



## HUD's Rule to Restrict Smoking in Public Housing: An Overview

On November 30, 2016, the U.S. Department of Housing and Urban Development (HUD) announced a final rule to restrict smoking in public housing. This fact sheet provides an overview of the rule's smoking restrictions.

### **Q: What does the rule do?**

**A:** The rule requires public housing agencies (PHAs) administering public housing to adopt a smoke-free policy by mid-year 2018, which is 18 months from the effective date of the final rule. The policy must prohibit the use of "prohibited tobacco products" in all indoor areas, including individual living units, common areas, administrative office buildings, and outdoor areas within 25 feet of those areas.

### **Q: What units of public housing does the rule cover?**

**A:** The rule covers public housing units, including scattered site and single-family properties. The rule excludes dwelling units in mixed-finance projects and does not apply to housing assisted under Section 8, PHA properties that have converted to project-based rental assistance contracts under the Rental Assistance Demonstration Program, or tribal housing. HUD continues to encourage excluded properties to voluntarily adopt smoke-free policies.

### **Q: What types of tobacco products does the rule include?**

**A:** The rule prohibits the use of "prohibited tobacco products," which are defined as both "waterpipes (hookahs)" and "items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes." While the rule does not include electronic cigarettes (e-cigarettes) or other electronic smoking devices, PHAs can choose to prohibit the use of e-cigarettes in their smoke-free policies.

### **Q: Does the rule cover outdoor areas?**

**A:** The rule prohibits smoking in all outdoor areas within 25 feet of housing and administrative office buildings, or to the PHA's property boundary in situations where the boundary is less than 25 feet. This 25-foot perimeter includes balconies, porches, decks, and any outdoor space within 25 feet. Any designated smoking areas would have to be outside the 25-foot buffer zone. While the rule does not cover outdoor areas beyond 25 feet of housing and administrative office

buildings, it allows PHAs to create additional smoke-free outdoor areas like playgrounds or to make their entire grounds smoke-free.

**Q: How will the rule be enforced?**

**A:** The smoke-free policy must be included in the applicable PHA plans and tenant leases. Enforcement of the PHA's smoke-free policy is the responsibility of the local PHA, and the rule and accompanying documents include suggestions for compliance and enforcement. HUD may use PHA certifications to verify that PHAs have implemented smoke-free policies and use periodic inspections and audits to help monitor whether policies are being enforced.

**Q: How does the rule impact a PHA's already existing smoke-free policy?**

**A:** The rule does not grandfather (i.e., legally allow the continuation of) existing smoke-free policies that do not meet the minimum HUD requirements. If a PHA has a policy that is less stringent than the HUD requirements (e.g., no buffer zone or only a 15-foot buffer zone), the PHA policy must be updated to be in line with the new HUD requirements. Smoke-free policies may go beyond the HUD requirements, including prohibiting the use of e-cigarettes and establishing entirely smoke-free grounds.

**Q: How long do PHAs have to adopt a smoke-free policy?**

**A:** All PHAs must adopt a smoke-free policy that meets the minimum HUD requirements within 18 months of the effective date of the final rule by amending their applicable PHA plans and tenant leases. While PHAs have until mid-2018 to implement their smoke-free policies, HUD clarified that PHA plan amendments require resident engagement and public meetings. HUD encourages PHAs to obtain board approval in the smoke-free policy adoption process.

**Q: How is the final rule different from the rule as it was proposed in 2015?**

**A:** The final rule prohibits the smoking of hookah pipes. The proposed rule did not include these products. HUD also provided further detail where commenters noted concerns, including issues related to partially enclosed structures and reasonable accommodations.

**Q: What happens now?**

**A:** The rule will become effective 60 days after it is published in the Federal Register unless it is modified by Congress or the incoming administration. The Congressional Review Act gives Congress the authority to disapprove federal regulations.

*Last updated: November 30, 2016*

**Contact Us**

Please feel free to contact the Tobacco Control Legal Consortium at [publichealthlawcenter@mitchellhamline.edu](mailto:publichealthlawcenter@mitchellhamline.edu) with any questions about the information in this fact sheet.