

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: Administrative; CITE AUTHORITY WV Code 5A-4-2, 5A-3-42

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 7

TITLE OF RULE BEING PROPOSED: Smoking Restriction Guidelines for
West Virginia State Buildings/Facilities

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON January 31, 1991 AT 4:30pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Secretary, Department of Administration
Capitol Building, EW, Room 119
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Clad Pool

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

The working environment of State employees should present no unnecessary risk of physical harm or discomfort from environmental tobacco smoke which is a known cause of lung cancer.

As an employer with the responsibility to provide a safe and healthful work environment free from recognized and avoidable hazards, it is in the public interest for the Department of Administration, as the custodial agent for State owned, rented, leased facilities, to direct that a smoke free environment be assured not only for each State employee, but for the public as well, as they transact business with or received services from the State.

NOTICE
STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
REQUEST FOR COMMENTS ON
PROPOSED RULE

Notice is hereby given that the Department of Administration, State of West Virginia has filed with the Secretary of State, a proposed rule on Smoking Restrictions in the Workplace. The proposed rule may be viewed between 8:30 am and 4:30 pm, Monday through Friday in the Secretary of State's Office, Building 1, Suite 157-K, Main Capitol Building. The Department will accept comments on the proposed rule through 4:30 pm, January 31, 1991. Written comments and suggestions should be sent to the Secretary, Chuck Polan, Department of Administration, Building 1, Room E-119, Capitol Complex, Charleston, WV 25305.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens. None

C. Economic Impact on Citizens/Public at Large. None

Date: _____

Signature of Agency Head or Authorized Representative

Carl Pal

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 148
LEGISLATIVE RULES
DEPARTMENT OF ADMINISTRATION

SERIES 7

SMOKING PROCEDURES

Section 148-7-1. General

1.1 Scope.--The purpose of this rule is to establish procedures to ensure a healthful, smoke-free environment for each State employee and the public as they transact business with or receive service from the State in buildings, offices or other space, motor vehicles and aircraft owned or leased by the State and under the control of the Department of Administration. This rule does not apply to the offices and areas of the West Virginia Supreme Court of Appeals, the Legislature or constitutional officers.

1.2 Authority.--West Virginia Code 5A-4-1, 5A-4-2, 5A-3-42, and 5-3-48.

1.3 Filing Date.--December 19, 1990.

1.4 Effective Date.--

Section 148-7-2. Definitions

2.1 Appointing Authority: An agency head or his/her designee, such as agency supervisors, section or unit heads, or other individuals designated by the agency head.

2.2 Cigarette: Any lighted tobacco product.

2.3 ETS: Environmental tobacco smoke; secondhand or sidestream smoke.

2.4 Proper Ventilation: Smoke exhausted to the outside. The system used to expel the smoke shall not diminish the working conditions of the employees' environment; for example, the method may not affect the building's heating and cooling system.

2.5 Workplace/Worksite: Any office, facility, building, etc., owned or operated by the State covered by this rule,

including State-owned/leased motor vehicles and aircraft.

Section 148-7-3. Applicability

This rule is applicable to buildings, offices, other space, motor vehicles and aircraft owned or leased by the State and under the control of the Department of Administration. This rule does not apply to the offices and areas of the West Virginia Supreme Court of Appeals, Legislature or constitutional officers. State facilities such as hospitals, mental hospitals, prisons and/or regional jails shall comply with this rule to the maximum extent possible. The only exceptions will be by the express mutual approval of the affected appointing authority and the Secretary of the Department of Administration. All exceptions will be made with public health and safety being the prime consideration.

Section 148-7-4. Procedures

4.1 It shall be the responsibility of the appointing authority to ensure that all workplaces maintain a healthful, smoke-free environment and to make both employees and the public aware of their responsibility to comply with the smoking restrictions.

(a) Appointing authorities shall establish a smoke-free environment in State workplaces.

(b) Appointing authorities must prohibit smoking in worksites for employees and the public if accommodations cannot be made without exposing individuals to the effects of secondhand or sidestream smoke.

(c) Appointing authorities may make reasonable accommodations for smokers, wherever possible and whenever practical, as follows:

(1) Appointing authorities may establish smoking areas at worksites, as long as the areas are properly ventilated and/or employees and the public have a smoke-free environment with no material effects from secondhand or sidestream smoke.

(2) Appointing authorities are not required to make special accommodations for individual smoking areas, but may do so in accordance with this section.

(d) In the application of this rule, anytime there is a conflict between the rights of smokers and non-smokers, the rights of non-smokers shall prevail.

4.2 Public waiting rooms and receiving areas shall be smoke-free, and smoking restrictions shall be actively enforced by the individuals responsible for those areas.

(a) The appointing authority shall post signs, worded as specifically as possible, designating smoking and non-smoking areas, if smoking areas exist.

(b) Receptacles should be placed outside all buildings to encourage persons to extinguish smoking products before entering, and an overview of the agency's smoking restriction policy should be posted in all waiting rooms and reception areas.

(c) The agency shall incur all reasonable costs of the signs, receptacles, etc., and their installation.

4.3 Smoking restrictions shall be enforced at all conferences, meetings, and training sessions conducted by the State and shall be consistent with all other provisions of this rule. All non-State entities using State workplaces must conform to this rule.

4.4 Appointing authorities are encouraged to provide support and assistance to employees and the public in the implementation and enforcement of this rule.

4.5 All related policies shall be enforced by the appointing authorities.

(a) This rule does not supersede any local ordinances or State statutes that are more restrictive and applicable, nor does it permit discrimination against smokers applying for positions.

(b) While employers do have the right to make rules for their own premises, employers may not prohibit lawful behavior and the use of lawful tobacco products outside the site of the workplace under this rule.