

MEMORANDUM

February 2, 1987

TO: Samuel D. Chilcote, Jr.

FROM: Judy Wiedemeier Black *Judy Black*

RE: GSA Smoking Regulations

Last month, The Institute began to implement a three part plan to deal with the new General Services Administration (GSA) federal workplace smoking regulations.

All of the planned activities are under way. Although this is a difficult situation, we are beginning to see some good results.

By way of a reminder, there were three major strategies:

1. Work with federal unions and agencies as the regulations are put into effect.
2. Persuade Congress that nothing more needs to be done.
3. Demonstrate that federal workers are unhappy with the new regulations.

You asked that I prepare a report. <sup>①</sup>To date, we have seen the following progress: ✓

Federal Relations staff and consultants are in the process of contacting officials at all federal agencies under GSA's reach (see attachment). This team was briefed in mid December and has been equipped with materials for use in these sessions.

Reports on each agency contact are being made to me and an indepth report will be filed this week. A few highlights from contacts to date:

° With reports back from over one half of the agencies, the vast majority report that the agency head is trying to allow smoking in as much area as possible and still comply with the GSA rule.

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° The "Workplace Smoking Policy" we have given out has been well received as a document to help in wording policies.

° In one regulatory agency the early draft of the rule obtained before our meeting had smoking banned in private offices. We feel that after the meeting a more reasonable approach will be implemented.

° The meeting at the Dept. of Defense produced the statement that "...some departments, such as the Department of the Army, have already implemented their policies and that such policies will have to be modified because they are too restrictive and violate fire, safety and other regulations."

° All agencies are being reminded of the need to bargain with their unions and the suggestion that they contact GSA to let them know that the rule will be completed without force from GSA.

Public Affairs has succeeded in encouraging the American Federation of Government Employees (AFGE) to insist on the collective bargaining provisions of the new regulations.

° AFGE reports that, to date, there have been no negotiations anywhere related to the regulation. It is AFGE's position that until negotiations occur locally, AFGE will vigorously protest any attempt to enforce the GSA rule.

It is also AFGE's position that negotiations must proceed simultaneously with a promised indoor air quality study. So far, GSA has not fulfilled that promise either.

° Additional highlights:

- our consultants have met with AFGE attorneys who were excluded from the initial discussions with GSA. They have concerns about the GSA regulations and are attempting to persuade AFGE President Kenneth Blalock to reopen discussions with GSA.

- labor counsel has produced a legal memorandum outlining the negative collective bargaining implications of the GSA rule. That memo, under the signature of Machinist President Bill Winpisinger, will go to the presidents of all public employee unions. This should have a positive effect on the state and local, as well as federal situation.

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- The Wimpinsinger memo will be followed immediately by personal calls to each of the public employee unions. In line with these contacts, AFL-CIO Public Employee Division president John Leyden has agreed to counsel his member unions to insist that GSA adhere to its promises of local negotiations and simultaneous air quality studies.

Attachments

cc: William Kloepfer, Jr.  
Robert J. Lewis  
Roger L. Mozingo  
Peter G. Sparber  
Susan M. Stuntz.

JWB/se

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## Agency Contact List for GSA Regulation

(Prioritized.)

### I. The Departments

- . Agriculture
- . Commerce
- . Defense
- . Education
- . Energy
- . HUD (Housing and Urban Development)
- . Interior
- . Justice
- . Labor
- . State
- . Transportation
- . Treasury

### II. Independent Agencies and Regulatory Agencies Employing over 500.

- . EPA (Environmental Protection Agency)
- . Action
- . FED (Federal Reserve Board)
- . GSA (General Services Administration)
- . NASA (National Aeronautics & Space Administration)
- . NSF (National Science Foundation)
- . OPM (Office of Personnel Management)
- . Peace Corps
- . SBA (Small Business Administration)
- . TVA (Tennessee Valley Authority)
- . USIA (United States Information Agency)
- . VA (Veterans Administration)
- . CFTC (Commodity Futures Trading Commission)
- . CPSC (Consumer Product Safety Commission)
- . EEOC (Equal Employment Opportunity Commission)
- . FCC (Federal Communications Commission)
- . FDIC (Federal Deposit Insurance Corp.)
- . FHLBB (Federal Home Loan Bank Board)
- . FTC (Federal Trade Commission)
- . ICC (Interstate Commerce Commission)
- . NLRB (National Labor Relations Board)
- . NRC (Nuclear Regulatory Commission)
- . SEC (Securities and Exchange Commission)

III. Independent and Regulatory Agencies Employing under 500.

- . ACDA (Arms Control and Disarmament Agency)
- . Civil Rights Commission
- . Eximbank
- . Legal Services Corporation
- . FEC (Federal Election Commission)
- . FMC (Federal Maritime Commission)
- . ITC (International Trade Commission)
- . PBGC (Pension Benefit Guaranty Corp.)

## PUBLIC SMOKING HEARING READINESS

Primary Responsibility: Susan Stuntz

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When the Coalition on Smoking OR Health called a news conference to discuss public policy implications of the 1986 Surgeon General's report on "involuntary smoking," participants there confirmed what we already suspected: federal legislation and hearings on ETS issues can be anticipated as early as the first quarter of this year.

Sen. Hatch already has introduced legislation that would ban smoking on all means of public transport. It has been referred to the commerce committee (where Ernest Hollings is chairman; Wendell Ford heads the aviation subcommittee). We also have heard that Hatch has asked for labor committee hearings on ETS -- to give the Surgeon General yet another opportunity to review the findings of the report released December 16.

Rep. Scheuer has introduced legislation banning smoking on all domestic aircraft, and promises a bill that would extend the regulations announced by the General Services Administration in early December to federal employees who work in buildings not covered by GSA or Department of Defense regulations. Rep. Ritter has promised a federal workplace bill of his own.

### What We Can Expect

Whatever the venue, we can anticipate the now-familiar litany of anti-smoking scientists and activists claiming that environmental tobacco smoke poses a health hazard to nonsmokers in the workplace, and that smokers are less productive and more costly to their employers than nonsmokers. These include:

- . Surgeon General C. Everett Koop
- . Lawrence Garfinkel (American Cancer Society)
- . Representatives from the Heart and Lung Associations
- . John Banzhaf (ASH)
- . James Repace
- . David Burns, Jonathan Samet, and other authors of the Surgeon General's 1986 report
- . Bob Rosner, William Weis, Tim Lowenberg of Seattle University's Smoking Policy Institute
- . Marvin Kristein, American Health Foundation, on the economics of smoking restrictions

- . Representatives of state and local governments that have restricted smoking (possibly a Joe Califano or a New York Public Health Commissioner to report on their experiences in New York)
- . William Alli, American Federation of Government Employees
- . Representatives from the NAS passive smoking and cabin air quality committees
- . Aaron Lichtman, president of the new Citizens Against Tobacco Smoke (CATS), dedicated to banning smoking on airlines
- . Representatives from flight attendants' unions

We also could see, for the first time in federal public smoking hearings, testimony from workers who claim to have been harmed by exposure to ETS, from airline passengers who have been delayed or inconvenienced by smoking disputes, or from celebrities such as Roger Clemens, Cy Young Award winner and American League MVP, who attributed a poor performance in the World Series this year to exposure to tobacco smoke on an airline flight back to Boston from the league championship series.

#### What TI and Its Allies Must Cover

Tobacco Institute testimony and that of its allies and interested parties should emphasize:

1. The lack of scientific evidence that environmental tobacco smoke causes disease in healthy nonsmokers. Such testimony should note the difference in tone between the politicized introductions to NAS and Surgeon General's reports, and the scientific literature review that comprises the bulk of these documents. While the former claims health harm and recommends restrictions, the latter takes a far more cautious approach and recommends further research.
2. Smoking as but one aspect of a serious indoor air quality problem -- a problem that can and should be addressed not by restricting smoking, but by providing adequate and properly maintained ventilation systems.
3. Evidence that employers -- including the federal government -- can and are dealing with smoking problems in the workplace as they occur.
4. The lack of evidence that smokers are any more costly or less productive than nonsmokers.
5. Potential costs to employers of restricting smoking in workplaces.

6. Discriminatory effects of smoking restrictions, including denying equal access to handicapped workers, selective enforcement, and implementation that affects minorities, women and blue collar workers and excludes white male executives.

7. Potential collective bargaining problems for organized labor.

8. Evidence that the vast majority of the American public believes smoking restrictions are a matter to be addressed on a case-by-case basis, rather than by government fiat. In the case of public transportation, evidence that most of the flying public is satisfied with current rules and regulations.

Most of these arguments -- and the people to make them -- already are in place. A few are public opinion surveys and impact studies that are best completed once legislation is in hand.

#### Resources and Status

1. To note the lack of scientific evidence that environmental tobacco smoke poses a health hazard to nonsmokers.

. Continued briefings of Congressmen and their staff by TI legislative counsel and scientific consultants, on the ETS issue and on questions about scientific integrity and misrepresentation of fact.

. Representatives from the Indoor Air Pollution Advisory Group, probably Drs. Phil Witorsch and Nancy Balter, are up to date on the literature and ready to testify once hearing dates are set.

Action Needed: Interested Congressmen should be encouraged to invite other independent scientists who have been outspoken on this issue. In particular, Dr. Ernst Wynder, a reviewer of the 1986 Surgeon General's report, is reported to have distanced himself from the conclusions of the report. Michael Lebowitz has made similar statements.

2. To place the ETS issue in the broader context of indoor air quality.

. Gray Robertson, ACVA Atlantic, Inc., is ready and willing. He should be a part of continued private briefings with Congressional staff.

. Sal DiNardi, University of Massachusetts and another representative from IAPAG, also is available to testify.

. Representatives from organized labor who have continually pushed for smoking restrictions

We have asked the Department of HHS for documents used in preparing the Surgeon General's report. Assuming our request is denied we are attempting to interview a Member of Congress in seeking the information.



to be considered as part of a broader indoor air quality program, will be encouraged to include this issue in any testimony they submit.

. A representative from IT Corp., an independent laboratory which has agreed to analyze and discuss findings from portable indoor air sampling devices, can review results from samples taken in a cross section of government buildings, including Congressional hearing rooms. This resource will be made a part of the material on which Congressmen and their staffs currently are being briefed.

Action Needed: Delivery of and training on the portable air sampling devices is behind schedule. Public Affairs is pressing to put these briefcases into use as soon as possible.

On airlines, the Aviation Safety and Health Association has attempted in the past to place smoking-on-airlines in the context of cabin air quality. Although workload has prevented public affairs staff from meeting with ASHA officials, such discussions need to take place prior to any hearings.

3. Evidence that employers can and are dealing with this issue as necessary.

. TI should include this in its own testimony. Anecdotal evidence is available in quarterly corporate reports, and in the results of the voluntary programs put together in the last year.

. Organized labor will be encouraged to cite instances in which locals have successfully bargained on the issue.

Action Needed: Results of the program currently underway to brief agencies on requirements under the GSA regulations will be useful in describing the depth and breadth of local response to the General Services Administration's new requirements. These results may include examples of policies drafted and reports on success of or problems with implementation.

4. Lack of evidence that smokers are less productive or more costly to their employers than nonsmokers.

. UCLA economist Lew Solmon is prepared to appear and/or to submit a written statement detailing his research on the productivity/costs issue. He is prepared to ask to testify on his own, or he can be included as part of an industry panel.

5. An assessment of the potential costs to employers of imposing smoking restrictions.

. An economic impact study can be developed in two weeks' time, outlining potential costs to employers of posting signs, rearranging office space, and providing smoking breaks to employees. The study is tailored to legislation; all that is needed to proceed is a copy of the bill.

. Anecdotal information on any horror stories that have resulted from legislatively imposed smoking restrictions at the state or local level. The State Activities Division has commissioned a study of corporate experience with the Cincinnati ordinance. Results may be incorporated into TI testimony, or into the economic impact study, as appropriate.

Action needed: Testimony as to economic impact can be delivered with a liberal labor slant, or from the conservative corporate view. On the former, we have in the past obtained the sponsorship of the AFL-CIO, or of member unions; Jim Savarese is the witness. For the conservative corporate side, Bob Tollison presents the study. If and when testimony is to be given, we will need a judgment from Federal Relations as to whether we should seek labor sponsorship.

6. Discriminatory effects of workplace smoking restrictions.

. Tom Burch, chairman of the National Coalition of Vietnam Veterans, testified effectively last year as to the potential impact of federal smoking restriction legislation on the veteran population in VA hospitals and in the federal workforce. He is prepared to repeat his testimony, and to continue to call for assurances that any areas designated smoking and nonsmoking sections be equally accessible to the handicapped.

. The League of United Latin American Citizens (LULAC), and several state Hispanic chambers of commerce last year passed resolutions and/or submitted comments opposing workplace smoking restrictions. We will call on them for similar statements this year.

. Representatives from organized labor will cite in their testimony the potential for selective enforcement singling out union activists, and problems with blue

collar and lower level workers being disproportionately affected by restrictions in general office space.

7. Potential problems with collective bargaining contracts.

. TI should, of course, note this factor in its testimony.

. The strongest testimony here will come from organized labor, which will note the 1986 AFL-CIO resolution. We will approach the American Federation of Government Employees (AFGE), the Public Employee Dept. of the AFL-CIO, and the four other federal worker unions that commented on the GSA regulations. It will be our goal to encourage all to appear, or at a minimum to submit statements. Realistically, however, we can anticipate that a single representative will carry the message for all.

. In addition, we will approach the presidents of the five unions that commented on the 1986 Surgeon General's report, and ask them to submit a statement outlining their objections to the report.

Action needed: The Public Affairs Division continues its constant contact and briefings with organized labor; we continue to update unions as events occur.

8. Demonstrate that the vast majority of the American public believes that workplace smoking restrictions are best resolved on a case-by-case basis, and not by government fiat. For airlines, demonstrate that most of the flying public believes things work well the way they are.

. A public opinion survey commissioned in 1985 and released last year, revealed that the vast majority of voters in the Washington, D.C. area, and the majority of federal employees, believe that smoking restrictions in the workplace are best left to the individual manager and/or agency, and not a responsibility for the Congress. We can rerun that survey to obtain updated information.

. Comments submitted on the proposed GSA regulations can be cited in TI testimony, and in testimony from allies and friends.

. Also in 1985, we updated an earlier telephone survey of frequent flyers. Most believe the

current system of separate sections for smokers and nonsmokers works just fine. That survey, too, can be rerun and used to buttress the Department of Transportation's own complaint records.

Action needed: Both surveys can and will be fielded once we have received approval from the Federal Relations Division. C&B submitted a Freedom of Information request in August to obtain copies of all GSA comments. We continue to press for a response to that long-overdue request.

I would either take this out or place it at the end as an appendix. This way there is more emphasis on what remains to be done than on what has already been done.

The attached memoranda outline our current readiness for Congressional hearings on the tax, advertising and public smoking issues. Each describes the current situation, our expectations from the anti-smokers, the arguments that must be made in opposition, and the materials, allies and coalitions to make them.

Each also notes assignments and/or recommendations for additional action that should be completed prior to hearings. These assignments, broken down by issue within each division, include:

#### Public Affairs Division

##### Taxes:

- . Identification of witnesses from among appropriate ally and coalition groups.
- . Development of arguments and identification of experts and coalitions to argue that excise tax increases are not an appropriate means of financing health care costs.

##### Advertising:

- . Analysis of University of Michigan youth smoking data.
- . Develop article reviewing literature on international experiences with advertising bans.
- . Attempt to identify labor unions in affected industries and trades as possible spokespersons.
- . Op-ed articles, letters to the editor, etc., from academic resources.
- . Strengthening the advertising alliance.

##### Public Smoking:

- . Identification of witnesses from among appropriate contacts.
- . Follow up on availability and use of portable air sampling systems.
- . Discussions with Aviation Safety and Health Assn.
- . Continued briefings and follow-up with labor.
- . Continue efforts to obtain copies of GSA comments, via Freedom of Information request.

#### Federal Relations Division

*As hearings are announced,*  
Taxes: 1 Identification of <sup>specific</sup> Congressional witnesses.

Advertising: Development of broad-based coalition of product advertisers vulnerable to ad restrictions.

Assigned to FRD?

**Public Smoking:**

- . Continued Congressional briefings on ETS and indoor air quality issues.
- . Identification of ~~potential~~ Congressional witnesses, and Congressmen who would be amenable to invite other scientists who support the industry's view on ETS to testify.
- . ~~Report on agency briefing activities related to GSA regulations, including identification of sample policies covering a range of local options and reports on success of or problems with implementation.~~ . Approval to proceed with economic impact studies and/or voter surveys. One-month lead time is requested on both. On the former, decision will be needed as to whether to seek labor sponsorship.

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**State Activities Division:**

**Taxes:** Assistance in identifying witnesses, through state contacts.

**Public Smoking:** Assistance in identifying horror stories related to enforcement of smoking restriction legislation (Cincinnati project).

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