

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

SUBCHAPTER 140-70.1 MINOR ASSISTED UNDERCOVER PURCHASE OF TOBACCO PRODUCTS REGULATIONS

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Subchapter Authority: 1 CMC §§ 2603 and 2605; 4 CMC § 50143(a).

Subchapter History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

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 within the Commonwealth government. See 1 CMC § 2601. 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.

4 CMC § 50143(a) authorizes the Department of Commerce, Alcohol Beverage and Tobacco Control Division, the Department of Public Safety, and the Department of Public Health to secure, through adopted regulations, the voluntary assistance of minors to conduct undercover investigations against persons or business engaged in selling or otherwise providing tobacco products to minors.

Public Law 16-51 (effective Jan. 15, 2010), the “Commonwealth Healthcare Corporation Act of 2008,” codified at 3 CMC § 2801 et seq., established the Commonwealth Healthcare Corporation, which assumed the duties of the Department of Public Health as of January 15, 2011.

Part 001 - General Provisions

§ 140-70.1-001 Authority

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The authority for the promulgation and issuance of the Department of Public Health Regulations in this subchapter is derived from Public Law 11-75 § 15(a) [4 CMC § 50143(a)].

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

§ 140-70.1-005 Purpose

The purpose of the Department of Public Health Regulations in this subchapter is:

- (a) To establish a protocol for using minors for undercover purchases of tobacco products;
- (b) To assist with federal reporting requirements under 45 CFR § 96.130;
- (c) To further assure the CNMI's continued receipt of federal block grant funds pursuant to 45 U.S.C.S. § 300x-26*; and
- (d) To facilitate enforcement of Public Law 11-75.

* So in original. See Commission Comment.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

Commission Comment: The reference to 45 U.S.C.S. § 300x-26 is incorrect. No such section exists.

§ 140-70.1-010 Definitions

- (a) "Licensee" means any person, business entity, or organization licensed to sell tobacco products in the Commonwealth of the Northern Mariana Islands (CNMI) by the Department of Commerce, Alcohol Beverage and Tobacco Control Division.
- (b) "Minor" means an individual under the age of eighteen years.
- (c) "Tobacco product" means any tobacco preparation, including but not limited to, chewing tobacco, cigars, cigarettes, any cigarette products, or snuff.
- (d) "Undercover purchase" means an attempted purchase of tobacco products by a minor carried out in a manner that is reasonably designed to provide a reliable and realistic assessment of how a licensee reacts when presented, in the usual course of business, with typical young persons attempting to purchase tobacco products.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

Commission Comment: In subsection (c), the Commission changed the final semi-colon to a period to correct a manifest error.

Part 100 - Prerequisites for Using a Minor to Conduct an Undercover Purchase

§ 140-70.1-101 Parental Consent

The signed, written consent of a parent or guardian shall first be obtained for each minor used to purchase tobacco products undercover. Department of Public Health, Comprehensive State-based Tobacco Prevention and Control Program (“DPH”) shall prescribe a form for such written consent.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

§ 140-70.1-105 Training

(a) Before a minor conducts an undercover purchase of tobacco products, such minor shall first be trained by an employee of DPH.

(b) Such training will be conducted with the aim towards instructing the minor on how to act in a manner that is reasonably designed not to reveal to a licensee that the attempted purchase of tobacco products is pursuant to an undercover purchase.

(c) Such training shall be to the extent necessary to reasonably ensure that the minor is able to perform an undercover purchase in a competent and confident manner. To this end, such training shall include role-plays.

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

§ 140-70.1-110 General Selection Criteria for Minors Used

(a) DPH shall confirm that each minor selected is under the age of 18.

(b) Each minor selected shall not appear to be older or younger than the average person of his or her age, shall dress in a manner reasonably appropriate to his or her age group, and shall not alter his or her appearance with the intent of appearing older or younger.

(c) Minor selected may (but are not required to) include otherwise suitable persons who have previously used or currently use tobacco products.

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

§ 140-70.1-115 Voluntary Participation

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- (a) No minor shall be offered monetary compensation to participate in the undercover purchase program.
- (b) Nothing in this section shall be construed as prohibiting DPH from offering volunteers items of de minimis value as a show of appreciation for their assistance.
- (c) DPH may advertise the undercover purchase project to the public at large.
- (d) At all times, a minor's performance of an undercover purchase is strictly voluntary, and such voluntary relationship between the minor, the minor's parent(s) and DPH may be terminated by any party without notice or cause.
- (e) No minor may assist or be requested to so assist DPH as a condition of probation or in connection with a minor's disposition or sentencing in juvenile delinquency proceedings.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

Part 200 - Conduct of Undercover Purchases

§ 140-70.1-201 Required Items

When an undercover purchase begins, the minor shall possess a sum of money sufficient to pay for the tobacco product that the minor shall attempt to purchase.

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

§ 140-70.1-205 Adult Supervision

The minor shall be accompanied to the store that will be the subject of the undercover purchase by a person who is at least twenty one years old, and is an agent for DPH. That person shall supervise the minor as closely as circumstances permit without suggesting to store employees that the minor is accompanied. Department of Commerce, or Department of Public Safety staff may serve as agents for DPH for purposes of this section.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

§ 140-70.1-210 Procedure for Purchase

- (a) The minor shall enter the store alone.
- (b) The minor shall approach the counter, or secured area where tobacco products are maintained, and request from the cashier a single package of tobacco product. The brand requested shall vary among undercover purchases. If the store sells cigarettes in packages of less

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than twenty sticks, the minor shall purchase such a package.

- (c) The minor shall place on the counter enough money to purchase the tobacco product.
- (d) If the cashier asks the minor his or her age, the minor shall respond that he or she is eighteen.
- (e) If the cashier requests ID, the minor shall state that he or she does not have an ID in his or her possession but is old enough to buy cigarettes.
- (f) The minor shall not attempt to persuade the cashier to sell the tobacco product by taking steps other than those expressly set forth herein.
- (g) If the cashier provides the requested tobacco product, the minor shall pay for it, obtain the receipt and whatever change is owed, and promptly leave the store.
- (h) If the cashier declines to make the sale, the minor shall leave the store.
- (i) The person described in § 140-70.1-205 above, who accompanied the minor to the licensee's store, shall promptly meet the minor as soon as the minor leaves the store to determine whether tobacco products were purchased and to obtain them and the receipt for the minor if they were. An enforcement exemption from section 2(c) of PL 11-75 [6 CMC § 3110(c)] is granted to all minors who participate in the undercover purchase program.
- (j) Such tobacco product shall be retained by DPH for a period of at least six months and shall thereafter be destroyed, unless the tobacco product is to be used in connection with any prosecution or administrative procedure arising from the undercover purchase.
- (k) Any remaining money provided to a minor in connection with an undercover purchase shall be turned over by the minor to the adult referenced in § 140-70.1-205.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

Part 300 - Citations and Reports

§ 140-70.1-301 Citation Issuance

- (a) If a violation of PL 11-75 occurred during the course of an undercover purchase, an agent of DPH, including any agents from Department of Commerce, or Department of Public Safety, shall issue to the licensee a violation citation on a form to be prescribed by DPH within three business days after the violation.
- (b) For purposes of determining the number of a licensee's violations pursuant to section 16 of PL 11-75 [4 CMC § 50144], a one-year period shall run from June 1 of each year to May 31 of the following year, whereupon the violation number shall start over again.

(c) A licensee who accumulates four violations of section 2(a) of PL 11-75 [6 CMC § 3110(a)] within any 12 month period, shall, in addition to penalties provided by law, cause DPH to recommend in writing to the Department of Commerce, Alcohol Beverage and Tobacco Control Division, that the licensee's renewal application to sell tobacco be denied.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

§ 140-70.1-305 Report of Incident

Immediately following each undercover purchase, the minor, with the assistance of any accompanying person, shall complete a report that includes, at a minimum, the following information:

- (a) The minor's name, sex, and date of birth;
- (b) The date and time of the undercover purchase;
- (c) The location or address of the licensee checked;
- (d) The name or a brief description of the cashier involved;
- (e) The type and brand of tobacco product requested;
- (f) Whether the clerk asked the minor his/her age;
- (g) Whether ID was requested;
- (h) Whether ID was presented;
- (i) Whether the tobacco products requested were purchased;
- (j) Comments regarding any noteworthy aspects of the transaction.

Modified, 1 CMC § 3806(g).

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

Commission Comment: In subsection (d), the Commission inserted the final semi-colon to correct a manifest error. The Commission inserted a comma after the word "sex" in subsection (a) pursuant to 1 CMC § 3806(g).

§ 140-70.1-310 Report to Be Provided to Licensee

A copy of the report described in § 140-70.1-305 shall be sent or provided to the licensee.

Modified, 1 CMC § 3806(c).

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History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).

§ 140-70.1-315 Retention of Citations and Reports

DPH shall retain for at least five years all citations and reports, together with receipts, and any accompanying relevant paperwork.

History: Adopted 25 Com. Reg. 21472 (Nov. 17, 2003); Proposed 25 Com. Reg. 21421 (Oct. 15, 2003).