to provide separate smoking and non-smoking sections which pro-protect the non-smokers against involun-tary exposure to smoke.

(iv) An agency head may designate corridors, lobbies, or restrooms as smoking areas when it is not possible to designate a sufficient number of other smoking areas.

(d) Agencies are responsible for pro-viding adequate ash-trays or recep-tacles in the designated smoking areas.

(e) Suitable, uniform signs reading "No Smoking Except in Designated Areas" shall be placed on or near en-trance doors of buildings subject to these regulations. These signs shall be

furnished and installed by the GSA Buildings Manager in buildings man-aged by GSA. It should not be nec-essary to display a sign in every room of each building.

(f) An agency is not required by this regulation to make any expenditures for structural or non-structural changes to accommodate the pref-erences of non-smoking employees.

(g) Prior to implementation of this regulation, where there is an exclusive representative for the employees, the agency shall meet its obligation under 5 U.S.C. chapter 71. In all other cases, agencies should consult directly with employees.

(h) In accordance with the Federal Acquisition Regulation, part 8, the mandatory source of supply for the purchase of the aforementioned signs is UNICOR, Federal Prison Industries, Inc. (FPI). Prior approval from FPI is required before using any other source of supply. Purchase Orders should be submitted to: UNICOR, Federal Prison Industries, Inc., 320 First Street, NW., Washington, DC 20534, (202) 724-8239.

§ 101-20.106 Reimbursable services.

Services in addition to those stand-ard level services prescribed in §§ 101-20.101 through 20.105 may be provided or arranged for by GSA on a reimbursable basis. Such services include:

(a) Specialized security services be-yond standard levels, such as guarding, ingress-egress control, inspection of packages, directed security patrols, and other similar activities;

(b) Design, installation, mainte-nance, and operation of electronic sys-tems such as intrusion-detection de-vices, duress-holdup alarms, and re-mote monitoring systems;

(c) Utilities for specialized equip-ment, or for times when space condi-tioning beyond standard levels is re-quired;

(d) Construction and/or alterations necessary for installation of agency program equipment;

(e) Space adjustments requested by an occupant agency for its convenience in moving activities within its already assigned space;

(f) Janitorial and other services over and above standard levels;

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

ADM 5800.1A
July 8, 1993

GSA ORDER

SUBJECT: Smoking in GSA-occupied space and Government-owned or -leased vehicles assigned to GSA.

1. Purpose. This order prohibits smoking in GSA-occupied space and Government-owned or -leased vehicles assigned to GSA.
2. Cancellation. GSA Order ADM 5800.1, is cancelled.
3. Background. On January 7, 1993, the Environmental Protection Agency classified environmental tobacco smoke as a Class A human carcinogen. This order recognizes the increased health hazards of passive smoke to individuals. In response, it prescribes the action to take to protect those who work in GSA-occupied space or occupy Government-owned or -leased vehicles assigned to GSA.
4. Actions. Smoking is prohibited in GSA-occupied space and Government-owned or -leased vehicles assigned to GSA at all times.
5. Definitions.
 - a. Smoking is the use of a lighted cigar, cigarette, pipe, or other lit tobacco product.
 - b. GSA-occupied space is any indoor space used by GSA organizational elements for internal agency purposes. It does not include space assigned to other agencies, or joint use space. It does not include parking lots, sidewalks in front of building entrances, or courtyards.
 - c. Government-owned or -leased vehicles assigned to GSA are all vehicles, regardless of type, assigned to GSA organizational elements. These vehicles are owned or leased by the Government for 60 or more consecutive days.
6. Labor relations. Where there is an exclusive representative for the employees, GSA shall meet its obligations under 5 U.S.C. Ch. 71, before this order becomes effective.

Distribution: A; B; C; F; G; H; I (Circulate to all employees)

ADM 5800.1A

July 8, 1993

7. Responsibilities. The Associate Administrator for Administration and Regional Administrators are responsible for developing implementation plans within 30 days of the signature date of this order. Such plans should include, as applicable, provisions addressing:

a. Training for GSA employees who smoke and who desire assistance in quitting. Such training courses may require payment of a nominal fee by the employee.

b. Educational and informational items and activities aimed at informing all GSA employees of the health risks associated with smoking and exposure to secondhand smoke. Educational and informational items and activities may also inform GSA employees of their responsibility to maintain a healthy work environment.

8. Use of funds. Use of any agency funds for the construction or modification of any GSA facility or structure to accommodate smoking is prohibited.



ROGER W. JOHNSON
Administrator

U.S. DEPARTMENT OF LABOR
Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

FACSIMILE TRANSMISSION

DATE: 7/18/97

TO: Hima Vatti

FAX: 202-456-7028

NUMBER OF PAGES, INCLUDING COVER SHEET:

FROM: Tom Gnlassi

TELEPHONE NUMBER: (202) 219-6091

FAX NUMBER: (202) 219-6064

SPECIAL INSTRUCTIONS: Review of Executive Order on
Smoking in Federal Workplace.

U.S. Department of LaborOccupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:



MEMORANDUM FOR:

HIMA VATTI

FROM:


GREG WATCHMAN
ACTING ASSISTANT SECRETARY

SUBJECT:

REVIEW OF THE E.O. ON SMOKING IN THE
FEDERAL WORKPLACE

We have reviewed the proposed executive order to prohibit smoking in federal executive branch facilities. OSHA has no comments to offer regarding the proposed language of the executive order. We must point out that the enforcement of the Executive Order in federal workplaces would require OSHA resources. Should you have any questions, please call Tom Galassi at 202-219-6091.





**United States
Office of
Personnel
Management**

**FAX
TRANSMITTAL
SHEET**

OFFICE OF THE DIRECTOR

Number of Pages

7

**Please
Deliver
To:**

Name:	ELIZABETH DRYE	456-5581
Office:	DPC	Room:
Telephone:		

From:

Name:	LEIGH SHEIN	
Office:	Deputy Chief of Staff and Director of Interagency Affairs	Room: 5315
Telephone:	202-606-1000	FAX Number: 202-606-2183

Remarks



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

JUL 18 1997

MEMORANDUM FOR ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL

FROM:


JANICE R. LACHANCE
CHIEF OF STAFF

SUBJECT: Comments on Proposed Executive Order

We have reviewed the proposed Executive order entitled "Smoking in the Federal Workplace" and offer the following comments.

1. In our opinion, Executive orders are really Presidential regulations and should be used to provide specific direction pursuant to a specific law or to extend requirements beyond the Federal establishment. There is no need for the President to use this form to direct his subordinate officials. Therefore, a Presidential Memorandum to heads of departments and agencies seems to be sufficient and more appropriate.
2. To clarify possible ambiguity about the relationship between this proposed Executive order and the existing Federal Service Labor-Management Relations Statute, we recommend deleting the reference to the statute in Section 5 and adding the following language:

"Provisions of existing collective bargaining agreements shall be honored."

3. We also recommend the standard provision creating no enforceable rights be added (e.g., see E.O. 12871).
4. As you are aware, smoking policy is now a subject for collective bargaining and the effect of an Executive order banning smoking is to make this issue non-negotiable for future contracts (although it would not change smoking policies during the life of current contracts). As a general matter, the public employee unions have taken the position that smoking policy is one of the workplace issues that should be collectively bargained.

We have contacted all major Federal employee unions regarding this proposed Executive order and, given their reaction, feel that a briefing at the White House might be useful to bring them into the process. We would be glad to arrange this event.

5. Comptroller General decisions have authorized the use of appropriated funds to pay the costs incurred by employees participating in agency-authorized smoking cessation programs. We suggest mentioning this in the Executive order. Suggested language:

"Heads of agencies are reminded that agencies may establish programs designed to help employees stop smoking. However, before authorizing payment for a smoking cessation program, agencies are encouraged to carefully review the nature of the program and the credentials of the organization offering it."

6. Several reviewers expressed confusion over the definition of "courtyard," Section 2, (b). Does it pertain to enclosed courtyards only? We suggest incorporating clarifying language.

If you need any additional information, please contact Leigh Shein, Deputy Chief of Staff, at (202) 606-1000.

cc:

Ann McGuire

Special Assistant to the President
for Cabinet Affairs

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005a. fax	To: Mac Reed (1 page)	07/22/1997	P3/b(3)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 13021

FOLDER TITLE:

EO -Agency Comments

2014-0046-S

rc1421

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]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005b. letter	To Mac Reed [CIA Act] [partial] (1 page)	07/22/1997	P3/b(3)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 13021

FOLDER TITLE:

EO -Agency Comments

2014-0046-S
rc1421

RESTRICTION CODES

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Office of General Counsel

July 22, 1997

Mr. Mac Reed, Esquire
Assistant General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Reed:

As we discussed yesterday morning, the Central Intelligence Agency concurs with the proposed Executive Order on Smoking in the Federal Workplace as currently drafted.

We also would support your suggested change to section 2(b) of the proposed Order, replacing the 50 foot standard with one that permitted agencies to establish reasonable boundaries for nonsmoking areas. In addition, we suggest deleting the prohibition on the delegation of authority to make exceptions to the Order set forth at section 2(f). In our view, these types of decisions could be made by appropriate high level officials within federal agencies without requiring the personal attention of agency heads.

Thank you for including us in the review of this proposed Order and please contact me at (b)(3) if I may be of any further assistance to you in this matter.

Sincerely,

(b)(3)

[0056]



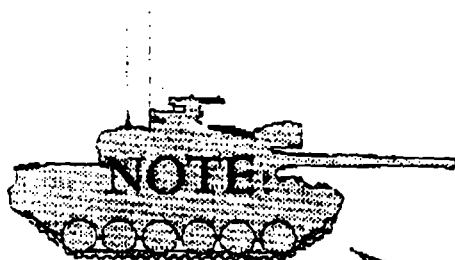
DEPARTMENT OF DEFENSE
LEGISLATIVE REFERENCE SERVICE

DATE/TIME:

TO: MAC REED OMB GC

FROM: Sam Brick DOD

Pages to follow: 1



ON SMOKING EO
REQUEST EXCEPTION AS
FOLLOWS.

fx



THE PENTAGON, ROOM 3D282
WASHINGTON, D.C. 20301-1600
TELEPHONE: (703) 697-1305
FAX: (703) 614-8391
E-MAIL: DODLRS@OSDGC.OSD.MIL

395-7294



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

Division of Legislative Counsel
(Telephone # - 401-8313)

Telefax Transmittal Sheet
(Telefax # - 401-5391)

TO:

Mac Reed

FROM:

Jack Kristy

DATE/TIME:

7/18

PAGES SENT (including transmittal)

1

COMMENTS:

Re: "Smoking in the Federal Workplace"

Well, it looks okay to me, but no one else in ED, including the people who manage the buildings, will be able to see it in the time you've permitted us, i.e. 3 hours. You ought to be ashamed.

Workplace Smoking Executive Order

Recommend including an exception as follows:

"The Secretary of Defense may establish exceptions to allow smoking in the bar areas of military clubs".

Reasons for the exception are as follows:

Many club patrons will not use the on-base clubs if they are not able to smoke in the bar areas. They will instead go to civilian bars off-base. The result will be less control over the service members drinking since they are off the base. The volume of drinking, and potentially disruptive behavior can be better monitored and controlled on the military base. In addition, if the service members begin to drive in larger numbers to civilian clubs to drink alcoholic beverages, we can expect the result will be increased drunk driving incidents and accidents.

Patrons of military clubs expect to be able to smoke in the bar areas of their clubs just like their civilian counterparts. Undue restriction of this privilege will have a negative impact on the morale of service members who smoke. They will see that they cannot smoke while in their club on-base as they would be able to in the civilian community representing a significant departure from the prevailing customs of contemporary society.

OFFICE OF THE GENERAL COUNSEL/LEGISLATION
U.S. DEPARTMENT OF TRANSPORTATION

400 Seventh Street, S.W.
C-40, Room 10100
Washington, DC 20590
Telephone: 202-366-4687
Telefax: 202-366-7153

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TO: MAC REED

FROM: Mary Crouter
202-366-9300

395-7294

Pages (including this page): 1

Date/Time: 7/21/97

Date Comment/Response (If Any) is Due:

REMARKS: Draft EO on Smoking in the Federal
Workplace -

DOT concurs, but suggests the EO should
require GSA to make appropriate changes
to the Federal Property Management Regulations
that deal with smoking (41 CFR §101-20.105.3).

GSA Office of Real Property

F A X C O V E R S H E E T

DATE:	July 21, 1997	TIME:	10:18 AM
TO:	Mac Reed OMB	PHONE:	
		FAX:	(202) 395-7294
FROM:	John D. Thomas GSA	PHONE:	(202) 501-0365
		FAX:	(202) 219-0104
RE:	GSA Comments on Proposed Executive Order on Smoking in the Federal Workplace		

Number of pages including cover sheet: 7



U.S. GENERAL SERVICES ADMINISTRATION
Office of Governmentwide Policy

JUL 18 1997

MEMORANDUM FOR MAC REED

ASSISTANT GENERAL COUNSEL
OFFICE OF MANAGEMENT AND BUDGET

ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL
THE WHITE HOUSE

EMILY SHEKETOFF
DEPUTY ASSISTANT SECRETARY
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION
DEPARTMENT OF LABOR

FROM:

G. MARTIN WAGNER *G. Martin Wagner*
ASSOCIATE ADMINISTRATOR
OFFICE OF GOVERNMENTWIDE POLICY
GENERAL SERVICES ADMINISTRATION

SUBJECT:

General Services Administration (GSA) Comments on Proposed
Executive Order on Smoking in the Federal Workplace

We have reviewed the proposed Executive Order on Smoking in the Federal Workplace and offer the following comments:

- Section 2(a), line 4, replace the word "Employers," with the words "Agency officials."
- Section 2(b) should be revised in its entirety to read: "The order does not extend to outdoor areas under Executive Branch control except areas near the entrance of federal buildings, near air intake ducts or within courtyards."
- Section 2(d) should be revised in its entirety to read: "The order does not extend to those portions of federally-owned buildings leased, rented, or otherwise provided to nonfederal entities." We believe that Section 2(d) should be revised as shown to clarify that this order does not apply to nonfederal entities such as restaurants, which may occupy portions of federally-owned buildings.

- 2 -

- Section 3, line 4, insert the word "includes" between the words "and" and "any."
- Section 4, line 7, insert the word "labor" between the words "employee" and "representatives."

In addition, in response to Ms. Drye's request, we have attached a copy of the GSA Smoking Policy which pertains to all GSA controlled space occupied by our customer agencies and is enunciated in FPMR § 101-20.105-3; and GSA Order, ADM 5800.1A, dated July 8, 1993, entitled "Smoking in GSA-Occupied Space and Government-Owned or -Leased Vehicles Assigned to GSA," which pertains to space occupied by GSA. Also, we have determined that the proposed Executive Order would apply to 100 percent of the Federal agencies and workforce housed in GSA controlled space.

Finally, we believe that issuance of the proposed Executive Order by the President is timely, and would send a strong signal to employees of the Federal Government and members of the public visiting or using Federal facilities that they will be protected from exposure to environmental tobacco smoke.

If you have any questions regarding any issues discussed in this memorandum, please call Mr. Stanley C. Langfeld, Director, Real Property Policy Division, at (202) 501-1737.

Thank you for giving GSA the opportunity to comment on the proposed Executive Order on Smoking in the Federal Workplace.

Attachments



§ 101-20.105-3

of the space it assigns, including hazards related to building features, fixtures, and systems. GSA is also responsible for correcting hazards in common, joint, and public use spaces. Occupant agencies are responsible for correcting hazards associated with their use of assigned space, including those related to the operation of their program equipment.

(b) Hazardous conditions within the occupant agency's responsibility to correct shall be corrected within 30 workdays when possible. Imminently dangerous conditions shall be corrected immediately upon their discovery. If more than 30 workdays are required for correction, an abatement plan shall be prepared in accordance with 29 CFR part 1960. Corrective alteration measures may be undertaken in accordance with § 101-20.106, Reimbursable services.

(c) Conditions within GSA's responsibility to correct shall be identified, documented and presented to the GSA buildings manager. Imminently dangerous conditions shall be corrected immediately upon their discovery. When an imminently dangerous condition as defined by 29 CFR 1960.28 exists, this report shall be made by telephone. Upon receipt of a properly documented report of hazardous conditions, GSA will promptly investigate, determine a plan to resolve the problems, and inform the occupant agency. Such reports shall state the hazardous condition and cite references to specific OSHA standards violated. In cases involving health problems, agencies shall provide to GSA an industrial hygienist's report of an investigation of the alleged problem, which must include a description of the problem, results of testing, and recommendations for correction. When resolution will take more than 30 workdays, GSA shall prepare an abatement plan in accordance with 29 CFR part 1960, shall furnish this plan to the occupant agency for review and subsequent follow-up, and shall give priority to prompt abatement of the conditions.

§ 101-20.105-3 Smoking.

(a) Regulations for controlling smoking in GSA-controlled buildings and facilities, including leased space and delegated facilities, are set forth below.

41 CFR Ch. 101 (7-1-96 Edition)

Smoking is defined as a lighted cigar, cigarette, pipe, or any other lit tobacco product. These regulations reflect the following considerations:

(1) In recognition of the increased health hazards of passive smoke on the non-smoker, smoking is to be held to an absolute minimum in areas where there are non-smokers.

(2) In recognition of the needs of smokers, smoking areas should be designated in Federal buildings which are convenient, do not negatively impact worker productivity, and do not impinge on the health of those who do not smoke.

(3) Agency heads are to be given the responsibility to determine which areas are to be smoking areas and which areas are to be non-smoking areas. In exercising this responsibility, agency heads are to give appropriate consideration to the views of the employees affected and/or their representatives and are to take fully into consideration the health issues involved. Note—Agencies are encouraged to develop additional guidelines for internal use for action when violations of these regulations occur. Nothing in these regulations precludes an agency from establishing more stringent guidelines. For purposes of these regulations, general office space is defined as space occupied by personnel performing their daily work functions; this includes, but is not limited to: ADP areas, mail rooms, file rooms, duplication areas, court and jury rooms, office space, etc.

(b) Smoking is prohibited in the following areas:

(1) General office space, except as permitted under paragraph (c)(2)(iii) of this section;

(2) Auditoriums, classrooms, and conference rooms;

(3) Elevators ("No Smoking" signs shall be posted in elevators and adequate receptacles shall be placed outside the entrances if designated as a smoking area);

(4) Corridors, lobbies, restrooms, and stairways, except as permitted under paragraph (c)(2)(iv) of this section;

(5) Medical care facilities such as medical clinics and units;

(6) Libraries; and

(7) Hazardous areas. Each agency shall post and enforce "No Smoking"

Federal Property Management Regulations

rules in any location under its jurisdiction which involves flammable liquids, flammable gases, or flammable vapors or in all other locations where there is a collection of readily ignitable, combustible materials.

(c) Designated smoking areas shall be established as follows:

(1) Smoking areas in cafeterias.

(i) Each agency head shall establish "smoking areas" in cafeterias.

(ii) The areas designated shall be based upon an estimate of the needs of smoking and non-smoking employees. This may be adjusted on the basis of local experience. The designated "smoking" areas shall be identified by appropriate signs.

(2) "Designated smoking areas" shall be established by agency heads.

(i) Agency heads shall establish designated smoking areas in the areas set forth under paragraph (c) of this section. Agency heads will be responsible for monitoring and controlling these areas, and for identifying "designated smoking areas" and identifying by proper signs. Suitable signs reading "Designated Smoking Area" shall be furnished and maintained by the agency.

(ii) Agencies in multi-tenant buildings are encouraged to work together to identify "designated smoking areas".

(iii) Office space may be designated as a smoking area providing the office space is configured so as to prevent the involuntary exposure of non-smokers to secondhand smoke; e.g., the office space must be large enough and sufficiently ventilated to provide separate smoking and non-smoking sections which protect the non-smokers against involuntary exposure to smoke.

(iv) An agency head may designate smoking areas in corridors, lobbies, or other smoking areas when it is not feasible to designate a sufficient number of other smoking areas.

(d) Agencies are responsible for providing adequate ash-trays and receptacles in the designated smoking areas.

(e) Suitable, uniform signs reading "No Smoking Except in Designated Smoking Areas" shall be placed on entrance doors of buildings and in these regulations. These signs

§ 101 (7-1-96 Edition)

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Federal Property Management Regulations

§ 101-20.106

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(i) Agency heads shall establish "designated smoking areas" except those areas set forth under paragraph (b) of this section. Agency heads will be responsible for monitoring and controlling these areas, and for ensuring that "designated smoking areas" are identified by proper signs. Suitable, uniform signs reading "Designated Smoking Area" shall be furnished and installed by the agency.

(ii) Agencies in multi-tenant buildings are encouraged to work together to identify "designated smoking areas".

(iii) Office space may be designated as a smoking area providing that the office space is configured so as to limit the involuntary exposure of non-smokers to secondhand smoke to a minimum; e.g., the office space involved must be large enough and sufficiently ventilated to provide separate smoking and non-smoking sections which protect the non-smokers against involuntary exposure to smoke.

(iv) An agency head may designate corridors, lobbies, or restrooms as smoking areas when it is not possible to designate a sufficient number of other smoking areas.

(d) Agencies are responsible for providing adequate ash-trays or receptacles in the designated smoking areas.

(e) Suitable, uniform signs reading "No Smoking Except in Designated Areas" shall be placed on or near entrance doors of buildings subject to these regulations. These signs shall be

furnished and installed by the GSA Buildings Manager in buildings managed by GSA. It should not be necessary to display a sign in every room of each building.

(f) An agency is not required by this regulation to make any expenditures for structural or non-structural changes to accommodate the preferences of non-smoking employees.

(g) Prior to implementation of this regulation, where there is an exclusive representative for the employees, the agency shall meet its obligation under 5 U.S.C. chapter 71. In all other cases, agencies should consult directly with employees.

(h) In accordance with the Federal Acquisition Regulation, part 8, the mandatory source of supply for the purchase of the aforementioned signs is UNICOR, Federal Prison Industries, Inc. (FPI). Prior approval from FPI is required before using any other source of supply. Purchase Orders should be submitted to: UNICOR, Federal Prison Industries, Inc., 320 First Street, NW., Washington, DC 20534, (202) 724-3239.

§ 101-20.106 Reimbursable services.

Services in addition to those standard level services prescribed in §§ 101-20.101 through 20.106 may be provided or arranged for by GSA on a reimbursable basis. Such services include:

(a) Specialized security services beyond standard levels, such as guarding, ingress-egress control, inspection of packages, directed security patrols, and other similar activities;

(b) Design, installation, maintenance, and operation of electronic systems such as intrusion-detection devices, duress-holdup alarms, and remote monitoring systems;

(c) Utilities for specialized equipment, or for times when space conditioning beyond standard levels is required;

(d) Construction and/or alterations necessary for installation of agency program equipment;

(e) Space adjustments requested by an occupant agency for its convenience in moving activities within its already assigned space;

(f) Janitorial and other services over and above standard levels;

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

ADM 5800.1A
July 8, 1993

GSA ORDER

SUBJECT: Smoking in GSA-occupied space and Government-owned or
-leased vehicles assigned to GSA

1. Purpose. This order prohibits smoking in GSA-occupied space and Government-owned or -leased vehicles assigned to GSA.
2. Cancellation. GSA Order ADM 5800.1, is cancelled.
3. Background. On January 7, 1993, the Environmental Protection Agency classified environmental tobacco smoke as a Class A human carcinogen. This order recognizes the increased health hazards of passive smoke to individuals. In response, it prescribes the action to take to protect those who work in GSA-occupied space or occupy Government-owned or -leased vehicles assigned to GSA.
4. Actions. Smoking is prohibited in GSA-occupied space and Government-owned or -leased vehicles assigned to GSA at all times.
5. Definitions.
 - a. Smoking is the use of a lighted cigar, cigarette, pipe, or other lit tobacco product.
 - b. GSA-occupied space is any indoor space used by GSA organizational elements for internal agency purposes. It does not include space assigned to other agencies, or joint use space. It does not include parking lots, sidewalks in front of building entrances, or courtyards.
 - c. Government-owned or -leased vehicles assigned to GSA are all vehicles, regardless of type, assigned to GSA organizational elements. These vehicles are owned or leased by the Government for 60 or more consecutive days.
6. Labor relations. Where there is an exclusive representative for the employees, GSA shall meet its obligations under 5 U.S.C. Ch. 71, before this order becomes effective.

Distribution: A; B; C; F; G; H; I (Circulate to all employees)

ADM 5800.1A

July 8, 1993

7. Responsibilities. The Associate Administrator for Administration and Regional Administrators are responsible for developing implementation plans within 30 days of the signature date of this order. Such plans should include, as applicable, provisions addressing:

a. Training for GSA employees who smoke and who desire assistance in quitting. Such training courses may require payment of a nominal fee by the employee.

b. Educational and informational items and activities aimed at informing all GSA employees of the health risks associated with smoking and exposure to secondhand smoke. Educational and informational items and activities may also inform GSA employees of their responsibility to maintain a healthy work environment.

8. Use of funds. Use of any agency funds for the construction or modification of any GSA facility or structure to accommodate smoking is prohibited.



ROGER W. JOHNSON
Administrator



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

Office of Congressional Relations
Legislative Analysis Staff

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TELECOPIER TRANSMITTAL SHEET

FROM: HARRY WOLF

TO: MAC REED

Receiving Telecopier Number: 9-395-7294

Pages sent (including transmittal sheet): 3

Mac,

HERE ARE THE COMMENTS OPM FURNISHED THE DOMESTIC POLICY
COUNCIL. I HOPE THEY ARE USEFUL. *H*



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

JUL 18 1997

MEMORANDUM FOR ELIZABETH DRYE
ASSOCIATE DIRECTOR
DOMESTIC POLICY COUNCIL

FROM:


JANICE R. LACHANCE
CHIEF OF STAFF

SUBJECT: Comments on Proposed Executive Order

We have reviewed the proposed Executive order entitled "Smoking in the Federal Workplace" and offer the following comments.

1. In our opinion, Executive orders are really Presidential regulations and should be used to provide specific direction pursuant to a specific law or to extend requirements beyond the Federal establishment. There is no need for the President to use this form to direct his subordinate officials. Therefore, a Presidential Memorandum to heads of departments and agencies seems to be sufficient and more appropriate.
2. To clarify possible ambiguity about the relationship between this proposed Executive order and the existing Federal Service Labor-Management Relations Statute, we recommend deleting the reference to the statute in Section 5 and adding the following language:

"Provisions of existing collective bargaining agreements shall be honored."
3. We also recommending the standard provision creating no enforceable rights be added (e.g., see E.O. 12871).
4. As you are aware, smoking policy is now a subject for collective bargaining and the effect of an Executive order banning smoking is to make this issue non-negotiable for future contracts (although it would not change smoking policies during the life of current contracts). As a general matter the public employee unions have taken the position that smoking policy is one of the workplace issues that should be collectively bargained.

We have contacted all major Federal employee unions regarding this proposed Executive order and, given their reaction, feel that a briefing at the White House might be useful to bring them into the process. We would be glad to arrange this event.

5. Comptroller General decisions have authorized the use of appropriated funds to pay the costs incurred by employees participating in agency-authorized smoking cessation programs. We suggest mentioning this in the Executive order. Suggested language:

"Heads of agencies are reminded that agencies may establish programs designed to help employees stop smoking. However, before authorizing payment for a smoking cessation program, agencies are encouraged to carefully review the nature of the program and the credentials of the organization offering it."

6. Several reviewers expressed confusion over the definition of "courtyard," Section 2, (b). Does it pertain to enclosed courtyards only? We suggest incorporating clarifying language.

If you need any additional information, please contact Leigh Shein, Deputy Chief of Staff, at (202) 606-1000.

cc:

Ann McGuire
Special Assistant to the President
for Cabinet Affairs

Debra Bonds' Concerns

- 1.) Memo - # 3 — "and most recently the Dept. of Labor (DOL), ...

They don't like the word "recently" because that study came out in 1994.

- * 2.) # 1 of EO — "The # of non-smokers who die from exposure to ETS has been estimated to be as high as 56,000 each year.

They seriously question the 56,000 figure which would make ETS $1/8$ as lethal as smoking.

- 3.) They think they should put in a quote from an OSHA study that points out that this will be expensive to the govt.

- * 4.) EO p. 1, sect. 2 — They question the "within 50 feet of entrance" exception. How was the 50' measure arrived at / decided? Will there be a shelter for smokers ag. rain/snow? How will this provision be enforced?

* - major concerns