

Questions and Answers on HUD's Smoke Free Public Housing Proposed Rule

Q: Why is HUD publishing this proposed rule?

A: HUD has been advocating for smoke free housing since 2009 in all of its programs because the health benefits to residents is substantial. The cost and benefits to PHAs is also compelling – in terms of a reduction in maintenance and unit-turn costs – and a significant reduction in the risk of catastrophic and fatal fires. To date, over 600 PHAs have implemented smoke-free policies. To expand the benefits of smoke-free living to all public housing residents and Public Housing Agencies (PHA), HUD must first propose a rule to amend its regulations and solicit public comment.

Q: What are the estimated damage and maintenance cost savings for PHAs as a result of the proposed rule?

A: HUD's Regulatory Impact Analysis for this proposed rule estimates that through a smoke-free policy, PHAs will save an average of between \$16 million to \$38 million per year in reduced maintenance. The reduced fire risk will be \$38 million. According to a 2014 CDC study published in Preventing Chronic Disease, "prohibiting smoking in all government subsidized housing in the United States, including public housing, would save an estimated \$497 million per year in health care and housing-related costs."

Impact	Source	Amount (Discount Rates in Parentheses)
Cost (potentially recurring but concentrated during first few years of the rule's implementation)	PHA Compliance	\$3.2 million
Cost (recurring)	Smoker Inconvenience	\$209 million
Cost (recurring)	Enforcement	not quantified
Benefit (recurring)	PHA Reduced Maintenance	\$16 to \$38 million
Benefit (recurring)	PHA Reduced Fire Risk	\$32 million
Benefit (annualized over 10 to 50 years)	Non-Smoker Health	Less than: \$148 to \$447 million (3%) \$70 to \$137 million (7%)
Benefit (recurring)	Non-Smoker Well-Being (PHA residents who do not live in units with smokers)	\$96 to \$275 million
Benefit (recurring)	Smoker Health	not quantified
Partially Quantified Net Benefits (recurring)	See above	Less than: -\$19 to \$302 million (3%) -\$97 to -\$8 million (7%)

Q: What is known about how tobacco smoke travels within buildings?

A: As the Surgeon General reported, there is no safe level of exposure to secondhand tobacco smoke. In addition, research has clearly demonstrated that in multi-unit buildings, tobacco smoke travels from smokers' units into the units of non-smokers. Smoke can also travel between the units of smokers into common areas such as hallways and lobbies, which are often designated as non-smoking areas in buildings that permit smoking in individual apartments. Research has further demonstrated significantly lower concentrations of tobacco smoke contaminants in public housing buildings that are covered by

smoke-free policies, and the majority of smoking complaints come from neighbors who are exposed to second hand smoke that travels between units.

Q: When will PHAs need to be fully smoke free?

A: Today's rule is a proposed rule and it is open for public comment for 60 days. PHAs will not be required to be smoke free until, after consideration of public comment, a final rule is published and effective. HUD is proposing that all public housing be smoke free within 18 months after the effective date of the final rule. This allows time for PHAs to engage residents, develop policies, solicit public comment, get Board approval and amend resident's leases. In advance of that, we strongly encourage all PHAs to get started so there is time to complete all the steps. HUD has provided a great deal of material available on its website at www.hud.gov/healthyhomes, including a tool kits for both managers and residents. Also, the latest HUD guidance "Change is in the Air" (<http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>) has a step-by-step action plan for PHAs to follow.

Q: What about agencies that already have smoke free policies, will they be grandfathered in?

A: Of the over 600 PHAs with smoke-free policies in place, many have "partial" smoke free policies that include only certain buildings or spaces. The rule does not propose to include a provision to grandfather in existing policies if they do not include all living units, indoor common areas in public housing and in PHA administrative office buildings (in brief, a smoke-free policy for all public housing indoor areas). The smoke-free policy must also extend to all outdoor areas up to 25 feet from the housing and administrative office buildings. As proposed, policies that do not meet these minimum requirements will need to be updated within the timeframe of the final rule.

Q: How many units would be impacted by this rule?

A: Public housing includes nearly 1.2 million units across the country. As of September 30, 2015, at least 228,000 units were already smoke-free, so this proposed rule impacts over 940,000 units.

Q: How many children live in public housing? How many elderly persons?

A: Public housing serves over 2 million residents. There are over 760,000 children under age 18 living in public housing (38%), and over 329,000 persons over age 62 (16%).

Q: How should PHAs enforce these regulations?

A: The smoke free requirement must be part of a PHA policy and within each resident's lease agreement. PHAs should include enforcement of the smoke-free policy as part of its regular lease enforcement policies. It may help residents with compliance if the smoke free policy includes a description of the expected oversight process, and whether monitoring will be done with unit inspections. Also, HUD recommends PHA outline how residents should report if they see or smell persons smoking in restricted areas. HUD is seeking comment on best practices for enforcement from PHAs that have already implemented a smoke free policy and will issue guidance after the proposed rule comment period is completed. In the meantime, PHAs should review the discussion of enforcement in the "Change is in the

Air” guidebook (hyperlink to <http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>).

Q: Will this rule result in public housing residents getting displaced or evicted?

A: Enforcement of smoke free policies could result in evictions for tenants that do not adhere to the policy or continue to smoke in their unit. This is an area where HUD is soliciting comment from PHAs and residents. HUD’s 2014 guidance “Change is in the Air” (hyperlink <http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>) includes suggestions for engaging residents early in the process and practicing a graduated enforcement approach before terminating leases. Graduated enforcement includes escalating warnings before a lease termination is initiated. Additionally, PHAs are encouraged to engage with local health departments and tobacco control organizations such as the American Lung Association to provide smoking cessation resources for residents who would like to quit.

Q: Smoking prevalence is high among people with mental illness. Could a smoking ban be harmful to this population?

A: Although the proposed rule would not require that residents quit smoking, it may lead them to quit or substantially cut back. Research has demonstrated that when smokers with a history of mood or anxiety disorders quit, there was a lower likelihood that the disorder would recur or persist. Research has also shown that when people who are addicted to alcohol or drugs were more successful in long term abstinence from alcohol or drugs if they were provided with smoking cessation during addictions treatment.

Q: What about residents that smoke and have difficulty getting outside, or have mobility impairments – can they be allowed to still smoke in their units?

A: As proposed in the rule, allowing a resident to smoke in their unit or building common area is not an accommodation that can be granted under these regulations once effective. PHAs may consider working one-on-one with these residents to consider other alternatives for compliance.

Q: Will PHAs also make programs available to residents who want to quit smoking?

A: PHAs are encouraged to partner with their local and state health departments and tobacco control organizations to help residents who want to quit. HUD will work with its federal partners to provide more information about these services as part of future technical assistance and guidance in advance of the final rule.

Q: Are housing authorities required to build shelters for smokers?

A: No, PHAs are not required to build shelters for their residents. Construction of smoking shelters and purchases of benches may be done using Capital Funds. Several PHAs have reported that they achieve better compliance with smoking bans in restricted areas when there is a designated location for smoking that includes seating.

Q: Does this rule include other types of smoking devices, like electronic cigarettes or hookah pipes?

A: No, this rule only proposes to cover lit tobacco products where the tobacco leaves are ignited, such as cigarettes, cigars and pipes. The exclusion on e-cigarettes (also known as electronic nicotine delivery systems or ENDS) in this rule should not be read as an endorsement of e-cigarettes as an acceptable health alternative to cigarettes. The aerosol from ENDS typically contains nicotine derived from tobacco plants, and may contain other hazardous and potentially hazardous constituents such as formaldehyde and lead. In light of growing health concerns regarding exposure to the aerosol of these products among non-users, especially children and pregnant women, HUD is seeking additional comments on the issue of ENDS, and may prohibit the use of these products in public housing in the final rule. HUD encourages PHAs that already have smoke-free policies to consider whether ENDS should be included in their smoke-free policies.

Q: What about the use of marijuana or medical marijuana in states that allow its use?

A: Nothing about this proposed rule is intended change any requirements regarding the use of marijuana in federally-subsidized housing. PHAs that need more information about the relevant laws can request a copy of the February 10, 2011 memo “Medical Marijuana Use In Public Housing and Housing Choice Voucher Programs” or download the memo from <http://portal.hud.gov/huddoc/med-marijuana.pdf>.

Q: Doesn't this rule conflict with HUD's goal to end homelessness?

A: The proposed smoke free public housing rule includes requirements for current residents of public housing. It does not prohibit smoking by public housing residents or prospective residents, and it should not discourage PHAs from offering homes to persons that smoke. The proposed regulations would simply restrict the activity of smoking within public housing property and within 25 feet of building entrances and windows. Residents that smoke and comply with the smoke-free policy can continue their residency in public housing. Where there are violations of the smoke free policy, HUD encourages PHAs to use a graduated enforcement approach, to include warnings before lease termination. HUD continues to expect PHAs to follow the administrative grievance procedures during enforcement of their smoke-free housing policies. HUD solicits comments on enforcement from housing authorities that are already smoke free and will develop guidance on graduated enforcement practices after reviewing comments on the proposed rule.

Q: What about scattered site or single family public housing? Attached balconies or porches?

A: Under the proposed rule, smoking would also be banned in single family detached public housing. The proposed rule also prohibits smoking on attached structures if they are part of the building or within 25 feet of the housing or building.

Q: What about project-based Section 8 or housing choice voucher units managed by a Public Housing Authority?

A: These units are not proposed to be covered by this proposed rule. HUD's guidance to assist owners of these types of housing, “Change is in the Air” can be found at <http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>.

Q: My PHA manages public housing units located in other multi-unit mixed-finance developments. Must the smoke free policy include these units too, if the rest of the building is not smoke-free?

A: The proposed rule excludes these public housing units because the PHA may not be the primary owner of the property and non-public housing units may be contained within the building. HUD strongly encourages PHAs managing these types of properties to include all of their rental housing in the smoke free policy.

Q: My jurisdiction already has a smoke-free requirement for housing that includes just a 20 foot buffer zone around the building. Do I need to change our PHA's policy?

A: Once the rule is final, the PHA policy must follow the federal requirements if they are more stringent. If it's the case that the local or state requirement is more stringent, the PHA should follow those rules.

Q: How can I submit comments on the proposed rule?

A: Comments may be submitted by mail or electronically until January 19, 2016. You may mail comments to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. You may submit comments electronically by uploading them through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. (Facsimile (fax) comments are not acceptable.)

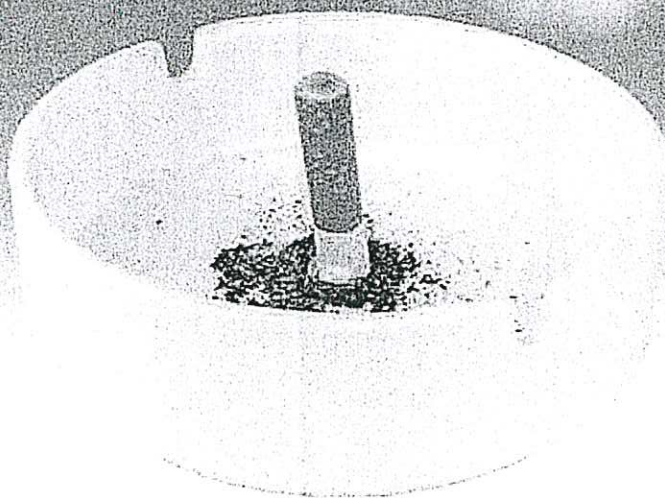
U.S. Department of Housing and Urban Development
Office of Lead Hazard Control and Healthy Homes



CHANGE IS IN THE AIR

**An Action Guide for Establishing Smoke-Free
Public Housing and Multifamily Properties**

October 2014



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WORKSHOP MANUAL

PUBLIC HOUSING SMOKE-FREE POLICY & LEASE ADDENDUM

IMPLEMENTATION OF HUD'S RULE TO RESTRICT SMOKING IN PUBLIC HOUSING

Overview: HUD's final rule to restrict smoking in public housing was published in the Federal Register on December 5, 2016 and went into effect on February 3, 2017. This rule requires each PHA to implement a smoke-free policy, no later than July 30, 2018. The PHA must incorporate the smoke-free policy into the resident dwelling leases by way of a lease addendum. Such policy must ban the use of prohibited tobacco products in all public housing living units, indoor common areas in public housing, and in PHA administrative buildings. The policy must also extend to all outdoor areas up to 25 feet from the public housing and PHA administrative office buildings.

Implementation of Rule:

STEP 1- PHA consultation with its resident advisory board(s) to assist with and make recommendations for preparation of the PHA's smoke free policy.

STEP 2 – PHA preparation of its smoke-free policy, and related lease addendum.

It is recommended that the policy and lease addendum contain statements pertaining to the following subjects:

- *Purpose of the Policy and Lease Addendum*
- *Designated Smoke-Free Restricted Areas*
- *Definition of Smoking*
- *Resident Responsibilities*
- *Landlord Responsibilities*
- *Landlord Not a Guarantor of Smoke-Free Environment*
- *Effect of Policy Violation/Breach of Lease*
- *Disclaimer by Landlord*
- *Notice to Residents With Respiratory ailments, Allergies, or Any Other Physical or Mental Condition Related to Smoke.*

Edison Housing Authority Smoke Free Policy and Lease Addendum

- **Purpose of Policy and Lease Addendum** - In an effort to reduce the increased risk of fire from smoking; the increased maintenance, cleaning and decorating costs from smoking; the irritation and known health effects of secondhand smoke; and to avoid the higher cost of fire insurance charged for non-smoke-free buildings, all of the housing developments managed by the Edison Housing Authority (hereinafter referred to as the "Housing Authority") have been designated Smoke-Free housing developments.
- **Designated Smoke-Free Restricted Areas** - Effective smoking will not be permitted in the following designated Smoke-Free Restricted Areas of the housing developments managed by this Housing Authority: Dwelling units occupied or to be occupied by residents and members of their households and any common areas of the buildings in which such premises are located, including but not limited to community rooms, community bathrooms, laundry rooms, lobbies, foyers, reception areas, hallways, stairwells, day care centers, offices, elevators, mechanical spaces, waste disposal/recycling spaces, and all outdoors areas within 25 feet of said building(s), including building balconies, entry ways, patios, porches, yards and recreation areas, or to the PHA's property boundary in situations where the boundary is less than 25 feet.

Residents and members of their households shall not smoke anywhere within the aforesaid designated smoke-free restricted areas, nor shall residents or members of their households permit any guest or visitor under their control to smoke in said areas.
- **Definition of Smoking** - The term "smoking" means inhaling, breathing, or carrying or possessing any lighted cigarette, cigar, electronic nicotine delivery systems, pipe, including water pipes (hookahs) or other tobacco leaf product or similar lighted product in any manner or in any form.
- **Resident Responsibilities** - Residents and members of their household shall inform their guests and visitors of the terms and conditions of this smoke-free policy. Further, residents shall promptly give the Housing Authority a written statement of any incident where tobacco smoke is migrating into the resident's dwelling unit from sources outside the unit.
- **EHA's Responsibilities** - The Housing Authority shall post no-smoking signs at building entrances and exits, in common areas, and in conspicuous places adjoining the grounds of each of the designated smoke-free buildings.

- *Housing Authority- Not a Guarantor of Smoke-Free Environment* - It is not the intent of the Housing Authority smoke-free policy to make the Housing Authority or any of its management agents the guarantor of resident health or of the non-smoking condition of resident dwelling units and other designated smoke-free restricted areas.

Resident dwelling leases shall include a provision wherein residents acknowledges that Housing Authority's adoption of a smoke-free living environment does not make the Housing Authority or any of its management agents the guarantor of resident's health or of the non-smoking condition of the resident's dwelling unit and the other designated smoke-free restricted areas of the premises. However, the Housing Authority shall take reasonable steps to enforce the non-smoking terms of its lease and to make the designated smoke-free restricted areas, as smoke free as is reasonably possible.

The Housing Authority is not required to take steps in response to smoking unless landlord knows of said smoking or has been given written notice of said smoking.

- *Effect of Policy Violation/Breach of Lease* - Any resident, including the members of their household, guests, or visitors will be considered in violation of the Housing Authority's public housing smoke-free policy and the applicable provisions of their smoke-free lease addendum if found smoking in any Housing Authority designated smoke-free restricted area. Three (3) violations will be considered to be a material or continuing breach of the smoke-free lease addendum and grounds for termination of the lease by the Housing Authority.

After the first warning a cleaning/refurbishing charge of \$_____ will be added to the resident's account for each violation of this policy that occurs in any Housing Authority designated smoke-free restricted area. (Any lighted smoking matter not properly disposed of may also be cause for an additional cleaning/refurbishing charge.

Breach of the of the smoke-free lease addendum shall give each party to the lease all the rights contained in both the addendum and the dwelling lease.

- *Disclaimer by Housing Authority* - The Housing Authority's adoption and implementation of this policy, does not in any way change the standard of care that the Housing Authority or its management agents would have to a resident household to render buildings and premises designated as smoke-free restricted areas any safer, more habitable, or improved in terms of air quality standards than any other rental premises. The Housing Authority specifically disclaims any implied or express warranties that the buildings, common areas, resident premises, or other designated smoke-free restricted areas will have any higher or improved air quality standards than any other rental property. The

Housing Authority cannot and does not warrant or promise that the rental premises or the designated smoke-free restricted areas will be free from secondhand smoke. The Housing Authority's ability to police, monitor, or enforce this policy is dependent in significant part on voluntary compliance by the Authority's residents and their guests and visitors. Residents shall be required to acknowledge this disclaimer in the smoke free lease addendum.

- *Notice to Residents With Respiratory Ailments, Allergies, or Any Other Physical or Mental Condition Related to Smoke* - Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that the Housing Authority does not assume any higher duty of care to enforce the Authority's smoke-free policy than any other Housing Authority's obligation under the dwelling lease.

STEP 3 – Tenant Review Notice.

HUD regulations require that the housing authority post or otherwise make available for a minimum 30 day calendar period, a notice to its public housing residents informing them that the Housing Authority has prepared and proposes to adopt, subject to receipt and consideration of their written comments, a Public Housing Smoke-Free Policy and a form of Smoke-Free Policy Dwelling Lease Addendum (copies attached); and specifying that all written comments should be submitted to the PHA's Management Office by _____ (insert a date which follows the end of the 30 day review and comment period).

STEP 4 – Prepare a Resolution For Adoption of the Housing Authority Smoke-Free Policy and its form of Related Lease Addendum.

The wording of such resolution should cover the adoption/approval of both the policy and lease addendum, the attachment of copies of such documents to the resolution, their incorporation therein, and their being made a part thereof by reference; the incorporation of the policy as an attachment to the ACOP and its being made a part thereof by reference; amendment of the PHA's form of public housing dwelling lease by making the smoke-free lease addendum a part thereof; and the effective date of the resolution.

STEP 5 Present Resolution to the Board of Commissioners for Adoption.

STEP 6 -Prepare and hand-deliver or mail a letter to all of the Public Housing residents informing them of the adoption of the public housing smoke-free policy and the related dwelling lease addendum, notifying them of the effective date of the policy, instructing them to

contact the Housing Authority management office for the purpose of scheduling an appointment for execution of the smoke-free lease addendum, and providing them with copies of both the smoke-free policy and the related lease addendum.

Notes:

Residents are required to sign the lease addendum in the presence of a Housing Authority management representative.

Failure to sign the lease addendum may result in legal action.

Copies of the signed and dated lease addendum must be retained in the resident's file.

The EHA must notify each resident of the content of the addendum to their existing lease at least 60 days before the lease addendum is to take effect and specify a reasonable time period for the resident to accept the offered addendum (see 24 CFR 966.4(1)(2)(iii)(E)). PIH REGULATIONS ALSO PROVIDE THAT LEASES ARE REQUIRED TO STIPULATE THAT THE RESIDENT HAS AN OPPORTUNITY FOR A HEARING ON A GRIEVANCE OF ANY PROPOSED ADVERSE ACTION AGAINST THE RESIDENT (see CFR 966.52(b)).

No Smoking Policy
(to be included in ACOP as section 16-VIII.

PART VIII: SMOKE-FREE POLICY [24 CFR Subpart G]

16-VIII.A. OVERVIEW

PHAs must establish and maintain a smoke-free environment for the public housing properties they own and maintain according to HUD regulations. This section sets the definitions and terms of that policy.

16-VIII.B. DEFINITIONS

The term "smoking" means inhaling, exhaling, breathing or carrying any lighted or heated cigar, cigarette, pipe or waterpipe (hookah) or any other tobacco product or plant product (e.g. marijuana) in any manner or in any form. Smoking also includes the use of an electronic cigarette.

The term "electronic cigarette" means any electronic device that provides a vapor of liquid nicotine and/or other substances to the user as she/he simulates smoking. The term shall include such devices whether they are manufactured or referred to as e-cigarettes, e-cigars or e-pipes or under any product name.

16-VIII.C. PHA POLICY

Smoking is not permitted in PHA buildings, including within any apartment, administrative or maintenance space or within 25 feet of any PHA building. Effective July 1, 2018, all current residents, all employees and all guests and all new residents of the PHA will be subject to this policy.

As leases are renewed beginning with lease renewals effective July 1, 2017, tenant leases will contain the prohibition on smoking contained in this policy. Tenants will be given a copy of this policy and will sign that they have received it and are knowledgeable regarding the contents of the policy.

Any deviation for the smoke-free policy by any tenant, a member of the tenant's household or a guest of the tenant will be considered a lease violation.

A lease violation notice will be sent for the first violation of this policy. A second lease violation notice will be sent for the second violation of this policy. A third violation notice will be sent for the third violation of this policy and will be considered a repeated violation of the material terms of the lease and will result in an eviction notice.

Each violation notice will carry an assessment of \$100 for violation of this notice.

**LEASE ADDENDUM
SMOKE-FREE POLICY**

Tenant and members of the tenant's family and household are parties to a written lease with the housing authority. This addendum to the lease states the following additional terms, conditions and rules which are hereby incorporated into the lease. A breach of this addendum shall give all parties all of the rights contained herein as well as the rights contained in the lease.

1. Smoking is not permitted in PHA buildings, including within any apartment, administrative or maintenance space or within 25 feet of any PHA building. Effective with the signing of this lease, the tenant will be subject to this policy.

2. The term "smoking" means inhaling, exhaling, breathing or carrying any lighted or heated cigar, cigarette, pipe or waterpipe (hookah) or any other tobacco product or plant product (e.g. marijuana) in any manner or in any form. Smoking also includes the use of an electronic cigarette.

The term "electronic cigarette" means any electronic device that provides a vapor of liquid nicotine and/or other substances to the user as she/he simulates smoking. The term shall include such devices whether they are manufactured or referred to as e-cigarettes, e-cigars or e-pipes or under any product name.

3. Any deviation from the smoke-free policy by any tenant, a member of the tenant's household or guest will be considered a lease violation. Three violations will be considered a repeated violation of the material terms of this lease and will result in eviction.

4. A lease violation notice will be sent for the first violation of this policy. A second lease violation notice will be sent for the second violation of this policy. A third violation notice will be sent for the third violation of this policy and will be considered a repeated violation of the material terms of the lease and will result in an eviction notice.

5. Each violation notice will carry an assessment of \$100 for violation of this notice.

6. If a tenant observes a violation of this policy, they are encouraged to report the incident to the management office as soon as possible. Management will take appropriate action.

Head of Household _____ Date _____

Other adult _____ Date _____

Other adult _____ Date _____

Other adult _____ Date _____

Other adult _____ Date _____

NOTICE OF VIOLATION OF SMOKE-FREE POLICY

Tenant _____ Address _____

Date _____ First Second Third Notice (circle one)

Please be advised that we have observed or we have been informed and we have recorded a violation of the housing authority's no-smoking policy.

On _____ (date), you or _____
(date) (household member or guest)

were observed smoking in/on _____
(location of incident)

This is a violation of the terms of your lease with the housing authority and could be cause for lease termination.

If you have any questions, please stop by to discuss the incident with the project manager.

(Signature)

(Date)

NOTICE OF SMOKING INCIDENT

Address _____ Date of incident _____

Tenant _____

Person reporting the incident _____

This notice is to inform management of the following smoking-related incident.

Description of the incident:

- ☐ Smoking coming into unit.
- ☐ Smoking observed in indoor area
- ☐ Smoking observed in outdoor area
- ☐ Smoking observed in other rental units
- ☐ Other: _____

Remarks/Detailed

Description: _____

Signature and Date

Staff Use Only

Date of review: _____ Reviewer: _____

Action taken: _____

Follow-up: _____

HOUSING AUTHORITY of the
TOWN OF BOONTON

April 30th, 2018

BHA SMOKE FREE POLICY EFFECTIVE JULY 1ST 2018

I certify that I have received the HUD Smoke Free Policy Handbook given by the Boonton Housing Authority and I've been informed that the Smoke Free Policy takes effect July 1st, 2018.

Tenant Name:

Address or Apartment Number:

Signature: