

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

SUBCHAPTER 140-20.8 SMOKE-FREE AIR ACT RULES AND REGULATIONS

Part 001	[Reserved]	Smoking on Property of the Public School System and the Northern Marianas College	
Part 100	Scope and Authority		
§ 140-20.8-101	Scope	Part 400	Reasonable Distance
§ 140-20.8-105	Authority	§ 140-20.8-401	Reasonable Distance Requirements
§ 140-20.8-110	Effective Date		
Part 200	Definitions	Part 500	Where Smoking Not Regulated
§ 140-20.8-201	Definitions	§ 140-20.8-501	Smoking Permitted at Owner's Discretion
Part 300	Public Places and Public Meetings	§ 140-20.8-505	Exceptions
§ 140-20.8-301	Prohibition of Smoking in Government Facilities	Part 600	Compliance and Enforcement
§ 140-20.8-305	Prohibition of Smoking in Public Places	§ 140-20.8-601	Compliance
§ 140-20.8-310	Prohibition of Smoking in Places of Employment	§ 140-20.8-605	Enforcement
§ 140-20.8-315	Prohibition of	§ 140-20.8-610	Citations, Hearing, and Penalties for Violations

Subchapter Authority: 1 CMC §§ 2601-2633; 3 CMC §§ 3171-3187.

Subchapter History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: PL 1-8, tit. 1, ch. 12, codified as amended at 1 CMC §§ 2601-2633, created the Department of Public Health and Environmental Services (DPHES) within the Commonwealth government. See 1 CMC § 2601. 1 CMC § 2603(a) grants the Department the power and duty to maintain and improve health and sanitary conditions in the CNMI. 1 CMC § 2605 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles, and effected numerous other revisions. According to Executive Order 94-3 § 105:

Section 105. Department of Public Health.

The Department of Public Health and Environmental Services is re-designated the Department of Public Health.

The full text of Executive Order 94-3 is set forth in the Commission comment to 1 CMC § 2001.

Part 001 - [Reserved]

Part 100 - Scope and Authority

§ 140-20.8-101 Scope

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

The purpose of the Smoke-Free Air Act of 2008 and these regulations is to protect the public health and welfare by prohibiting smoking in public places and places of employment; and to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke. The Act shall not be construed to prohibit or otherwise restrict smoking in outdoor areas. The Act shall not be construed to permit smoking where it is prohibited or otherwise restricted by other applicable law, ordinance, or resolution. The Act and these regulations shall be liberally construed to further its purpose.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: The Commission created the section titles for Part 100.

§ 140-20.8-105 Authority

The regulations throughout this chapter implement the provisions of the Smoke-Free Air Act of 2008, P.L. 16-46. The Department of Public Health, under 1 CMC § 2603 and 2605, is authorized to promulgate rules and regulations to effect its duties under Title 6, Division 3, Chapter 1, Article 4 of the Commonwealth Code.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

§ 140-20.8-110 Effective Date

These regulations shall become effective on December 1, 2010.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Part 200 - Definitions

§ 140-20.8-201 Definitions

- (a) “Act” means the Smoke-Free Air Act of 2008.
- (b) “Attached bar” means a bar area of a restaurant.
- (c) “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises* and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- (d) “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

- (e) “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- (f) “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- (g) “Enclosed area” means an area or space bounded by walls, with or without windows, continuous from floor to ceiling and enclosed by one or more doors, including but not limited to an office, function room, or hallway. If an outdoor area, as defined herein, has structure capable of being enclosed by walls or covers, regardless of the materials or removable nature of the walls or covers, that area will be considered enclosed when the walls or covers are in place.
- (h) “Entrance” means the opening of a building. For the purposes of these regulations, it can be a door used for entry or exit or an operable window.
- (i) “Health care facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals or other clinics, including nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (j) “Outdoor area” means any space open to the outside air at all times.
- (k) “Outdoor arena” means a location in which an organized event takes place.
- (l) “Person” means any individual, firm, fiduciary, partnership, corporation, trust or association, however formed, club, trustee, agency or receiver.
- (m) “Place of employment” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work area, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.
- (n) “Public place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.
- (o) “Restaurant” means an eating establishment, including but not limited to, coffee shops,

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include an attached bar.

(p) “Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(q) “Service line” means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the services involves the exchange of money.

(r) “Shopping mall” means an enclosed public walkway or hail area that serves to connect retail or professional establishments.

(s) “Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

(t) “Sports arena” means sports pavilions, stadiums, gymnasium, health spas, boxing arenas, swimming pools, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

* So in original.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: The paragraphs of this section were undesignated in the original regulation. The Commission designated them as subsections (a) through (t). The Commission inserted quotation marks around terms defined. The Commission corrected the capitalization of the words “bar” in subsection (b) and “arena” in subsection (k) and inserted periods at the ends of subsections (a), (b), and (k) pursuant to 1 CMC § 3806(g). The Commission struck the figure “1” in subsection (q) pursuant to 1 CMC § 3806(e).

Part 300 - Public Places and Public Meetings

§ 140-20.8-301 Prohibition of Smoking in Government Facilities

Smoking is prohibited in all enclosed areas and outdoor areas within 25 feet of any doorway entrance or exit to a government facility that is owned, leased, or operated by the Government of the Commonwealth of the Northern Mariana Islands (CNMI) or any instrumentality thereof including but not limited to office buildings, warehouses, and vehicles owned and leased by the same. For the purposes of determining compliance within these regulations, the Department will confer with the CNMI Department of Public Works and the CNMI Building Code as to all applicable standards for buildings and enclosure requirements.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: The Commission inserted a comma after the word “warehouses” pursuant to 1 CMC § 3806(g).

§ 140-20.8-305 Prohibition of Smoking in Public Places

Smoking is prohibited in all enclosed areas of public places, including but not limited to areas available to and customarily used by the general public and other common-use areas. For the purposes of determining compliance within these regulations, the Department of Public Health will assess these areas according to the following requirements:

- (a) Sports arenas including enclosed places in outdoor arenas. Smoking shall be prohibited in:
 - (1) Any open field used for a sporting event including sitting areas (bleachers/stands) with the exception of designated parking.
 - (2) Within the fenced perimeter; common areas; fields; and general premises of the Gilbert C. Ada Gymnasium; Tan Ko Palacios Baseball Field; Miguel Pangelinan Softball Field; and the track & field/soccer area, with the exception of the parking lot.
- (b) Smoking shall be prohibited in the lobby areas of motels or hotels except in designated smoking areas in an outdoor area 25 feet or farther from the entrances, exits, operable windows, and ventilation intakes that serve an enclosed public place or workplace in which smoking is prohibited.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

§ 140-20.8-310 Prohibition of Smoking in Places of Employment

- (a) Smoking is prohibited in all enclosed facilities within places of employment, or within 25 feet of any person who is not smoking if the place or site of work is an outdoor area or area other than an enclosed area, without exception. For the purposes of determining compliance within these regulations, employers must adhere to the following:
 - (1) Inform employees, agents, subagents, contractors, customers, and all other persons who are physically present on the premises of the prohibition against smoking.
 - (2) Prominently posting “Smoking” or “No Smoking” signs, or the international “No Smoking” symbol,
 - (3) Removing all ashtrays,
 - (4) Asking any person who smokes in an area where smoking is prohibited to refrain from smoking,
 - (5) If the person does not refrain from smoking, asking the person to leave,
 - (6) Refusing service to a person who is smoking.
- (b) If the person refuses to leave, the proprietor or other person in charge shall handle the situation in the same manner as for violations of other laws, employee policies, or house rules.
- (c) Nothing in this section prohibits the owner, manager, or other person in charge from taking more stringent measures to protect individuals from secondhand smoke.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

Commission Comment: The Commission inserted a comma after the word “customers” in subsection (a)(1) pursuant to 1 CMC § 3806(g).

§ 140-20.8-315 Prohibition of Smoking on Property of the Public School System and the Northern Marianas College [Reserved]

[Reserved]

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Part 400 - Reasonable Distance

§ 140-20.8-401 Reasonable Distance Requirements

Smoking is prohibited within a reasonable distance of 25 feet outside an enclosed area where smoking is prohibited. For the purposes of determining compliance within these regulations, the Department will assess reasonable distance according to the following requirements:

- (a) Any smoking shall be no less than 25 feet away from any entrances including window openings and ventilation systems or any other means of possible infiltration to an enclosed area.
- (b) Any smoking shall be no less than 25 feet away from any person who is not smoking, if the place or site of work is an outdoor area or area other than an enclosed area; and
- (c) In no case shall this provision be used to permit smoking on school grounds or property of the CNMI Public School System; the Northern Marianas College; and any school or college-related functions, events, or activities on Saipan, Tinian, or Rota.
- (d) There shall be no smoking permitted or allowed outside of nor on any balconies of any motel or hotel room regardless of whether such room is designated as a smoking room. Any smoking shall be confined to the area within the smoking-designated room.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: The Commission titled this section.

Part 500 - Where Smoking Not Regulated

§ 140-20.8-501 Smoking Permitted at Owner’s Discretion

Smoking may be allowed by owners or operators as to entities or locations not regulated under Public Law 16-46 and as incorporated into these regulations, including private residences or homes; private apartments or condominiums; within specific and limited hotel/motel rooms that are rented to guests and are designated as smoking rooms; private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing for a designated smoking room; outdoor areas of places of employment except those covered by the provisions of [3 CMC] § 3174 and § 3176;

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

enclosed gaming areas of a casino establishment; and fully enclosed and well-ventilated smoking areas at the departure terminal of the Commonwealth airports.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: The Commission created this section from the first paragraph of section 500 of the regulation and titled it pursuant to 1 CMC § 3806(a).

§ 140-20.8-505 Exceptions

For the purposes of determining compliance within these regulations, the following are to comply with the prohibition against smoking as regulated entities or areas in the following manner:

- (a) Bars, including open air bars, until the earlier of an established time when the kitchen ceases servicing meals or 10:00 p.m., provided that smoke does not infiltrate into areas where smoking is prohibited.
- (b) Attached bars until the earlier of an established time when the kitchen ceases servicing dinner meals or 10:00 p.m., provided that smoke does not infiltrate into areas where smoking is prohibited. Because ventilation systems are inadequate to prevent second-hand smoke, whenever smoking occurs or is permitted in an attached bar area of a restaurant under this provision, any smoking including second-hand smoke shall be controlled through complete and separate enclosures such as enclosed glass windows; separate entrances; and sealed doors from the dining area and/or dining patrons, after 10:00 p.m. Ventilations or exhaust fans are deemed insufficient to control infiltration or drift of smoke from the permitted smoking area. Total and separate enclosures are required.
- (c) Private residence used as a licensed child care, adult day care, or health facility;
- (d) No more than 20% of rooms rented to guests in an establishment may be designated as smoking. Room reservations should be for non-smoking rooms unless a customer specifically requests for a smoking room.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: The Commission created this section from the second paragraph of section 500 of the regulation and titled it pursuant to 1 CMC § 3806(a).

Part 600 - Compliance and Enforcement

§ 140-20.8-601 Compliance

- (a) The person, firm, corporation, or other entity that owns, leases, manages, operates, or otherwise controls the use of a public place, workplace, or public transportation regulated by this law shall take necessary steps to prevent smoking by:
 - (1) Informing employees, agents, subagents, contractors, customers, and all other persons

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

who are physically present on the premises of the prohibition against smoking;

- (2) Prominently posting “Smoking” or “No Smoking” signs, or the international “No Smoking” symbol;
- (3) Removing all ashtrays;
- (4) Asking any person who smokes in an area where smoking is prohibited to refrain from smoking;
- (5) If the person does not refrain from smoking, asking the person to leave;
- (6) Refusing service to a person who is smoking.

(b) If the person refuses to leave, the proprietor or other person in charge shall handle the situation in the same manner as for violations of other laws or house rules.

(c) Nothing in this section prohibits the proprietor or other person in charge from taking more stringent measures to protect individuals from secondhand smoke.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: The Commission created Part 600 and titled it. The paragraphs of this section were undesignated in the original regulation. The Commission designated them as subsections (a) through (c) pursuant to 1 CMC § 3806(a). The Commission converted the commas at the ends of subsections (a)(1) through (a)(5) to semicolons and converted the comma at the end of subsection (a)(6) to a period pursuant to 1 CMC § 3806(g). The Commission inserted a comma after the word “customers” in subsection (a)(1) pursuant to 1 CMC § 3806(g). The Commission corrected the spelling of the word “from” in subsection (a)(5) pursuant to 1 CMC § 3806(g). The Commission inserted a period at the end of subsection (b) pursuant to 1 CMC § 3806(g).

§ 140-20.8-605 Enforcement

This act shall be enforced by the Department of Public Health (DPH) through the Bureau of Environmental Health (BEH) or an authorized designee. Such enforcement will include, but is not limited to, the following measures:

(a) BEH, in conjunction with the Community Guidance Center Program Manager for Substance-Abuse or Tobacco Prevention (“CGC”) shall conduct a Community Outreach and Information Program designed to inform the community of the provisions of Public Law 16-46 and these regulations through the following activities:

- (1) BEH and CGC shall develop an information brochure and “Frequently Asked Questions” or “FAQs” for the community and for regulated entities or businesses in order to inform the community of the provisions of P.L. 16-46.
- (2) This community outreach effort shall take place through December 1, 2010 on a regular basis.
- (3) BEH and CGC shall conduct presentations to the Alcohol Beverage and Tobacco Control Board; the Marianas Visitor’s Bureau; the Saipan Chamber of Commerce; Rotary Club of Saipan; Rota and Tinian Mayor’s Offices; the Department of Public Safety officers and personnel; the CNMI Fire Division; the Hotel Association of the Northern Mariana Islands; and any other civic, community, or business organizations.
- (4) After December 1, 2010 BEH and the Community Guidance Center shall conduct at least one quarterly orientation session on Saipan regarding Public Law 16-46 until December 1, 2011.
- (5) There shall be at least one additional orientation or presentation on Tinian and Rota after

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

December 1, 2010.

(6) The CNMI Business Licensing Office, CNMI Zoning Office, and Registrar of Corporations shall provide a copy of this act to all applicants submitting an application to do business in the CNMI and/or any Information Brochure or FAQs prepared by BEH which summarizes the provisions of Public Law 16-46 and its requirements.

(b) BEH and/or the Fire Division of the Department of Public Safety (DPS) shall conduct inspections for compliance of this act during regular scheduled mandated inspections including sanitation and/or fire safety inspections in addition to the following activities:

(1) BEH shall make itself available for courtesy inspections for compliance under this chapter without any penalty in order to provide feedback and information to affected businesses seeking to comply with Public Law 16-46;

(2) BEH may solicit or may request information from business owners or regulated entities in order to answer any questions or to resolve any issues or concerns relating to the Act and its provisions or these regulations;

(3) BEH shall, in addition to being familiar with Public Law 16-46 themselves, have available any handouts or brochures to distribute.

(c) A proprietor, owner, or operator of an establishment regulated by this Act shall inform persons violating or disregarding the provisions of the Act of the appropriate requirements. Offending persons shall be instructed to cease smoking or relocate or to leave the premises should they refuse to comply.

(d) Any citizen may report a violation to BEH or the Department of Public Safety to initiate enforcement of the Act;

(e) An employee or private citizen may bring legal action to compel enforcement and may seek injunctive relief to enforce these provisions in any court of competent jurisdiction.

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: The Commission inserted a comma after the word “community” in subsection (a)(3) pursuant to 1 CMC § 3806(g). The Commission struck the figure “1” from subsection (a)(4) pursuant to 1 CMC § 3806(g).

§ 140-20.8-610 Citations, Hearing, and Penalties for Violation

(a) BEH shall develop a citation form (which may be part of a general citation form under its other areas of jurisdiction) for the specific purpose of issuing a Citation or Notice of Violation, including any warning thereof, for violations of Public Law 16-46 by any person, owner, operator, or business entity regulated by law under this chapter. The Citation or Notice of Violation shall, at a minimum, indicate the date, place, time, and manner of the violation; identify the complaining party; the section of Public Law 16-46 and/or this chapter violated; a short and plain statement of the factual basis and findings; and a notice to appear for a hearing should the violator wish to dispute the Citation.

(b) BEH shall designate a Hearing Officer under its existing procedures for any

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

administrative hearings under this chapter. All administrative hearings for any citations, shall be coordinated and handled by BEH. Alternately, any proceedings shall be conducted in a manner consistent with the Administrative Procedure Act at 1 CMC Section 9101 et seq.

(c) In addition to the BEH, the Department of Public Safety may issue a Citation or Notice of Violation to any person violating Public Law 16-46 or issue any warning, written or verbal, to any person or business owner or operator and provide a copy of such Citation or warning to BEH. All citations shall be heard by the BEH Hearing Officer.

(d) After hearing notice, and opportunity to be heard, the BEH Hearing Officer may issue any order, administrative penalty or fine; and other appropriate relief under the statute as authorized.

(e) Any decisions by the BEH Hearing Officer shall be a final agency decision and any aggrieved party may seek judicial review to the CNMI Superior Court.

(f) If Public Law 16-46, § 3182(c) is applicable, BEH and/or the Department of Public Safety shall refer the matter to the Secretary of the Department of Finance or an authorized designee for possible action pursuant to 4 CMC § 5611(g).

History: Adopted 32 Com. Reg. 30986 (Nov. 22, 2010); Proposed 32 Com. Reg. 30657 (Sept. 22, 2010).

Commission Comment: The Commission corrected the capitalization of the word “warning” in subsections (a) and (c) and of the words “order,” “administrative penalty,” and “fine” in subsection (d) pursuant to 1 CMC § 3806(f). The Commission inserted a comma after the word “time” in subsection (a) and after the word “penalty” in subsection (d) pursuant to 1 CMC § 3806(g).