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TITLE 20--EDUCATION

CHAPTER 68--NATIONAL EDUCATION REFORM

SUBCHAPTER X--MISCELLANEOUS

Part B--Environmental Tobacco Smoke

Sec. 6083. Nonsmoking policy for children's services

(a) Prohibition

After March 31, 1994, no person shall permit smoking within any indoor facility owned or leased or contracted for and utilized by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

(b) Additional prohibition

After March 31, 1994, no person shall permit smoking within any indoor facility (or portion thereof) owned or leased or contracted for by such person for the provision by such person of regular or routine health care or day care or early childhood development (Head Start) services to children or for the use of the employees of such person who provides such services, except that this subsection shall not apply to--

- (1) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and
- (2) any private residence.

(c) Federal agencies

- (1) Kindergarten, elementary, or secondary education or library services

After March 31, 1994, no Federal agency shall permit smoking within any indoor facility in the United States operated by such

agency, directly or by contract, to provide routine or regular kindergarten, elementary, or secondary education or library services to children.

(2) Health or day care or early childhood development services

After March 31, 1994, no Federal agency shall permit smoking within any indoor facility (or portion thereof) operated by such agency, directly or by contract, to provide routine or regular health or day care or early childhood development (Head Start) services to children, except that this paragraph shall not apply to--

- (A) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and
- (B) any private residence.

(3) Application of provisions

The provisions of paragraph (2) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (2) not subject to paragraph (1).

(d) Notice

The prohibitions in subsections (a) through (c) of this section shall be incorporated by publication of a notice in the Federal Register by the Secretary (in consultation with the heads of other affected agencies) and by such agency heads in funding arrangements involving the provision of children's services administered by such heads. Such prohibitions shall be effective 90 days after such notice is published, or 270 days after March 31, 1994, whichever occurs first.

(e) Special waiver

(1) In general

On receipt of an application, the head of the Federal agency may grant a special waiver to a person described in subsection (a) of this section who employs individuals who are members of a labor organization and provide children's services pursuant to a collective bargaining agreement that--

- (A) took effect before March 31, 1994; and
- (B) includes provisions relating to smoking privileges that

are in violation of the requirements of this section.

(2) Termination of waiver

A special waiver granted under this subsection shall terminate on the earlier of--

(A) the first expiration date (after March 31, 1994) of the collective bargaining agreement containing the provisions relating to smoking privileges; or

(B) the date that is 1 year after March 31, 1994.

(f) Civil penalties

(1) In general

Any failure to comply with a prohibition in this section shall be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty under this section, the total amount shall not exceed the amount of Federal funds received by such person for the fiscal year in which the continuing violations occurred. For the purpose of the prohibition in subsection (c) of this section, the term "person" shall mean the head of the applicable Federal agency or the contractor of such agency providing the services to children.

(2) Administrative proceeding

A civil penalty may be assessed in a written notice, or an administrative compliance order may be issued, by the Secretary only after an opportunity for a hearing in accordance with section 554 of title 5. Before making such assessment or issuing such order, or both, the Secretary shall give written notice thereof to such person by certified mail with return receipt and provide therein an opportunity to request in writing not later than 30 days after the date of receipt of such notice such hearing. The notice shall reasonably describe the violation and be accompanied with the procedures for such hearing and a simple form to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing which should be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary's designee) and such person may

consult to arrange a suitable date and location where appropriate.

(3) Circumstances affecting penalty or order

In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate--

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the degree of culpability, and any demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C) such other matters as justice may require.

(4) Modification

The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the Secretary or agreed upon in compromise, may be deducted from any sums that the United States or its agencies or instrumentalities owes to the person against whom the penalty is assessed.

(5) Petition for review

Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review thereof with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy thereof to the Secretary or the Secretary's designee. The petition shall be filed within 30 days after the Secretary's assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

(6) Failure to comply

If a person fails to pay an assessment of a civil penalty or comply with an order, after either or both are final under this

section, or after a court under paragraph (5) has entered a final judgment in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at then currently prevailing rates from the day either or both are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.

(Pub. L. 103-227, title X, Sec. 1043, Mar. 31, 1994, 108 Stat. 272.)