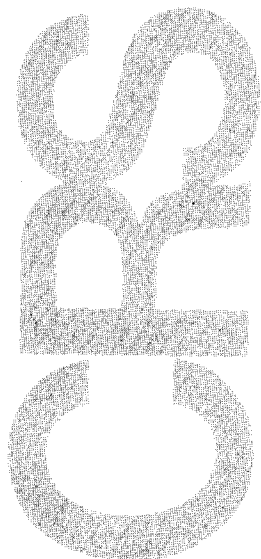
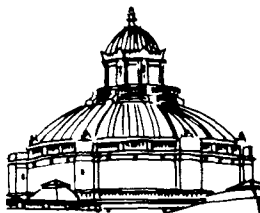


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ACTIONS OF THE CONGRESS AND THE FEDERAL GOVERNMENT ON  
SMOKING AND HEALTH

by  
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ABSTRACT

This paper is a history of actions taken by the U.S. Congress and by the various departments and regulatory agencies of the Federal Government on the subject of smoking and health for the period from the mid 1950s to the end of the 95th Congress in 1978.

CHRONOLOGY OF MAJOR ACTIONS ON SMOKING AND HEALTH

November 1962--The Surgeon General's Advisory Committee on Smoking and Health is established and begins its study of tobacco as a possible health problem.

January 11, 1964--The Advisory Committee releases its report, entitled Smoking and Health, which concludes that cigarette smoking is a health hazard.

June 23, 1964--The FTC issues a trade regulation requiring a health warning on cigarette packages and in advertising.

June 23 through July 2, 1964--The House Committee on Interstate and Foreign Commerce holds five days of hearings on the general subject of smoking and health. The FTC agrees to a Committee request that it defer its ruling until the Congress can study the subject in more detail.

March 22 through April 15, 1965--The Senate Committee on Commerce holds eight days of hearings on legislation concerning cigarette labeling and advertising. A bill, S. 559, is reported by the Committee on May 19.

April 6 through May 4, 1965--The House Committee on Interstate and Foreign Commerce holds eight days of hearings on smoking-related legislation, one of which, H.R. 3014, is reported on June 8.

June 16, 1965--The Senate passes S. 559.

June 22, 1965--The House passes S. 559 after substituting the provisions of H.R. 3014.

June 6, 1965--The Senate passes the conference report on S. 559.

July 13, 1965--The House passes S. 559.

July 27, 1965--The President sign S. 559 into law as P.L. 89-92, the Federal Cigarette Labeling and Advertising Act of 1965.

October 29, 1965--The Department of Health, Education, and Welfare establishes a National Clearinghouse on Smoking and Health.

June 2, 1967--The Federal Communications Commission, in sustaining the complaint of Banzhaf v. F.C.C., applies the "fairness doctrine" requiring broadcast stations carrying cigarette advertising to carry also a significant amount of anti-smoking messages.

April 15 through May 1, 1969--The House Committee on Interstate and Foreign Commerce holds 13 days of hearings on proposals to regulate cigarette advertising and labeling. A bill, H.R. 6543, is reported on June 5.

June 18, 1965--The House passes H.R. 6543.

July 22, 1965--The Consumer Subcommittee of the Senate Committee on Commerce holds hearings on the House-passed H.R. 6543. The Committee reports an amended version of the bill on December 5.

December 12, 1969--The Senate passes H.R. 6543 as amended.

March 1970--Both houses agree to a conference report on H.R. 6543.

April 1, 1970--The President signs H.R. 6543 into law as P.L. 91-222, the Public Health Cigarette Smoking Act of 1970.

August 8, 1970--The FTC issues a proposed rule requiring cigarette manufacturers to disclose tar and nicotine content of cigarettes in advertising. The proposal is suspended when manufacturers agree voluntarily to make the disclosures.

February 1, 1973--Senator Frank Moss and the American Public Health Association petition the Consumer Product Safety Commission to set a maximum level for the tar content in cigarettes and to ban from interstate sale any cigarettes exceeding that level.

April 5, 1973--The Senate Committee on Commerce reports S. 1165, a bill to include little cigars under the broadcast advertising prohibition.

April 10, 1973--The Senate passes S. 1165.

May 22 through May 24, 1973--The House Committee on Interstate and Foreign Commerce holds three days of hearings on H.R. 3828 and H.R. 7482, similar legislation affecting little cigars. The committee reports H.R. 7482 on June 22.

September 10, 1973--The House passes S. 1165, in lieu of H.R. 7482.

September 20, 1973--The President signs S. 1165 into law as P.L. 93-109, Little Cigar Act of 1973.

May 7, 1973--The Civil Aeronautics Board approves a regulation requiring domestic airlines to provide designated "no smoking" areas aboard aircraft after July 1, 1973, for the comfort of passengers.

May 17, 1974--The Consumer Product Safety Commission decides that it does not have the authority to act on the Moss petition to ban high tar cigarettes.

October 5, 1976--The CAB proposes a change in its aircraft smoking regulation to ban the smoking of pipes and cigars entirely on aircraft on the basis of the discomfort they cause non-smokers.

January 11, 1978--Secretary of Health, Education, and Welfare Joseph Califano announces a new anti-smoking initiative, consisting of public education, regulation, and research. The new initiative is to be coordinated by a newly-created Office on Smoking and Health, which will include the National Clearinghouse on Smoking and Health.

February 5, 1978--The Subcommittee on Public Health and the Environment of the House Committee on Interstate and Foreign Commerce holds oversight hearings on the new anti-smoking initiative, with testimony from the Secretary, and from representatives from the tobacco industry, anti-smoking organizations, and other health organizations.

May 19, 1978--Senator Edward Kennedy introduces bills dealing with preventive health and other health programs, S. 3115, S. 3116, and S. 3118, which contain provisions combining elements of a broad anti-smoking campaign.

May 25 through June 9, 1978--The Subcommittee on Health and Scientific Research of the Senate Committee on Human Resources holds

three days of hearings on preventive health and related legislation, including S. 3115, S. 3116, and S. 3118, which contain anti-smoking provisions.

September 7, 1978--The Subcommittee on Tobacco of the House Committee on Agriculture holds hearings on the effect of smoking on non-smokers, with testimony to the effect that public smoke is not hazardous to nonsmokers.

September 15, 1978--The Senate Committee on Human Resources reports S. 3116, containing provisions to fund research and demonstration projects to deter smoking among children.

September 29, 1978--The provisions of S. 3116, including those concerning childhood smoking deterrence, are included in S. 2474, a bill amending health services programs. The bill is passed by the Senate and a conference is held with the House. The conference agreement contains the Senate childhood smoking provision with the addition of language to require the program to work also to deter the use of alcoholic beverages among children.

November 10, 1978--The President signs S. 2474 into law as P.L. 95-626, the Health Services and Centers Amendments of 1978.



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## INTRODUCTION

The following report is a history of Federal involvement in the issue of smoking and health. The report describes in detail the actions taken by the Congress, the executive branch, and by independent Federal regulatory agencies on the subject of cigarette smoking and health. It covers the years immediately preceding the 1964 Surgeon General's report on Smoking and Health to the end of the 95th Congress in 1978.

The chronology begins with the events leading up to the formation of the Advisory Committee to the Surgeon General on Smoking and Health in 1962, and the work of that committee which resulted in the publication of its historic report in January 1964.

The aftermath of that report included labeling and advertising legislation in 1965 and 1970, as well as the introduction and examination of numerous other bills and floor amendments that were not enacted into law. These bills were designed to reduce Federal support and assistance for tobacco production and export, raise taxes on tobacco products, modify cigarette advertising practices, regulate smoking in public carriers and public places, and generally improve the Nation's health by discouraging the practice of cigarette smoking. Various attempts at legislation to deal with the smoking and health issue are described in the report, as are the actions of Federal regulatory agencies, such as the Federal Trade Commission, the Federal Communications Commission,

the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Aviation Administration, and the Consumer Product Safety Commission, all of whom have been involved in the smoking and health controversy in one way or another over the years. The various activities of the Department of HEW in this area are also described.

The report also contains information on legislation and hearings, sponsored primarily by congressional members from tobacco-producing States, who disagree with the findings of the original Surgeon General's report and subsequent documents that smoking has a serious causal relationship with certain diseases.

ACTIONS OF THE CONGRESS AND THE FEDERAL GOVERNMENT ON  
SMOKING AND HEALTH

1956-1964

In June 1956, the National Cancer Institute, the National Heart Institute, the American Cancer Society, and the American Heart Association, operating jointly, established a scientific Study Group to examine the available data on the relationship of smoking and health. The group appraised 16 independent studies carried on in five countries over an 18-year period, and concluded that there was a causal relationship between excessive cigarette smoking and lung cancer.

The Surgeon General of the U.S. Public Health Service, Dr. Leroy E. Burney, who had helped to initiate the formation of the Study Group, expressed the opinion of the U.S.P.H.S. on the subject on July 12, 1957: "The Public Health Service feels the weight of the evidence is increasingly pointing in one direction; that excessive smoking is one of the causative factors in lung cancer."

Two years later, in the November 28, 1959, issue of the Journal of the American Medical Association, Surgeon General Burney reiterated his views from the earlier statement that: "The weight of evidence at present implicates smoking as the principal factor in the increased incidence of lung cancer," and that: "Cigarette smoking particularly is associated with an increased chance of developing lung cancer."

In 1961, the presidents of the American Cancer Society, the American Public Health Association, the American Heart Association, and the National Tuberculosis Association wrote to the President of the United States, urging the formation of a Presidential commission to study the "widespread implications of the tobacco problem."

In January of 1962, a meeting of representatives of these organizations with the Surgeon General, Luther L. Terry, resulted in a proposal by Dr. Terry that the Secretary of Health, Education, and Welfare form an advisory committee to assess available information on the subject and make recommendations.

A detailed proposal in April of the same year for the formation of such an advisory committee called for the reevaluation of the 1957 and 1959 positions taken by Surgeon General Burney in the light of several developments in the area during the intervening years, such as:

1. "New studies indicating that smoking has major adverse health effects;
2. Representations from national voluntary health agencies for action on the part of the Service;
3. The recent study and report of the Royal College of Physicians of London (This study concluded that: Cigarette smoking is a cause of lung cancer and bronchitis, and probably contributes to the development of coronary heart disease and various other less common diseases. It delays healing of gastric and duodenal ulcers);
4. Action of the Italian Government to forbid cigarette and tobacco advertising; curtailed advertising of cigarettes by Britian's major tobacco companies on TV; and a similar decision on the part of the Danish tobacco industry;
5. A proposal by Senator Maurine Neuberger that Congress create a commission to investigate the health effects of smoking;
6. A request for technical guidance by the Service from the Federal Trade Commission on labeling and advertising of tobacco products; and

7. Evidence that medical opinion has shifted significantly against smoking."\*

In July, the Surgeon General met with representatives of national organizations, tobacco industry representatives, and Federal agencies involved in the issue to discuss guidelines for the advisory committee's work. This meeting also produced a list of possible Committee members. This list was reviewed over the next months by representatives of these groups, all of which had the right to veto any name without having to give reasons. Any persons who had already taken a public position on the questions at issue were eliminated from the list. The Surgeon General finally selected ten physicians and scientists who agreed to serve on the Advisory Committee to the Surgeon General on Smoking and Health. On November 9, 1962, the Committee began its work.

In carrying out its study, the Committee utilized 155 outside consultants, supporting staff from the Public Health Service, and several organizations and institutions. Information about smoking and health to be assessed was obtained from the National Library of Medicine, from tobacco companies, and from special reports prepared under contract. In its studies, the Committee evaluated three main kinds of scientific evidence: animal experiments, clinical and autopsy studies, and population or epidemiological studies.

Subcommittees were formed to deal in depth with the specific topics under study and their conclusions were submitted to the full committee for debate, revision and adoption. The full Advisory Committee between November 1962 and December 1963 held nine sessions, each lasting from two to four days, in Washington or Bethesda.

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\*Smoking and Health, Report of the Advisory Committee to the Surgeon General of the Public Health Service, p. 8.

On January 11, 1964, the report of the Advisory Committee to the Surgeon General was released. According to the report entitled Smoking and Health, the Committee's judgment in brief was: "Cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."

Specifically, the Committee found that:

1. "Cigarette smoking is associated with a 70 percent increase in the age-specific death rates of males, and to a lesser degree with increased death rates of females;
2. Cigarette smoking is causally related to lung cancer in men;
3. Cigarette smoking is the most important of the causes of chronic bronchitis in the United States, and increases the risk of dying from chronic bronchitis and emphysema; and
4. Male cigarette smokers have a higher death rate from coronary artery diseases than nonsmoking males."\*

On January 16, 1964, five days after the Report's publication, Senator Maurine Neuberger of Oregon introduced two bills in the Senate that were a direct reaction to the Report's findings. The first bill, S. 2429, would have required the Federal Trade Commission to regulate cigarette advertising and labeling, mandated that all cigarette packages carry a warning label, and ordered the elimination of cigarette advertising portraying smoking as attractive to children. The second bill, S. 2430, the Cigarette Health Hazard Act, provided for a congressional finding that cigarette smoking constitutes

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\*Smoking and Health, Report of the Advisory Committee, pages 31 and 32.

a grave public health hazard. It also provided for the Department of Health, Education, and Welfare to coordinate Federal activities and conduct research programs on the injurious substances in cigarette smoke, conduct an educational program to inform the public of the health hazards involved in smoking, and conduct periodic surveys of smoking patterns. Representatives John Blatnik and John Dingell introduced similar bills in the House on January 20. No congressional action occurred on these bills.

On January 18, the Federal Trade Commission issued notice of its intention to adopt trade regulation rules which would have required that cigarette packages and advertisements bear a health warning. On June 23, the Commission issued a trade regulation rule to be promulgated July 1, 1965, to the effect that failure to disclose a health warning in all advertising and on every pack, box, carton, or other container in which cigarettes are sold to the consuming public would be a violation of Section 5 of the FTC Act.

On March 4, 1964, the floor of the Senate was the scene of the first in what was to be over the succeeding years a series of attempts to deal with an apparently contradictory Federal policy regarding tobacco and health. Sen. John Williams of Delaware, during debate on the Agricultural Act of 1964, H.R. 6196, dealing with cotton and wheat production, proposed a floor amendment to repeal the Federal price support program for tobacco.

"Why," asked Sen. Williams, "should the Government spend \$40 million annually to subsidize the production of tobacco, a commodity so strongly criticized by the Surgeon General?" He said that his amendment would not restrict the use of tobacco or interfere with its production, but would simply stop the practice of spending millions of dollars of the taxpayers' money



"to support a commodity which no one has said would be of benefit to the health of America but which the Surgeon General and the best medical authorities in the country have determined would be injurious to our health."

Opposition to the amendment was immediate and strong, based on several factors. Some opponents felt that the Surgeon General's report was inconclusive, with its findings based largely on statistical association. One of the major points of opposition was the effect that the elimination of price supports would have on the thousands of tobacco farmers in the country. According to one opponent, Sen. John Sherman Cooper of Kentucky, "If the amendment were adopted, tobacco production would mount, and the result would be cheap tobacco, at disastrous prices to our farmers." Another opponent, Sen. Everett Jordan of North Carolina, said that adoption of the amendment, "would increase the smoking habits of millions of people, because cigarettes would probably be produced at half price."

The Williams amendment to repeal the tobacco price support program was defeated by a vote of 63-26, but the attempt would be made again many times in future Congresses.

The actions of the FTC and the introduction of legislation described above, as well as other bills not enumerated here -- all in response to the findings of the Advisory Committee -- led to the calling of hearings by the House Committee on Interstate and Foreign Commerce on June 23, 24, 25, 29, and July 2, 1964. Committee Chairman Oren Harris of Arkansas, in his opening remarks at the hearings, referred to both the FTC action and the proposed legislation, and said: "The purpose of these hearings will be, if we can

reach that point, to determine the extent of authority under existing law to deal with the various aspects of this general field, and to determine whether any action of the Congress is warranted in the interest of public health. In other words, we want to find out under our responsibility whether or not legislative action is necessary, and if so, what kind?"

Testimony was heard from Members of Congress, representatives of the Department of Health, Education, and Welfare, the tobacco industry, health organizations, and the medical profession. Following the hearings, Chairman Harris, at the direction of the Committee, asked the FTC to defer the effective date of its proposed rule applicable to cigarette advertising and packaging, so that the Committee would have more time to go into the matter in more detail. The FTC agreed to do so.

The tobacco industry's response to the report of the Advisory Committee was to call for further research on the subject. George V. Allen, president of the Tobacco Institute, responding on January 11 for the industry, said that the tobacco industry, "which is already supporting a considerable body of health research, stands ready to increase that support and also to cooperate with the Government and other groups on any projects which offer possibilities for filling the gaps in knowledge which still exist in this broad field of scientific concern."

On January 13, 1964, Representative Harold Cooley of North Carolina introduced the first in a number of bills calling for such research that was to be introduced in the following month. The bill, H.J. Res. 885, called for research into the quality and health factors of tobacco. On February 7, the House Committee on Agriculture, of which

Representative Cooley was chairman, reported out another bill introduced by him, H.J. Res. 915, to authorize the Secretary of Agriculture to conduct research into the quality and health factors of tobacco and other ingredients and materials used in the manufacture of cigarettes (House Report no. 1135). No further action was taken during the 88th Congress, but the following year, Representative Cooley reintroduced the same bill in the 89th Congress as H.J. Res. 153. Again no further action was taken on the proposal.

In July of 1964, three Federal agencies, the Children's Bureau, the U.S. Office of Education, and the Public Health Service, working with various private health interest groups, established the National Interagency Council on Smoking and Health. The Council was created to serve as a medium of exchange for groups concerned with the problems of smoking and health. In succeeding years, other government agencies and private groups joined the Council's membership.

#### 1965

The early days of the 89th Congress saw the introduction of a variety of bills dealing with cigarette labeling and advertising. The Senate Commerce Committee held eight days of hearings between March 22 and April 5, 1965, on two bills. One, S. 547, introduced by Senator Neuberger, specifically authorized the Federal Trade Commission (FTC) to set advertising and labeling standards for cigarettes, including a caution label with the average yield per cigarette of each "incriminated agent," as determined by the Commission. The bill also required all cigarette advertisements to carry the same warning and called for the elimination of all advertising that tended to depict smoking as

attractive to children. The second bill, S. 559, introduced by Senate Commerce Committee Chairman Warren Magnuson, required that all cigarette packages carry a warning label plus the average tar and nicotine yield per cigarette. It also prohibited the requirement of any other warning by any Federal, State, or local authority (including the FTC).

After completion of its hearings, the Senate Commerce Committee reported S. 559 amended, on May 19. As reported, the bill required all cigarette packages to bear the statement: "Caution: Cigarette Smoking May Be Hazardous to Your Health." It also provided that no other statement could be required and that, for three years, no statement relating to smoking and health could be required in cigarette advertising. It provided for a fine of \$100,000 for violations of the law and required the FTC, working with HEW, to transmit regular reports on the effectiveness of labeling, information on the health consequences of smoking, current advertising practices, and recommendations for legislation.

On June 16, 1965, the Senate passed S. 559 by a 72-5 roll call vote and sent the bill to the House. In the meantime, the House Committee on Interstate and Foreign Commerce had held eight days of hearings between April 6 and May 4 on a number of bills. H.R. 2248, introduced by Representative Morris Udall, would have amended the Federal Food, Drug, and Cosmetic Act to make it applicable to smoking products. H.R. 3014, introduced by Representative Walter Rogers of Texas, and H.R. 4007, introduced by Representative Ancher Nelson, required the same caution label as required by the Senate-passed bill, and barred the FTC or other regulatory agencies from requiring any further warning or statement in cigarette advertising.

H.R. 4244, introduced by Representative Paul Fino, required the label: "Warning -- Contents May Be Dangerous to Health," plus the nicotine and tar content be placed on cigarette packages.

The House Committee reported H.R. 3014 amended, on June 8. As reported, it was similar to the Senate-passed bill, requiring the same caution label. It also prohibited FTC or other agency action on cigarette advertising permanently, rather than for three years. The House bill provided for fines up to \$10,000 for violations, and contained no provision for regular reports from the FTC.

The House passed H.R. 3014 on June 22 by voice vote; then substituted its provisions for those of S. 559, which it then passed, also by voice vote. The two houses went to conference on the proposal, and on July 1, the conference report on S. 559 was filed (H.R. No. 586). In a compromise of the provisions of the House and Senate bills, the bill agreed upon in conference--

- (1) Required that each cigarette package bear a conspicuous and legible label stating: "Caution: Cigarette Smoking May Be Hazardous to Your Health;"
- (2) Prohibited any other statement relating to smoking and health from being required on cigarette packages so labeled;
- (3) Provided that, until July 1, 1969, no statement relating to smoking and health could be required in any advertisement of cigarettes the packages of which were labeled in accordance with the act;
- (4) Established a penalty of \$10,000 for violations; and

- (5) Required the Secretary of Health, Education, and Welfare and the Federal Trade Commission to submit annual reports and recommendations to the Congress.

The conference report was passed by the Senate on July 6, by voice vote, and by the House on July 13, by a 286-103 roll call vote, and S. 559 was sent to the President. A number of Senators and Representatives sent a letter to President Johnson on July 16, urging him to veto the bill because it did not go far enough, and that "instead of protecting the health of the American people, (it) protects only the cigarette industry." The President, however, signed S. 559 into law as P.L. 89-92 on July 27, 1965.

In October of 1965, the Department of Health, Education and Welfare set up a National Clearinghouse on Smoking and Health. The Clearinghouse was intended to serve several roles. It was to act as a central repository of scientific information, to carry out a national program of public information and educational projects, and to carry on research in smoking behavior and methods of cessation. It was established to achieve three major objectives: (1) to reduce the numbers of persons smoking cigarettes; (2) to reduce the number of young persons taking up cigarettes; and (3) to help develop less hazardous smoking for those not wishing to quit or unable to do so.

### 1967

The 90th Congress was a time of little legislative activity regarding smoking and health. A number of bills were introduced by members of both Houses who felt that the 1965 legislation did not do enough to protect the public health; but none was enacted.

In May of 1967, Senator Magnuson and others sponsored a bill, S. 1803, to strengthen the 1965 bill by requiring the disclosure of the tar and nicotine content of mainstream smoke of cigarettes and to authorize a continuing program for isolating and disclosing other harmful agents in cigarette smoking. Representatives Thomas Foley and James Corman introduced similar bills in the House, H.R. 10903 and H.R. 11175. In August, Senator Magnuson held three days of hearings of the Consumer Subcommittee of the Senate Commerce Committee on the bill and on efforts toward the development and marketing of a less hazardous cigarette. Nothing further came of the bill, but the FTC that year began to test the tar and nicotine content of cigarettes sold in the U.S. and to publish the results periodically. The first report issued on November 22 listed 54 brands.

Representative John Moss introduced H.R. 1171, requiring the inclusion of a stronger warning label plus the average tar and nicotine yield on all cigarette packages and in all advertising. It also authorized the Secretary of Health, Education, and Welfare to prescribe rules establishing maximum lengths of cigarettes, if he determined that longer cigarettes increased the risk of disease.

Senator Robert Kennedy and others introduced three bills dealing with the problem. The first, S. 2394, required a stronger warning label plus the disclosure of tar and nicotine yields on packages and in advertising. The second, S. 2395, directed the Federal Communications Commission to establish regulations prohibiting cigarette advertising which might effect children or which might effect the public health. The third, S. 2396, provided for taxing cigarettes on the basis of their tar and nicotine content.

None of these bills received any further legislative action in 1968 and it was not until the 91st Congress that further legislation in this area was enacted.

Although 1967 saw no substantive legislative activity on smoking and health, it was a year for significant regulatory action. In January a complaint was filed with the Federal Communications Commission by an attorney, John Banzhaf III, acting as a private citizen, to the effect that information on the health hazards of smoking was not being made available on television on the bill and on efforts toward the development and marketing of a less hazardous cigarette. Nothing further came of the bill, but the FTC that year began to test the tar and nicotine content of cigarettes sold in the U.S. and to publish the results periodically. The first report issued on November 22 listed 54 brands.

Representative John Moss introduced H.R. 11717, requiring the inclusion of a stronger warning label plus the average tar and nicotine yields on all cigarette packages and in all advertising. It also authorized the Secretary of Health, Education, and Welfare to prescribe rules establishing maximum lengths for cigarettes, if he determined that longer cigarettes increased the risk of disease.

Senator Robert Kennedy and others introduced three bills dealing with the problem. The first, S. 2394, required a stronger warning label plus the disclosure of tar and nicotine yields on packages and in advertising. The second, S. 2395, directed the Federal Communications Commission to establish regulations prohibiting cigarette advertising which might effect children or which might



effect the public health. The third, S. 2396, provided for taxing cigarettes on the basis of their tar and nicotine content.

None of these bills received any further legislative action in 1967 or 1968 and it was not until the 91st Congress that further legislation in this area was enacted.

Although 1967 saw no substantive legislative activity on smoking and health, it was a year for significant regulatory action. In January a complaint was filed with the Federal Communications Commission by an attorney, John Banzhaf III, acting as a private citizen, to the effect that information on the health hazards of smoking was not being made available on television and radio as a counterweight to cigarette advertising. In June the FCC sustained Banzhaf's complaint that cigarette advertisements on radio and television raised just one side of a controversial issue of public importance, and that the Commission's "fairness doctrine" was applicable to such advertising. The Commission ruled that broadcast stations must allow "a significant amount of time" for "the other side of this controversial issue." The ruling did not require equal time for antismoking messages, but left the volume of such messages up to the "reasonable judgment" of station officials.

The FCC received protests on its decision from the various parties affected by the decision, such as the Tobacco Institute, cigarette manufacturers, radio and television networks, individual stations, and the National Association of Broadcasters, but the Commission on September 8 formally denied all petitions for reconsiderations of its ruling, and in 1968 its position was sustained by the U.S. Court of Appeals for the District of Columbia.

In the summer of 1967, two Federal agencies, the Public Health Service and the Federal Trade Commission both published reports which were the first in an annual series of reports, mandated by the Congress in the 1965 legislation. The Public Health Service, in its first annual The Health Consequences of Smoking, presented a review of more than 2,000 research studies published since the 1964 Surgeon General's report. The report stated that "no evidence has been revealed which brings into question the conclusions of the 1964 report." "On the contrary," the report went on, "the research studies published since 1964 have strengthened those conclusions and have extended in some important respects our knowledge of the health consequences of smoking."

The report summarized the state of knowledge at that time concerning the health consequences as follows:

1. Cigarette smokers have substantially higher rates of death and disability than their nonsmoking counterparts in the population. This means that cigarette smokers tend to die at earlier ages and experience more days of disability than comparable nonsmokers.
2. A substantial portion of earlier deaths and excess disability due to diseases that may have been caused by smoking would not have occurred if those affected had never smoked.
3. If it were not for cigarette smoking, practically none of the earlier deaths from lung cancer would have occurred; nor a substantial portion of the earlier deaths from chronic bronchopulmonary diseases (commonly diagnosed as chronic bronchitis or pulmonary emphysema or

both); nor a portion of the earlier deaths of cardiovascular origin. Excess disability from chronic pulmonary and cardiovascular diseases would also be less.

4. Cessation or applicable reduction of cigarette smoking could delay or avert a substantial portion of deaths which occur from lung cancer, a substantial portion of the earlier deaths and excess disability from chronic bronchopulmonary diseases, and a portion of the earlier deaths and excess disability of cardiovascular origin.

The Federal Trade Commission's 1967 report to Congress stated that "there is virtually no evidence that the warning statement on cigarette packages (required by Congress) has had any significant effect." The Commission recommended mandatory labeling of tar and nicotine content on cigarette packages and in advertisements, as well as other measures to encourage manufacturers to develop less hazardous cigarettes. The report noted that whether "intentional or fortuitous, teenagers appear to be the prime target for televised cigarette advertising," and that such advertising "continues to depict smoking as an enjoyable activity while ignoring completely the health hazards." It suggested that to counteract then-current advertising practices might require "either termination or drastic alteration of cigarette advertising on radio and television", and would certainly require a "vast educational campaign to negate the image of cigarette smoking as harmless and satisfying."

#### 1968

In 1968, a supplement to the 1967 PHS's Health Consequences of Smoking continued the review of scientific information on the subject. According

to the Surgeon General, these findings confirmed the "clinical, experimental, and epidemiological relationships between tobacco smoking and many forms of illness related to it."

The FTC's 1968 report strengthened its recommendation to Congress to "ban television and radio cigarette advertising or such advertising should be limited as to the hours at which it may appear; the extent to which it may appear; and the type of programs on which it may appear."

#### 1969

The 91st Congress did take legislative action on cigarette advertising. In the House more than 90 members either introduced or cosponsored bills dealing with cigarette labeling and advertising. All of these bills were variations of or identical to four basic approaches to the subject: (1) creation of a stronger warning label plus inclusion of tar and nicotine levels on packages and inclusion of both the warning and the tar and nicotine levels in advertising; (2) prohibition or regulation of broadcast cigarette advertising; (3) inclusion of tar and nicotine levels on packages and in advertising; and (4) extension of the 1965 act.

The first of these variations, H.R. 643, was introduced initially by Representative William F. Ryan of New York, as an amendment to the 1965 act. It would have replaced the caution statement required by that legislation with a new statement: "Warning: Cigarette Smoking Is Dangerous to Health and May Cause Death From Cancer and Other Diseases." It also called for the placing on each cigarette package the average tar and nicotine yield per cigarette in such package, and required the inclusion of both the warning

statement and the tar and nicotine information on all advertising as well. In addition, it called for the Secretary of HEW to investigate whether longer cigarettes present increased risks to smokers, and, if so, to prescribe rules establishing a maximum length or maximum lengths for cigarettes.

A bill first introduced by Representative John Moss, H.R. 1237, would have amended the Communication Act of 1934 to direct the Federal Communications Commission to establish regulations to (1) prohibit the broadcasting of cigarette advertising at such hours and during programs determined most likely to influence children; and (2) regulate the total amount of such advertising determined for the protection of the health and welfare of the public, and particularly children.

Representative James Corman introduced a bill, H.R. 3055, designed to strengthen the 1965 act by requiring on cigarette packages, in addition to the caution statement, the quantity of tar and nicotine and other identifiable hazardous agents. It required that this information also be included in cigarette advertisements. It also authorized the FCC to prescribe and publish regulations dealing with the measurements of the quantity of tar and nicotine and with the identification and measurement of the quantity of other hazardous agents.

Representative David Satterfield of Virginia and others sponsored H.R. 6543, the Public Health Cigarette Smoking Act of 1969, which stated the policy of Congress and the purpose of the legislation, to be the establishment of a program whereby -- "(1) the public may be adequately informed that cigarette smoking may be hazardous to health by inclusion of a warning

to that effect on each package of cigarettes; and (2) commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, nonuniform and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." In effect, this bill extended the provisions of the 1965 Act.

In the meantime, the FCC in February of 1969 announced that it was taking action to ban the broadcast of cigarette advertising on radio and television. Its Notice of Proposed Rule Making stated that "presentation of commercials promoting the use of cigarettes is inconsistent with the obligation imposed upon broadcasters to operate in the public interest." The Commission said that cigarettes posed a "unique danger -- a danger measured in terms of an epidemic of deaths and disabilities". In May, the Federal Trade Commission announced that it was considering a proposed rule requiring all cigarette advertising to contain a strong warning: "Cigarette smoking is dangerous to health and may cause death from cancer, coronary heart disease, chronic bronchitis, pulmonary emphysema and other diseases." Both of these proposed rules would take effect with the expiration later that year of the prohibition included in the 1965 legislation against any such regulatory action.

The House Committee on Interstate and Foreign Commerce held 13 days of hearings between April 15 and May 1, 1969, on the various legislative proposals and on the issues of smoking and health. In his remarks opening the hearings, Committee Chairman Harley Staggers cited language from the conference report on the 1965 Act to the effect that Congress would reexamine

the subject matter based on all available information, including that contained in the required reports from the Department of Health, Education and welfare and the FTC, before July 1, 1969.

Following the hearings, the Committee reported H.R. 6543 (H. Rept. no. 91-289) on June 5. As reported, H.R. 6543 provided for a stronger warning label, "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health and May Cause Lung Cancer or Other Diseases," and, in addition, extended for six years the provision from the 1965 Act prohibiting Federal regulatory agencies from taking stronger measures on cigarette advertising. Minority views were included in the Committee report of commercials promoting the use of cigarettes is inconsistent with the obligation imposed upon broadcasters to operate in the public interest." The Commission said that cigarettes posed a "unique danger -- a danger measured in terms of an epidemic of deaths and disabilities". In May, the Federal Trade Commission announced that it was considering a proposed rule requiring all cigarette advertising to contain a strong warning: "Cigarette smoking is dangerous to health and may cause death from cancer, coronary heart disease, chronic bronchitis, pulmonary emphysema and other diseases." Both of these proposed rules would take effect with the expiration later that year of the prohibition included in the 1965 legislation against any such regulatory action.

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The House passed H.R. 6543 as reported on June 18 by voice vote after defeating several attempts by floor amendments to require health warnings in advertising and to permit regulatory agencies to act on advertising.

The Consumer Subcommittee of the Senate Commerce Committee held hearings on the House-passed bill on July 22. The hearings concentrated more on the self-regulation of cigarette advertising by the tobacco industry than on the provisions of the House bill, because the industry, represented at the hearings by Joseph F. Cullman III, offered to discontinue cigarette advertising on television and radio by September 1970 when major contractual arrangements were due to expire or earlier if the broadcasting industry would agree to terminate existing contracts simultaneously at any point after December 31, 1969.



The Chairman of the FTC, Paul Rand Dixon, testified that the Commission would suspend until 1971 its efforts to require a health warning in cigarette advertising if broadcast advertising were stopped voluntarily. Both FTC Chairman Dixon and FCC Chairman Rosel G. Hyde, testified that broadcasters should continue to show anti-smoking messages after advertising stopped.

The full Senate Commerce Committee reported H.R. 6543, with amendments, to the Senate on December 5. As reported, (S. Rept. no. 91-566) the bill would have made it unlawful to advertise cigarettes on radio and television after January 1, 1971; changed the mandatory statement on packages to: "Warning Excessive Cigarette Smoking Is Dangerous To Your Health"; and continued to prohibition of FTC regulation of cigarette advertising for 18 months.

On December 12, the Senate passed H.R. 6543 by a vote of 70-7 after adding two amendments. The first offered by Senator Frank Moss, deleted the word "Excessive" from the warning label. The second, offered by Senator Moss and modified by Senator Norris Cotton, amended the provision concerning FTC regulation to allow the Commission to require health warnings in cigarette advertising after July 1, 1971, or sooner if it determined that advertising practices constituted a "gross abuse" of the nonbroadcast media.

### 1970

Conference agreement on H.R. 6543 was not reached until March of 1970. As agreed to in conference (H.Rept. no. 91-897), passed by both Houses, and signed into law (P.L. 91-222), the bill:

- (1) Prohibited advertising of cigarettes on radio or television beginning Jan. 2, 1971;

- (2) Changed the label wording to "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health";
- (3) Prohibited all State and local health-related regulation or prohibition of cigarette advertising;
- (4) Prohibited FTC action on print advertising until on or after July 1, 1971, and provided detailed procedures for notification of Congress before any such FTC action;
- (5) Required annual reports to Congress by the FTC and the Department of Health, Education, and Welfare on the health consequences of smoking, effectiveness of labeling, and advertising practices.

After the enactment of P.L. 91-222, the FCC vacated its proposed rule-making regarding broadcast advertising of cigarettes. The removal of such advertising raised the question of whether anti-smoking messages required earlier by the Commission under its "fairness doctrine" could be so required any longer. Broadcast and tobacco industry spokesman argued that the "fairness doctrine" could no longer be applied and therefore the antismoking messages no longer need be shown. The FCC, in a report and order approved December 15, 1970, ruled that after the advertising ban went into effect on January 2, 1971, broadcasters could present antismoking messages as a public service, and that because the smoking and health issue was no longer a "controversial" one, the fairness doctrine did not apply and they could present such messages with no obligation to provide views from another side, the tobacco industry, that cigarette smoking may not be hazardous to health.

On August 8, 1970, the Federal Trade Commission issued a proposed rule to require cigarette manufacturers to disclose tar and nicotine content of this product in cigarette advertisements. The proceeding was suspended on December 22 when the cigarette companies agreed voluntarily

to make this disclosure. In February of 1971, advertisements conforming to this agreement began to appear and by December of that year, all cigarette advertisements were in conformity.

Also during the 91st Congress, Senators Edward Brooke and Frank Moss introduced separate bills to deal with the controversy of Federal price supports paid tobacco farmers and other Federal activities supporting the growth and sale of tobacco products, in apparent opposition to Federal health policy, as expressed by the Department of Health, Education, and Welfare, on the dangers of smoking. In March of 1969 Senator Brooke introduced a bill, S. 1721, the Tobacco Market Adjustment Act, which provided a four-year phasing out of all Federal price supports for tobacco producers. In May of 1970, Senator Moss introduced his bill (S. 3826) to eliminate such Federal supports and other activities. Neither the Brooke nor Moss bill received further action beyond committee referral. However, in July of 1970, Senator Moss introduced the provisions of his bill as floor amendment to the Department of Agriculture FY 1971 appropriations. This amendment would have prohibited the use of any Federal funds for:

- (1) a tobacco price support program;
- (2) an export subsidy;
- (3) advertising or promoting the sale of tobacco;
- (4) financing the foreign sale of tobacco under the Agricultural Trade Development and Assistance;
- (5) inspecting and grading tobacco.

The Senate defeated the Moss amendment overwhelmingly, but the Senator continued to offer it in succeeding years.

1971-1972

The cigarette broadcast advertising ban became effective early in the 92nd Congress. The two-year span of this Congress again was a period of little substantive legislative activity regarding smoking although several bills were introduced.

The legislation introduced represented a variety of attempts to deal with the problems of smoking and health, including efforts to reduce the production and sale of high tar and nicotine cigarettes, to inform the public about the dangers of smoking, and to protect nonsmokers. Congressional members from tobacco-producing states also presented legislation representing their interest in the controversy.

Representative Spark Matsunaga in January of 1971 introduced a bill, H.R. 877, giving authority to the Secretary of Transportation and to the Interstate Commerce Commission to require that common carriers under their jurisdiction provide special smoking sections aboard aircraft, railroad cars, buses, and vessels carrying passengers, with smoking only in such areas. Senator Richard Schweiker sponsored an identical bill early the next year, S. 3249.

Representative Bill Young of Florida introduced a bill with similar intentions. This bill, the Nonsmokers Relief Act, H.R. 4676, would have required the Secretary of Transportation to prescribe regulations requiring airplanes, railroads, and motor vehicle modes of public transportation in interstate commerce to reserve some seating capacity for nonsmoking passengers. This legislation, sponsored in the Senate by Senator Edward Gurney,

S. 1298, received no legislative action, but the Interstate Commerce Commission (ICC) on November 17, 1971, issued an order concerning smoking by passengers and operating personnel on interstate buses. According to the ICC order, which was affirmed in a 1973 court case, smoking of cigarettes, cigars, or pipes was permitted only in the rear section (not to exceed 20 percent of capacity) of interstate passenger buses.

Several bills concerning Federal taxation of cigarettes were introduced in the 92nd Congress. Representative James Corman, in H.R. 2460, sponsored an approach to tax cigarettes on the basis of their tar and nicotine content. Representative Thomas O'Neill introduced a bill, H.R. 4602, to impose an additional excise tax on cigarettes, with the proceeds being used for cancer research programs through a Cancer Research Fund. Senator Frank Moss introduced S. 2691, the Cigarette Tar Tax Act, which would have amended the Internal Revenue Code to tax cigarettes on the basis of their tar content.

Senator Moss' bill also contained provisions to eliminate Federal support for tobacco farmers and sales and export, similar to his bill in the previous year. S. 2691 also provided for the establishment of a Commission on Tobacco Adjustment Assistance to prepare an analysis on: (1) the effect of the termination of price supports for tobacco; (2) the economic hardships to growers, manufacturers, etc. from the elimination or reduction of the use of tobacco products; and (3) the economic hardship to State and local governments caused by the reduction in revenues from tobacco product taxes; and to prepare recommendations.

In July during the Senate debate for the Department of Agriculture appropriations bill, Senator Moss again offered as a floor amendment his proposal to eliminate Federal support for tobacco production and sales. When it was again defeated, he withdrew a second amendment, this one to establish the Commission described in his bill.

Also in July of 1971, the Federal Trade Commission, following up its action of the year before to require the inclusion of cigarette tar and nicotine content in all advertising, issued proposed complaints against cigarette manufacturers to require them to include health warnings in their advertising. This issue was resolved the following year when, under consent orders issued by the FTC March 30, 1972, the six major cigarette manufacturers agreed to include in all advertisement the warning statement required by law on all packages.

In February 1972, the Consumer Subcommittee of the Senate Commerce Committee held three days of hearings under on a bill introduced by Subcommittee Chairman Frank Moss the year before to require the FTC to establish acceptable levels of tar and nicotine content for cigarettes. The hearings followed directly upon the release of the Surgeon General's 1972 report on the health consequences of smoking, which contained a chapter on the significance of the various hazardous ingredients in cigarette smoke. The hearings also addressed the question of the marketing and advertising of so-called "little cigars," which had recently appeared on the market, and which were being advertised on radio and television as cigars. The little cigar became the subject of legislation in the following Congress.

Finally, two bills were introduced in the 92nd Congress that essentially represented the views and interests of the tobacco industry and tobacco-producing States. In July of 1971, Representative Richardson Preyer of North Carolina and others introduced a joint resolution, H. J. Res. 8245, to provide for the establishment of a Scientific Commission on Smoking and Health, with member scientists nominated by the President's Science Advisor and by the tobacco industry, to study the "inconclusive" findings of the 1964 Surgeon General's report and settle other controversial issues regarding smoking and health.

Then in September of 1972, Senator Everett Jordan and Representative Nick Galifinakis, both of North Carolina, introduced identical bills in the Senate and House to authorize the Secretary of Agriculture to make grants for research to develop techniques of and information on the growing, harvesting, and processing of tobacco to assist tobacco producers in protecting the health of tobacco users. These bills, S. 3968 and H.R. 15243, provided for appropriations of funds in an amount not less than that spent by the Federal Government in the preceding year for studies on the effect of smoking on health. No action was taken on any of these bills.

#### 1973-1974

The 93rd Congress was again a mixture of legislation, most of it not acted upon, and regulatory action, much of it inconclusive.

Senator Moss offered his bills from past years to terminate price supports for tobacco (S. 248), to provide for FTC establishment of acceptable tar and nicotine levels in cigarettes (S.249), and to tax cigarettes on the basis of their tar and nicotine levels (S. 456). He also introduced a bill,

S. 1231, sponsored in the House by Representative Robert Kastenmeier, H.R. 4640, to eliminate cigarette advertising as a deductible business expense under the Internal Revenue Code. Senator Moss again tried unsuccessfully to terminate price supports through a floor amendment to the Agricultural appropriations bills.

Representative Spark Matsunaga and Senator Richard Schweiker reintroduced their bills, H.R. 765 and S. 2219, to require common carriers to limit smoking aboard aircraft, railroad cars, buses, and vessels, except in designated areas. A similar approach was taken by Representative Bill Young of Florida, with his bill to require carriers by rail, motor vehicles, and air modes of public transportation in interstate commerce to reserve some seating capacity for passengers who do not smoke. Representative Peter Kyros sponsored a bill to prohibit smoking on aircraft operating in air transportation.

Representative Peter Peyser included, as part of a drug abuse education bill, H.R. 4976, provision for educating the public on problems relating to tobacco abuse.

Representatives Frank Denholm in H.R. 17263 and 17264, and Edward Koch, in H.R. 17324, introduced bills to increase the excise tax on cigarettes, with larger increases applied to the longer cigarettes. These bills also called for the establishment of a National Cancer Research Fund to be funded from the additional excise taxes.

In contrast, however, Representative David Treen introduced a bill, H.R. 13265, to eliminate, over a four-year period, taxes imposed under the Internal Revenue Code on cigars, cigarettes, cigarette papers, and tubes.



Representative William Lehman introduced a number of bills on the subject of smoking and health. One of them (H.R. 3827), would have revised the cigarette package warning statement to read: "Warning: Cigarette Smoking Is Dangerous to Health and May Cause Death From Cancer, Coronary Heart Disease, Chronic Bronchitis, Pulmonary Emphysema, or Other Diseases." Another, H.R. 7319, would have required cigarette packages to disclose the quantities of tar and nicotine contained in cigarettes in the packages.

Representative Lehman, in February of 1973, Senator Moss in March, and Representative Torbert MacDonald, in May, introduced bills, H.R. 3828, S. 1165, and H.R. 7482 respectively, designed to include the so-called "little cigar" in the broadcast ban for cigarettes. Little cigars had been on the market for a number of years; they were similar to cigarettes in size and shape and packaging, but were wrapped in leaf tobacco or reconstituted tobacco sheet similar to cigars.

The legislation under consideration was designed to amend the Federal Cigarette Labeling and Advertising Act of 1965 to include little cigars as defined, under the broadcast advertising prohibition. The Senate Commerce Committee, acting without hearings, reported S. 1165 on April 5, 1973, (S. Rept. no. 93-103) and the Senate passed it on April 10, and again after reconsideration on April 30. The House Committee on Interstate and Foreign Commerce held hearings on H.R. 3828 and H.R. 7482 on May 22, 23, and 24, and reported H.R. 7482 on June 22 (H. Rept. no. 93-323). On September 10, the House passed the Senate bill in lieu of its own measure and the Little Cigar Act of 1973 was signed into law on September 20, 1973, as P.L. 93-109.

The smoking-related regulatory activities during the 94th Congress involved three Federal agencies.

In 1973, the Civil Aeronautics Board and the Federal Aviation Administration announced separate actions regarding the issue of smoking aboard passenger aircraft.

On May 7, the CAB approved a regulation requiring domestic airlines to provide designated "no smoking" areas aboard aircraft after July 1, 1973. On July 16, the FAA announced that it was withdrawing a proposed rule-making first issued in March 1970 that would have regulated smoking in the passenger compartments of aircraft.

The CAB's jurisdiction in this area of passenger airline operations is related to questions of the adequacy of aircraft operation based on the comfort of passengers. The FAA, on the other hand, is primarily concerned with questions of aircraft safety, hence its long-standing prohibition, as a safety hazard, of smoking during takeoff and landing, and in aircraft lavatories. In its 1973 decision, the FAA determined that smoking during flight was not a safety hazard and, therefore, not a matter for its further concern. The CAB, however, determined that smoking during flight was detrimental to the convenience and comfort of passengers, and decided to proceed with its action to require "no smoking" areas.

On February 1, 1973, Senator Frank Moss and the American Public Health Association petitioned the Consumer Product Safety Commission (CPSC) to set a maximum level of 21 milligrams of tar in cigarettes and ban from sale

in interstate commerce any cigarettes yielding more than that level. The Consumer Product Safety Act, P.L. 92-573, enacted in 1972, had specifically exempted "tobacco and tobacco products" from the jurisdiction of the Commission, but the petitioners claimed that the Commission still had authority under the Federal Hazardous Substances Act to classify high tar yield cigarettes as a "banned hazardous substance."

After the CPSC had taken the matter under consideration, Senator Sam J. Ervin, Jr. in December of 1973, wrote to the Comptroller General of the U.S. asking whether the GAO concurred with Senator Ervin's position that the Commission had no jurisdiction in this area and that "the expenditure of public funds by the Commission in connection with any attempt to regulate tobacco or tobacco products would be illegal and in violation of the law." The GAO studied the issue and reported back to Senator Ervin in April 1974. This report concluded that:

- (1) The Federal Hazardous Substances Act (FHSA) at the time of its enactment did not include tobacco or tobacco products within its purview;
- (2) authority that never existed under the Federal Hazardous Substances Act to regulate tobacco could not be transferred to the CPSC;
- (3) although tobacco products might be included under the general definition of "hazardous substances" under the FHSA, the Congress had enacted specific legislation governing smoking and health in 1965 and 1969, preempting the field;
- (4) the CPSC, while it did have jurisdiction over the FHSA and the regulation of "consumer products," was not given authority to administer the various cigarette acts, the Congress reserving such decisions to itself; and finally

- (5) the Comptroller General believed that the Commission did not have the authority to act on the petition to ban the sale of high tar cigarettes -- or to act on any other matter relating to the regulation of tobacco products unless or until the Congress saw fit to confer such jurisdiction on the Commission.

On May 17, 1974, the Consumer Product Safety Commission met and voted 3-2 that it lacked the authority to act on the petition to ban high tar cigarettes. This decision was based on legal analyses by the CPSC legal counsel as well as conclusions reached by the GAO.

#### 1975-1976

The 94th Congress was a period of moderate legislative and regulatory activity on the issues of smoking and health.

Most legislation introduced consisted of reintroductions of bills from previous Congresses or modifications thereof. Representative Ken Hechler introduced a bill, H.R. 491, similar to past measures to prohibit smoking aboard aircrafts. Representative Bill Young reintroduced the Nonsmokers Relief Act, H.R. 1227, to require the reserving of seating capacity for nonsmokers in rail, motor vehicle, and air carriers.

Representative Edward Koch reintroduced legislation to increase excise taxes on cigarettes by length with proceeds going to a National Cancer Research Fund (H.R. 584). Representative Robert Drinan introduced a similar bill, H.R. 1605, to increase taxes on cigarettes by size with proceeds going to programs dealing with lung and blood diseases. Senator Edward Brooke offered a bill, S. 2896, which would have increased excise taxes on cigarettes by \$2.50 per thousand with proceeds divided as follows: 66 percent to the National Cancer Institute, 31 percent to the National

Heart Institute, and three percent to the National Institute of Environmental Health Services.

Senator Frank Moss reintroduced the Low Tar and Nicotine Act, S. 2248, to provide that the FTC establish acceptable maximum levels of tar and nicotine that may be present in cigarettes. On March 26, 1975, Senator Moss again attempted to eliminate price supports for tobacco farmers, this time by means of floor amendments to a bill, H.R. 4296, to adjust target prices, loans, and purchase levels of certain agricultural products. Senator Moss's first amendment to eliminate tobacco price supports immediately, was defeated by a vote of 26-55. His second amendment, to phase out the supports over a three-year period, was defeated by 32-51. The third amendment, which would have eliminated the increase placed on the support price for tobacco by the bill under consideration from 60 percent of parity to 70 percent, was defeated by vote of 35-48.

In November of 1975, Representative Robert Drinan introduced the Smoker and Nonsmoker Health Protection Act, H.R. 10748, an omnibus bill. Its three titles contained many provisions suggested by earlier proposals. Title I was designed to strengthen the existing labeling and advertising legislation, with provisions to: (1) strengthen the package warning label; (2) require tar and nicotine levels to be printed on each package; (3) require advertising to carry both the strengthened warning and the tar and nicotine levels; (4) repeal the preemption of State action on advertising and labeling; and (5) require that cigarettes manufactured for export carry a warning label in the language of the recipient country. Title II would have regulated smoking in Federal and interstate buildings

and facilities for the protection of nonsmokers. Title III incorporated Representative Drinan's earlier bill to increase cigarette taxes to expand medical research. Senator Mark Hatfield sponsored the Drinan bill in the Senate the following year, S. 2906.

In January of 1976, Senators Gary Hart and Edward Kennedy introduced the National Health Research and Development Act, S. 2902, which included a provision to amend the Internal Revenue Act to establish a new tax on cigarettes based on tar and nicotine content, with proceeds going for health services research and development. In February, March, and May, the Health Subcommittee of the Senate Labor and Public Welfare Committee held three days of hearings on the proposal and on the general subject of cigarette smoking and disease. Then on August 6, Senator Hart offered his proposal for a "health protection tax" on cigarettes as a floor amendment in the Senate debate on tax reform legislation. The proposal was defeated with a 60-25 roll call vote on a motion to lay the amendment on the table.

On October 5, 1976, the Civil Aeronautics Board published a proposal for a change in its regulations regarding smoking on aircraft. The CAB's proposed regulation would have banned the smoking of pipes and cigars on air carriers on the basis of the discomfort they caused nonsmokers. The proposal also addressed itself to the improvement of the effectiveness and acceptance of nonsmoking sections aboard airplanes. The CAB invited comments from interested parties on its proposals and on related questions, such as whether all smoking aboard airplanes should be prohibited. After an extension of the deadline for the submission of such comments to January 21, 1977, the Board received more than 25,000 comments on the proposed

changes and related questions. The CAB had not reached a final decision on the matter when the 95th Congress drew to a close in October of 1978, but continued to study and consider the extensive number of comments received on its proposed changes.

### 1977-1978

The 95th Congress was a two-year period of extreme contrasts with regard to smoking and health activities. The first year mirrored the actions of many previous years, with the introduction or reintroduction of bills which received little or no significant activity. In 1978, however, this changed radically. In January, the executive branch, particularly as represented by the Secretary of Health, Education, and Welfare, initiated a broad-based attack on cigarette smoking, focusing on education, regulation, and research in an effort to reduce both the health hazards of smoking and the incidence of smoking itself.

### 1977

On the opening day of the 95th Congress, January 4, 1977, Representative Robert Drinan introduced a package of three bills whose provisions he had sponsored in bills in previous Congresses. H.R. 838 required the Secretary of Health, Education, and Welfare to include in his annual report on the health consequences of smoking, information on the effect of involuntary cigarette inhalation on nonsmokers. H.R. 839, the Public Health Cigarette Smoking Act, was designed to strengthen the 1965 labeling act. H.R. 862, the Federal Nonsmokers Protection Act, was designed to protect nonsmokers

by prohibiting smoking in specified areas of Federal facilities and in interstate passenger carrier facilities and by requiring Federal agencies to permit nonsmokers to have separate work areas where practical. Congressman Drinan later that month introduced another bill, the Health Protection Cigarette Tax Act, H.R. 2040, which would have established a graduated scale of Federal excise tax rates on cigarettes based on tar and nicotine content. This proposal was identical to the amendment that Senator Gary Hart had tried and failed to add to the Tax Reform Act in 1976. Senator Hart and others, reintroduced this proposal in the Senate in April, as S. 1260.

Other proposals from earlier Congresses were reintroduced early in the 95th Congress. Bills to increase the cigarette excise tax with proceeds going to medical research were introduced by Representative Edward Koch, H.R. 954, and Representative Robert Roe, H.R. 2169. Representative Bill Young reintroduced his proposal to require seating capacity for nonsmokers in airplanes, railroad cars, and other common carriers H.R. 2239. A proposal from Representative Edward Beard, H.R. 5676, to strengthen the package warning label, require its inclusion in advertisements, and regulate smoking in Federal and interstate passenger facilities was similar to other proposals from past Congresses.

In June, Representative James Johnson took up the effort formerly waged by Senator Frank Moss to eliminate Federal expenditures on behalf of the tobacco industry. His floor amendment to the FY 1978 Department of Agriculture appropriations bill would have prohibited the use of Federal funds to pay for salaries or administrative expenses concerning



loans, price supports, sales or any other disposal program with respect to tobacco or tobacco products. The amendment was defeated by voice vote. Later in the year, Representative Johnson and others introduced a bill, again formerly supported by former Senator Moss, to direct the Secretary of Agriculture to conduct a study to determine the probable economic effect of a cessation of Federal assistance serving to promote tobacco production and the manufacturing and marketing of tobacco products for human consumption.

In July of 1977, the Federal Trade Commission, in its annual report to the Congress, recommended a stronger warning label on cigarette packages plus the inclusion of tar and nicotine content both on the package and in all advertising. The Commission suggested two warning statements: "Warning: Cigarette Smoking is Dangerous to Health and May Cause Death from Cancer, Coronary Heart Disease, Chronic Bronchitis, Pulmonary Emphysema, and Other Diseases"; or "Warning: Cigarette Smoking is a Major Health Hazard and May Result in Your Death." The FTC also recommended that a strong warning label be placed on little cigar packages.

Two new pieces of smoking-related legislation were introduced in the latter half of 1977. Senator Patrick Leahy introduced a resolution, S. Res. 333, to ban cigarette smoking in all Senate hearing rooms during public hearings. Representative Gene Snyder's bill, H.R. 8592, was designed to clarify the rights of smokers aboard carrier aircraft by requiring that no air carrier give any preference or advantage to passengers who use or do not use tobacco products except as required for air safety. Neither bill was acted upon.

1978

On January 11, 1978, the fourteenth anniversary of the publication of the Surgeon General's Report on Smoking and Health, HEW Secretary Joseph Califano, addressing a meeting of the National Interagency Council on Smoking and Health, called cigarette smoking "Public Health Enemy Number One in the United States." The Secretary reviewed the actions taken by the Department during the years since the 1964 report to educate the public on the dangers of smoking and to encourage people to cease smoking or not take it up in the first place. He also described accomplishments that had been made as well as all that still needed to be done, particularly regarding young people. Finally Secretary Califano announced a "vigorous new program on smoking and health: a program of public education, regulation, and research -- backed by higher budgets, more energetic efforts, and a renewed commitment from the government department that is charged with protecting the nation's health."

As described by the Secretary, the public information and education element of the new program would include: efforts to increase the number of anti-smoking announcements broadcast on radio and television; efforts to increase health education programs dealing with smoking in the nation's schools; research by the National Institute of Education and the National Institute of Child Health and Human Development on motivations that encourage or discourage smoking in children and teenagers; development of a broad public education and awareness program to motivate young people not to smoke; and special efforts targeted at high-risk groups, such as pregnant women, workers in especially dangerous occupational

settings, and persons with health problems likely to be worsened by smoking.

The regulatory element of the Secretary's program was aimed at encouraging more vigorous enforcement efforts against smoking and to protect the rights of nonsmokers in public places. Such efforts would include: a new smoking policy in the HEW Department's own facilities which would restrict areas in which smoking would be permitted, with the general rule to be "No Smoking -- except in smoking areas"; encouragement of a similar policy for private corporations, other Federal agencies through the General Services Administration, in commercial airliners through the Civil Aeronautics Board, and in State facilities through State legislation. The Secretary directed the National Institute for Occupational Safety and Health to develop standards for restricting smoking in hazardous work settings. The Federal Trade Commission would consider recommendations concerning health warnings on packages and in advertising, and on empowering the Federal Government to set maximum levels for hazardous substances in cigarettes.

A third element of the proposal was an expanded and more comprehensive program of research into the subject of smoking and health, including such areas as the epidemiology of smoking, the development of a less hazardous cigarette, the effect of smoke on the health of nonsmokers, the identification of the types of smokers at greatest risk, the factors that lead people to smoke and to dependence on tobacco, and the most effective methods and techniques in helping people quit smoking.

As a fourth element, Secretary Califano described a number of incentives, financial and otherwise, that would be explored as possible ways of helping people reduce their smoking. The Secretary announced the formation, with the Secretary of the Treasury, of a task force to examine tax policies relating to cigarette use, including such possible measures as a general increase in the Federal excise tax on cigarettes and a graduated tax according to nicotine, tar, and carbon monoxide content. As another financial incentive, the Secretary announced that he was asking insurance providers to consider offering special premium discounts and other advantages to nonsmokers.

The Secretary also announced that he was establishing a new Office on Smoking and Health, reporting directly to the Assistant Secretary on Health, to: coordinate all HEW action on smoking and health; provide "seed money" to government and voluntary agencies for research and demonstration programs; and oversee the development of new media and information materials on smoking and health. The National Clearinghouse on Smoking and Health would be the nucleus of the new office, moving from Atlanta to Washington in the process.

The Secretary said that, in creating this new office and initiating the new smoking and health activities, he was operating under existing authority from the National Consumer Health Information and Health Promotion Act of 1976, P.L. 94-317. The Office on Smoking and Health would begin operations in FY 1978, funded by what the Secretary termed "reprogrammed" funds authorized by that legislation, and in FY 1979 would oversee a \$23 million departmental campaign on smoking and health.

Finally the Secretary announced that he had asked the Surgeon General to prepare a new Surgeon General's report for publication in 1979. He wanted this new report to become "the major compendium of research on smoking and health over the past generation," bringing together existing research data since the 1964 report.

In response to the Secretary's announced program, Representative Stephen Neal of North Carolina on January 30 introduced a bill, H.R. 10609, designed to prohibit the expenditure of funds by HEW on an information and education program. The bill, which was reintroduced the following day by Representative Neal with the other members of the North Carolina delegation as co-sponsors, would have limited the expenditure of the projected funds to additional research into the harmful properties of tobacco and the dangerous effects of smoking. Representative Neal called this a "far more productive use of the money." A similar proposal, S. 5210, to prohibit funds for the program was introduced in the Senate by Senator Robert Morgan on February 7. None of these bills received any further action.

On February 15, the Subcommittee on Public Health and the Environment of the House Committee on Interstate and Foreign Commerce held hearings on the Secretary's antismoking initiatives. The purpose of the hearing, according to Subcommittee Chairman Representative Paul Rogers, was "to hear directly from the Secretary, as well as representative groups both supporting and opposing his announced plans, so that we may have the full benefit of all views in this area."

In his statement, Secretary Califano reiterated his reasons for initiating the program against cigarettes, his particular concern to keep young people from starting to smoke and to help those already smoking to quit, his concern for those with special health risks and for the rights of nonsmokers to be able to work in a smoke-free environment.

In questioning Secretary Califano on his proposed initiative, members of the subcommittee generally supported that portion of his program dealing with educating children about starting to smoke. Some members however, disagreed with the aims of the initiatives, citing such issues as Government interference with people's rights, including the right to smoke; interference with the rights of farmers to earn a living; confusion about actual numbers of persons who contract diseases or die as a result of cigarette smoking; lack of sufficient attention to other factors, such as certain air pollutants, which may cause some of the problems attributed to cigarette smoking; and lack of concrete evidence that cigarette smoking has more than a statistical relationship to disease, disability, and death.

Other subcommittee members expressed support for the Secretary's initiative and in some cases, wondered why it did not go further, into such areas as increasing Federal taxes on cigarettes, and eliminating Federal price supports for tobacco farmers, citing, in the latter case, an appearance of hypocrisy on the Government's part in condemning smoking on the one hand and financially supporting the farming of tobacco on the other.

A point concerning the mechanism for funding the initiatives was brought up several times during the hearing. In his January 11 speech, the Secretary had said that the new Office of Smoking and Health would

begin operation in FY 1978 with "several million dollars of reprogrammed funds." He was questioned at the hearing by Representative Tim Lee Carter about his use of the term "reprogrammed." In addition, an exchange of letters between the Secretary and the Chairman of the House Labor-HEW Appropriations Subcommittee, Representative Daniel Flood, was placed in the hearings record. These letters discussed the point that reprogramming budget items in the manner in which the Secretary was describing would have to be reviewed and approved by the Appropriations Committee. Secretary Califano responded, to both questions at the hearings and to Representative Flood's letter, that he had misused the word "reprogrammed" in his January speech, and that what he was actually proposing was to retarget funds within a budget line item. Such a "retargeting," the Secretary contended, was a legitimate step to take and did not require any further Appropriations Committee review.

The subcommittee also heard testimony from: the tobacco industry represented by the Tobacco Institute, which generally opposed the initiative; an anti-smoking organization, Action on Smoking and Health, which supported the Secretary's concern, but felt that the initiative did not go far enough; a panel representing four national health organizations, which supported the Secretary's actions; and a representative of both the North Carolina and American Farm Bureau, who opposed the initiative.

On May 12, 1978, Representative James Johnson made another attempt to halt the Federal Government from financially supporting the tobacco farming and the tobacco business. During the floor debate on the International Development and Food Assistance Act of 1978, the legislation to amend and

extend the Food for Peace program, Representative Johnson offered an amendment to delete funds, totalling \$11.3 million, for the purchase of tobacco for export under the program. Representative Robert F. Drinan, who spoke in support of the amendment, said that it would "simply remove the hypocrisy and inconsistency from one of our Nation's most successful foreign aid programs." Representative Carl Perkins, speaking in opposition, noted that "tobacco is not forced upon any nation," and that if we did not provide it, they would buy it elsewhere, and "all we would be doing would be hurting hundreds of thousands of small farmers in this country who make their living from growing tobacco." The amendment was defeated by a roll-call vote of 189-126.

On May 19, Senator Edward Kennedy and others introduced a series of bills dealing with preventive health that included provisions concerning smoking and health. One of these bills, S. 3115, the Disease Prevention and Health Promotion Act of 1978, contained four separate titles authorizing a variety of programs in the areas of preventive health and health promotion. Title IV was entitled "Programs Designed to Promote Health through Smoking Deterrence." This title was introduced at the same time as a separate bill, S. 3118, the Smoking Deterrence Act of 1978. This proposal combined several elements into a broad anti-smoking campaign, as follows:

1. A major Federal initiative aimed at the prevention of smoking among children;
2. The institution of a system of revolving warning labels to replace the current warning on cigarette packages. The legislation listed ten new label warnings, to be affixed on a random basis on cigarette packages. This



idea was based on experience in certain European countries that more information about the dangers of smoking can be conveyed and that consumers will notice them more if the labels change and their content varies;

3. A requirement in law that all Federal buildings and all carriers in interstate transportation set side areas for nonsmokers;
4. The institution of a Federal health protection tax, which would tax cigarettes in proportion to their tar and nicotine content;
5. Authorization of studies by the Secretary on the health risks associated with smoking cigarettes of varying levels of tar and nicotine and with substances commonly added to commercially manufactured cigarettes.

Another bill introduced at this time by Senator Kennedy was S. 3116, the Formula and Project Grants for Preventive Health Services and Resources for Diseases Prevention and Health Promotion Act of 1978. On May 25, June 7 and 9, the Subcommittee on Health and Scientific Research of the Senate Committee on Human Resources held hearings on the various proposals. On September 15, 1978, the full Committee reported S. 3116 with amendments (S. Rept. no. 95-1196) to the Senate. As reported, the bill contained, among other provisions, two new authorizations dealing with smoking and health. These provisions were taken from S. 3115, title IV, or S. 3118, as originally introduced, with a few changes. The first new authority created a program to deter childhood smoking, authorizing \$5 million a year for two years for biomedical and behavioral research and \$10 million a year for two years for grants for demonstrations and evaluations of community- or school-based programs to deter childhood smoking. The other new authority was for studies on the health risks of cigarettes with varying levels of tar, nicotine, carbon monoxide, and other additives.

On September 29, the text of S. 3116, including the smoking and health provisions, was inserted in S. 2474, a bill to amend and extend a number of health services programs. S. 2474 was passed by the Senate and a conference with the House was held. The House counterpart bill to S. 2474 had contained no provision related to smoking and health, and the bill reported out of conference on October 15 (H. Rept. no 95-1799) adopted the Senate provision with one change: in the authorization for the comprehensive program to deter smoking among children, language was added to provide authority for the program to deter also "the use of alcoholic beverages" among children. The conference bill included the authority for the studies by the Secretary with no change from the Senate bill.

Both the House and Senate agreed to the conference report on S. 2474, and the bill, the Health Services and Centers Amendments of 1978, was signed into law on November 10, 1978, P.L. 95-626.

On August 10, during the Senate floor debate on the Agriculture Department's FY 1979 appropriations bill, Senator Claiborne Pell offered an amendment to eliminate from the bill an appropriation of \$3,106,000 for tobacco production research, citing Government policy of supporting and encouraging the growing of tobacco on the one hand and spending millions of dollars to try to discourage people from smoking it on the other as "... senseless, and fiscally unsound," Senator Pell said that "it is time we signal an end to this waste and inconsistency on the part of the Federal Government." Speaking against the amendment, Senator Walter Huddleston said that although the research funded by this appropriation was called "production research, virtually all of it is directly related to research or to developing a leaf that would

eliminate whatever harmful properties are determined to be involved." At this reassurance that the primary purpose of the research funds was for research relating to the health aspect of tobacco production, Senator Pell withdrew his amendment.

On the same day that this debate was taking place, the press reported stories on research by Dr. Gio B. Gori, deputy director of cancer prevention of the National Cancer Institute, that seemed to show that some cigarettes have so little tar, nicotine, and other harmful elements that they could be called "less hazardous" and could be smoked in "tolerable" numbers, up to 16 to 23 a day for certain brands with the lowest levels, without "appreciable" ill effects on the average smoker, in fact with no measurable risk beyond a nonsmoker's. Dr. Gori, in an interview, emphasized that he was not calling any cigarette "safe." He said that "the only cigarette that is safe is the cigarette that is not lit." Dr. Gori and his colleague in the research, Dr. Cornelius Lynch, published their findings in an article, "Toward Less Hazardous Cigarettes: Current Advances," in the September 15, 1978, issue of the Journal of the American Medical Association.

On September 7, the Subcommittee on Tobacco of the House Committee on Agriculture held hearings on the "Effect of Smoking on Nonsmokers." Representative Walter B. Jones, chairman of the subcommittee, said that the hearing was being held "because of concern about an issue which is receiving a great deal of attention, that is, the effort to restrict smoking in public facilities. He noted the existence of controversy on whether tobacco smoke is harmful to people who do not smoke, and said that "the time has come to put some information from medical and scientific experts on the record to help us in our own final judgment."

The subcommittee had invited researchers who had done work in this field to testify. Testimony at the hearing was strongly of the view that public smoke is not hazardous to nonsmokers. Dr. Edwin Fisher, University of Pittsburgh School of Medicine, for instance, testified that "my careful view of the literature, confirming the conclusions based upon my own experimental data ... reveals a lack of scientific information which would allow me to conclude that atmospheric tobacco smoke or its constituents represent a health hazard in nonsmokers." Dr. Kenneth Moser, Director of the Pulmonary Division of the University of California at San Diego Hospital, said, of the question of whether demonstrated levels of cigarette smoke in public places can cause lung disease in nonsmokers, that he was aware of "no published data which support this thesis." To the question, "does public smoking adversely affect the lungs of patients who already have lung disease?", Dr. Moser responded that, "based on the available evidence, I must conclude that there is no proof that smoking in public places adversely affects patients with lung disease either acutely or chronically."

SUMMARY

More than two decades have passed since the first significant charges were made against tobacco as a serious cause of health problems. In the period since, the charges have multiplied, involving tobacco, cigarette smoking in particular, as, in the words of the current Secretary of Health, Education and Welfare: "the single greatest cause of disease and premature death in this country today."

At first the accusations against smoking were made by a number of private health organizations and concerned one disease only--lung cancer. Before long, the seriousness of the charges and the controversy that accompanied them involved the Federal Government and its chief health officer, the Surgeon General of the Public Health Service. The work of the committee organized by the Surgeon General to examine the weight of medical and scientific evidence on the relationship between tobacco and disease solidified the accusations concerning cigarettes as a cause of lung cancer. In addition, that report and subsequent studies gathered and published by the Department of Health, Education and Welfare involved tobacco with other diseases as well--chronic bronchitis, emphysema, coronary artery diseases, heart disease, and others.

The response to the report of the Surgeon General's Advisory Committee in 1964 was immediate and involved all facets of the Federal Government--the Congress, the executive branch, regulatory agencies, and the courts.

The Congress has been the scene of numerous attempts, through legislation, to deal with the problems of smoking and health. The year after the 1964 report, the Congress passed legislation to require a warning label on cigarette packages. A few years later, another bill was passed, this time to strengthen the warning label and to prohibit cigarette advertising on radio and television. That was the only smoking-related legislation passed into law until 1978, when a provision to provide funds to help deter childhood smoking was included in an omnibus health services bill enacted into law. Although little legislation has been passed concerning smoking and health, many bills representing a broad variety of attempts to deal with the problem have been introduced in both the House and Senate. In addition, a number of attempts (all of them unsuccessful) at floor amendments have been made in both houses. These legislative efforts over the years have dealt with such areas as Federal economic and technical support for tobacco farming and product manufacture, marketing, and export; cigarette advertising practices; regulation of smoking in public carriers and public places; and increase in taxes on tobacco products to finance research into tobacco-related diseases and to pay for health care for those suffering from such diseases.

Efforts to deter and reduce smoking by a number of Federal regulatory agencies have augmented legislative action. The Federal Trade Commission, for instance, has been active in the area of cigarette advertising, both both print and broadcast. The Federal Communications Commission has been involved in broadcast advertising of cigarettes and the presentation of anti-smoking messages under its "fairness doctrine." The Interstate

Commerce Commission, the Civil Aeronautics Board, and the Federal Aviation Administration have all dealt with the subject of smoking aboard common carriers, such as buses, trains, and airplanes. Some of the decisions of the various regulatory agencies have been challenged and upheld by the courts.

The executive branch of the Federal Government, primarily represented by the Department of Health, Education and Welfare, has been involved in the smoking and health controversy from the very beginning. It was the Department's chief medical officer, of course, who organized the Advisory Committee to study the issue, and it was the Department which provided the funding and the technical assistance for the preparation of the Committee's report. Over most of the years, since the report's publication, the Department's primary role has been gathering and disseminating information on the issue of smoking and health; for example, the annual reports on the health consequences of smoking, and the work of the National Clearinghouse on Smoking and Health. In the last few years, however, the Department has taken a more activist role in the issue. In January of 1978, the Secretary of Health, Education and Welfare initiated a broad program of public education, regulation, and research, to encourage people to stop or reduce their smoking, to discourage young people from starting to smoke, to protect the rights of nonsmokers for a smoke-free environment, and generally to reduce the toll of smoking on the Nation's health.