

1

***Proposed Regulation to Make Users of Tobacco Ineligible for  
Employment as New Florida Fire Fighters***

Revised January 10, 1989

Terence A. Gerace, Ph.D.  
University of Miami School of Medicine

***Why is this regulation important to fire fighters?***

Fire Fighters have one of the highest on-the-job mortality rates of any occupation. The primary cause of death is coronary heart disease.

Cigarette smoking is a key risk factor for heart disease. In fact, smokers have twice the risk of a fatal heart attack compared to non-smokers.

Cigarette smoking also causes cancer, specifically "cancer of the lung, larynx, oral cavity and esophagus" and contributes to cancer of the bladder, kidney and pancreas. Smokeless tobacco products such as chew and snuff can lead to cancer of the mouth.

Furthermore, fire fighters are exposed to cancer causing agents (carcinogens) such as asbestos and toxins from burning plastics and other chemical products in industrial, home and farm fires. Cigarette smoke and these toxins can work synergistically to substantially increase the risk of lung cancer and other cancers.

For example, the risk of lung cancer to a non-smoker exposed to asbestos is 4 times greater than for a non-smoker not exposed to asbestos. The rate of lung cancer is 10 times greater in a smoker than non-smoker. But, the combined risk of lung cancer from exposure to asbestos and cigarette smoke is 50 times greater than for an unexposed non-smoker. This synergistic effect dramatically increases the risk of lung cancer for fire fighters who smoke and are exposed to occupationally derived asbestos.

***Does smoking affect the performance of fire fighters?***

Smoking decreases the oxygen carrying capacity of the blood in fire fighters. Fire fighters need an uncompromised oxygen carrying capacity to endure the cardiovascular demands of hard physical labor, extreme temperature, and psychological stress while fighting a fire and performing rescue missions.

2022975141

The need for an uncompromised oxygen carrying capacity has been recognized by current regulations that exclude from the fire service applicants with hypertension or diabetes, both major risk factors for coronary heart disease which limits endurance.

Fire fighters require more endurance than any other public service worker. The strain of heavy protective clothing (bunker gear) and air tank, carrying other humans, manning a line under great water pressure, climbing ladders, and working under extreme temperatures require a body that is devoid of carbon monoxide from cigarette smoke.

Carbon monoxide from cigarette smoke displaces oxygen in the blood stream leaving the smoker with a reduced oxygen carrying capacity. This results in reduced endurance and increases the chances of sudden cardiac death.

Studies show that within 24 hours of cessation from smoking the carbon monoxide level decreases to that of a person who has never smoked.

***Is this regulation job-related?***

Fire fighters require endurance to perform their duties. Cigarette smoking not only reduces endurance in the short-run by immediately substituting carbon monoxide for oxygen in the blood, but smoking also decreases endurance in the long-run by promoting clogging of the coronary arteries and producing chronic obstructive lung disease.

Fire fighters more than any other occupational group, except professional athletes, need good endurance or aerobic capacity.

***Will the proposed regulation benefit the State of Florida financially?***

Yes. The current Heart and Lung Bill (F.S. 112.18) provides special worker's compensation for any Florida fire fighter who dies or is disabled by heart disease. The Heart and Lung Bill presumes that heart disease is accidental and occurs in the line of duty.

The proposed regulation will decrease the number of fire fighters who smoke and consequently reduce the number of fire fighters who have heart attacks. Therefore, fewer claims will occur for worker's compensation.

This regulation will help fire fighters who wish to quit smoking since there will be less social support for their smoking with fewer smokers in the fire service.

2022975142

***Will the proposed regulation benefit individual fire departments?***

By reducing the number of fire fighters who smoke, the proposed regulation will decrease the amount of "second hand" or environmental tobacco smoke that fire fighters breath. This will lessen the chances that legal suits will be filed against fire departments because they permitted dangerous "second hand" smoke in fire stations and vehicles.

***What are some other advantages of this regulation?***

This regulation will bring into the fire service individuals who will be least affected by the toxic exposures related to fighting fires.

The regulation will also bring into the fire service individuals whose lung functions and cardiovascular systems are least likely to be further damaged during the time they are in the fire service.

The regulation will bring into the fire service people who are least likely to produce "second hand" smoke that may be injurious to non-smoking and smoking fire fighters already in the fire service.

The regulation will bring into the fire service people who will on the average have more endurance to perform their job, less often be absent due to upper respiratory infections, and be less likely to go out on disability.

***Could the proposed regulation be used to discriminate against or have an "adverse impact" on any group because of race, color, religion, sex or national origin in violation of Title VII of the Civil Rights Act of 1964?***

It is very unlikely. Title VII of the Civil Rights Act of 1964 states (as amended) it is "unlawful... to... refuse to hire... any individual because of such individual's race, color, religion, sex or national origin..."

This proposed regulation could not be used as a pretext for discrimination since the current smoking rates in Florida are essentially the same for whites and minorities, and males and females.

***What are the obligations of regulating and employing agencies?***

Regulating and employing agencies have a moral, if not legal, obligation to forwarn applicants about the potential synergistic effect of cigarette smoking and occupational exposure to cancer agents such as asbestos and chemical products.

2022975143

Regulating and employing agencies have a moral, if not legal, obligation to encourage smokers who are at the greatest risk for incurring occupational diseases during their tenure as fire fighters to reduce that risk prior to joining the service by quitting cigarettes.

Regulating and employing agencies have a moral, if not legal, obligation to protect currently employed fire fighters. Therefore, given the information from the latest Surgeon General's Report on the impact of "second hand" smoke, the agencies need to prevent new personnel who smoke from entering the fire service.

A regulation requiring that applicants for the fire service quit smoking prior to joining the fire service is imperative since stress and the social environment related to being in the fire service may facilitate continued smoking, make quitting more difficult, and relapse to smoking more likely.

***Are fire fighters in Florida concerned about smoking?***

Absolutely yes. The Professional Fire Fighters of Florida, representing nearly 10,000 fire fighters, passed an unprecedented resolution in December of 1986 to create a "smoke-free" fire service.

The Professional Fire Fighters of Florida also have sponsored Health and Safety Symposia in 1986 and 1987 that have focused on creating a "smoke-free" fire service.

Fire fighters have shown a desire to quit cigarettes as evidenced by the relatively low rates of smoking in Florida fire fighters: Metro Dade County 25%, City of Miami 20%, and Pensacola 22%. These figures compare very favorably with police officers 44%, painters 55%, and fire fighters nationally 37%.

Over 50% of Dade fire fighters who ever smoked have quit smoking.

***Will requiring new fire fighters to be non-smokers produce additional benefits?***

Yes. Fire fighters who smoke tend to have higher blood cholesterol levels and consume more alcohol than fire fighters who do not smoke. These additional risk factors increase the probability of heart disease and cancer, respectively, in fire fighters who smoke.

2022975144

***Is being a non-smoker a condition of hiring in other states?***

Yes. This regulation began in 1978 in Alexandria Virginia at the urging of Fire Chief Charles Rule. The regulation became known as "Rule's Rule".

Other locations that require non-smoker status for new hirees include

California: San Mateo, Monrovia

Kansas: Wichita

Virginia: Alexandria, Fairfax Country, Hampton and VA Beach

Wisconsin: Janesville

State of Massachusetts

The Oklahoma City Fire Department requires that new trainees sign an agreement that they will not smoke for one year on or off the job after being hired. The Oklahoma regulation has been upheld in the courts.

***Is there support for this regulation in the State of Florida?***

There is overwhelming support from organizations that represent all segments of the fire service in Florida.

The Joint Council of Fire Fighting Organizations comprised of the Professional Fire Fighters of Florida, the Florida State Fire Chiefs Association, the Society of Fire Instructors, the Florida State Firemans Association, and Fire Inspectors unanimously passed a resolution October 30, 1987 supporting a "smoke-free" fire service.

The Florida Fire Fighers Training and Standards Advisory Council unanimously recommended to the State Fire Marshal that users of tobacco products not be hired as fire fighters in Florida.

The League of Cities strongly supported this regulation during public hearings in 1988.

The Florida House of Representatives passed this regulation during the 1988 Session.

***Is there precedent for this regulation in the State of Florida?***

Absolutely yes. A rapidly expanding network of fire departments, 15 to date, has made non-smoker status a requirement for new fire fighters. A partial list follows:

Clearwater Fire Department, no tobacco use on or off the job for new hirees after December 15, 1986.

2022975145

Gainesville Fire Department, "As of October 1, 1987, the City of Gainesville will hire as firefighters only individuals who do not smoke. The City agrees to provide courses to stop smoking for those employees wishing to quit smoking."

Tallahassee Fire Department, "Effective December 1, 1985, as a condition of employment no person shall be hired as a firefighter or fire lieutenant in the Tallahassee Fire Department if he smokes tobacco on or off duty."

Ocala Fire Department, no smoking policy applies to all new fire fighters on or off duty.

St. Petersburg Fire Department, no smoking policy applies to fire fighters hired after October 1, 1987.

Town of Palm Beach Fire Department, no smoking policy is for new hires.

Seminole Fire Rescue Department, "Prior to appointment, as a condition of employment, applicants will sign an affidavit as to being a non-user of tobacco products for the duration of his/her employment. Any violation of this condition of employment, on or off the job, may result in termination."

Bradenton, Ft. Walton Beach, Ft. Lauderdale, Hialeah, and Sarasota also require new hires to be non-smokers.

***Why must the State create this regulation when "Home Rule" action can result in the same end result?***

The State is responsible for establishing entrance requirements for new fire fighters throughout the State of Florida. For example, the State requires that new fire fighters must be free from high blood pressure and diabetes, two risk factors for heart disease. Although this regulation could implemented in a piecemeal fashion by "Home Rule", the importance of this new regulation both for the safety of new fire fighters and for the benefit of taxpayers who pay worker's compensation is compelling reason to immediately apply this regulation uniformly throughout Florida.

***Will fire fighters who do not smoke be helped by this legislation?***

Yes. The most recent Surgeon General's Report examined very carefully every study related to "second hand" smoke, sometimes called environmental tobacco smoke. Environmental tobacco smoke is the smoke non-smokers passively take in when they are near smokers.

2022975146

The 60 prominent scientists who contributed to the Surgeon General's Report and the many who critically reviewed it concluded:

1. Involuntary smoking is a cause of lung cancer in healthy nonsmokers.
2. Separating smokers and nonsmokers within the same air space, does not eliminate the exposure of nonsmokers to environmental tobacco smoke.

***Will this regulation infringe on the rights of fire fighters who currently smoke?***

No. Fire fighters who currently smoke will not be affected by this regulation. These fire fighters will, of course, have to comply with the Florida Indoor Air Act of 1985.

***Will this regulation interfere with a person's right to earn a living?***

This regulation will in no way affect the employment status of current fire fighters.

Recruits for the fire service who smoke can freely choose to quit smoking and be eligible for the fire service or continue to smoke and not be eligible. This statement is not meant to diminish the difficulty some smokers have quitting cigarettes. However, young smokers applying for the fire service have a better prognosis for quitting than older fire fighters. The added incentive of being eligible for a highly desired occupation if they quit smoking will enhance the motivation of applicants to quit smoking.

***Are there precedents for regulations that exclude people from the fire service?***

Yes. Fire fighters are not hired now if they have high blood pressure or diabetes, two major risk factors for coronary heart disease.

In contrast, fire fighters who smoke are being hired in many fire departments in Florida even though smoking is a major risk factor for heart disease and the primary cause of lung cancer, chronic bronchitis, and emphysema.

The regulation to make applicants who smoke ineligible for the fire service is no more restrictive than the requirement to disallow persons with high blood pressure or diabetes. It is noteworthy that

2022975147

high blood pressure and diabetes may be caused by factors such as heredity which may be completely out of a person's control, whereas cigarette smoking may be considered a voluntary act, at least in its early stages.

This regulation will encourage applicants to quit smoking when they are young and least addicted to cigarettes.

***Has any state passed landmark legislation restricting smoking in any occupational group?***

Massachusetts has recently passed a bill for fire fighters and police officers. No other state has done so although many smaller governmental units have. California law, however, bans smoking on commercial airplanes, trains and buses, thus affecting all occupations.

Forty out of 50 states (80%) have legislation restricting smoking in public places and some include restrictions in the workplace.

A new Federal Law effective April 22, 1988 affects all occupations because it eliminates smoking on all airline flights of two hours or less.

The United States General Services Administration (GSA) with over 800,000 employees and the United States Army have made it illegal to smoke except where designated smoking areas have been created. There is no stipulation that those in authority have to create smoking areas.

***Does Florida's Clean Indoor Air Act support the proposed regulation?***

Yes. The Florida Clean Indoor Air Act (HB-281, October 1, 1985) requires that all employers develop a smoking policy taking into account the proportion of smokers and non-smokers. Under this law employers may ban smoking completely by stating "based on the authority of the Florida Clean Indoor Air Act HB-281 smoking is specifically prohibited in all enclosed areas of these premises."

Nothing shall prohibit an employer from banning all smoking everywhere in the workplace, regardless of employee demands.

According to the law all areas in public places, including worksites, are considered non-smoking unless a part of that area is set aside for smoking.

***Since smoking is an addiction doesn't this regulation prevent persons who smoke from earning a living in their chosen profession.***

2022975148

This regulation will in no way prevent current fire fighters who smoke from continuing as fire fighters in Florida.

This regulation will encourage those seeking employment as fire fighters to quit smoking at a time in their lives when smoking is least addictive and the incentive to quit is greatest.

Most people who smoke have actually welcomed legislation that limits smoking in the workplace. It helps them restrict their own smoking. Over 90% of people who smoke say they would prefer to be non-smokers.

***Are fire departments liable for the effects of smoking among fire fighters?***

The nature of fire fighting and other elements of the job such as the unusual schedule and stress may increase the chances that a beginning smoker will become addicted to cigarettes and later have a difficult time quitting.

An argument could be made that being a fire fighter makes it more difficult for a smoker to quit. This may make fire departments partially liable for smoking related illnesses such as coronary heart disease and cancer if they do nothing to address the issue of smoking, especially since there may be a synergistic effect caused by cigarette smoke and toxins in the work environment of fire fighters.

***Will this regulation have an impact on the cost of health care in Florida?***

Yes, in the long-run. In the long-run the Fire Service in Florida will become "smoke-free". Health care costs for smoking related diseases are \$35 billion per year in the United States. Florida, soon to be the fourth most populous state, is paying a substantial portion of those costs.

With this regulation fewer fire fighters will develop early heart disease and cancer. Other citizens in Florida, encouraged by the fire service to quit smoking or not start in the first place, will also avoid premature heart disease and cancer.

***What policy issues and questions need to be addressed to make this regulation work?***

What if a new fire fighter is caught smoking on the job?

2022975149

What if he is caught smoking off the job?

What is the policy for monitoring smoking status of new hirees?

What technique(s) will be used to monitor compliance with the regulation?

How often will monitoring techniques be administered?

What will be the consequences of noncompliance with this regulation?

What will be the policy for first offenders?

What will be the policy for second offenders?

Will there be second offenders?

Will each fire department determine whether the regulation is being followed?

Will the State of Florida provide guidelines for implementing this regulation?

How will the regulation be monitored at the State level to see that it has been properly implemented?

How will the effectiveness of the regulation be evaluated?

***Who has endorsed the concept of a Smoke-Free Fire Service for Florida?***

C. Everett Koop, M.D., Surgeon General of the United States.

Bill Gunter, Former State Fire Marshal.

Don Shula, Head Coach and Vice President, Miami Dolphins.

Tom Landry, Coach, Dallas Cowboys.

Bernard Fogel, M.D., Vice President for Medical Affairs and Dean University of Miami School of Medicine.

Lawton Chiles, United States Senator.

Dante Fascell, United States Congressman.

William Friedewald, M.D., Associate Director for Disease Prevention, National Institutes of Health (NIH).

2022975150

Joseph Cullen, Ph.D., Deputy Director, Division of Cancer Prevention and Control, National Cancer Institute (NCI).

Claude Lenfant, M.D., Director, National Heart, Lung, and Blood Institute (NHLBI).

Charles Tate, M.D., Professor Emeritus of Medicine and Pulmonary Disease, University of Miami School of Medicine.

***Are there organizations who will not support this legislation?***

Absolutely yes. For example, the Tobacco Institute representing the manufacturers of cigarettes, the manufacturers or "pushers" of cigarettes, advertising agencies, and media will not be happy with this regulation.

2022975151