

THE TOBACCO INSTITUTE

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HORACE R. KORNEGAY
President
202/457-4830

October 11, 1978

General Services Administration (PBOP)
Washington
District of Columbia 20405

Re: Proposed Rule 101-20.109-10
Regulations of Smoking

Dear Sirs:

On September 11, 1978, the Public Buildings Service of the General Services Administration ("GSA") proposed to amend Section 101-20.109-10 of the GSA regulations governing building operations, maintenance, protection, and alterations to prohibit or restrict smoking in certain areas of GSA-controlled buildings. The rationale for the proposed action is that "it has become necessary to regulate smoking in certain areas of Federal buildings because smoke in a confined area may be irritating and annoying to nonsmokers and may create a potential hazard to those suffering from heart and respiratory diseases or allergies." The GSA invited comment on this proposed rule.

The Tobacco Institute, a nonprofit association representing major manufacturers of cigarettes, as well as a number of manufacturers of other tobacco products, believes that the imposition of mandatory smoking rules for all Federal buildings would be unwarranted and unwise, and beyond the scope of GSA's authority. The current GSA regulation, which prohibits smoking only in locations containing flammable or combustible materials, is clearly based on safety considerations. The proposed regulation, however, has no connection with safety and is instead based solely on the GSA's views concerning the purported effects of smoking on the health and comfort of nonsmokers. Not only do such determinations fall outside of the legitimate authority of the GSA, but the conclusions reached are wholly unproven.

Restrictions On Public Smoking Are
Unwarranted In View Of The Scientific
Evidence

The summary of the proposed rule does not indicate the evidence from which the GSA concluded that public smoking may constitute a potential health hazard or annoyance to nonsmokers. This omission is not surprising, for inadequate scientific evidence exists to support such a

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conclusion. On September 7, 1978, several days before the GSA announced its proposed smoking regulation, experts testifying at a hearing before the Subcommittee on Tobacco of the Committee on Agriculture of the House of Representatives on the effects of public smoking on nonsmokers unanimously concluded that restrictions on smoking in public are not justified based upon scientific evidence. See Enclosures A-E. Similarly, in 1977, medical doctors, research scientists and lawyers addressed the issue of smoking in the workplace at a European conference entitled "Passive Smoking At The Workplace." One participant, Professor W. Klosterkötter, summarized the medical evidence on the question by saying that he had "not found any convincing facts, arguments, or plausible hypotheses supporting any probable health hazards from passive smoking." See Enclosure F.

Although the GSA has not stated specifically the basis for its findings as to the need for smoking restrictions, it can be assumed that the GSA's action was prompted at least in part by misleading reports in the popular press of the alleged harmful effects of public smoking. One common charge, for example, is that public smoking results in the exposure of nonsmokers to harmful levels of carbon monoxide. This charge is refuted by studies done in actual workplace situations and experiments employing realistic conditions which show that carbon monoxide levels remain low--in one study workers actually experienced a decrease in levels of carboxyhemoglobin (the compound formed by carbon monoxide and red blood pigment) despite exposure to tobacco smoke all day. See Enclosure G.

The specific conclusions of the GSA with respect to the effects of public smoking on those with heart and respiratory disease and allergies also remain scientifically unproven. Referring to people with respiratory disease, Dr. Kenneth Moser, a well-known lung specialist at the University of California, has concluded that "(T)here is not now a sufficient body of hard facts to support the view that public smoking poses a health hazard to the lungs of the nonsmoker." See Enclosure D.

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Similarly, there is a lack of reliable data on the question of whether public smoking harms those with heart disease. Although one researcher, Dr. W. S. Aronow, has performed a study from which he concludes that public smoking exacerbates angina pectoris, recent expert testimony before Congress raises serious questions about Dr. Aronow's experimental methods and conclusions. See Enclosures A-C. Moreover, Dr. Suzanne B. Knoebel, an expert in the field of cardiology has testified that:

"There are no indications that tobacco smoke in the atmosphere either causes or accelerates cardiovascular disease in the healthy nonsmoker. Nor do available studies establish that atmospheric tobacco smoke under realistic conditions adversely affects nonsmokers with preexistent cardiovascular disease." See Enclosure C.

The statement in support of the GSA's proposed rule also suggests that tobacco smoke "may create a potential hazard to people suffering from allergies." Researchers, however, believe that it has not been shown that exposure to tobacco smoke causes allergic reactions. See Enclosure H. Most of the studies relating to "tobacco allergy" have relied on skin tests using tobacco leaf extracts, a testing procedure clearly not comparable to the nonsmoker's exposure to tobacco smoke. Moreover, while some people claim to have an allergy to tobacco smoke, this assertion generally means that they dislike it. True allergic responses, therefore, must be considered separately from what are really annoyance responses. See Enclosure I.

Even when "annoyance" or "irritation" is considered separately from actual health effects, equally little support exists for regulation of public smoking. The regulation of behavior viewed by some as "annoying" has always been of dubious validity. As one authority on the effects of public smoking states:

"Irritation and annoyance of nonsmokers can, however, arise merely from the view ...that someone indulges in the frowned-upon habit of smoking. Hence attitudes now become a decisive factor. In our opinion, transitory irritating and annoying effects cannot be considered as a health hazard." See Enclosure J.

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This conclusion was borne out through a recent investigation by Western Airlines and Boeing researchers who found that if smokers were placed on one side of the aircraft, the ventilation system made it virtually impossible for nonsmokers on the other side to smell the smoke. See Enclosure K. But Robert J. Serling, former Aviation Editor for UPI, said that after Western tried this method, they were

"...swamped with complaints. It seems that all a non-smoker needed was to see someone smoking, and that was enough to make him think he could smell the smoke. I'm afraid this is just one more instance where emotionalism gets in the way of established scientific facts."

See Enclosure L.

The results of a recent survey established that the "annoyance" caused by public smoking has been greatly exaggerated. Annoyances related to smoking were near the bottom of the survey list--in fact, only 3 percent of all annoyances reported by nonsmokers were related to smoking. Other common exposures of daily life such as trucks and traffic noise were clearly viewed as more annoying. See Enclosure M.

Despite the absence of persuasive scientific evidence showing that public smoking is a health hazard or significant source of annoyance, public misunderstanding of the issue persists. Such misunderstanding might be explainable by the sensationalism which often attends reporting on emotional issues. The same misunderstanding by a government agency, however, is inexcusable particularly where it is asserted as a basis for restriction of a lawful and common personal custom. The GSA should not impose regulations curtailing smoking in Federal buildings, in the absence of reliable scientific evidence supporting its conclusion that public smoking is "irritating," "annoying," or a "potential hazard" to nonsmokers. An analysis of similar issues led the Federal Aviation Administration to reject a petition which sought to prohibit smoking on the flight deck of commercial aircraft. The FAA found that no credible evidence existed to show that smoking caused deleterious effects in flight crew performance.
See Enclosure M.

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The Proposed Regulation Is Beyond
The Scope of GSA Authority And Is
Based On An Arbitrary And Unsound
Social Judgment

In view of the absence of credible supporting evidence, the GSA's proposed smoking restriction represents nothing more than an essentially arbitrary social judgment. This judgment goes far beyond the proper scope of the GSA's authority to promulgate regulations necessary for the efficient and orderly operation of government in Federal facilities. The existing prohibition on smoking where flammable or combustible materials are present is justifiable as an effort to protect Federal buildings from the dangers of fire. No such justification can be found for the proposed restriction of public smoking in other areas of Federal buildings.

The imposition of a social standard by government regulation is more likely to impede rather than improve the orderly and efficient operation of government. The development of a productive and enjoyable working environment is best left to cooperative efforts between agency supervisors and their employees. By dictating agency policy on smoking regardless of the needs and desires of the employees of a particular agency or department, and by forcing agency management to penalize violators of mandatory smoking restrictions, the proposed rule would preempt such cooperative efforts. It would foment undesirable conflicts between agency management and employees, to the detriment of all concerned.

A prime illustration of this problem is Subsection (e) of the proposed regulation, which requires supervisors to plan work space so that complaining nonsmokers can be accommodated, provided that "(1) efficiency of work units will not be impaired, (2) additional space will not be required, and (3) costly alterations to the space or procurement of additional office equipment will not be necessary." Given the number and variety of GSA-controlled facilities, the varying concerns of supervisors of such facilities, and the vague considerations which must be taken into account in establishing work areas for nonsmokers, it is inevitable that the rule will lead to numerous complaints by agency employees that their supervisors are either overenforcing or underenforcing

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the new rules. Disruption of employer-employee relations would be the likely result.

In 1976, the GSA promulgated voluntary guidelines for the establishment of non-smoking rules in Federal facilities, pursuant to which many agencies, acting in conjunction with their employees, have developed rules governing smoking in agency facilities. The current proposal does not indicate that the GSA has developed any evidence since 1976 to justify discarding these guidelines, which depend on cooperation and courtesy, in favor of prohibition based on government fiat. To the contrary, as recently as July 5 of this year, the GSA Administrator issued a notice in the Federal Register concerning amendments to the rules governing conduct on Federal property, in which he rejected a request for a smoking prohibition in most areas of Federal buildings. The notice stated that

"...nonsmoking areas are currently used in public building space such as in elevators, sections of cafeterias, and other appropriate building space. Since conformity with these prohibitory and directory signs is covered by Sec. 101-20.304 of this regulation, an additional prohibitory regulation is not considered necessary." 43 Fed. Reg. 29001-02.

It strikes us as odd that two months after this ruling, the GSA should suddenly reverse field and find that "(i)t has become necessary to regulate smoking" in GSA-controlled facilities. At a time when the Federal government is seeking to reduce the burden of needless administrative regulations, and when the public is expressing increasing dissatisfaction with government interference in personal activities, establishment of such mandatory prohibitions on smoking would be most inappropriate. This is particularly true where the prohibitions are the result of an unsupported social judgment totally unrelated to the GSA's authority to maintain and operate Federal property.

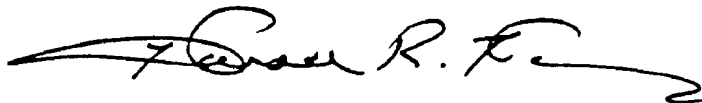
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Courtesy has traditionally been the custom by which Americans have solved problems arising from differences in social conduct. It is obvious that common courtesy--not more governmental regulation--is the preferred response to public smoking in Federal buildings.

Since the proposed smoking regulation is not based on sound facts or sound policy, and is not within the proper scope of GSA authority, it should be withdrawn.

Respectfully submitted,



Horace R. Kornegay

HRK:yb
Enclosures

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ENCLOSURES

- A. Booker, Walter., Statement, Hearing Before the Agriculture Committee, U. S. House of Representatives, September 7, 1978.
- B. Fisher, Edwin R., Statement, Hearing Before the Agriculture Committee, U. S. House of Representatives, September 7, 1978.
- C. Knoebel, Suzanne B., Statement, Hearing Before the Agriculture Committee, U. S. House of Representatives, September 7, 1978.
- D. Moser, Kenneth M., Statement, Hearing Before the Agriculture Committee, U. S. House of Representatives, September 7, 1978.
- E. Salvaggio, John, Statement, Hearing Before the Agriculture Committee, U. S. House of Representatives, September 7, 1978.
- F. Klosterkötter, W., "Passive Smoking at the Workplace", Proceedings of a Conference Arranged by the Bavarian Academy for Industrial and Social Medicine, Munich, Germany, March 31-April 1, 1977.
- G. Szadkowski, D., et al., "Burden of Carbon Monoxide From Passive Smoking in Offices," Inn. Med. 3:310-313, 1976.
- H. a. McDougall, J. C., and C. J. Gleich, "The Tobacco Allergy--Fact or Fancy?" Presented at the American Academy of Allergy Meeting, San Juan, Puerto Rico, June, 1976.
b. Taylor, G., "Tobacco Smoke Allergy--Does it Exist," Chapter 3.5 in Environmental Tobacco Smoke Effects on the Nonsmoker (R. Rylander, Ed.), University of Geneva, pp 50-55, 1974.
c. Salvaggio, John, Statement, Hearing Before the Agriculture Committee, U. S. House of Representatives, September 7, 1978.
- I. Aviado, Domingo, Statement Presented Before the Committee on Environmental Control, Chicago City Council Hearing, September 12, 1978.

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- J. Klosterkotter, W., "Passive Smoking at the Workplace," Proceedings of a Conference Arranged by the Bavarian Academy for Industrial and Social Medicine, Munich, Germany, March 31-April 1, 1977.
- K. "Nonsmokers Woes in Head or Nose?" Sunday Record, July 10, 1977.
- L. Serling, Robert J., "Smoking in Airplanes," The Washington Post, p. A-16, July 7, 1977.
- M. Cohen, Reuben, Statement, Hearings Before the Agriculture Committee, U. S. House of Representatives, September 7, 1978.
- N. Department of Transportation Federal Aviation Administration, Reg. Docket No. 15614, In the Matter of the Petition of the Airline Pilot's Committee of 1976, the Public Citizen's Health Research Group, and the Aviation Consumer Action Project, decided August 22, 1977.

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