

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	re: SSNs and DOBs [partial] (1 page)	n.d.	b(6)
002. memo	Michael Cushing to Elizabeth Drye re: Union Briefing [partial] (2 pages)	07/21/1997	b(6)

COLLECTION:

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

FOLDER TITLE:

Tobacco EO - Federal Buildings

2014-0046-S

rc1418

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

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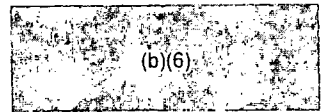
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OPM / Michael Cushing - arrangements -

714
606-2930

[open brow 2-4]-

President APGE John Spurdeman in
APTEO the hospital
NFFE
APL - public
employee dept.

- 3:00 -

Andy Hyman wkend. 201-568-7466 to noon Sat
690-6318 516-484-4855 to wkend

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~~Gary~~

DOD - Asst Secy of Defense for Management Policy
703-
Fred Pang 697-2121
Pamela Derry Frank Rush 697-1898

SMOKING IN THE FEDERAL WORKPLACE

Employees of the Federal Government and members of the public visiting or using federal facilities should be protected from exposure to environmental tobacco smoke. The health risks of smoking and exposure to smoke are clearly documented by reports of the Department of Health and Human Services and of the Environmental Protection Agency (EPA). In 1986, the U.S. Surgeon General concluded that exposure to environmental tobacco smoke (ETS) was a cause of lung cancer in otherwise healthy nonsmokers. In 1993, the U.S. Environmental Protection Agency confirmed this finding and categorized ETS as a Group A carcinogen, meaning that it was a known cancer-causing agent in humans. Since these reports, numerous studies have linked ETS exposure to various illnesses including asthma and heart disease. In fact, two recent studies found that exposure to secondhand smoke increases the risk of death from heart disease. The number of nonsmokers who die from exposure to ETS has been estimated to be as high as 56, 000 each year. The evidence indicates that smoking is a preventable cause of diseases; exposure to environmental tobacco smoke is a cause of diseases, including lung cancer, in exposed persons, including healthy nonsmokers; and the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke.

Accordingly, by the authority vested in me as President by the Constitution and laws of the United States of America, 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, except as otherwise provided in this order.

Section 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 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. Employers shall not require workers to enter such areas during business hours while smoking is ongoing.
- (b) The order does not extend to outdoor areas under Executive Branch control except within 50 feet of the entrance of federal buildings, within 50 feet of air intake ducts or within courtyards.
- (c) 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.

- (d) The order does not extend to federally-owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.
- (e) 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.
- (f) The head of any agency may establish limited and narrow exceptions which are essential 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 environmental tobacco smoke. Authority to approve such exceptions may not be delegated.

Section 3. Responsibility for Implementation of Order. The heads of agencies of the Executive Branch 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 any employing unit or authority of the Federal Government, other than those of the Legislative and Judicial Branches.

Section 4. 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 representatives about the implementation of this order.

Section 5. Consistency with Other Law. The provisions of this order shall be implemented consistent with applicable law, including the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq., the National Labor Relations Act 29 U.S.C. 151 et seq. 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 Executive Order. Agencies are required to review their current policy to confirm that agency policy comports with this Executive Order. Agency policies found not in compliance shall be revised to comply with the terms of this Executive Order.

Section 6. Cause of Action. Nothing in this order shall be construed to create a new cause of action against the United States, or to affect in any way the liability of the Executive Branch under the Federal Tort Claims Act.

Section 7. Construction. Nothing in this order shall limit an agency head from establishing more protective policies for employees and members of the public visiting or using federal facilities.

MEMORANDUM TO ELIZABETH DRYE

FROM: HIMA VATTI

DATE: JULY 28, 1997

SUBJECT: EO's EFFECT ON CURRENT AGENCY SMOKING POLICIES

The agencies that will be affected by the Executive Order can be divided into three categories: first, those agencies whose current policies clearly comply with the EO as presently written; second, those agencies whose policies may comply with the EO as presently written, but compliance must be verified; third, those agencies whose policies do not comply with the EO as presently written and which will be obligated by the EO to implement a stricter smoking policy in the workplace. The great majority of agencies updated their smoking policies during the Clinton Administration.

To summarize, approximately 754,000 employees in 18 agencies currently operate in a smoke-free workplace. Nearly 100,000 employees (excluding those at VA health care facilities) work in 6 agencies whose compliance with the EO must be verified. Finally, about 220,000 employees work in 12 agencies that must upgrade their smoking policies to conform to the EO.

Finally, I have provided a list of those agencies that offer a smoking cessation program of some type to smoking employees.

Category 1: Agencies Unaffected by the EO

The EO will have no affect on the following agencies, because these agencies currently have in place a smoking policy that goes beyond the EO by making no provisions for interior designated smoking areas. The buildings of these agencies are entirely smoke-free. Any minor exception that is made is "essential to accomplish the agency mission," and, therefore, will not violate the EO.

Agency	# Employees (As of 5/97)	Last Updated	Vehicle Ban
1. GSA	14,195	7/1/95	Yes
2. USDA	102,542	12/16/96	Yes
3. USIA	6,567	11/1/93	
4. HHS	126,628 (incl. SSA)	5/587	
5. SSA	67,800	10/3/88	
6. STATE	24,033	8/1/93	Yes
7. USTR	155	4/2/93	
8. DOL	15,497	12/1/94	
(main) 9. TREASURY	1,363	9/1/94	
10. OPM	3,480	10/93-2/1/94 (phase-in)	

11. FLETC	481	7/27/95	Yes
12. FMS	2,164	11/1/96	
13. FEMA	6,158	3/18/93	Yes
14. ONDCP	88	4/2/93	
15. VA (office)	243,948 (tot.)	10/1/90	
16. DOJ	113,881	1/1/95	
17. DOI	70,843	7/93	
smoke-free building complex; considering making all Interior-occupied space nationwide smoke-free			

Category 2: Agencies Whose Compliance Must be Verified

The following agencies may be in compliance with the EO as presently written. These agencies provide for limited designated indoor smoking areas. They will have to ensure that these areas meet the ventilation requirements outlined in the EO.

- | | |
|-------------------------------|--|
| 1. EPA- | description of smoking lounges seems to comply with EO requirements
17,586 employees; last updated 5/9/91 |
| 2. DOT- | 63,050; 7/3/90 |
| 3. SBA- | 4,707; 6/22/95 |
| 4. BATF HQ- | ban on smoking in motor vehicles
1,025 (DC); 6/18/96 |
| 5. US MINT- | 2,118; 10/17/94 |
| 6. BEP- | 2,736; 4/3/95 |
| 7. VA Health Care Facilities- | each maintains a smoking area in a detached building
last updated 1/13/95 |

Category 3: Agencies Affected by the EO

The following agencies will implement more stringent smoking policies at the appropriate time pursuant to the EO as presently written.

1. DOC (34,497; 8/87), IRS (implemented GSA Smoking Regulations; 119,426; 7/1/96)

The EO goes beyond the GSA regulations in two significant ways:

- First, the EO curtails Agency Head discretion in identifying smoking areas by describing designated smoking areas in terms of ventilation requirements.
- Second, the ventilation requirements will preclude the provision of smoking areas in spaces in cafeterias, restrooms, and large offices that are used concurrently by smokers and nonsmokers.

Currently, DOC provides a smoking area in every cafeteria.

2. DOD (tot.- 766,086; military- 738,543; civilian- 27,543; 3/7/94)- The Agency permits smoking in residential housing, prison quarters, clubs, and restaurants. The housing and prison exceptions would survive. The situation with clubs and restaurants is unclear at present.
3. ED (4,540; 10/27/93)- Currently, the Agency allows smoking areas in cafeterias and restrooms. ED must verify that other designated areas comply with ventilation requirements.
4. BATF Field Offices (2,929; 6/18/96)- Certain field offices may currently provide smoking areas in coffee rooms, lounges, cafeterias, and other similar areas that are used concurrently by smokers and non-smokers.
5. CUSTOMS (19,628; 6/20/91)- There is a smoking area in the cafeteria. There is one smoking room whose ventilation system must be found in compliance with EO requirements.
6. BPD (1,698; 6/29/93)- The Bureau allows smoking in single occupant offices in the E Street building when no nonsmokers are present, the cafeteria smoking area, and smoking lounges that have independent ventilation systems. Smoking in offices and the cafeteria will cease. Motor vehicles are smoke-free.
7. THRIFT (1,352; 4/20/93)- The Agency allows smoking in the second floor restrooms and the sixth floor patio at headquarters.
8. HUD- (11,094; 1992) Locations of the designated smoking areas are negotiated at the local level and are chosen on the basis of loose guidelines, not strict ventilation requirements. Local management can designate areas in restrooms and general office space. There are designated smoking areas at headquarters. When the union contracts expire, HUD may institute smoke-free policies everywhere.
9. DOE (17,257; 8/7/96)- The Agency allows smoking in a portion of the public dining area in the Forrestal Cafeteria at headquarters. One courtyard at HQ is designated for smoking. There is no uniform nationwide policy. Each Field Office, Laboratory, and M&O contract makes its own policy based on state regulations and local union-management negotiations.
10. CIA (number of employees is classified; 10/23/91; 9/14/96)- Except during lunch hours between 11:00am-2:00pm, smoking is allowed in the courtyard at headquarters.
11. OCC (2,929), USSS (4,716)- These two agencies have no written smoking policies.

Smoking Cessation Programs:

1. Treasury Bureaus:

Main-	health fair and classes
CUSTOMS-	classes on cessation and stress management, counseling
FLETC-	clinics when necessary
US MINT-	classes
BEP-	classes, assistance in purchasing prescription nicotine patches
FMS-	classes
BPD-	classes when necessary; only first program is free
THRIFT-	classes
2. GSA, OGP-	classes for a nominal fee
3. DOL-	classes and clinics for free
4. ED-	classes on agency time
5. SSA-	classes around the clock, counseling
6. EPA-	classes for free
7. DOD-	extremely thorough program at all levels of command
8. STATE-	classes
9. USDA-	classes, counseling for free (well thought-out program)
10. FEMA-	assistance and counseling
11. HHS-	clinic for free (not negotiated at the local level)

I. Current Smoking Policy

Almost 60% of respondents reported that they allowed no smoking in company buildings, and an additional 12.8% extended their smokefree policy to include company property as well. Twelve percent permitted smoking only in separately-ventilated designated smoking areas. Less than 3% had no policy in place. The primary significance of these numbers is that almost 85% of respondents reported work environments where their employees are protected from environmental tobacco smoke. These numbers correspond reasonably well when compared with the 1992 National Survey of Worksite Health Promotion Activities results for companies with more than 750 employees (74.5% v. 85%). Figure 5 displays these results.

A concern arises from the result that these policies apply to *all* company sites in only 60% of our sample. In the other 40%, the policy either applied only to corporate headquarters (43.6%, N=55), or individual sites or operating units determined their smoking policies independently (40%). Based on unsolicited remarks from respondents, it is possible that the policies are more widespread. Because of the decentralized administration of the sites, however, there is no system to collect information from other sites. In fact, there is a strong association between the type of corporate administration and the universal application of a smoking policy. Forty-eight of 64 corporations with centralized administrations applied smoking policies to all company sites, while only 29 of 63 decentralized administrations did (See Figure 6).

OFFICE OF THE SECRETARY
OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH
OFFICE OF PUBLIC HEALTH AND SCIENCE, EXECUTIVE OFFICE
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Washington, D.C. 20201
Phone No: (202) 690-5605
Fax No: (202) 690-7425

FAX TRANSMITTAL COVER SHEET

TO: ELRYE Date: 8/15/97
FAX NO: _____ PHONE NO. _____

SUBJECT: _____

FROM: HAL THOMPSON Voice 202-205-0677 ART LAWRENCE Voice 202-690-7439
JIM O'HARA Voice 202-690-7694 MARY ANN SYPERT Voice 202-690-5605
SHEILA NORRIS Voice 202-690-6561 OTHER: _____

Number of pages including cover sheet: _____

MESSAGE: _____

☐ PER OUR CONVERSATION
☐ PER YOUR REQUEST
☐ FOR YOUR INFORMATION
☐ PLEASE REVIEW AND APPROVE FOR SIGNATURE
☐ YOUR REQUEST IS APPROVED
☐ MORE INFORMATION IS NEEDED
☐ PLEASE SIGN AND RETURN
☐ PLEASE PROVIDE THE FOLLOWING:

Have a Active and Healthy Day!

IF TRANSMITTAL PROBLEMS, CALL MARY ANN ON 202-690-5605.

**Sample of Private Worksites with Smoking Policies
that Restrict Smoking Outdoors
8/7/97**

1. **Delta** - has designated smoking areas outside away from the building entrances. No specific distance is given, but the smoking area must be away from entrances.
2. **Nike** - no smoking on company grounds
3. **Calgon (worldwide)** - property-wide ban on smoking
4. **COMSTAT (Washington, DC)** - property-wide ban on smoking
5. **Mayo Clinic** - property-wide ban on smoking
6. **Merck** - No smoking on campus. If there is a fence (most buildings have them), then smokers must be outside the fence to smoke. Fences are not close to entryways.
7. **Texaco** - smoking outside must be in designated areas away from buildings.
8. **Blue Cross/Blue Shield of Nebraska** - smoking is only permitted on property in designated locations outside of the building.
9. **Vistakon, Florida** (subsidiary of Johnson & Johnson) - smoking permitted on company grounds provided it occurs beyond 50 feet of any building
10. **Dow Chemicals** - the corporate office has designated smoking areas outside (no specific distance from the building); at the manufacturers plants, there is no smoking anywhere on the property.
11. **Boeing** - smoking outside must be farther than 25 feet from storage containers containing hazardous materials - in some cases this could apply to the entire plant.

APPENDIX B. SAMPLE POLICIES

The following policies were selected from those of Wellness Councils of America member companies.

BLUE CROSS/BLUE SHIELD OF NEBRASKA

As a major health insurer and concerned employer, we discourage smoking because it is a serious health hazard to both smokers and nonsmokers. Smoking is only permitted in designated locations outside of our buildings. This policy includes nonbusiness hours such as weekends and evenings.

It is our policy to respect the rights of both smokers and nonsmokers in company buildings and facilities.

COLUMBIA NATURAL RESOURCES, INC., WEST VIRGINIA

Policy Title: Smoking Policy

It is the policy of this Company to provide a working environment free of passive smoke and to encourage a smokefree workplace.

Procedure Title: Smoking Policy

Procedure

In addition to the areas covered by Safety Policies and to meet the concerns of employees regarding the hazards of smoking and exposure to smoke and to maintain a safe and healthy environment in which to work, smoking will not be permitted in any building areas occupied by CNR/CGC employees. Where CNR/CGC share building space with other companies or other tenants, employees shall not be permitted to go to those areas to smoke. Smoking will be prohibited in all company vehicles, except where all occupants of the vehicle are smokers. It is the responsibility of each employee to ensure that his/her visitor(s) comply with all provisions of this policy. Any exception to this policy will require the written authorization from the CEO.

Summary

All questions relating to this policy should be directed to the Director-Human Resources.

VISTAKON, FLORIDA

Purpose of Policy

It is the philosophy of Vistakon to provide its employees with a work environment that offers the opportunity and resources to optimize their personal health and well-being. In accordance with this philosophy and the convincing evidence of the negative effects of sidestream (passive) smoke, it is Vistakon's intent that all facilities maintain a Smoke-Free environment.

Extent of Policy

The no-smoking policy will apply to all physical facilities owned or leased by Vistakon and located within the domestic U.S., including office buildings, research laboratories, manufacturing plants and distribution centers. Also included under this policy are all company-owned/leased vehicles.

Smoking is permitted on company grounds provided that it occurs beyond 50 feet of any building entrance or in the "external designated smoking" areas. Employees who choose to smoke within the permitted areas must do so on their regularly scheduled breaks or meal periods. No additional time from work shall be authorized for this activity. Each employee is expected to abide by the terms of the Smoke-Free Workplace Policy.

Implementation

Vistakon Live for Life [their in-house health promotion/disease prevention program] will provide, upon request, appropriate smoking cessation resources to interested employees.

Supervisory Responsibility

Management and supervisory staff will be responsible for ongoing compliance with the Smoke-Free Workplace Policy within their work areas. They are expected to adhere to standard practices in resolving issues of nonconformance (in addressing employee complaints) and maintaining expected levels of productivity within their work groups. Policy violation will result in disciplinary action.

03/07/97 FRI 12:23 FAX 2029393868

E.L.I.

002

Commission on Risk Assessment and Risk Management

FOR IMMEDIATE RELEASE:

CONTACT: Brenda K. Foster
(202) 331-4323

EMBARGOED FOR PUBLICATION UNTIL MARCH 7, 1997

Presidential/Congressional Commission Issues 71 Recommendations To Improve EPA, FDA, Other Federal Agency Approaches to Environment, Public Health Threats

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Environmental Health Sciences
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Virginia V. Welden
Monsanto Company
St. Louis, Missouri

Cheryl
Rumrider, Director
Sharon Rumrider
Associate Director
Joanna Rumrider
Designated Federal Official

WASHINGTON — Government agencies need to change how they approve new medications, decide on clean up of Superfund sites, analyze laboratory animal test results of poisons or cancer-causing substances, and weigh the costs and benefits of environmental protection, said the Presidential/Congressional Commission on Risk Assessment and Risk Management today as it issued 71 detailed recommendations for reforming how the federal government addresses threats to air, water, soil and public health.

In Volume II of its two-part report, the 10-member Commission says the current risk management procedures are often too simplistic or complex to be effective and relevant. The Commission instead recommends specific changes to key environmental and health policies that would equally weigh coordination among agencies, public participation, peer review and analysis. For example, the Commission recommends that the increasingly costly Superfund program should be based on site use and should review and change remedies that use expensive, outdated technology.

Dr. Gilbert S. Omenn, chairman of the Commission and dean of the University of Washington's School of Public Health and Community Medicine in Seattle, said the Commission found that one of the greatest risks to human health — indoor air pollution — is largely unregulated and needs immediate attention by Congress and the Administration.

"Indoor air pollution often poses a greater health risk than outdoor air pollution," said Dr. Omenn. "Unregulated use of pesticides, cleaning chemicals, deodorants, and emissions from gas and wood stoves generate high concentrations of potentially toxic indoor air pollutants."

To deal with the issue, the Commission recommends that Congress and the Administration craft legislation requiring EPA, OSHA, CPSC and other federal agencies to develop a coordinated strategy to address the growing problem of indoor air pollution.

Other agency-specific recommendations include:

Environmental Protection Agency (EPA)

- Superfund site cleanups should be based on "reasonably anticipated current and future use of a site." Congress "should encourage reuse of brownfields," those

(more)

Volume II/Page 2

urban sites "where economic use is avoided because of liability concerns," and give the Environmental Protection Agency (EPA) "broader authority to develop enforceable institutional controls" to ensure land use doesn't change.

- The Clean Water Act should be amended to replace its "fragmented programs" with a comprehensive, integrated watershed-management approach to maintain and improve water quality.

Food and Drug Administration (FDA)

- To foster the federal Food and Drug Administration's accelerated review and approval of new drugs, the FDA ought to "update criteria for toxicity-testing and clinical-trial protocols" with its counterpart agencies in foreign countries "so that properly documented studies...in other countries can be used as evidence for FDA review." The FDA's accelerated approvals of new drugs "should be linked to rigorous post-marketing surveillance." In addition, the FDA should be given back the power to require scientific evidence of the health claims for dietary supplements.
- The "Delaney Clause," the federal law requiring a ban on food additives or chemical residues that might possibly cause cancer, should undergo "substantial modification...to a standard of reasonable certainty of no harm for all population groups."

Department of Agriculture (USDA)

- USDA must replace its "rudimentary, conflicting..., inadequate" methods for assessing such microbiological risks to food as *E. coli* contamination of ground beef and other products.

Occupational Safety and Health Administration (OSHA)

- OSHA should establish guidelines for agency risk assessments and streamline the process for developing permissible exposure limits for air contaminants in the workplace. OSHA also should cooperate more with the National Institute for Occupational Safety and Health.

General recommendations include:

- Regulatory agencies should distinguish between chemical tests involving laboratory animals that develop cancerous tumors "only...as a result of mechanisms or doses that...clearly...[are] not relevant to humans," and test results that "are predictive" of possible effects on humans. A chemical that causes effects that are not relevant to humans "should not be regulated as a carcinogen and should not require extensive risk assessment."
- Risk assessment should identify particular groups of susceptible people — those in specific occupations residents of low socioeconomic areas — who are likely to have higher exposure to chemicals being assessed. The affected people should be consulted early in the assessment process for information on all known sources of exposure to that chemical and related chemicals.

(more)

Volume II/Page 3

- Congress should reject proposals to subject risk assessment and benefit-cost analysis "to expanded judicial review." Instead, court involvement should be minimized while "consensual" approaches — such as alternative dispute resolution techniques, negotiated rule-making and expert peer review — should be increased.
- Risk managers and those with a stake in their decisions should "aggressively seek alternatives to command-and-control regulation to improve the efficiency and effectiveness of health and environmental protection and to reduce compliance and litigation costs."

The Commission, established under 1990 amendments to the federal Clean Air Act, began its work in May, 1994. Its members, including experts in public health, law, science, the environment and industry, were appointed by the leaders of the House and Senate, the president and the National Academy of Sciences. Its report follows public hearings held across the country and testimony from the EPA, FDA, OSHA, DOE, state and local officials, and many individuals and organizations.

The Commission was assigned to review the procedures for devising and enforcing the regulations that protect humans and the environment from substances that degrade ecosystems or cause cancer and other chronic health effects — effects that result from cumulative, repeated exposures but may not appear for months, years or decades.

The first volume of the Commission's report deals with its recommendations for establishing a six-stage Risk Management Framework to define a problem and put it in context, analyze the risks associated with the problem, examine options for addressing the risks, make decisions about which options to implement, take actions to implement the options selected, and then conduct an evaluation of the results.

The Commission will remain active until June, 1997 to assist Congress, the Administration and various other interested parties in considering its recommendations "and finding common ground with relevant proposals from others," the report says.

Federal Unions Demand Action on 'Sick Buildings'

Demonstrators Outside EPA Identify 30 Sites

By Mohamad Bazzi
Washington Post Staff Writer

Members of four federal employee unions rallied outside the Environmental Protection Agency headquarters in Southwest Washington yesterday to demand new federal guidelines for dealing with "sick building syndrome," a term describing maladies that afflict workers in poorly ventilated office buildings.

The unions released a list of 30 federal buildings nationwide where they said workers have reported illnesses attributed to poor air quality, including headaches, eye and skin irritation, sinus problems, nausea, coughing and respiratory trouble.

Union officials said a growing number of workers suffer from those symptoms, which some doctors say could lead to multiple chemical sensitivity, a condition in which a person reacts negatively to chemicals outside a sick building.

At EPA headquarters, in the 400 block of M Street SW, about 100 employees have reported illnesses in the last 10 years, said Bill Hirzy, senior vice president of the National Federation of Federal Employees Local 2050. The reports began in 1987, when the EPA installed new carpets and room partitions.

Patricia Sims, a former EPA attorney who in 1989 was transferred to the agency's Waterside complex in Southwest Washington from the agency's Chicago office, said that she soon began feeling dizzy and nauseated and that she had trouble concentrating. She said her symptoms usually disappeared when she left the building.

"It was all pretty vague and subtle," said Sims, who now works full time for the National Federation of Federal Employees. "It was like continuously having a flu."

When Sims's symptoms did not subside after two years, she sought permission to split her work schedule between her home and the office. Other employees were transferred to EPA buildings in Crystal City and on Capitol Hill.

Several union officials said that the EPA's response to complaints from its employees has been good but that they want the agency to assume a greater role in dealing with sick

building problems in federal and private office buildings.

EPA spokesman Dave Ryan said that the agency does not have the authority to regulate air pollution in office buildings but that the Occupational Safety and Health Administration has developed guidelines on indoor air quality.

Ryan said that the rugs at EPA headquarters were removed in 1988 and that all new carpeting is now aired out before and after it is installed. The agency also has made improvements in its air-conditioning system and is regularly monitoring air quality in its buildings.

Ryan said the Waterside complex was recently reroofed to prevent water leaks, which could be a source of biological contamination. In addition, the EPA reduced the number of workers at the complex from 5,500 in 1989 to about 4,000 today.

Up to 30 percent of new and remodeled office buildings are believed to cause some form of health problems, according to the World Health Organization. The problem is most common in airtight offices erected in the 1970s to be energy efficient. With sealed windows and a limited intake of fresh air, airtight buildings trap and recycle contaminants such as bacteria spun out of dirty ventilation systems, toxic substances that rise from new carpets and hydrocarbons that seep from copying machines. The invisible and often odorless pollutants are difficult to measure, which complicates efforts to identify a specific cause for sick building ailments.

James Keogh, director of the University of Maryland's Occupational Health Project, which treats people with sick building maladies, said the most common problems in such buildings are poor ventilation, water leaks that cause mold and the emission of toxic substances from furniture and office equipment.

But medical researchers are unsure whether prolonged exposure to contaminants in sick buildings can lead to multiple chemical sensitivity.

"People who have become ill in a specific building setting may tend to react very differently to odors and stimuli in other settings," Keogh said. "In general, people feel lousy in the building and feel enormously better when they go outside."



Assistant Secretary for Health
Office of Public Health and Science
Washington D.C. 20201

MEMORANDUM FOR THE PRESIDENT

I respectfully submit for your consideration a proposed Executive Order to prohibit smoking in federal executive branch facilities.

Strong scientific evidence documents that exposure to environmental tobacco smoke (ETS) is a serious risk to health. ETS is a known cause of diseases, including lung cancer, in healthy nonsmokers and is a major source of harmful indoor air pollution. ETS is responsible for approximately 3,000 lung cancer deaths each year in nonsmoking adults. ETS also threatens the health of hundreds of thousands of children with asthma and other respiratory illnesses.

Major scientific reports of the Department of Health and Human Services (HHS 1986, 1991, 1996, 1997) and the Environmental Protection Agency (EPA 1993) document these findings. HHS, EPA, and most recently the Department of Labor (DOL), recommend that smoking either be prohibited indoors, or be permitted indoors only in separately-ventilated areas. Protecting nonsmokers from the health consequences of ETS exposure is the primary goal of restrictions on smoking in the workplace.

Our Administration has supported and advocated eliminating indoor exposure to ETS. The most far-reaching effort is DOL's proposed occupational standard to eliminate ETS exposure in virtually all workplaces nationwide. During the 103rd Congress the Administration also supported legislation (H.R. 3434) to prohibit ETS exposure in public buildings and on March 31, 1994 you signed P.L. 103-227, the "Goals 2000: Educate America Act" which prohibited smoking in federally-funded children's services facilities, including most elementary and secondary schools.

Existing General Services Administration (GSA) regulations on this subject were published seven years before the EPA report. The GSA regulations apply to approximately 10 percent of federal domestic facilities and do not cover those federal buildings which are under the control of federal departments and agencies with statutory real property authority. The 1986 GSA rules permit smoking in areas designated by agency heads and do not require that such areas be ventilated separately.

Mr. President, the simple separation of smokers and nonsmokers within the same airspace does not eliminate ETS exposure. As a result, many federal agencies are not now smokefree and federal workers and visitors to federal buildings are exposed unnecessarily to ETS. In view of

Page 2 - Executive Order To Prohibit Smoking In Federal Executive Branch Facilities

the solid science base and the Administration's public commitment to reducing ETS exposure, it seems inadvisable to continue to permit smoking in federal indoor workplaces.

The Executive Branch has legal authority and strong scientific justification to move ahead to prohibit smoking in federal workplaces. The most expedient mechanism to announce and implement an Executive Branch smoke-free workplace policy would be a Presidential Executive Order. An Executive Order would apply more broadly and could be implemented more quickly than other approaches.

The issuance of an Executive Order would produce substantial savings rather than costs. The federal Government would be promoting the health of its employees while saving money due to reduced sick days, building maintenance, and furniture and carpet replacement. Some studies estimate conservatively that smoking in the workplace costs employers one thousand dollars annually for each employee who smokes. As the nation's largest employer, the issuance of an Executive Order to protect worker health would set an important example to other employers considering adopting smokefree policies.

A proposed Executive Order is attached for your consideration.

A handwritten signature in black ink, appearing to read 'D. Shalala', with a large, stylized initial 'D'.

Donna E. Shalala

Attachment

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Office of the Secretary

Assistant Secretary for Health
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Attachment

SMOKING IN THE FEDERAL WORKPLACE

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Accordingly, by the authority vested in me as President by the Constitution and laws of the United States of America, 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, except as otherwise provided in this order.

Section 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 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. *Employers shall not require workers to enter such areas during business hours while smoking is ongoing.* *Agency officials (GSA)*
- (b) The order does not extend to outdoor areas under Executive Branch control except *within 50 feet of the entrance of federal buildings, within 50 feet of air intake ducts or within courtyards.* *the vicinity* *within*
- (c) 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.

I kept areas from which ETS would enter the building from every wing or air ducts

- (d) The order does not extend to federally-owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.
- (e) 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.
- (f) The head of any agency may establish limited and narrow exceptions which are essential 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 environmental tobacco smoke. Authority to approve such exceptions may not be delegated.

Section 3. Responsibility for Implementation of Order. The heads of agencies of the Executive Branch 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 any employing unit or authority of the Federal Government, other than those of the Legislative and Judicial Branches.

Section 4. 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 representatives about the implementation of this order.

Section 5. Consistency with Other Law. The provisions of this order shall be implemented consistent with applicable law, including the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq., the National Labor Relations Act 29 U.S.C. 151 et seq. 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 Executive Order. Agencies are required to review their current policy to confirm that agency policy comports with this Executive Order. Agency policies found not in compliance shall be revised to comply with the terms of this Executive Order.

Section 6. Cause of Action. Nothing in this order shall be construed to create a new cause of action against the United States, or to affect in any way the liability of the Executive Branch under the Federal Tort Claims Act.

Section 7. Construction. Nothing in this order shall limit an agency head from establishing more protective policies for employees and members of the public visiting or using federal facilities.

Talking Points

Thank you for coming. As you know, we are preparing an executive order establishing a smoke-free environment in federal workplaces. The goal is to ensure that employees, and members of the public who enter federal buildings are not exposed to ETS. Agency heads would have the flexibility to accommodate smokers given this basic constraint (e.g. through separately ventilated smoking areas).

We are taking this step because evidence indicates that environmental tobacco smoke is a serious health concern. In 1993, EPA found ETS to be a class A carcinogen. More recent studies have indicated that ETS contributes to other illnesses, such as heart disease and asthma. So we are working on an EO to insure all federal workers are protected from ETS.

Your views are important to us -- you have experience working with your members to reduce or eliminate workplace environmental tobacco smoke. We welcome your insights.

We would want to work with you to implement the order. It will not take effect immediately. There will be an implementation period, so we hope to work with you during that transition.

Re. Collective Bargaining: We recognize the importance of this issue to your members. Given the health concerns, we feel it's necessary to ensure that workers are not involuntarily exposed to ETS. We welcome your views on how to best transition toward a smoke-free work environment.

DRAFT
NOT CLEARED

SMOKING IN THE FEDERAL WORKPLACE

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- (d) The order does not extend to federally-owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.

JULY 17, 1997

MEMORANDUM TO ELENA KAGAN

FROM: CHRISTA ROBINSON

SUBJECT: PREPARATION FOR UPCOMING EVENTS

Attached are the shell versions of the briefings for upcoming events. I have e-mailed these to the lead staff person and I have designated below who is responsible for each item. My intern, Keil Green, will be attending meetings and working with the staff leads on these events. He prepared to add substantive additions to the briefing memos if the staff lead wants -- so he may be sending you documents to approve - but the staff know they are responsible. I have also reiterated that nothing should be circulated to the Press Office or Staff Secretary without your approval (regardless of anyone else that may have approved it.) Keil will also make sure that participants are vetted for all events.

7/18/97 - Radio Address- (Youth Crime Gun Interdiction Initiative Report)

7:40 pm - 8:15 pm - Roosevelt Room.

Yesterday, it was decided that no guests will attend the taping of this address, so we "disinvited" the chiefs we had lined up to come. The ATF will organize regional press events to take place after the radio address is broadcasted on Saturday.

PAPER:

- 1) **Briefing Paper:** Megan Maloney
- 2) **Memo from Rubin and Reno** - Jose
- 3) **Charts & Graphs** - Treasury to Press Office.
- 4) **Fact Sheet on Expansion of the Initiative** - Jose
- 5) **Q&A** - Jose
- 6) **Juvenile Justice Accomplishments** - Neera

SCHEDULING CONTACT: Jen P./Rebecca Cameron

PRESS CONTACT: Megan Maloney

7/22/97 - Signing of Executive Order on Tobacco

The event will probably take place around 2:30pm at HHS -- depending on when Shalala can arrive. The Program will include: Shalala, Federal Employee, POTUS, and possibly Louis Sullivan if he can attend. Califano, Satcher will be in front row.

PAPER:

- 1) **Briefing Paper:** Elizabeth Drye
- 2) **Executive Order** - Elizabeth/Phil Caplan. The Executive Order will go directly from the Clerk's Office to the Press Office.
- 3) **Fact Sheet** - Elizabeth Drye will prepare and get to Press Office.
- 4) **Q&A** - Elizabeth Drye will prepare and get to Press Office.

SCHEDULING CONTACT: Karen Finney
SPEECH WRITER: Jordan Tamagni

PRESS CONTACT: Julie Green



FAX TRANSMITTAL SHEET
CENTER FOR PARTNERSHIP AND LABOR-MANAGEMENT RELATIONS
 1900 E STREET, NW., WASHINGTON, DC 20415
 VOICE: 202-606-2930 FAX: 202-606-2613

Please Deliver To:	Name:	Elizabeth Drye		Number of Pages (including this one): 5
	Office:	Domestic Policy Council	Room:	
	Telephone:	456-5573 FAX: 456-5581		

From:	Name:	Michael Cushing	Date:
	Office:	Center for Partnership and Labor-Management Relations	
	Telephone:	(202) 606-2714	

Please call the above number if there are any missing pages

Remarks:

Attached is a copy of EO 12871, establishing the National Partnership Council. Thanks for arranging yesterday's meeting. Please let us know if we can be helpful.

NATIONAL PARTNERSHIP COUNCIL • REPORT TO THE PRESIDENT

Title 3—

Executive Order 12871 of October 1, 1993

The President

Labor-Management Partnerships

The involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's Government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the executive branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

Section 1. THE NATIONAL PARTNERSHIP COUNCIL. (a) *Establishment and Membership.* There is established the National Partnership Council ("Council"). The Council shall comprise the following members appointed by the President:

- (1) Director of the Office of Personnel Management ("OPM");
- (2) Deputy Secretary of Labor;
- (3) Deputy Director for Management, Office of Management and Budget;
- (4) Chair, Federal Labor Relations Authority;
- (5) Federal Mediation and Conciliation Director;
- (6) President, American Federation of Government Employees, AFL-CIO;
- (7) President, National Federation of Federal Employees;
- (8) President, National Treasury Employees Union;
- (9) Secretary-Treasurer of the Public Employees Department, AFL-CIO; and
- (10) A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively "agency"), not otherwise represented on the Council.

Members shall have 2-year terms on the Council, which may be extended by the President.

(b) *Responsibilities and Functions.* The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:

- (1) supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;

APPENDIX A

(2) proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;

(3) collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;

(4) utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and

(5) working with the President's Management Council toward reform consistent with the National Performance Review's recommendations throughout the executive branch.

(c) *Administration.* (1) The President shall designate a member of the Council who is a full-time Federal employee to serve as Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.

(2) Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.

(3) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(4) Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.

(5) All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may request.

(d) *General.* (1) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

(2) Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.

(3) The Council shall exist for a period of 2 years from the date of this order, unless extended.

(4) Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special Government employees for any purpose. **SEC. 2. IMPLEMENTATION OF LABOR-MANAGEMENT PARTNERSHIP THROUGHOUT THE EXECUTIVE BRANCH.** The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

(a) create labor-management partnerships by forming labor-management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform Government;

(b) involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;

(c) provide systematic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are

NATIONAL PARTNERSHIP COUNCIL • REPORT TO THE PRESIDENT

Federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;

(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same; and

(e) evaluate progress and improvements in organizational performance resulting from the labor-management partnerships.

Sec. 3. NO ADMINISTRATIVE OR JUDICIAL REVIEW. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William Clinton

THE WHITE HOUSE.
October 1, 1993.



**United States
Office of
Personnel
Management**

Hima

**FAX
TRANSMITTAL
SHEET**

Date:

7-29

Number of Pages

3

OFFICE OF THE DIRECTOR
1900 E STREET, NW., ROOM 5H09
WASHINGTON, DC 20415-0001

Please

Deliver

To:

Name: *ELIZABETH DRYE*

Office: *DPC*

Room:

Telephone:

From:

Name: **Mary Strand**

Office: **Chief of Staff**

Room: **5H09**

Telephone: **(202) 606-1000**

FAX Number: **(202) 606-2183**

Remarks

I'm not sure you still need this, but here are + Q+A's you asked Leigh Shein about. I've already given Hima the # of Federal employees.

My direct phone # is (202) 606-1704 if you've got questions.

WARNING: Many Fax machines produce copies on thermal paper. The image produced is highly unstable and will deteriorate significantly in a few years. It should be copied on a plain paper copier prior to filing.

U.S. OFFICE OF PERSONNEL MANAGEMENT
QUESTIONS AND ANSWERS
REGARDING POLICY ON SMOKING CESSATION

1.Q. *What is the legal authorization for agencies to pay for employee participation in smoking cessation programs?*

1.A. A decision by the Comptroller General of the United States (B-231543 dated February 3, 1989) held that under 5 U.S.C. §7901, Federal agencies have the authority to utilize appropriated funds to pay the costs incurred by employees participating in agency-authorized smoking cessation programs. The decision held that because smoking is a major contributing cause of illnesses such as cancer, coronary disease and emphysema, smoking cessation programs, are "preventive" in nature and authorized by 5 U.S.C. §7901(c)(4).

2.Q. *Is there a governmentwide policy on smoking cessation programs in Federal agencies?*

2.A. While there is no requirement that agencies establish such programs, OPM supports and encourages agency-authorized programs aimed at health promotion and disease prevention, including smoking cessation programs. Agencies may contact OPM's Employee Health Services Policy Center at (202) 606-2920, for assistance in establishing and/or locating programs designed to help employees stop smoking.

3.Q. *Do federal employees' health insurance plans cover smoking cessation assistance?*

3.A. ~~The U.S. Office of Personnel Management (OPM) administers the Federal Employees Health Benefits (FEHB) program, which provides health services to 10 million federal employees, retirees, and their families through 375 health benefits plans.~~ ^{The government}

Individual plan coverage to aid members in smoking cessation varies. Federal employees should refer to their plan brochure for specific coverage information.

Generally, fee-for-service plans cover up to \$100 towards the cost of enrollment in one smoking cessation program per member per lifetime after

the calendar year deductible has been met. Many fee-for-service plans also cover the cost of smoking cessation drugs that require a prescription; some cover the cost of non-prescription drugs as a part of the \$100 lifetime benefit to aid in smoking cessation.

Benefits in Health Maintenance Organizations (HMOs) vary greatly; the Prescription Drugs Benefits section of each plan's brochure specifies whether drugs to aid in smoking cessation are covered or excluded. Generally, members must contact their HMO to find out about whether classes are offered for smoking cessation and whether they require any payment by the member.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Office of the Secretary

Assistant Secretary for Health
Office of Public Health and Science
Washington D.C. 20201

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Page 2 - Executive Order To Prohibit Smoking In Federal Executive Branch Facilities

the solid science base and the Administration's public commitment to reducing ETS exposure, it seems inadvisable to continue to permit smoking in federal indoor workplaces.

The Executive Branch has legal authority and strong scientific justification to move ahead to prohibit smoking in federal workplaces. The most expedient mechanism to announce and implement an Executive Branch smoke-free workplace policy would be a Presidential Executive Order. An Executive Order would apply more broadly and could be implemented more quickly than other approaches.

The issuance of an Executive Order would produce substantial savings rather than costs. The federal Government would be promoting the health of its employees while saving money due to reduced sick days, building maintenance, and furniture and carpet replacement. Some studies estimate conservatively that smoking in the workplace costs employers one thousand dollars annually for each employee who smokes. As the nation's largest employer, the issuance of an Executive Order to protect worker health would set an important example to other employers considering adopting smokefree policies.

A proposed Executive Order is attached for your consideration.



Donna E. Shalala

Attachment

SMOKING IN THE FEDERAL WORKPLACE

Employees of the Federal Government and members of the public visiting or using federal facilities should be protected from exposure to environmental tobacco smoke. The health risks of smoking and exposure to smoke are clearly documented by reports of the Department of Health and Human Services and of the Environmental Protection Agency (EPA). In 1986, the U.S. Surgeon General concluded that exposure to environmental tobacco smoke (ETS) was a cause of lung cancer in otherwise healthy nonsmokers. In 1993, the U.S. Environmental Protection Agency confirmed this finding and categorized ETS as a Group A carcinogen, meaning that it was a known cancer-causing agent in humans. Since these reports, numerous studies have linked ETS exposure to various illnesses including asthma and heart disease. In fact, two recent studies found that exposure to secondhand smoke increases the risk of death from heart disease. The number of nonsmokers who die from exposure to ETS has been estimated to be as high as 56, 000 each year. The evidence indicates that smoking is a preventable cause of diseases; exposure to environmental tobacco smoke is a cause of diseases, including lung cancer, in exposed persons, including healthy nonsmokers; and the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke.

Accordingly, by the authority vested in me as President by the Constitution and laws of the United States of America, 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, except as otherwise provided in this order.

Section 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 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. Employers shall not require workers to enter such areas during business hours while smoking is ongoing.
- (b) The order does not extend to outdoor areas under Executive Branch control except within 50 feet of the entrance of federal buildings, within 50 feet of air intake ducts or within courtyards.
- (c) 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.

- 01/11/51 10-02 202 090 1203 HHS 05/15 006/006
- (d) The order does not extend to federally-owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.
 - (e) 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.
 - (f) The head of any agency may establish limited and narrow exceptions which are essential 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 environmental tobacco smoke. Authority to approve such exceptions may not be delegated.

Section 3. Responsibility for Implementation of Order. The heads of agencies of the Executive Branch 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 any employing unit or authority of the Federal Government, other than those of the Legislative and Judicial Branches.

Section 4. 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 representatives about the implementation of this order.

Section 5. Consistency with Other Law. The provisions of this order shall be implemented consistent with applicable law, including the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq., the National Labor Relations Act 29 U.S.C. 151 et seq. 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 Executive Order. Agencies are required to review their current policy to confirm that agency policy comports with this Executive Order. Agency policies found not in compliance shall be revised to comply with the terms of this Executive Order.

Section 6. Cause of Action. Nothing in this order shall be construed to create a new cause of action against the United States, or to affect in any way the liability of the Executive Branch under the Federal Tort Claims Act.

Section 7. Construction. Nothing in this order shall limit an agency head from establishing more protective policies for employees and members of the public visiting or using federal facilities.

EXECUTIVE ORDER

DIKHI
7-31-97
2:45

Draft
8/4

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 ^{any} ~~all~~ outdoor areas under Executive Branch control ^{in front of} ~~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 ^{those portions of (GSA)} 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,

~~Sec. 2~~ Doorways and Courtyards

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~~ ^{Insert} Sec. 2 Smoking cessation programs. The heads of agencies are encouraged to use ^{(A) Sam below}

existing authority to establish programs designed to help employees stop smoking.

~~Sec. 4~~ ⁴⁵ 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~~ ⁶ Sec. 5 Phase-In of implementation. 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 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 and to inform their employees of the health risks of exposure to environmental tobacco smoke and undertake related activities as necessary.

~~Sec. 6~~ ⁷ 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 et seq.) and the National Labor Relations Act (29 U.S.C. 151 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 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~~ ⁸ 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

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,

① Other Locations

Section 3 ~~Discretionary Authority~~ ^{Additional} and

The heads of agencies shall evaluate

the need to restrict smoking

at doorways and in courtyards

to protect workers and

visitors from ~~the~~ ^{environmental} tobacco smoke

and take ~~the~~ ^{shall} action, if any, they deem

appropriate

whenever action they consider ~~appropriate~~ ^{and necessary} any necessary action.

any action they
determine
to be
necessary



Elizabeth Drye

07/21/97 12:45:52 PM



Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP

Subject: 3:30 Briefing for union leaders re EO on Smoking in Federal Workplace

Below is a list of attendees for 3:30 mtg. and talking points. Michael Cushing at OPM organized the meeting for us.

Background

As you know, the EO would ban smoking in federal workplaces except in enclosed, designated smoking areas vented to the outside, or in residences (e.g. on army bases). GSA regulations already require agencies to minimize ETS and set up separate smoking areas in cafeterias. Most agencies have already implemented more protective restrictions, such as allowing smoking only outside. The unions have challenged these changes in some cases and negotiated accommodating measures (e.g. CDC built tents for smokers outside).

The unions believe smoking policy should remain subject to collective bargaining. They therefore formally oppose addressing the issue through an EO. Their members are divided on smoking issues, however, and the unions are not likely to visibly oppose the EO.

The purpose of our meeting is to listen to their concerns and those of their membership, and to ask for their support and partnership in implementing the EO.

Participants

Michael Cushing, Leigh Shein, OPM

Jim O'Hara, Andy Hyman, HHS

Terry Rosen, American Federation of Government Employees, AFL-CIO (AFGE).

Cary Sklar, National Treasury Employees Union (NTEU).

James Cunningham, President, and Sean Safford, National Federation of Federal Employees (NFFE).

Paula Lucak, AFL-CIO Public Employee Department (PED).

Talking Points

Thank you for coming. As you know, we are preparing an executive order establishing a smoke-free environment in federal workplaces. The goal is to ensure that employees, and members of the public who enter federal buildings are not exposed to ETS. Agency heads would have the flexibility to accommodate smokers given this basic constraint (e.g. through separately

ventilated smoking areas).

We are taking this step because evidence indicates that environmental tobacco smoke is a serious health concern. In 1993, EPA found ETS to be a class A carcinogen. More recent studies have indicated that ETS contributes to other illnesses, such as heart disease and asthma. So we are working on an EO to insure all federal workers are protected from ETS.

Your views are important to us -- you have experience working with your members to reduce or eliminate workplace environmental tobacco smoke. We welcome your insights.

We would want to work with you to implement the order. It will not take effect immediately. There will be an implementation period, so we hope to work with you during that transition.

Re. Collective Bargaining: We recognize the importance of this issue to your members. Given the health concerns, we feel it's necessary to ensure that workers are not involuntarily exposed to ETS. We welcome your views on how to best transition toward a smoke-free work environment.

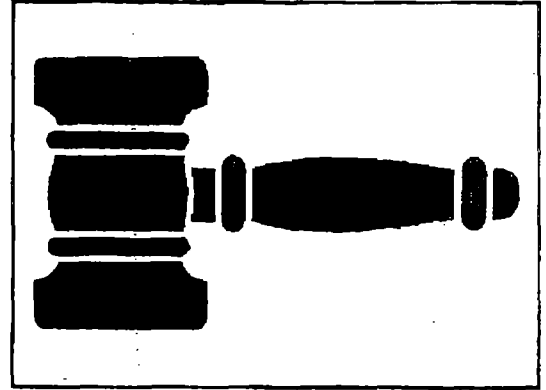
U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF THE GENERAL COUNSEL

PHONE: (202) 690-6318

FAX: (202) 690-7998

DATE: January 9, 1997

TO: ELIZABETH DRYE
fax: 456-7028



FROM: ANDREW D. HYMAN
Special Assistant to the General Counsel
U.S. Department of Health and Human Services
Office of the General Counsel, Room 707F
200 Independence Ave., SW
Washington, D.C. 20201

COMMENTS: Attached is a letter to the President that was cc'ed to the Secretary. Can we discuss how the WH intends to answer this. Thanks.

No. of Pages (including cover): 4

**ACTION ON SMOKING AND HEALTH**

2013 H Street NW • Washington DC 20006-4207 • (202)659-4310

Internet Address: <http://ash.org/>**December 26, 1996**

The President William J. Clinton
The White House
Building WH, Room 1/WW
1600 Pennsylvania Avenue, N.W.
Washington DC 20500

Via Facsimile: 202 4562461 and Certified Mail - Return Receipt Requested

Dear Mr. President:

RE: An Executive Order Limiting Smoking in Most Federal Buildings

As the largest national organization solely devoted to the many different problems of smoking and to protecting the rights of nonsmokers, we write to urge you to sign an executive order prohibiting smoking in most federal buildings — an order which was originally drafted by ASH Trustee Dr. Louis W. Sullivan as Health and Human Services Secretary for former President Bush.

We urge you to sign it for several reasons:

1. Although you and your wife (a former ASH contributor) are well aware of how irritating and unhealthy breathing tobacco smoke can be, you probably are not aware of how many federal buildings still permit smoking, which is detrimental and threatening to the health of millions of American workers and visitors to the buildings.

Action on Smoking and Health**Page 2**

2. Your stand against the problems of smoking has proven to be enormously popular and politically successful. As indicated by the amount of state and local legislation introduced and passed, contributions, numerous surveys, etc., it is apparent that most Americans are even more concerned about the very immediate and obvious problems of being forced to breathe carcinogenic tobacco smoke than they are about less concrete concerns over children becoming smokers.

3. Five states (California, Utah, Maryland, Vermont, and Washington), more than 100 cities and counties, and the great majority of major businesses already prohibit smoking in their buildings. It works very well, protects tens of millions of nonsmokers with allergies and other sensitivities to tobacco smoke, and is widely accepted by smokers, even those who now go outside to smoke. Thus, what once may have seemed to the Bush administration to be a very controversial proposal is now widely accepted by the public and by most large businesses.

4. Without such an order, a striking lack of uniformity among smoking policies in different buildings will continue to result in confusion and resulting problems of compliance; in uncertainty for workers voluntarily or involuntarily transferred, as well as for persons transacting government business or simply visiting; and denial of protection for millions of Americans.

5. Since many federal buildings already prohibit smoking, an executive order making the policy uniform would have very few adverse consequences, and would arouse little real opposition except from cigarette manufacturers. At the same time, it would be seen as a very important and symbolic gesture from a president not afraid to stand up the tobacco industry.

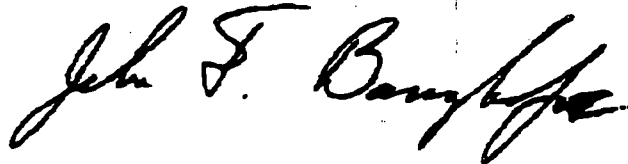
Action on Smoking and Health**Page 3**

6. The former U.S. Surgeon General, the AMA, WHO, and many other organizations all estimate that more than 50,000 American NONsmokers die each year from exposure to tobacco smoke, and at least half of that exposure occurs outside the home. Thus the average American is more likely to be killed by someone else's tobacco smoke than he is by their car, bullet, or AIDS virus. You have the power — without the need to go to Congress — to provide federal workers with protection from this deadly killer.

For all of these reasons, ASH respectfully urges you to sign an Executive Order prohibiting smoking in all federal buildings — as you have with the White House itself — and to announce it at or prior to your Inauguration. An overwhelming majority of Americans will applaud and thank you; most smokers will tolerate the restriction as they do on domestic air flights and in a growing number of public places; and many lives will be saved.

Please feel free to have a staff member contact ASH for any additional information or assistance with this issue. Thank you.

Yours truly,



John F. Banzhaf III
Executive Director

JFB:jld

cc: The First Lady Hillary Rodham Clinton
The Honorable Donna E. Shalala, Secretary of Health and Human Services
Dr. Louis W. Sullivan, President, Morehouse School of Medicine



Record Type: Record

To:

Ellen Kagan

cc:

Subject: 3:30 Briefing for union leaders re EO on Smoking in Federal Workplace

Below is a list of attendees for 3:30 mtg. and talking points. Michael Cushing at OPM organized the meeting for us.

Background

As you know, the EO would ban smoking in federal workplaces except in enclosed, designated smoking areas vented to the outside, or in residences (e.g. on army bases). GSA regulations already require agencies to minimize ETS and set up separate smoking areas in cafeterias. Most agencies have already implemented more protective restrictions, such as allowing smoking only outside. The unions have challenged these changes in some cases and negotiated accommodating measures (e.g. CDC built tents for smokers outside).

The unions believe smoking policy should remain subject to collective bargaining. They therefore formally oppose addressing the issue through an EO. Their members are divided on smoking issues, however, and the unions are not likely to visibly oppose the EO.

The purpose of our meeting is to listen to their concerns and those of their membership, and to ask for their support and partnership in implementing the EO.

Participants

Michael Cushing, OPM Leigh Stein, OPM
Jim O'Hara, AIA Ardis Herman, HHS

Terry Rosen, American Federation of Government Employees, AFL-CIO (AFGE).

Cary Sklar, National Treasury Employees Union (NTEU).

James Cunningham, President, and Sean Safford, National Federation of Federal Employees (NFFE).

Paula Lucak, AFL-CIO Public Employee Department (PED).

Talking Points

Thank you for coming. As you know, we are preparing an executive order establishing a smoke-free environment in federal workplaces. The goal is to ensure that employees, and members of the public who enter federal buildings are not exposed to ETS. Agency heads would have the flexibility to accommodate smokers given this basic constraint (e.g. through separately ventilated smoking areas).

We are taking this step because evidence indicates that environmental tobacco smoke is a serious health

concern. In 1993, EPA found ETS to be a class A carcinogen. More recent studies have indicated that ETS contributes to other illnesses, such as heart disease and asthma. So we are working on an EO to insure all federal workers are protected from ETS.

Your views are important to us -- you have experience working with your members to reduce or eliminate workplace environmental tobacco smoke. We welcome your insights.

We would want to work with you to implement the order. It will not take effect immediately. There will be an implementation period, so we hope to work with you during that transition.

Re. Collective Bargaining: We recognize the importance of this issue to your members. Given the health concerns, we feel it's necessary to ensure that workers are not involuntarily exposed to ETS. We welcome your views on how to best transition toward a smoke-free work environment.

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Office of the Secretary

Assistant Secretary for Health
Office of Public Health and Science
Washington D.C. 20201

MEMORANDUM FOR THE PRESIDENT

I respectfully submit for your consideration a proposed Executive Order to prohibit smoking in federal executive branch facilities.

Strong scientific evidence documents that exposure to environmental tobacco smoke (ETS) is a serious risk to health. ETS is a known cause of diseases, including lung cancer, in healthy nonsmokers and is a major source of harmful indoor air pollution. ETS is responsible for approximately 3,000 lung cancer deaths each year in nonsmoking adults. ETS also threatens the health of hundreds of thousands of children with asthma and other respiratory illnesses.

Major scientific reports of the Department of Health and Human Services (HHS 1986, 1991, 1996, 1997) and the Environmental Protection Agency (EPA 1993) document these findings. HHS, EPA, and most recently the Department of Labor (DOL), recommend that smoking either be prohibited indoors, or be permitted indoors only in separately-ventilated areas. Protecting nonsmokers from the health consequences of ETS exposure is the primary goal of restrictions on smoking in the workplace.

Our Administration has supported and advocated eliminating indoor exposure to ETS. The most far-reaching effort is DOL's proposed occupational standard to eliminate ETS exposure in virtually all workplaces nationwide. During the 103rd Congress the Administration also supported legislation (H.R. 3434) to prohibit ETS exposure in public buildings and on March 31, 1994 you signed P.L. 103-227, the "Goals 2000: Educate America Act" which prohibited smoking in federally-funded children's services facilities, including most elementary and secondary schools.

Existing General Services Administration (GSA) regulations on this subject were published seven years before the EPA report. The GSA regulations apply to approximately 10 percent of federal domestic facilities and do not cover those federal buildings which are under the control of federal departments and agencies with statutory real property authority. The 1986 GSA rules permit smoking in areas designated by agency heads and do not require that such areas be ventilated separately.

Mr. President, the simple separation of smokers and nonsmokers within the same airspace does not eliminate ETS exposure. As a result, many federal agencies are not now smokefree and federal workers and visitors to federal buildings are exposed unnecessarily to ETS. In view of

Page 2 - Executive Order To Prohibit Smoking In Federal Executive Branch Facilities

the solid science base and the Administration's public commitment to reducing ETS exposure, it seems inadvisable to continue to permit smoking in federal indoor workplaces.

The Executive Branch has legal authority and strong scientific justification to move ahead to prohibit smoking in federal workplaces. The most expedient mechanism to announce and implement an Executive Branch smoke-free workplace policy would be a Presidential Executive Order. An Executive Order would apply more broadly and could be implemented more quickly than other approaches.

The issuance of an Executive Order would produce substantial savings rather than costs. The federal Government would be promoting the health of its employees while saving money due to reduced sick days, building maintenance, and furniture and carpet replacement. Some studies estimate conservatively that smoking in the workplace costs employers one thousand dollars annually for each employee who smokes. As the nation's largest employer, the issuance of an Executive Order to protect worker health would set an important example to other employers considering adopting smokefree policies.

A proposed Executive Order is attached for your consideration.



Donna E. Shalala

Attachment

SMOKING IN THE FEDERAL WORKPLACE

Employees of the Federal Government and members of the public visiting or using federal facilities should be protected from exposure to environmental tobacco smoke. The health risks of smoking and exposure to smoke are clearly documented by reports of the Department of Health and Human Services and of the Environmental Protection Agency (EPA). In 1986, the U.S. Surgeon General concluded that exposure to environmental tobacco smoke (ETS) was a cause of lung cancer in otherwise healthy nonsmokers. In 1993, the U.S. Environmental Protection Agency confirmed this finding and categorized ETS as a Group A carcinogen, meaning that it was a known cancer-causing agent in humans. Since these reports, numerous studies have linked ETS exposure to various illnesses including asthma and heart disease. In fact, two recent studies found that exposure to secondhand smoke increases the risk of death from heart disease. The number of nonsmokers who die from exposure to ETS has been estimated to be as high as 56,000 each year. The evidence indicates that smoking is a preventable cause of diseases; exposure to environmental tobacco smoke is a cause of diseases, including lung cancer, in exposed persons, including healthy nonsmokers; and the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke.

Accordingly, by the authority vested in me as President by the Constitution and laws of the United States of America, 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, except as otherwise provided in this order.

Section 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 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. Employers shall not require workers to enter such areas during business hours while smoking is ongoing.
- (b) The order does not extend to outdoor areas under Executive Branch control except within 50 feet of the entrance of federal buildings, within 50 feet of air intake ducts or within courtyards.
- (c) 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.

- (d) The order does not extend to federally-owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.
- (e) 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.
- (f) The head of any agency may establish limited and narrow exceptions which are essential 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 environmental tobacco smoke. Authority to approve such exceptions may not be delegated.

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Section 5. Consistency with Other Law. The provisions of this order shall be implemented consistent with applicable law, including the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq., the National Labor Relations Act 29 U.S.C. 151 et seq. 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 Executive Order. Agencies are required to review their current policy to confirm that agency policy comports with this Executive Order. Agency policies found not in compliance shall be revised to comply with the terms of this Executive Order.

Section 6. Cause of Action. Nothing in this order shall be construed to create a new cause of action against the United States, or to affect in any way the liability of the Executive Branch under the Federal Tort Claims Act.

Section 7. Construction. Nothing in this order shall limit an agency head from establishing more protective policies for employees and members of the public visiting or using federal facilities.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. memo	Michael Cushing to Elizabeth Drye re: Union Briefing [partial] (2 pages)	07/21/1997	b(6)

COLLECTION:

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

FOLDER TITLE:

Tobacco EO - Federal Buildings

2014-0046-S

rc1418

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]



Center for Partnership and
Labor-Management Relations

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415-0001

July 21, 1997

MEMORANDUM FOR ELIZABETH DRYE, Domestic Policy Council

FROM: Michael Cushing *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] 60023

- (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: [REDACTED] (b)(6)

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

Memorandum for Elizabeth Drye

July 21, 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)

✓ (c) 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

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

August 9, 1997

EXECUTIVE ORDER

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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 in any outdoor areas under executive branch control in front of air intake ducts.

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.

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(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 establish such exceptions may not be delegated.

Sec. 3. Other Locations. The heads of agencies shall evaluate the need to restrict smoking at doorways and in courtyards under executive branch control in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

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(OVER)

Sec. 4. Smoking Cessation Programs. The heads of agencies are encouraged to use existing authority to establish programs designed to help employees stop smoking.

Sec. 5. 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. 6. Phase-In of Implementation. Implementation of the policy set forth in this order shall be achieved no later than 1 year after the date of this order. This 1 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. 7. 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 et seq.) and the National Labor Relations Act (29 U.S.C. 151 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 shall review their current policy to confirm that agency policy comports with this order, and policy found not in compliance shall be revised to comply with the terms of this order.

Sec. 8. 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 affect in any way the liability of the executive branch under the Federal Tort Claims Act.

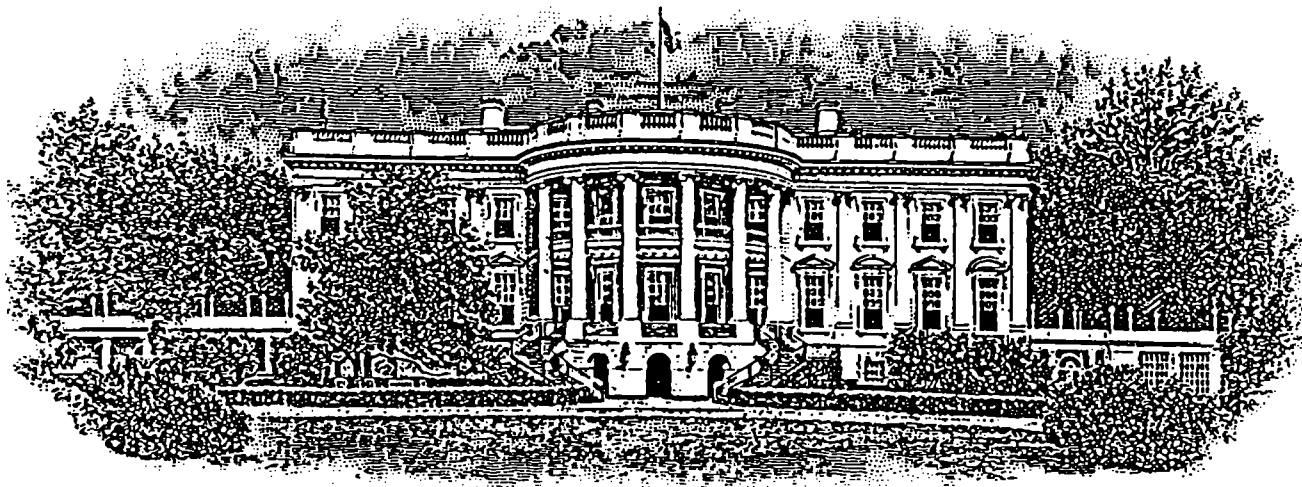
Sec. 9. Construction. Nothing in this order shall limit an agency head from establishing more protective policies on smoking in the Federal workplace for employees and members of the public visiting or using Federal facilities.

WILLIAM J. CLINTON

THE WHITE HOUSE,
August 9, 1997.

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The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Jim O'Hara

FAX NUMBER: 690-7425

TELEPHONE NUMBER: _____

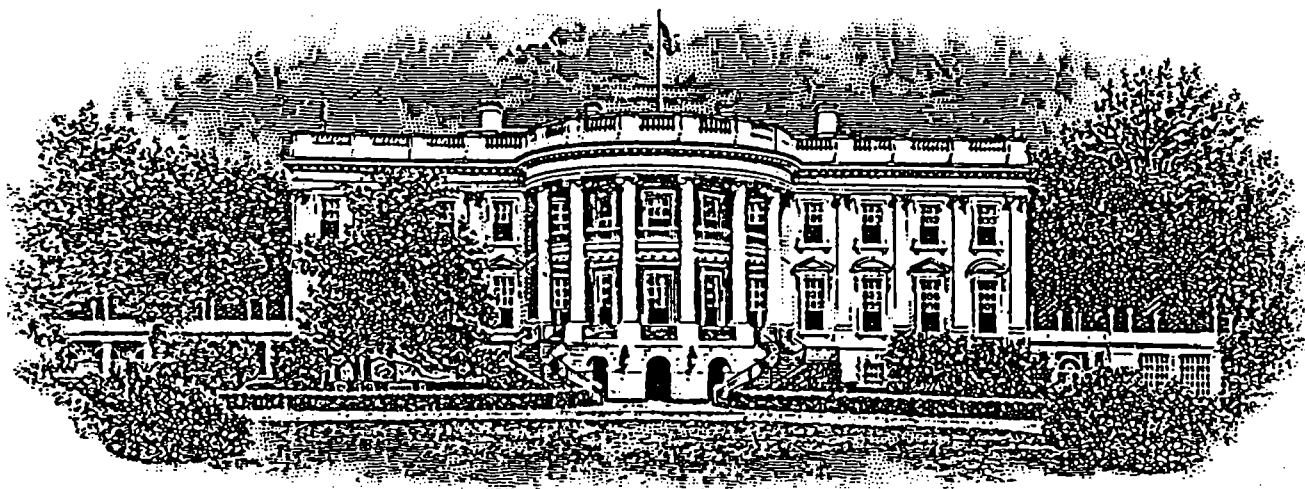
FROM: Elizabeth Dye

TELEPHONE NUMBER: _____

PAGES (INCLUDING COVER): 3

COMMENTS: Thanks for your help!

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Stanley Langfeld

FAX NUMBER: 219-0104

TELEPHONE NUMBER: _____

FROM: Elizabeth Drye

TELEPHONE NUMBER: 456-5573

PAGES (INCLUDING COVER): _____

COMMENTS: Thanks for your help.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	0827	
CONNECTION TEL		96907425
CONNECTION ID	OPHS EXECUTIVE 0	
ST. TIME	08/08 18:19	
USAGE T	01'24	
PGS.	3	
RESULT	OK	

Jim O'Hara - Close Hold

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:

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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.

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- (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 those portions of federally owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.
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- (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 establish such exceptions may not be delegated.

Sec. 3. Other Locations. The heads of agencies shall evaluate the need to restrict smoking at doorways and in courtyards under executive branch control to protect workers and visitors from environmental tobacco smoke and take any action they deem necessary.

Sec. 4. Smoking Cessation Programs. The heads of agencies are encouraged to use existing authority to establish programs designed to help employees stop smoking.

Sec. 5. 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.

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Sec. 9. 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,

President Clinton Issues Executive Order to Protect Federal Employees from Environmental Tobacco Smoke

August 9, 1997

President Clinton signed an executive order that will ban smoking in all federal Executive Branch facilities, except in limited circumstances. Today's action is an important step to protect the health of federal employees, and the members of the public who visit or use federal facilities, from the health risks of environmental tobacco smoke (ETS).

Making Federal Facilities Smoke-Free

Federal agencies' smoking policies vary, and many must be strengthened to fully protect federal workers and visitors from ETS exposure. Over 15 federal agencies ban smoking indoors. But many agencies still allow smoking in areas where non-smokers and visitors may be exposed to ETS. The President's Executive Order:

- o Prohibits smoking in interior space owned, rented, or leased by the Executive Branch of the federal government, such as office space and National Park Service visitors' centers, except in limited circumstances.
- o Allows agencies to have indoor designated smoking areas that are enclosed and exhausted directly to the outside. Agency heads may not require workers to enter such areas during business hours while smoking is occurring.
- o Prohibits smoking in front of building air intake ducts in outside areas under the federal government's control.
- o Directs agency heads to evaluate the need to limit smoking at doorways and in courtyards.
- o Requires heads of Executive Branch agencies to implement the order within one year, and encourages agencies to offer smoking cessation assistance to their workforce.

Implementing Strong, Science-Based Measures

Strong scientific evidence documents that exposure to ETS is a serious health risk:

- o ETS is a known cause of lung cancer in healthy non-smokers, and is associated with increases in death rates from cardiovascular disease in non-smokers.
- o The Environmental Protection Agency (EPA) estimates that ETS is responsible for about 3,000 lung cancer deaths each year in nonsmoking adults.
- o Environmental tobacco smoke also threatens the health of hundreds of thousands of children with asthma and other respiratory illnesses.
- o In 1986 the Surgeon General found that simple separation of smokers and nonsmokers within the same airspace may reduce but does not eliminate ETS exposure to nonsmokers.

Building on the President's Record

In August, 1996 President Clinton announced a comprehensive Food and Drug Administration rule to protect children from tobacco. The regulation seeks to reduce children's tobacco use by 50% over seven years by restricting children's access to cigarettes and smokeless tobacco and by reducing the products' appeal. Two provisions of the rule are already in effect:

- o Retailers are prohibited from selling cigarettes and smokeless tobacco products to anyone under age 18;
- o Retailers must verify age by photo ID for anyone under the age of 27 purchasing these products.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

August 9, 1997

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Sec. 5. 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. 6. Phase-In of Implementation. Implementation of the policy set forth in this order shall be achieved no later than 1 year after the date of this order. This 1 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. 7. 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 et seq.) and the National Labor Relations Act (29 U.S.C. 151 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 shall review their current policy to confirm that agency policy comports with this order, and policy found not in compliance shall be revised to comply with the terms of this order.

Sec. 8. 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 affect in any way the liability of the executive branch under the Federal Tort Claims Act.

Sec. 9. 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.

WILLIAM J. CLINTON

THE WHITE HOUSE,
August 9, 1997.

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