

R392. Health, Disease Control and Prevention, Environmental Services.

R392-510. Utah Indoor Clean Air Act.

R392-510-1. Authority.

- (1) This rule is authorized by Sections 26-1-30(2), 26-15-12, and Title 26 Chapter 38.
- (2) This rule does not preempt other restrictions on smoking that are otherwise allowed by law.

R392-510-2. Definitions.

- (1) "Agent" means the person to whom a building owner has delegated the maintenance and care of the building.
- (2) "Area" means a three dimensional space.
- (3) "Building" means an entire free standing structure enclosed by exterior walls.
- (4) "Building owner" means the person(s) who has an ownership interest in any public or private building.
- (5) "E-cigarette" means any electronic oral device that provides a vapor of nicotine or other substance and which simulates smoking through its use or through inhalation of the device; and includes an oral device that is composed of a heating element, battery, or electronic circuit and marketed, manufactured, distributed, or sold as an e-cigarette, e-cigar, e-pipe, or any other product name or descriptor, if the function of the product meets the definition of an electronic oral device.
- (6) "Employer" means any individual, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons.
- (7) "Enclosed" means space between a floor and ceiling which is designed to be surrounded on all sides at any time by solid walls, screens, windows or similar structures (exclusive of doors and passageways) which extend from the floor to the ceiling.
- (8) "Executive Director" means the Executive Director of the Utah Department of Health or his designee.
- (9) "Facility" means any part of a building, or an entire building.
- (10) "HVAC system" means the collective components of a heating, ventilation and air conditioning system.
- (11) "Lighted Tobacco" means both tobacco that is under self sustained combustion and tobacco that is heated to a point of smoking or vaporizing.
- (12) "Local Health Officer" means the director of the jurisdictional local health department as defined in Title 26A, Chapter 1, or his designee.
- (13) "Nonsmoker" means a person who has not smoked a tobacco product in the preceding 30 days.
- (14) "Non-tobacco shisha" means any product that does not contain tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.
- (15) "Operator" means a person who leases a place from a building owner or controls, operates or supervises a place.
- (16) "Place of public access" or "Place" means any enclosed indoor place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the place of public access have general and regular access or which the public uses, including:
 - (a) buildings, offices, shops, elevators, or restrooms;
 - (b) means of transportation or common carrier waiting rooms;
 - (c) restaurants, cafes, or cafeterias;
 - (d) taverns as defined in Section 32B-1-102, or cabarets;
 - (e) shopping malls, retail stores, grocery stores, or arcades;
 - (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas;
 - (g) barber shops, hair salons, or laundromats;
 - (h) sports or fitness facilities;
 - (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any of these;
 - (j)(i) any child care facility or program subject to licensure or certification under this title, including those operated in private homes, when any child cared for under that license is present; and
 - (ii) any child care, other than child care as defined in Section 26-39-102, that is not subject to licensure or certification under this title, when any child cared for by the provider, other than the child of the provider, is present;
 - (k) public or private elementary or secondary school buildings and educational facilities or the property on which those facilities are located;
 - (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families;
 - (m) any facility rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor;
 - (n) any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner-operators of the business;
 - (o) any area where the proprietor or manager of the area has posted a conspicuous sign stating "no smoking", "thank you for not smoking", or similar statement; and
 - (p) a holder of a bar establishment license, as defined in Section 32B-1-102.

(17) "Publicly owned building or office" means any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county, or municipal taxes.

(18) "Shisha" means any product that contains tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

(19) "Smoking" means:

- (a) the possession of any lighted or heated tobacco product in any form;
- (b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or hookah that contains:
 - (i) tobacco or any plant product intended for inhalation;
 - (ii) shisha or non-tobacco shisha;
 - (iii) nicotine;
 - (iv) a natural or synthetic tobacco substitute; or
 - (v) a natural or synthetic flavored tobacco product;
- (c) using an e-cigarette; or
- (d) using an oral smoking device intended to circumvent the prohibition of smoking in this rule.

(20) "Workplace" means any enclosed space, including a vehicle, in which one or more individuals perform any type of service or labor for consideration of payment under any type of employment relationship. This includes such places wherein individuals gratuitously perform services for which individuals are ordinarily paid.

R392-510-3. Responsibility for Compliance.

Where this rule imposes a duty on a building owner, agent, or operator, each is independently responsible to assure compliance and each may be held liable for noncompliance.

R392-510-4. Proprietor Right to Prohibit Smoking.

- (1) The owner, agent or operator of a place may prohibit smoking anywhere on the premises.
- (2) The owner, agent or operator of a place may also prohibit smoking anywhere outdoors on the premises.

R392-510-5. Smoking Prohibited Entirely in Places of Public Access and Publicly Owned Buildings and Offices.

(1) Places listed in Section 26-38-2(3)(a) through (p) are places of public access and smoking is prohibited in them except as provided for in Section 26-38-3(2).

(2) It is the responsibility of the owner or operator to provide evidence to the local health department upon request that the facility is in compliance with this rule.

R392-510-6. Requirements for Smoking Permitted Areas.

(1) Any enclosed area where smoking is permitted must be designed and operated to prevent exposure of persons outside the area to tobacco smoke generated in the area.

(2) If a lodging facility permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed guest rooms, or if a nursing home, assisted living facility, small health care facility, or hospital with a certified swing-bed program permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed private residential sleeping rooms, the facility's air handling system or systems must not allow air from any smoking-allowed area to mix with air in or to be used in:

- (a) any part of the facility defined as a place of public access in Section 26-38-2(3);
- (b) another room designated as a non-smoking room; or
- (c) common areas of the facility, including dining areas, lobby areas and hallways.

(d) If an operator of a lodging facility chooses to modify the status of a room from a smoking to a non-smoking room, then the operator shall perform a full deep cleaning of the room. The deep cleaning shall include cleaning of carpets, bedding, drapes, walls, and any other object in the room which absorbs smoking particles or smoking fumes.

R392-510-7. HVAC System Documentation.

(1) If a building has a smoking-permitted area under Section 26-38-3(2), the building owner must obtain and keep on file a signed statement from an air balancing firm certified by the Associated Air Balance Council or the National Environmental Balancing Bureau, or an industrial hygienist certified by the American Board of Industrial Hygiene that the smoking permitted area meets the requirements of Subsections R392-510-6(1). If a building's HVAC System is altered in any way, the building owner must obtain new certification on the system.

(2) The building owner must provide the information required in Subsection R392-510-7(1) within three working days upon request from the operator, executive director or local health officer.

(3) The operator must provide the information required in Subsection R392-510-7(1) within five working days upon the request of the executive director or local health officer.

(4) The building owner must provide the HVAC operation specifications and maintenance guidelines to the HVAC operation and maintenance personnel or contractor. The maintenance guidelines must include the manufacturer's recommended procedures and time lines for maintenance of HVAC system components. If the manufacturer's recommended procedures for operation and maintenance of the HVAC system are not available, the building owner must obtain and use guidelines developed by a mechanical

engineer licensed by the State of Utah who has expertise in the design and evaluation of HVAC systems or by a mechanical contractor licensed by the State of Utah who has expertise in the repair and maintenance of HVAC systems.

(5) The building owner must maintain HVAC inspection and maintenance records or logs for the three previous years and must make them available to the operator, executive director or local health officer within three working days of a request.

(6) The operator must make the record or logs required in Subsection R392-510-7(5) available to the executive director or local health officer within five working days of a request.

(7) The records or logs required in Subsection R392-510-7(5) must include:

- (a) The specific maintenance and repair action taken, and reasons for actions taken;
- (b) The name and affiliation of the individual performing the work; and
- (c) The date of the inspection or maintenance activity.

R392-510-8. Operation and Maintenance of HVAC Systems.

(1) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) shall identify a person responsible for the operation and maintenance of the HVAC system.

(2) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must maintain and operate the HVAC system to meet the requirements of Subsections R392-510-6.

(3) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must cause the HVAC system components to be inspected, adjusted, cleaned, and calibrated according to the manufacturer's recommendations, or replaced as specified in the maintenance guidelines required in Subsection R392-510-7(4). The building owner, agent, or operator's experience with the HVAC system may establish that more frequent maintenance activities are required.

(4) Visual or olfactory observation is sufficient to determine whether a smoking-permitted area meets the requirements of Section R392-510-6.

R392-510-9. Protection of Air Used for Ventilation.

(1) Smoking is not permitted within 25 feet of any entrance-way, exit, open window, or air intake of a building where smoking is prohibited.

(2) Ashtrays may be placed near entrances only if they have durable and easily readable signage indicating that the ashtray is provided for convenience only and the area around it is not a smoking area. The sign shall include a reference to the 25 foot prohibition.

(3) An employer shall establish a policy to prohibit employee smoking within 25 feet of any entrance-way, exit, open window, or air intake of a building where smoking is prohibited.

R392-510-10. Educational and Cultural Activities Not Exempted.

(1) Educational facilities, as used in the Utah Indoor Clean Air Act, means any facility used for instruction of people, including preschools, elementary and middle schools, junior and senior high schools.

(2) Smoking is prohibited in facilities used by, vocational schools, colleges and universities, and any other facility or educational institution operated by a commercial enterprise or nonprofit entity, including hotel, motel, and convention center rooms, for the purpose of providing academic classroom instruction, trade, craft, computer or other technical or professional training, or instruction in dancing, artistic, musical or other cultural skills as well as all areas supportive of instruction including classrooms, lounges, lecture halls, study areas and libraries.

R392-510-11. Private Dwellings Which Are Places of Employment.

(1) A private dwelling is subject to these rules while an individual who does not reside in the dwelling is engaged to perform services in the dwelling on a regular basis is present. This includes situations where an individual performs services such as, but not limited to:

- (a) domestic services;
- (b) secretarial services for a home-based business; or
- (c) bookkeeping services for a home-based business.

(2) In a private dwelling in which a business or service is operated and into which the public enters for purposes related to the business or service smoking is prohibited in the business or service area during hours when the dwelling is open to the public.

(3) A private dwelling in which an individual is employed on a nonregular basis only is not subject to these rules. This includes situations where individuals perform services such as:

- (a) baby-sitting services;
- (b) trade services for the owner of the dwelling or individuals residing in the dwelling such as those services performed by plumbers, electricians and remodelers;
- (c) emergency medical services;
- (d) home health services; and
- (e) part-time housekeeping services.

R392-510-12. Signs and Public Announcements.

Signs required in this section must be easily readable and must not be obscured in any way. The words "No Smoking" must be not less than 1.5 inches in height. If the international "No Smoking" symbol is used alone, it must be at least 4 inches in diameter.

(1) In a place where smoking is prohibited entirely, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted in this establishment" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.

(2) In a place where smoking is partially allowed, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted except in designated areas" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.

(3) In a place where smoking is allowed in its entirety, the building owner, agent, or operator must conspicuously post a sign using the words, "This establishment is a smoking area in its entirety" or similar statement.

(4) The building owner, agent, or operator must post a sign at all smoking-permitted areas provided for under Section 26-38-3(2)(a), (b), and (c). The sign must have the words, "smoking permitted" or similar wording and include the international smoking symbol.

(5) The building owner, agent, or operator must post a sign inside the exit of all smoking-permitted areas, if the exit leads to a smoking-prohibited area. The sign must have the words, "smoking not permitted beyond this point" or similar wording and include the international no-smoking symbol.

(6) In public lodging facilities that designate guest rooms as smoking allowed, the building owner, agent, or operator must conspicuously post a permanent sign on the smoking-allowed guest room door and meet the requirements of R392-510-6(1) and (2).

(7) In nursing homes, assisted living facilities, small health care facilities and hospitals with a certified swing-bed program that designate private residential sleeping rooms as "smoking allowed," the building owner, agent, or operator must conspicuously post a permanent sign on the door and meet the requirements of R392-510-6(1) and (2).

(8) The building owner, agent, or operator of an airport terminal, bus station, train station, or similar place must provide announcements on a public address system as often as necessary but not less than four times per hour during the hours that the place is open to the public, as follows:

(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.

(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.

(9) The building owner, agent, or operator of a sports arena, convention center, special events center, concert hall or other similar place must provide announcements on a public address system prior to the beginning of any event, at intermissions, at the conclusion of the event and any other break in the program or event, as follows:

(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.

(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.

(10) The building owner, agent, or operator of a large place, such as an airport, university, hotel or motel, or sports arena may, in writing, request the assistance of the local health officer to establish an effective signage and public announcements plan. The local health officer may cause the plan to be modified at any time to protect nonsmokers from being exposed to tobacco smoke.

(11) Buildings that are places of worship operated by a religious organization are not required to post signs.

(12) In a place of public access where the smoking of non-tobacco products is allowed and smoking of tobacco is prohibited, a sign shall be posted indicating that tobacco products may not be smoked.

R392-510-13. Discrimination.

An employer may not discriminate or take any adverse action against an employee or applicant because that person has sought enforcement of the provisions of Title 26, Chapter 38, Rule R392-510, the smoking policy of the workplace or otherwise protests the smoking of others.

R392-510-14. Enforcement action by Proprietors.

An owner, agent, or employee of the owner of a place where smoking is prohibited by this rule who observes a person smoking in apparent violation of this rule shall request the person to stop smoking. If the person fails to comply, the proprietor, agent, or employee shall ask the person to leave the premises.

KEY: public health, indoor air pollution, smoking, ventilation

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