

~~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. §§71-5716 to 71-5734 ~~section 71-5701 to 71-5713~~ and by Neb. Rev. Stat. section §71-1911. These regulations are operative June 1, 2009.

7-001.02 The purpose of these ~~rules~~ Nebraska Clean Indoor Air Act is to protect the public health and welfare, comfort, and environment by prohibiting smoking in public places and at public meetings except in designated smoking areas, 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. section 71-5701 to 71-5713. §§71-5716 to 71-5734.

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

Ceiling means the top or overhead portion of a room or building. For the purposes of this Act, 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. section §71-1911.

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

~~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.~~

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

~~Floor means the lower horizontal surface of a room, and/or the surface people walk on. For the purposes of this Act, 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.~~

~~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.~~

~~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.~~

~~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.~~

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

~~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 non-smoking areas. The barrier may contain doors or portals for exit and entry.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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. A private residence does not include the indoor area of lobbies, hallways, clubhouses, laundry rooms, and other common areas in apartment buildings, condominiums, trailer parks, and other multiple-unit residential facilities.~~

~~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 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 is a program designed to help smokers stop smoking tobacco products.

~~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.~~

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 this Act, it can be of any shape or material which impedes airflow.

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: 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. ~~A designated smoking area; 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 outdoor smoking areas must remain closed unless a person is entering or exiting. These doors may not be allowed to remain open.~~
2. ~~An area exempt because of a waiver issued by the Department as provided in 178 NAC 7-006; or Measurements of the wall area to determine that less than 20% is permanently open to the outside.~~
  - 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 will be included in total wall measurements.~~
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: 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. For example, to ensure compliance, a proprietor may:

1. Post appropriate signs that include the international symbol for no smoking on entrance doors to inform the public that smoking is not allowed;
2. Remove any smoking paraphernalia designated for on-site use, such as ashtrays, and;
3. Take other necessary and appropriate steps to ensure compliance with the act at such places.

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. Exemptions: Some indoor public places and indoor places of employment are exempt from 178 NAC 7-003.01. Proprietors of exempted areas must ensure that smoke from these places does not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act. The following indoor areas are exempt:

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; 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; and
2. All smoking rooms on the same floor must be contiguous.

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: 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

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

1. Space reasonably proportionate to the preference of the users;

- ~~1. Access to the outside and to other parts of the public place;~~
- ~~2. 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—FINDING VIOLATIONS; INJUNCTIONS

~~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. 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 section 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.

~~7-004.01A~~ — 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. 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 section 71-1626 may institute an action in any court with jurisdiction to enjoin a violation of the Act.

7-005 STATE PROPERTY 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 State Buildings—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: General Prohibition: Smoking is prohibited in the indoor areas of all state buildings. 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. Smoking is prohibited in the outdoor area within ten feet of an entrance to all state buildings. The name and address of the organization providing the smoking cessation program;~~
- ~~2. Ashtrays are prohibited within ten feet of an entrance to all state buildings. 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~~

~~7-005.01A1 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 The Department will maintain a list of smoking cessation programs that have met the requirements of 7-005.01.~~

~~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. No person will be allowed to use smoking cessation program participation as a means to dismiss charges associated with the violation of this Act or these regulations more than three times.~~

## 7-006 APPLICATION FOR WAIVER OF THE LAW CHILD CARE PROGRAMS

~~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. 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 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.~~ 7-006.02 Child care programs that are located in the residence of the child care provider.

7-006.02A Smoking will 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.

7-006.02B 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 will be provided to parents, guardian(s), or other individuals responsible before accepting a child into care.

~~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.~~

#### 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 must demonstrate that the waiver will not significantly affect the health and comfort of the public and/or employees.
2. To apply for a waiver 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 environment would be protected under the waiver.
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 must determine that the health and comfort 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 must be consistent with the intent of the statute and these regulations.

7-007.04 Any waivers granted by the Department must 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 welfare.

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.

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