

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

December 19, 2008

FEDERAL MANAGEMENT REGULATION
Amendment 2008-08

TO: Heads of Federal agencies

SUBJECT: FMR Case 2008-102-3, Real Property Policies Update -
Smoking Restrictions

1. Purpose. This document includes pages that reflect amendments to Part 102-74 of the Federal Management Regulation (FMR).

2. Background. On August 9, 1997, President Clinton signed Executive Order (E.O.) 13058, entitled "Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace," to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities (62 FR 43451, August 13, 1997).

On October 20, 1997, GSA issued GSA Bulletin FPMR D-245, "Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace" (62 FR 54461). In accordance with the requirements of E.O. 13058, GSA Bulletin FPMR D-245 prohibited the smoking of tobacco products in all interior space owned, rented or leased by the executive branch of the Federal Government, except in specially-equipped designated smoking areas, outdoor areas in front of air intake ducts and certain other residential and non-Federal occupied space. The bulletin also required the heads of executive agencies to evaluate the need to restrict smoking in courtyards and near doorways.

Studies conducted since the issuance of GSA Bulletin FPMR D-245 have concluded that cigarette smoking is the number one preventable cause of morbidity and premature mortality worldwide. Studies also have shown that the harmful effects of smoking are not confined solely to the smoker, but extend to co-workers and members of the general public who are exposed to secondhand smoke as well. Recognition of these facts is evidenced by the stricter laws on smoking enacted by several states over the past 10 years. Twenty-six states have banned smoking entirely in all of their State government buildings and 19 have banned smoking in all private work places.

Executive Order 13058 encourages the heads of executive agencies to evaluate the need to further restrict smoking at doorways and in courtyards under executive branch control and authorizes the agency heads to restrict smoking in these areas in light of this evaluation.

The proposed changes to the current smoking policy may affect conditions of employment for employees. Where there is an exclusive representative for the employees, executive branch agencies will be required to meet their collective bargaining obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, before the proposed revisions to the existing smoking policy can be implemented.

GSA published FMR Amendment 2008-08, FMR Case 2008-102-3, final rule in the *Federal Register* at 73 FR 77517, December 19, 2008.

3. Effective date. December 19, 2008.

4. Explanation of changes. The GSA amended the FMR by revising the restrictions on the smoking of tobacco products in leased or owned space under the jurisdiction, custody, or control of the Administrator of General Services. This final rule cancels and replaces in its entirety 41 CFR 102-74.315 through 102-74.350 including the insertion of a new 41 CFR 102-74.351.

5. Filing instructions. Make the following page changes:

Remove FMR pages:

Part 102-74 TOC
pp. 102-74-i and 102-74- ii

102-74-7 and 102-74-8

Insert FMR pages:

Part 102-74 TOC
pp. 102-74-i and
102-74- ii

102-74-7 and 102-74-8



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AMENDMENT 2005–03 NOVEMBER 8, 2005

PART 102-74—FACILITY MANAGEMENT

Sec.

	Subpart A—General Provisions		
102-74.5—	What is the scope of this part?	102-74.120—	Is a prospectus required to be submitted before emergency alterations can be performed?
102-74.10—	What is the basic facility management policy?	102-74.125—	Are prospectuses required for reimbursable alteration projects?
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102-74.15—	What are the facility management responsibilities of occupant agencies?	102-74.135—	Who selects construction and alteration projects that are to be performed?
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102-74.25—	What responsibilities do Executive agencies have regarding occupancy services?	102-74.150—	Who submits prospectuses for the construction or alteration of public buildings to the Congressional committees?
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102-74.40—	What are concession services?	102-74.165—	What energy standards must Federal agencies follow for existing facilities?
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102-74.50—	Are Federal agencies required to give blind vendors priority in operating vending facilities?	102-74.175—	Are Government-leased buildings required to conform with the policies in this subpart?
102-74.55—	Are vending facilities authorized under the Randolph-Sheppard Act operated by permit or contract?	102-74.180—	What illumination levels must Federal agencies maintain on Federal facilities?
102-74.60—	Are Federal agencies required to give blind vendors priority in operating cafeterias?	102-74.185—	What heating and cooling policy must Federal agencies follow in Federal facilities?
102-74.65—	Are cafeterias authorized under the Randolph-Sheppard Act operated by permit or contract?	102-74.190—	Are portable heaters, fans and other such devices allowed in Government-controlled facilities?
102-74.70—	Are commercial vendors and nonprofit organizations required to operate vending facilities by permit or contractual arrangement?	102-74.195—	What ventilation policy must Federal agencies follow?
102-74.75—	May Federal agencies sell tobacco products in vending machines in Government-owned and leased space?	102-74.200—	What information are Federal agencies required to report to the Department of Energy (DOE)?
102-74.80—	[Reserved]		Ridesharing
102-74.85—	[Reserved]	102-74.205—	What Federal facility ridesharing policy must Executive agencies follow?
102-74.90—	[Reserved]	102-74.210—	What steps must Executive agencies take to promote ridesharing at Federal facilities?
102-74.95—	[Reserved]	102-74.215—	[Reserved]
	Conservation Programs	102-74.220—	[Reserved]
102-74.100—	What are conservation programs?	102-74.225—	[Reserved]
	Asset Services		
102-74.105—	What are asset services?		
102-74.110—	What asset services must Executive agencies provide?		
102-74.115—	What standard in providing asset services must Executive agencies follow?		

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FEDERAL MANAGEMENT REGULATION

Occupant Emergency Program

- 102-74.230— Who is responsible for establishing an occupant emergency program?
- 102-74.235— Are occupant agencies required to cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization?
- 102-74.240— What are Federal agencies' occupant emergency responsibilities?
- 102-74.245— Who makes the decision to activate the Occupant Emergency Organization?
- 102-74.250— What information must the Designated Official use to make a decision to activate the Occupant Emergency Organization?
- 102-74.255— How must occupant evacuation or relocation be accomplished when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat)?
- 102-74.260— What action must the Designated Official initiate when there is advance notice of an emergency?

Parking Facilities

- 102-74.265— Who must provide for the regulation and policing of parking facilities?
- 102-74.270— Are vehicles required to display parking permits in parking facilities?
- 102-74.275— May Federal agencies authorize lessors or parking management contractors to manage, regulate and police parking facilities?
- 102-74.280— Are privately owned vehicles converted for propane carburetion permitted in underground parking facilities?
- 102-74.285— How must Federal agencies assign priority to parking spaces in controlled areas?
- 102-74.290— May Federal agencies allow employees to use parking spaces not required for official needs?
- 102-74.295— Who determines the number of employee parking spaces for each facility?
- 102-74.300— How must space available for employee parking be allocated among occupant agencies?
- 102-74.305— How must Federal agencies assign available parking spaces to their employees?
- 102-74.310— What measures must Federal agencies take to improve the utilization of parking facilities?

Smoking

- 102-74.315— What is the smoking policy for interior space in Federal facilities?

- 102-74.320— Are there any exceptions to the smoking policy for interior space in Federal facilities?
- 102-74.325— Are designated smoking areas authorized in interior space?
- 102-74.330— What smoking restrictions apply to outside areas under Executive branch control?
- 102-74.335— Who is responsible for furnishing and installing signs concerning smoking restrictions in the building, and in and around building entrance doorways and air intake ducts?
- 102-74.340— Who is responsible for monitoring and controlling areas designated for smoking by an agency head and for identifying those areas with proper signage?
- 102-74.345— Does the smoking policy in this part apply to the judicial branch?
- 102-74.350— Are agencies required to meet their obligations under the Federal Service Labor-Management Relations Act where there is an exclusive representative for the employees prior to implementing this smoking policy?
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- 102-74.355— With what accident and fire prevention standards must Federal facilities comply?
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- 102-74.375— What is the policy on admitting persons to Government property?

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- 102-74.380— What is the policy concerning the preservation of property?

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- 102-74.385— What is the policy concerning conformity with official signs and directions?

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- 102-74.395— What is the policy concerning gambling?

§102-74.300—How must space available for employee parking be allocated among occupant agencies?

The Federal agency buildings manager must allocate space available for employee parking among occupant agencies on an equitable basis, such as by allocating such parking in proportion to each agency's share of building space, office space or total employee population, as appropriate. In certain cases, Federal agencies may allow a third party, such as a board composed of representatives of agencies sharing space, to determine proper parking allocations among the occupant agencies.

§102-74.305—How must Federal agencies assign available parking spaces to their employees?

Federal agencies must assign available parking spaces to their employees using the following order of priority:

- (a) Severely disabled employees (see definition in [§102-71.20](#) of this chapter).
- (b) Executive personnel and persons who work unusual hours.
- (c) Vanpool/carpool vehicles.
- (d) Privately owned vehicles of occupant agency employees that are regularly used for Government business at least 12 days per month and that qualify for reimbursement of mileage and travel expenses under Government travel regulations.
- (e) Other privately owned vehicles of employees, on a space-available basis. (In locations where parking allocations are made on a zonal basis, GSA and affected agencies may cooperate to issue additional rules, as appropriate.)

§102-74.310—What measures must Federal agencies take to improve the utilization of parking facilities?

Federal agencies must take all feasible measures to improve the utilization of parking facilities, including—

- (a) The conducting of surveys and studies;
- (b) The periodic review of parking space allocations;
- (c) The dissemination of parking information to occupant agencies;
- (d) The implementation of parking incentives that promote ridesharing;
- (e) The use of stack parking practices, where appropriate; and
- (f) The employment of parking management contractors and concessionaires, where appropriate.

Smoking

§102-74.315—What is the smoking policy for interior space in Federal facilities?

Pursuant to Executive Order 13058, "Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace" (3 CFR, 1997 Comp., p. 216), 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 prohibited in all interior space owned, rented or leased by the executive branch of the Federal Government.

§102-74.320—Are there any exceptions to the smoking policy for interior space in Federal facilities?

- Yes, the smoking policy does not apply in—
- (a) 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;
 - (b) Portions of Federally owned buildings leased, rented or otherwise provided in their entirety to non-Federal parties;
 - (c) Places of employment in the private sector or in other non-Federal Governmental units that serve as the permanent or intermittent duty station of one or more Federal employees; and
 - (d) Instances where an agency head establishes limited and narrow exceptions that are necessary to accomplish agency missions. Such exceptions must 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.

§102-74.325—Are designated smoking areas authorized in interior space?

No, unless specifically established by an agency head as provided by [§102-74.320](#)(d). A previous exception for designated smoking areas is being eliminated. All designated interior smoking areas will be closed effective June 19, 2009. This six-month phase-in period is designed to establish a fixed but reasonable time for implementing this policy change. This phase-in period will provide agencies with time to comply with their obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, in those circumstances where there is an exclusive union representative for the employees.

§102-74.330—What smoking restrictions apply to outside areas under Executive branch control?

Effective June 19, 2009, smoking is prohibited in courtyards and within twenty-five (25) feet of doorways and air intake ducts on outdoor space under the jurisdiction, custody or control of GSA. This six-month phase-in period is designed to establish a fixed but reasonable time for implementing this policy change. This phase-in period will provide agencies with time to comply with their obligations under the Federal Service Labor-Management Relations Act, as amended, 5 U.S.C. Ch. 71, Labor-Management Relations, in those circumstances where there is an exclusive union representative for the employees.

§102-74.335—Who is responsible for furnishing and installing signs concerning smoking restrictions in the building, and in and around building entrance doorways and air intake ducts?

Federal agency building managers are responsible for furnishing and installing suitable, uniform signs in the building, and in and around building entrance doorways and air intake ducts, reading "No Smoking," "No Smoking Except in Des-

ignated Areas,” “No Smoking Within 25 Feet of Doorway,” or “No Smoking Within 25 Feet of Air Duct,” as applicable.

§102-74.340—Who is responsible for monitoring and controlling areas designated for smoking by an agency head and for identifying those areas with proper signage?

Agency heads are responsible for monitoring and controlling areas designated by them under [§102-74.320](#)(d) for smoking and identifying these areas with proper signage. Suitable, uniform signs reading “Designated Smoking Area” must be furnished and installed by the occupant agency.

§102-74.345—Does the smoking policy in this part apply to the judicial branch?

This smoking policy applies to the judicial branch when it occupies space in buildings controlled by the executive branch. Furthermore, the Federal Chief Judge in a local jurisdiction may be deemed to be comparable to an agency head and may establish exceptions for Federal jurors and others as provided in [§102-74.320](#)(d).

§102-74.350—Are agencies required to meet their obligations under the Federal Service Labor-Management Relations Act where there is an exclusive representative for the employees prior to implementing this smoking policy?

Yes. Where there is an exclusive representative for the employees, Federal agencies must meet their obligations under the Federal Service Labor-Management Relations Act, 5 U.S.C. Ch. 71, Labor-Management Relations, prior to implementing this section. In all other cases, agencies may consult directly with employees.

§102-74.351—If a state or local government has a smoke-free ordinance that is more strict than the smoking policy for Federal facilities, does the state or local law or Federal policy control?

The answer depends on whether the facility is Federally owned or privately owned. If the facility is Federally owned, then Federal preemption principles apply and the Federal policy controls. If the facility is privately owned, then Federal tenants are subject to the provisions of the state or local ordinance, even in the Federally leased space, if the state or local restrictions are more stringent than the Federal policy.

Accident and Fire Prevention

§102-74.355—With what accident and fire prevention standards must Federal facilities comply?

To the maximum extent feasible, Federal agencies must manage facilities in accordance with the accident and fire prevention requirements identified in [§102-80.80](#) of this chapter.

§102-74.360—What are the specific accident and fire prevention responsibilities of occupant agencies?

Each occupant agency must—

- (a) Participate in at least one fire drill per year;
- (b) Maintain a neat and orderly facility to minimize the risk of accidental injuries and fires;
- (c) Keep all exits, accesses to exits and accesses to emergency equipment clear at all times;
- (d) Not bring hazardous, explosive or combustible materials into buildings unless authorized by appropriate agency officials and by GSA and unless protective arrangements determined necessary by GSA have been provided;
- (e) Use only draperies, curtains or other hanging materials that are made of non-combustible or flame-resistant fabric;
- (f) Use only freestanding partitions and space dividers that are limited combustible, and fabric coverings that are flame resistant;
- (g) Cooperate with GSA to develop and maintain fire prevention programs that provide the maximum safety for the occupants;
- (h) Train employees to use protective equipment and educate employees to take appropriate fire safety precautions in their work;
- (i) Keep facilities in the safest condition practicable, and conduct periodic inspections in accordance with Executive Order 12196 and 29 CFR part 1960;
- (j) Immediately report accidents involving personal injury or property damage, which result from building system or maintenance deficiencies, to the Federal agency building manager; and
- (k) Appoint a safety, health and fire protection liaison to represent the occupant agency with GSA.

Subpart C—Conduct on Federal Property

Applicability

§102-74.365—To whom does this subpart apply?

The rules in this subpart apply to all property under the authority of GSA and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to this part at each public entrance to each Federal facility.

Inspection

§102-74.370—What items are subject to inspection by Federal agencies?

Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.