

TITLE 178 ENVIRONMENTAL HEALTH

CHAPTER 7 CLEAN INDOOR AIR

7-001 SCOPE AND AUTHORITY

7-001.01 These regulations are authorized by the Nebraska Clean Indoor Air Act (CIAA), Neb. Rev. Stat. §§71-5716 to 71-5734 and by Neb. Rev. Stat. §71-1911. These regulations are operative June 1, 2009.

7-001.02 The purpose of the Nebraska Clean Indoor Air Act is to protect the public health and welfare by prohibiting smoking in public places and places of employment. The Act shall not be construed to prohibit or otherwise restrict smoking in outdoor areas. The Act shall not be construed to permit smoking where it is prohibited or otherwise restricted by other applicable law, ordinance, or resolution. The Act shall be liberally construed to further its purpose.

7-002 DEFINITIONS

Act means the Nebraska Clean Indoor Air Act, Neb. Rev. Stat. §§71-5716 to 71-5734.

Ceiling means the top or overhead portion of a room or building. For the purposes of these regulations, it can be of any shape, height, or material; and can be full or partial.

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

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

Department means the Nebraska Department of Health and Human Services.

Employed means hired, contracted, subcontracted, or otherwise engaged to furnish goods or services.

Employee means a person who is employed by an employer in consideration for direct or indirect monetary wages, profit, or other remuneration.

Employer means a person, nonprofit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership, limited liability company, cooperative, firm, trust, association, organization, or other business entity, including retail establishments where goods or services are sold, who or which employs one or more employees.

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

Floor means the lower horizontal surface of a room, and/or the surface people walk on. For the purposes of these regulations, it can be of any shape, substance, or material.

Guestroom or suite means a sleeping room and directly associated private areas, such as a bathroom, a living room, and a kitchen area, if any, rented to the public for their exclusive transient occupancy, including, but not limited to, a guestroom or suite in a hotel, motel, inn, lodge, or other such establishment.

Indoor area means an area enclosed by a floor, a ceiling, and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and in which less than 20% of the total wall area is permanently open to the outdoors. For walls in excess of eight feet in height, only the first eight feet shall be used in determining such percentage.

Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations.

Place of employment means an indoor area under the control of a proprietor that an employee accesses as part of his/her employment without regard to whether the employee is present or work is occurring at any given time. The indoor area includes, but is not limited to, any work area, employee break room, restroom, conference room, meeting room, classroom, employee cafeteria, and hallway. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present.

Proprietor means any employer, owner, operator, supervisor, manager, or other person who controls, governs, or directs the activities in a place of employment or public place.

Public place means an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence is not a public place.

Smoke or smoking means the lighting of any cigarette, cigar, pipe, or other smoking material or the possession of any lighted cigarette, cigar, pipe, or other smoking material, regardless of its composition.

Smoking Cessation Program means a program designed to help people stop smoking tobacco products.

Tobacco retail outlet means a store that sells only tobacco and products directly related to tobacco. Products directly related to tobacco do not include alcohol, coffee, soft drinks, candy, groceries, or gasoline.

Wall means a vertical partition with a height and length greater than its thickness; used to divide, define, or enclose an area. For the purposes of these regulations, it can be of any shape or material which impedes airflow.

7-003 PUBLIC PLACES AND PUBLIC MEETINGS

7-003.01 General Prohibition: Smoking is prohibited in all public places and indoor places of employment. The definition of an indoor area can be found in 178 NAC 7-002. For purposes of determining compliance with these regulations, the Department will assess these areas according to the following requirements:

1. The presence of a floor, a ceiling, and walls on all sides. Definitions of floor, ceiling and wall may be found in 178 NAC 7-002.
 - a. Walls may contain closeable entry/exit doors and windows.
 - b. Entry/exit doors allowing access between an indoor public place and an outdoor smoking area must not remain open while smoking is occurring.
2. Measurements of the wall area to determine that less than 20% is permanently open to the outdoors.
 - a. The first eight feet of height and the entire length of each wall are measured to obtain total wall square footage.
 - b. Calculate 20% of total wall square footage to obtain total open area square footage.
 - c. If a proprietor chooses to install security devices, such as bars, fencing, and wood slats, they must be permanent fixtures. Any security devices located within permanently open areas must be included in total wall measurements.

7-003.02 Responsibilities of Proprietor or Other Person in Charge of a Public Place: Compliance with the provisions of 178 NAC 7 is the responsibility of the proprietor of a public place or place of employment where smoking is prohibited. To ensure compliance, a proprietor must take measures, which may include:

1. Posting appropriate signs that include the international symbol for no smoking on entrance doors to inform the public that smoking is not allowed, and;
2. Removing any smoking paraphernalia designated for on-site use, such as ashtrays.

7-003.03 Exemptions: Some indoor public places and indoor places of employment are exempt from 178 NAC 7-003.01. The following indoor areas are exempt:

7-003.03A Guestrooms and Suites: Guestrooms and suites that are rented to guests and are designated as smoking rooms.

1. No more than 20% of rooms rented to guests in an establishment may be designated as smoking rooms;
2. All smoking rooms on the same floor must be contiguous; and
3. Smoke from smoking rooms must not infiltrate into areas where smoking is prohibited under the Act.

7-003.03B Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education; and

7-003.03C Tobacco retail outlets as defined in 178 NAC 7-002.

7-004 FINDING VIOLATIONS; INJUNCTIONS

7-004.01 Finding Violations: Any person may report possible violations of the Nebraska Clean Indoor Air Act to the Department or a local public health department as defined in Neb. Rev. Stat. §71-1626. Such departments may conduct inspections of public places or places of employment where smoking is prohibited in response to reports of potential violations.

7-004.02 Retaliation: No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to report a violation of the Act.

7-004.03 Injunctions: The Department or a local public health department as defined in Neb. Rev. Stat. §71-1626 may institute an action in any court with jurisdiction to enjoin a violation of the Act.

7-005 SMOKING CESSATION PROGRAMS: A person found guilty of smoking in a place of employment or a public place in violation of the Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses. A person charged with such offense may voluntarily participate, at his/her own expense, in a smoking cessation program approved by the Department of Health and Human Services, and such charge will be dismissed upon successful completion of the program.

7-005.01 To be approved by the Department, a smoking cessation program must, at a minimum:

1. Consist of three contacts between participant and counselor, equaling two hours of counseling time;
2. Be able to track the progress of participants to determine required counseling time is met; and
3. Issue a certificate of completion to participants.

7-005.01A To have a smoking cessation program approved by the Department, the program facilitator must submit a written application to the Department on a form provided by the Department or construct an application that must contain the following information:

1. The name and address of the organization providing the smoking cessation program;

2. The professional experience of the individual responsible for the direct delivery of cessation counseling;
3. The name and phone number of the facilitator of, or primary contact for, the smoking cessation program;
4. A copy of the certificate issued to participants upon completion, and
5. A statement detailing the length of the program in hours and the cost to participants.
6. The written application must be sent to:

Clean Indoor Air Act Program Manager
Nebraska Department of Health and Human Services
Division of Public Health
301 Centennial Mall South
Lincoln NE 68509

7-005.02 The Department will maintain a list of smoking cessation programs that have met the requirements of 178 NAC 7-005.01.

7-006 CHILD CARE PROGRAMS

7-006.01 Child care programs that are not located in the residence of the child care provider must be smoke free environments. 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; and
3. In all indoor areas of the child care program whether or not children use the area.

7-006.02 The following requirements apply to child care programs that are located in the residence of the child care provider:

1. Smoking must be prohibited in all areas of the home during the hours when the residence is being used as a licensed child care program and one or more children who are not occupants of the residence are present.
2. The child care provider must inform parents, guardian(s), or other individuals responsible of all enrolled children if any household member, including the provider, smokes in the home. This information must be provided to parents, guardian(s), or other individuals responsible before accepting a child into care.

7-007 WAIVER OF THE LAW

7-007.01 The Department of Health and Human Services may waive provisions of the Nebraska Clean Indoor Air Act upon good cause shown and shall provide for appropriate protection of the public, including employees', health and safety in the granting of these waivers.

1. An applicant for a waiver must demonstrate good cause for a waiver and demonstrate that the waiver will not significantly affect the health and safety of the public and/or employees.
2. To apply for a waiver of provisions of the Act, or these regulations, the proprietor or other person in charge must submit a written application to the Department on a form provided by the Department or construct an application that must contain the following information:
 - a. Name and address of public place or place of employment.
 - b. Type of public place or place of employment.
 - c. Name and telephone number of proprietor or person in charge.
 - d. Name and telephone number of person making the application, if other than the proprietor or person in charge.
 - e. Description of how the public, including employees', health and safety would be protected under the waiver.
 - f. Description of which provisions are to be waived and the time period for which the waiver is in effect.
3. The written application for a waiver must be sent to:

Clean Indoor Air Act Program Manager
Nebraska Department of Health and Human Services
Division of Public Health
301 Centennial Mall South
Lincoln NE 68509

7-007.02 In order to grant a waiver, the Department will determine that the health and safety of the public and/or employees would be protected under a waiver as if there were compliance with the Act.

7-007.03 Any waivers granted by the Department will be consistent with the intent of the statute and these regulations.

7-007.04 Any waivers granted by the Department will be temporary, with the length of the waiver to be determined by the Department. At the time of the waiver's expiration, if an applicant desires a continued exemption, the applicant must reapply for another waiver to ensure the continued protection of the public, including employees', health and safety.

EFFECTIVE DATE
APRIL 18, 2009

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

178 NAC 7

7-007.05 Any person aggrieved by the Department's decision regarding a waiver may seek administrative review as provided by the Administrative Procedure Act.