

TITLE 178 -- ENVIRONMENTAL HEALTH

CHAPTER 7 -- CLEAN INDOOR AIR

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NEBRASKA HEALTH & HUMAN SERVICES REGULATION & LICENSURE

TITLE 178 – -ENVIRONMENTAL HEALTH

CHAPTER 7 —CLEAN INDOOR AIR

7-001 SCOPE AND AUTHORITY

7-001.01 These rules are authorized by the Nebraska Clean Indoor Air Act (CIAA), Neb. Rev. Stat. section 71-5701 to 71-5713 and by Neb. Rev. Stat. section 71-1911.

7-001.02 The purpose of these rules is to protect the public health, comfort, and environment by prohibiting smoking in public places and at public meetings except in designated smoking areas.

7-002 DEFINITIONS

Act means the Nebraska Clean Indoor Air Act, Neb. Rev. Stat. section 71-5701 to 71-5713.

Bar means a business establishment that serves alcoholic beverages and may or may not provide limited food service.

Child care program means any facility providing child care which is required to be licensed under Neb. Rev. Stat. section 71-1911.

Common area means any indoor area open to the public that a person must pass through or use, for example: entry or exit areas, lobby areas, restrooms, break rooms, cash register counters, ticket areas, registration areas, common traffic areas, general use areas of rental apartment buildings, or similar sections of public places.

Department means the Nebraska Department of Health and Human Services Regulation and Licensure.

Designated smoking area means an area designated and visually identified by the proprietor where smoking is permitted.

Educational facility means the enclosed, indoor area of an institution or place, operated for teaching or instructional purposes.

Entrance means the opening of a building used for entry or exit.

Factory means a building or group of buildings in which goods are manufactured. It is a place where workers are employed in fabricating goods.

Inadequacy of ventilation means that:

1. There is no ventilation system in the area; or
2. The ventilation system serving the area does not consist of a heating/ventilation/air conditioning system; or
3. The system in use is incapable of moving smoke away from the area.

Limited Food Service means serving or otherwise providing only snack items or commercially prepared and wrapped foods that require little or no preparation.

Non-state building means a building not owned, leased, or occupied in its entirety by the state.

Office means any building, structure, or area in which the principle activities consist of professional, clerical, or administrative services, for example: professional offices, offices in financial institutions, business offices, telemarketing offices, government offices, and similar places of work.

Person means an individual, partnership, limited liability company, corporation, association, governmental subdivision, or a public or private organization of any character.

Physical barrier means a wall, partition, furnishing, or other barrier acceptable for separating the smoking and nonsmoking areas and which minimize the toxic effect of smoke in adjacent nonsmoking areas. The barrier may contain doors or portals for exit and entry.

Place of work means any location at which two or more individuals perform any type of a service for consideration of payment under any type of employment relationship, including but not limited to an employment relationship with or for any person. This term includes any location where two or more individuals gratuitously perform service for which individuals are ordinarily paid.

Premises means the indoor facility, all attached and all outbuildings, and all areas included within the lot boundaries.

Private enclosed office means a separately ventilated room with floor to ceiling walls and a closeable door, which is assigned to and occupied by only one person.

Private social function means an official ceremony or social occasion not open to the general public for which guests go onto premises owned, leased, or borrowed by a host for

companionship, diversion and enjoyment of hospitality and at which the guest uses the premises as his or her host intended.

Proprietor means the person who ultimately controls, governs, or directs the activities in a public place or at a public meeting. A proprietor may be, but does not have to be, the owner or lessee of the public place.

Provider means a person who is licensed to operate a child care program under Neb. Rev. Stat. section 71-1911.

Public conveyance means a vehicle used to transport the public, the use of which is not limited to certain persons or particular occasions or geared by special terms, whether or not for compensation. Public conveyance includes trains, buses, boats, taxis, passenger elevators in buildings, and other vehicles held out to the general public for carrying passengers.

Public meeting means a meeting as defined in Neb. Rev. Stat. section 84-1409.

Public place means any enclosed indoor area:

1. Used by the general public; or
2. Serving as a place of work.

Some examples of public places are: restaurants, retail stores, offices and other commercial establishments, public conveyances, educational facilities, hospitals, nursing homes, auditoriums, arenas, and meeting rooms.

A private enclosed office is not a public place.

Restaurant means any public place:

1. Which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served for compensation;
2. Which has no sleeping accommodations; and
3. Which has kitchen and dining room equipment and employees to prepare, cook, and serve food to customers.

Restaurants do not include businesses that are strictly "take-out" facilities or retail stores where food is sold.

Retail store means all or part of a commercial occupancy used for the transaction of business or the rendering of a service directly to the public, for example: shops, grocery stores, convenience stores, laundromats, and department stores.

Room means any indoor area bordered on all sides by a floor to ceiling wall in which the sides must be continuous and solid except for closeable entry/exit doors.

Separately ventilated means having a fixture, appliance or architectural feature that prevents smoke from entering the area outside a room including:

1. A window that can be opened to the outside;
2. An exhaust system;
3. A separate heating/ventilating/air conditioning system; or
4. Any other fixture, appliance, or feature that prevents smoke from entering the area outside the room.

Smoke free means that smoking is prohibited twenty-four hours per day, seven days per week.

Smoke free environment means an area, building, or contiguous portion of a building separated from adjacent smoking-permitted areas, where smoking is prohibited twenty-four hours per day, seven days per week, regardless of the hours of operation or activity within the area or building.

Smoke pollution means smoke caused by a lighted cigar, cigarette, pipe, or any other lighted human smoking equipment.

Smoking means carrying a lighted cigar, cigarette, pipe, or any other lighted smoking equipment.

Smoking status means the determination, whether by the proprietor or by operation of law, whether smoking is permitted in a specific building or area.

State building means a building owned, leased, or occupied in its entirety by the state.

State employee means any person who is hired, appointed, or elected to work for the State of Nebraska.

State vehicle means any motor vehicle with an enclosed cab and / or passenger cabin which is owned or leased by the State of Nebraska.

Warehouse means a place in which goods or merchandise are stored; a storehouse.

7-003 PUBLIC PLACES AND PUBLIC MEETINGS

7-003.01 General Prohibition: Smoking is prohibited in all public places and at all public meetings except in:

1. A designated smoking area;

2. An area exempt because of a waiver issued by the Department as provided in 178 NAC 7-006; or
3. An entire room or hall used for a private social function at which seating arrangements are under the control of the sponsor of the function and not under the control of the proprietor or person in charge of the room or hall.

7-003.02 Restaurants and Bars:

7-003.02A At the discretion of the proprietor, restaurants with less than 1200 square feet of serving area and bars of any size may:

1. Permit smoking in the entire establishment;
2. Prohibit smoking in the entire establishment; or
3. Designate separate smoking and nonsmoking areas.

7-003.02B At the discretion of the proprietor, restaurants with 1200 square feet or more of serving area may:

1. Prohibit smoking in the entire establishment : or
2. Designate separate smoking and nonsmoking areas.

7-003.02C All restaurants and all bars must post signs which notify the public of the smoking status of the establishment as provided in 178 NAC 7-003.04.

7-003.03 Responsibilities of Proprietor or Other Person in Charge of a Public Place
Compliance with the provisions of 178 NAC 7-003 is the responsibility of the proprietor or other person in charge of a public place.

7-003.03A Restrictions in Places of Work: In factories, warehouses, and similar places of work not usually frequented by the general public, the proprietor or other person in charge of a public place must prohibit smoking in those places of work where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees;

7-003.03B Designated Smoking Areas: If the proprietor or other person in charge of a public place designates a smoking area, s/he must:

1. Designate an area which is reasonably proportionate to the preference of the users
2. Post appropriate signs as provided in 178 NAC 7-003.04;

3. Separate designated smoking areas for employees from all common areas;
4. Ask smokers to refrain from smoking upon request of a client or employee suffering discomfort from the smoke;
5. Locate the smoking area and use existing physical barriers, ventilation systems, and seating arrangements to minimize the toxic effect of smoke in adjacent nonsmoking areas; and
6. Use any other means which may be appropriate to prevent smoking in the public place.

7-003.03C Common areas: The proprietor or other person in charge of a public place may designate a specific common area or part of the common area as a smoking area only if the nonsmoking common area has:

1. Space reasonably proportionate to the preference of the users;
2. Access to the outside and to other parts of the public place;
3. Amenities, accessories, furnishings, and services that are at least equal to those in the smoking common area.

7-003.03C1 The proprietor must insure that no individual will be required to use or pass through a smoking area in order to conduct all activities permitted in the public place.

7-003.03C2 The proprietor may require an employee to use or pass through a designated smoking area, as provided in 7-003.03B, when the designated area is the site of the employee's assigned duties.

7-003.03D Ashtrays: The proprietor must insure that there are:

1. No ashtrays in nonsmoking areas; and
2. Ashtrays provided at all entrances to nonsmoking areas.

7-003.04 Signs

7-003.04A General Standards: All signs which provide the public notice of the smoking status of a public place or public meeting must:

1. Display printed text in clear, unequivocal language describing the smoking status. Signs may also include:

- a. The statement, "In accordance with the Nebraska Clean Indoor Air Act,.."; or
 - b. Additional words or symbols, but the additional printing must not obscure the basic words identifying the smoking status."
2. Be posted at a height and location easily seen by a person before entering;
 3. Be clearly visible in the place or meeting; and
 4. Have letters on those signs which prohibit smoking printed at least as large as the letters on those signs which permit smoking.

7-003.04B Specific Signs

7-003.04B1 Signs which inform the public of the smoking status of an entire building or establishment must:

1. Use one of the following statements or a statement which is substantially similar:
 - a. "This establishment is a smoking area in its entirety";
 - b. "No smoking except in designated areas"; or
 - c. "No smoking anywhere in this establishment"; and
2. Be posted conspicuously on all entrances normally used by the public;
3. If the international symbol for "NO SMOKING" is used, and the cigarette symbol is at least two and one half inches long, the lettering for the words "NO SMOKING" may be eliminated or may be any height.

7-003.04B2 All signs, except for furniture signs, which inform the public of a designated smoking area in a public place or at a public meeting must:

1. Use one of the following statements or a statement which is substantially similar:
 - a. "No Smoking" or "Smoking Prohibited"; or

- b. "Smoking Allowed" or "Smoking Area";
2. Be conspicuously posted in areas adjacent to designated smoking areas so that persons may clearly differentiate between the two areas; and
3. Be printed in letters of no less than one inch in height;
4. If the international symbol for "NO SMOKING" is used, and the cigarette symbol is at least two and one half inches long, the lettering for the words "NO SMOKING" may be eliminated or may be any height.

7-003.04B3 Furniture Signs: All signs on tables, seats, desks, or counters which inform the public of a designated smoking area in a public place or at a public meeting must:

1. Use one of the following statements or a statement which is substantially similar:
 - a. "No Smoking" or "Smoking Prohibited"; or
 - b. "Smoking Allowed" or "Smoking Area";
2. Be used together with at least one sign indicating where smoking is allowed and one sign indicating where smoking is prohibited. These two signs must be posted either at the boundary between the two areas or on walls adjacent to the designated smoking area and the no smoking areas;
3. Be printed in letters of no less than one half inch in height.

7-004 CHILD CARE PROGRAMS

7-004.01 Child care programs that are required to be licensed under Neb. Rev. Stat. section 71-1911, and that are not in the residence of the provider must be smoke free environments.

- 7-004.01A The prohibition of smoking applies:
1. To all persons including employees, parents, guests, contractors and others;

2. At all times, 24 hours per day, seven days per week, regardless of the hours of operation;
3. In all indoor areas of the child care program whether or not children use the area;
4. In all outdoor areas of the child care program except for a designated smoking area. If the provider designates a smoking area, it must be at least 50 feet from the building and out of sight of the children.

7-004.01B The child care provider must post an appropriate sign(s) to notify the public that the facility is a smoke free environment. If the provider designates an outdoor smoking area, the sign must indicate that the interior of the facility is smoke free.

7-004.02 The child care provider in a child care program in the residence of the provider must, before accepting a child into care, inform the child's parents if any household member, including the provider, or any staff person smokes in the home.

7-005 STATE PROPERTY

7-005.01 State Buildings

7-005.01A. General Prohibition: Smoking is prohibited in the indoor areas of all state buildings.

1. Smoking is prohibited in the outdoor area within ten feet of an entrance to all state buildings.
2. Ashtrays are prohibited within ten feet of an entrance to all state buildings.

7-005.01A1 Signs: The proprietor of a state building must post signs:

1. Ten feet outside every entrance to a state building to inform the public by means of pedestal signs, painted walkways, or any other conspicuous signage that smoking is prohibited;
2. At the entrance to a state building to inform the public of the smoking status of the building.

7-005.01B Exceptions: Smoking is permitted in the following state buildings or parts of state buildings:

1. Private residences;
2. Veterans homes established pursuant to Neb. Rev. Stat. section. 80-315;
3. Facilities and institutions under the control of the Department of Health and Human Services

7-005.01C Partial Exceptions: Smoking is permitted in the following state buildings in the percentages indicated:

1. No more than 25% of the overnight lodging facilities at each park managed by the Game and Parks Commission. Hallways and common areas must be smoke free and posted as described in 178 NAC 7-003.04B;
2. No more than 50% of the space used by the public in state owned buildings at the Nebraska State Fairgrounds that possess a Class C, I, or M license for the sale of alcoholic liquor for consumption on the premises under the Nebraska Liquor Control Act.
3. No more than 40% of the residential housing rooms or units owned or leased on each campus under the control of the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges. Hallways and common areas must be smoke free and posted as described in 178 NAC 7-003.04B.

7-005.02 State Space in Non-State Buildings

7-005.02A When the state leases or otherwise controls space in a non-state building, smoking is prohibited at all times in the state leased or controlled space.

7-005.02B The proprietor of space in a non-state building which is leased or otherwise controlled by the state must post signs at the entrance to the space to inform the public that the space is a smoke free environment

7-005.03 State Vehicles: Smoking is prohibited at all times in state vehicles.

7-006 APPLICATION FOR WAIVER OF THE LAW

7-006.01 To apply for a waiver of the Act, or these rules, the proprietor or other person in charge must submit a written application to the Department on a form provided by the Department and attached and incorporated into these rules. (Attachment 1) or in another preferred format which provide all the information requested on the form.

7-006.02 An applicant for waiver must demonstrate compelling reasons for a waiver and must demonstrate that the waiver will not significantly affect the health and comfort of nonsmokers.

7-006.03 In order to grant a waiver, the Department must determine that the health and comfort of nonsmokers would be protected as well under a waiver as if there were compliance with the Act.

7-006.04 Any person aggrieved by the Department's decision regarding a waiver, may seek administrative review as provided by the Administrative Procedure Act.

ATTACHMENT 1

Application for a waiver of the provisions of the Nebraska Clean Indoor Air Act, Neb. Rev. Stat. §§ 71-5701 to 71-5713, and of 178 NAC 7, the regulations implementing the Nebraska Clean Indoor Air Act. Attach additional sheets of paper if needed to answer any question.

1. Check one: Factory Warehouse Public Place Public Meeting
 Place of Work Not Usually Frequented by the Public
2. If a factory, warehouse, similar place of work not usually frequented by the public or public place, the name and location: _____

3. If a public place, describe the specific type of place (restaurant, convenience store, bowling alley) name, location and description: _____

4. If a public meeting, name, date and location: _____

5. Name, address, & telephone of proprietor or other person in charge: _____

6. Name, address, & telephone of person making application for waiver, if other than the proprietor: _____

7. Describe how the public health, comfort, and environment would be protected as well under a waiver, if issued, as if there were no waiver and there were compliance with the NEBRASKA CLEAN INDOOR AIR ACT and the RULES. _____

I hereby request a waiver from the provisions of the NEBRASKA CLEAN INDOOR AIR ACT and the RULES for the above named place or meeting.

SIGNATURE OF APPLICANT

DATE