UTAH COUNTY HEALTH DEPARTMENT
UTAH COUNTY INDOOR CLEAN AIR ACT REGULATION

The Utah County Board of Health adopts by reference the Utah Indoor Clean Air Act, Utah Code 26-38-1 to 9, and State Administration Rule, R.392 510-1 to 14. In addition, hookah/water pipe environmental tobacco smoke/emissions will be regulated the same as other indoor environmental tobacco smoke using the same requirements as the Utah Indoor Clean Air Act and applicable rules.

Authority and Effective Date

Adoption of this regulation is authorized by Utah Code 26A-1-121. This regulation becomes effective upon approval by the Utah County Board of Health.

Approved and adopted Sept. 27, 2010
Date

Dennis Hess, M.D., Vice Chair
Utah County Board of Health

Joseph K. Miner, MD
Joseph K. Miner, Executive Director
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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.

The definitions in Section 26-38-2 apply to this rule in addition to the following:

(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 vapor through 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) "Operator" means a person who leases a place from a building owner or controls, operates or supervises a place.

(15) "Place" means any "place of public access", or "publicly owned building or office", as defined in Title 26, Chapter 38.

(16) "Smoking" means the possession of any lighted or heated tobacco product in any form; inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine intended for inhalation through a cigar, cigarette, pipe, or hookah.

(17) "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(1)(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(1);

(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. Temporary Exemption.

(1) The definition of smoking, which prohibits heated tobacco inhaled or exhaled through a hookah does not apply to a place of public access if it meets the requirements outlined by statute in 26-38-2.5, and action was required prior to July 1, 2012. The department or local health department shall certify that the exemption requirements are met as directed by 26-38-2.5 and a reasonable fee may be imposed to recover the cost of certification of exemption. In addition, penalties may be imposed for violation of the exemption as defined in 26-23-6. The exemption will sunset, in accordance with 63I-1-226, July 1, 2017. Additionally, as required by statute, the place of public access must provide through written notice on menus, or conspicuously located signage that only tobacco products sold at this place of public access may be heated, inhaled, and exhaled and that only those 21 years of age and older may be admitted. Any change in exemption status must be reported to the local health department.

(2) The place of public access shall allow the local health department and State Health Department to inspect the facility to verify ongoing compliance with the rule and statute during the 5 year exemption period. To maintain the exemption, the place of public access must:

(a) Maintain its class C or D liquor license.

(b) Admit only individuals 21 years of age and older into the place of public access.

(c) Prominently display signs on the premises and in advertisements that disclose the dangers of second hand smoke and inhaling tobacco.

(d) Require that only tobacco products sold by the place of public access may be heated, inhaled, and exhaled in the place of public access.

(e) Not sell a product for use in a hookah that contains more than 30% tobacco or more than .05% nicotine.

(f) Sell a mixture of tobacco and other flavors for the purpose of heating, inhaling, and exhaling the tobacco mixture through a hookah pipe

(g) Be able to demonstrate that the sale of the mixture of tobacco and other flavors for use in a hookah pipe in the place of public access constitutes at least 10% of the establishment's gross annual sales (January 1 to December 31 during the exemption period).

(3) If the place of public access does not meet the requirements of the exemption as determined by inspection of the local health department and/or State Health Department, the certification of exemption shall be suspended, and the place of public access shall go through the appeals process as outlined in 26a-1-121 (2) to determine if the permit should be permanently revoked or if corrections have been made, renewed for the balance of the 5 year period.

R392-510-15. Signs Required for Temporary Exemption.

(1) The building owner, agent or operator must conspicuously post signs that are easily readable and not obscured in any way as outlined in R392-510-12. The words must not be less than 1.5 inches in height. The signs shall state "WARNING: There is no risk-free level of inhaling tobacco smoke or exposure to secondhand tobacco smoke. -U.S. Surgeon General".

(2) The sign shall be posted at all entrances or in a position clearly visible on entry into the place.

(3) Any advertisements to the public must include the statement "WARNING: There is no risk-free level of inhaling tobacco smoke or exposure to secondhand tobacco smoke. -U.S Surgeon General".

R392-510-16. Restriction on Use of e-Cigarette in Place of Public Access.

The prohibition against the use of an e-cigarette in a place of public access does not apply if:

(1) the use of the e-cigarette occurs in the place of public access that is a retail establishment that sells e-cigarettes and the use is for the purpose of:

(a) the retailer of an e-cigarette demonstrating to the purchaser of the e-cigarette how to use the e-cigarette; or

(b) the customer sampling a product sold by the retailer for use in an e-cigarette; and the retailer of e-cigarettes:

(i) has all required licenses for the possession and sale of e-cigarettes in a place of business;

(ii) does not permit a person under the age of 19 to enter any part of the premises of the retail establishment in which the

e-cigarettes are sold; and

(iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least 75% of the establishment's gross sales.

(2) this section sunsets, in accordance with 63I-1-226, July 1, 2017.

R392-510-17. 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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Notice of Continuation: April 2, 2012
Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-1 et seq.; 26-38-1