SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT’S RESPONSE
& LIST OF CHANGES MADE TO THE FINAL RULE
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SMOKING IN PUBLIC PLACES RULE
10-144 C.M.R. CH. 249

The Department of Health and Human Services, Maine CDC (Department) advertised for public comments on August 16, 2017, for proposed amendments to 10-144 C.M.R. Chapter 249 Smoking in Public Places Rule. Written comments were accepted through September 15, 2017. Comments were received from the following people:

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<tr>
<th>ID #</th>
<th>First Name</th>
<th>Last Name</th>
<th>Date</th>
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<tbody>
<tr>
<td>1</td>
<td>Joan D.</td>
<td>Boomsma</td>
<td>9/14/2017</td>
<td>MaineHealth</td>
<td>Written</td>
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<td>2</td>
<td>Deborah A.</td>
<td>Deatrick</td>
<td>9/14/2017</td>
<td>MaineHealth</td>
<td>Written</td>
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<td>3</td>
<td>Hilary</td>
<td>Schneider</td>
<td>9/15/2017</td>
<td>American Cancer Society Cancer Action Network</td>
<td>Written</td>
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<td>4</td>
<td>Rebecca B.</td>
<td>Smith</td>
<td>9/15/2017</td>
<td>American Heart Association</td>
<td>Written</td>
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<td>5</td>
<td>Lance</td>
<td>Boucher</td>
<td>9/15/2017</td>
<td>American Lung Association</td>
<td>Written</td>
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The Department’s response follows each comment and explains whether the requests for changes, (if any), were followed by the Department or not. If the Department made no change in response to the comment, then an explanation of the reasons why no changes were made is provided below, as well. The summary list of changes following these comments identify new changes resulting from either public comment or Assistant Attorney General review of the Rule for form and legality.

GENERAL COMMENTS
1. **Comment:** Commenters #1 and #2 supported the changes to this rule and commended the Department for updating this rule to be in step with Maine’s smoking laws at 22 M.R.S. §Ch. 262, which included clarifying definitions for environmental smoke and electronic smoking devices. These commenters further stated that this rule will support the continued protection from secondhand smoke and promote smoke-free lifestyles in Maine public places.

   **Response:** The Department thanks Commenters #1 and #2 for their comments.

SECTION 1 - DEFINITIONS
2. **Comment:** Commenter #3 stated that eliminating the definition of “invited guest” could be problematic and undermine the intent of the law and rule. Commenter #3 stated that Section 2(C)(9) outlines conditions for allowing smoking in a qualifying club, and refers to the term “invited guest”. With this term undefined, the Commenter is concerned that private clubs could host events that end up being open to the public and allow smoking if they argue that members of the public are “invited guests of the private function”. Commenter #3 recommends keeping the definition of “invited guest” to prevent an unintended loophole.

   **Response:** The Department reviewed this comment and decided change the rule to keep the previous definition of “invited guest” in Section 1 of the rule.
3. **Comment:** Commenter #3 suggests removing the definition of “ventilation” and all references to the term, including Section 1(N) and Section 2(C)(8)(e), because there is no reference to this term in Maine’s smoking laws. In addition, Commenter #3 stated that ventilation technologies do not sufficiently protect individuals from the harmful effects of breathing in secondhand smoke, and cites supporting research for this finding. Commenter #3 states that use of the term “ventilation” creates a sense of false protection when the evidence clearly demonstrates that ventilation systems do not remove carcinogens or other harmful substances from secondhand smoke in the air.

**Response:** The Department evaluated the potential risk of using the term “ventilation” and decided to change the “ventilation” definition to include the following statement: “Ventilation technologies do not sufficiently protect individuals from the harmful effects of breathing in secondhand smoke.” Adding this statement to the definition will help prevent the reader from assuming that ventilation is a safe removal method, while also regulating any use of ventilation technologies in the rule.

4. **Comment:** Commenters #3 and #4 stated that “environmental smoke” should be called “secondhand smoke” to reflect current language. While both commenters stated that the term “secondhand smoke” is used by the federal CDC, Commenter #3 stated that the term “secondhand smoke” is also used by the American Heart Association. Commenter #4 also stated that “secondhand smoke” is what is used by the public.

**Response:** The Department agrees with the Commenters and changed “environmental smoke” to “secondhand smoke”.

**SECTION 2 – SMOKING PROHIBITIONS AND LIMITATIONS**

5. **Comment:** Commenters #3 and #4 suggest changing language in Section 2(A)(5) in the following way: “A person may not smoke tobacco or any other substance Smoking is prohibited in, on, or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.” Commenter #3 stated that this recommended change provides clarity and consistency as smoking is defined and this language is consistent with Sections 2(A)(1), (3) and (4).

**Response:** The Department agrees with the Commenters’ suggestion to change the above language, and changed the wording in Section 2(A)(5) exactly as suggested.

6. **Comment:** Commenters #3 and #4 stated that in Section 2(B)(1)(a), the Department using the terms “child care facility” and “family child care provider” so that the amended language reads: “...Is used as a family child care provider, child day care facility or babysitting service. If a private residence is used as a family child day care provider, child care facility or babysitting service, smoking is prohibited:

i. In the residence, during the hours of operation as a family child day care provider, child care facility or babysitting service...”

Commenters #3 and #4 state that these terms are defined in 22 M.R.S. §8301-A and will prevent confusion by including the terms for licensed child care facilities and family child care providers that exist in private residences.

**Response:** The Department reviewed this comment and 22 M.R.S. §8301-A and, in response to this comment, made the following highlighted changes to Section 2(B)(1)(a):
Is used by a family child care facility provider or a person operating a baby-sitting service. If a private residence is used by as a family child day care provider or a person operating a baby-sitting service, smoking is prohibited:

i. In the residence, during the hours of operation by a family child day care provider or a person operating a babysitting service;

The Department decided to not add the term “child care facility”, because those kinds of operations are never operated in a private residence.

7. **Comment:** Commenter #3 stated that in Section 2(C)(5), the proposed language could potentially confuse lodging place operators. Commenter #3 stated that the Legislature only intended for those rooms actually used for sleeping to be allowed for smoking; yet, the language, “Smoking is not prohibited in lodging place rooms, such as motel or hotel rooms where sleeping accommodations are furnished to the public for business purposes,” may confuse the public. Commenter #3 recommends that the Department clarify the language as follows: “Smoking is not prohibited in those lodging place rooms expressly used for sleeping accommodations and furnished for business purposes.”

**Response:** The Department reviewed the comment and Commenter #3’s recommended language. The Department decided that clarifying this language would work and changed it with the following highlighted language: “Smoking is not prohibited in lodging place rooms, such as motel or hotel rooms, that are rented to the members of the public where expressly used for sleeping accommodations are furnished to the public....”