

R392. Health and Human Services, Population Health, Environmental Health.

R392-510. Utah Indoor Clean Air Act.

R392-510-1. Authority and Purpose.

- (1) Sections 26B-1-202, 26B-7-502, and Subsection 26B-7-503(6) authorize this rule.
- (2) The purpose of this rule is to implement the provisions of Section 26B-7-503, Utah Indoor Clean Air Act.

R392-510-2. Applicability.

- (1) This rule applies to any enclosed indoor place of public access and to publicly owned buildings and offices, except as described in Subsection (2).
- (2) Only Section R392-510-7, Section R392-510-12, and Subsection R392-510-11(7) of this rule apply to the following:
 - (a) Native American ceremony as specified in Subsection 26B-7-503(3)(a); and
 - (b) Areas where smoking is permitted by Subsection 26B-7-503(2).

R392-510-3. Definitions.

For this rule:

- (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 individual who has an ownership interest in any public or private building.
- (5) "Department" means the Utah Department of Health and Human Services.
- (6) "Educational facility" means any facility used for instruction of people, including a:
 - (a) preschool;
 - (b) elementary school;
 - (c) middle school;
 - (d) junior high school; or
 - (e) senior high school.
- (7) "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 persons.
- (8) "Enclosed" means space between a floor and ceiling that is designed to be surrounded on each side at any time by solid walls, screens, windows, or similar structures, exclusive of doors and passageways, which extend from the floor to the ceiling.
- (9) "Heating, Ventilation, and Air Conditioning system" or "HVAC "system" means the collective components of a heating, ventilation, and air conditioning system.
- (10) "Local Health Officer" means the director of the jurisdictional local health department, or a designated representative.
- (11) "Operator" means a person who leases a place of public access from a building owner or controls, operates, or supervises a place.
- (12) "Place of public access" has the same meaning as provided in Subsection 26B-7-501(17).
- (13) "Premises" means any lot, parcel, or plot of land, including any buildings or structure.
- (14) "Public lodging facility" means a place that is maintained, advertised, offered, used, or kept to provide temporary lodging for the general public, including a hotel, motel, and bed and breakfast lodging facility.
- (15) "Publicly owned building" or "office" has the same meaning as provided in Section 26B-7-501.
- (16) "Shisha" has the same meaning as provided in Section 26B-7-501.
- (17) "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 electronic cigarette; or
 - (d) using an oral smoking device intended to circumvent the prohibition of smoking in this chapter.
- (18) "Workplace" means any enclosed space, including:
 - (a) 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; and
 - (b) places wherein individuals voluntarily perform services for which individuals are ordinarily paid.

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

The building owner, agent, or operator of a place of public access may prohibit smoking anywhere on the premises.

R392-510-5. Smoking Prohibition.

(1) Except for areas where smoking is permitted by Subsection 26B-7-503(2), smoking is prohibited in places of public access and publicly owned buildings and offices.

(2) Upon request, the building owner, agent, or operator shall provide evidence to the local health officer 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) A building's HVAC system may not allow air from any smoking-permitted area to mix with air in or to be used in:

(a) any part of the facility defined as a place of public access;

(b) another room designated as a non-smoking room; or

(c) any common area of the facility, including dining areas, lobby areas, and hallways.

(3) If an operator of a public lodging facility chooses to modify the status of a guest room from a smoking to a non-smoking guest room, then the operator shall perform a full deep cleaning of the guest room, which shall include cleaning of:

(a) carpets;

(b) bedding;

(c) drapes;

(d) walls; and

(e) any other object in the room that may have absorbed smoke particles or fumes.

(4) Visual or olfactory observation is sufficient to determine whether a smoking-permitted area meets the requirements of this section.

R392-510-7. HVAC System Documentation.

(1) In an area where smoking is permitted as specified in Subsection 26B-7-503(2), the building owner shall:

(a) obtain and keep on file a signed statement from an air balancing firm certified by the Associated Air Balance Council or an industrial hygienist certified by the American Board of Industrial Hygiene that the smoking permitted area meets the requirements of Subsection R392-510-6(1); and

(b) obtain new system certification if the HVAC system is altered in any way.

(2) The building owner shall provide the information in Subsection (1) within three working days upon request from the operator, department, or local health officer.

(3) The operator shall provide the information in Subsection (1) within five working days upon the request of the department or local health officer.

R392-510-8. Protection of Air Used for Ventilation.

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

(2) Ashtrays may be placed near entrances if they have durable, and easily readable signage that:

(a) refers to the 25-foot prohibition described in Subsection (1);

(b) indicates that the ashtray is provided for convenience only; and

(c) states that the area around the ashtray is not a smoking area.

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

R392-510-9. Smoking Prohibited in Educational Facilities and Cultural Activities.

(1) Smoking is prohibited in any educational facility used by:

(a) a vocational school, college, or university; and

(b) any educational institution operated by a commercial enterprise or nonprofit entity, including any operating from a hotel, motel, or convention center room.

(2) Smoking is prohibited in any educational facility used to provide academic classroom instruction in:

(a) a trade, craft, computer, or other technical or professional training;

(b) dance, art, music, or other cultural skill; and

(3) Smoking is prohibited in each area of an educational facility that is supportive of instruction, including a classroom, lounge, lecture hall, study area, and library.

R392-510-10. Private Dwellings That Are Places of Employment.

(1) An employer of a business located in a private dwelling shall comply with this rule for any individual who:

(a) does not reside in the dwelling;

(b) is present in the dwelling; and

(c) is employed to perform work services on a regular basis in the dwelling including:

(i) domestic services;

- (ii) secretarial services for a home-based business; or
- (iii) bookkeeping services for a home-based business.

(2) In a private dwelling in which a business or service is operating, and which the public enters for purposes relating 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 to perform services, including baby-sitting, trade service performed by a plumber, electrician or remodeler, emergency medical service, home health service, or part-time housekeeping service, is not subject to this rule.

R392-510-11. Signs and Public Announcements.

(1) Signs required in this section shall be easily readable and may not be obscured in any way.

(2) The words "No Smoking" shall be at least one inch in height.

(3) If the international "No Smoking" symbol is used alone, it shall be at least four inches in diameter.

(4) In a place where smoking is prohibited entirely, the building owner, agent, or operator shall conspicuously post a sign:

(a) using the words, "No smoking is permitted in this establishment," or a similar statement;

(b) including the international no smoking symbol; and

(c) placed at each entrance or in a position clearly visible on entry into the place of public access.

(5) In a place where smoking is partially allowed, the building owner, agent, or operator shall conspicuously post a sign:

(a) using the words, "No smoking is permitted except in designated areas" or a similar statement;

(b) including the international no smoking symbol; and

(c) placed at each entrance or in a position clearly visible on entry into the place of public access.

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

(7) The building owner, agent, or operator shall post a sign:

(a) in each smoking-permitted area described in Subsection 26B-7-503(2);

(b) using the words, "smoking permitted" or similar wording; and

(c) including the international smoking symbol.

(8) The building owner, agent, or operator shall post a sign:

(a) inside the exit of each smoking-permitted area, if the exit leads to a smoking-prohibited area;

(b) using the words, "smoking not permitted beyond this point" or similar wording; and

(c) including the international no smoking symbol.

(9) In a public lodging facility that designates a public lodging unit as smoking allowed, the building owner, agent, or operator shall conspicuously post:

(a) a permanent sign on the smoking-allowed unit door; and

(b) meet the requirements of Subsection (7).

(10) In a nursing home, assisted living facility, small health care facility, and a hospital with a certified swing-bed program that designates a private residential sleeping room as "smoking allowed," the building owner, agent, or operator shall conspicuously post a permanent sign on the door, and meet the requirements of Subsection (7).

(11) The building owner, agent, or operator of an airport terminal, bus station, train station, or similar place shall 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 of public access is open as follows:

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

(b) if smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act allows smoking only in those areas specifically designated for smoking.

(12) The building owner, agent, or operator of a sports arena, convention center, special events center, concert hall or other similar place of public access shall provide announcements on a public address system:

(a) before the beginning of any event;

(b) at intermissions;

(c) at the conclusion of the event; and

(d) any other break in the program or event, as follows:

(i) if smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place of public access; or

(ii) if smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act allows smoking only in those areas specifically designated for smoking.

(13)(a) The building owner, agent, or operator of a large place of public access may request, in writing, the assistance of the local health officer to establish an effective signage and public announcements plan.

(b) The local health officer may require modification of the plan described in Subsection (13) at any time.

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

R392-510-12. Discrimination.

An employer may not discriminate against an employee or applicant because that person has protested the smoking of others or sought enforcement of:

- (1) Section 26B-7-503, Utah Indoor Clean Air Act;
- (2) this rule; or
- (3) the smoking policy of the workplace.

R392-510-13. Responsibility for Compliance.

(1) A business owner, agent, operator, or employee of a place of public access, where smoking is prohibited, who observes a person smoking in apparent violation of this rule, shall request the person to stop smoking.

(2) If the person fails to comply, the business owner, agent, operator, or employee shall ask the person to leave the premises.

R392-510-14. Severability.

If any provision of this rule, or its application to any person or circumstance is declared invalid, the applications of such provisions to other persons or circumstances, and the remainder of this rule shall be given effect without the invalidated provision or application.

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

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Authorizing, and Implemented or Interpreted Law: 26B-1-202; 26B-7-502; 26B-7-503(6)