

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 355. SMOKING IN PUBLIC PLACES AND INDOOR WORKPLACES**

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

310:355-1-1 [AMENDED]

310:355-1-6 [AMENDED]

Subchapter 3. Smoking Prohibitions and Exemptions

310:355-3-1 [REVOKED]

310:355-3-2 [REVOKED]

310:355-3-3 [REVOKED]

310:355-3-4 [REVOKED]

Subchapter 5. Situations In Which Smoking May Be Permitted

310:355-5-1 [AMENDED]

310:355-5-4 [AMENDED]

Subchapter 7. Plans Review and Inspections

310:355-7-2 [AMENDED]

Subchapter 9. Smoking Room Enclosure

310:355-9-1 [AMENDED]

310:355-9-2 [AMENDED]

Subchapter 11. Smoking Room Negative Air Pressure ~~and~~ and Smoke Containment

310:355-11-1 [AMENDED]

310:355-11-3 [AMENDED]

310:355-11-4 [AMENDED]

Subchapter 15. Presence of Smoke and Negative Air Pressure

310:355-15-1 [AMENDED]

310:355-15-3 [REVOKED]

Subchapter 17. Signage

310:355-17-1 [AMENDED]

310:355-17-2 [AMENDED]

310:355-17-4 [AMENDED]

Subchapter 19. Duties of Owner or Operator

310:355-19-1 [REVOKED]

Subchapter 21. Compliance

310:355-21-3 [AMENDED]

310:355-21-4 [AMENDED]

310:355-21-5 [AMENDED]

Subchapter 23. Rebate Program for the Clean Air in Restaurants Act

310:355-23-1 [REVOKED]

310:355-23-2 [REVOKED]

310:355-23-3 [REVOKED]

310:355-23-4 [REVOKED]

310:355-23-5 [REVOKED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; Smoking in Public Places and Indoor Workplaces, 63 O.S. §§ 1-1521, et seq.; Smoking in Certain Public Places Prohibited – Punishment, 21 O.S. § 1247; and the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.8(L).

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rules include implementation of 63 O.S. § 427.8(L) that states medical marijuana is subject to the Smoking in Public Places and Indoor Workplaces Act. The rules have removed outdated language, incorrect statutory references, and updated terminology based on statute.

CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 1. GENERAL PROVISIONS

310:355-1-1. Purpose and scope

This Chapter implements:

~~(1) the Smoking in Public Places and Indoor Workplaces Act and the Clean Air in Restaurants Act (CARA). This Chapter specifies how compliance with the Act and CARA will be accomplished. All definitions and other provisions in the Act and CARA apply to this Chapter. Title 63 O.S. §§ 1-1521, et seq.;~~

(2) Smoking in Certain Public Places Prohibited - Punishment, Title 21 O.S. § 1247; and

(3) Statutory provisions of the Oklahoma Medical Marijuana and Patient Protection Act: *All smokable, vaporized, vappable and e-cigarette medical marijuana product inhaled through vaporization or smoked by a medical marijuana licensee are subject to the same restrictions for tobacco under Section 1-1521 of Title 63 of the Oklahoma Statutes, commonly referred to as the "Smoking in Public Places and Indoor Workplaces Act".* [Title 63 O.S. § 427.8(L)]

310:355-1-6. Definitions

The following words and terms, when used herein, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Smoking in Public Places and Indoor Workplaces Act [63:1-1521 et seq].

"Building" means an entire free standing structure enclosed or predominantly enclosed by exterior walls.

"Department" means the Oklahoma State Department of Health.

"Eating establishment" means an establishment licensed by the Department under Chapter 256 or any Chapter adopted to replace Chapter 256 that is primarily engaged in preparing and selling food, exclusive of low-point beer and alcoholic beverages, for immediate consumption on or off the premises, based upon gross receipts of the establishment.

"Indoor workplace" means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed. [21 O.S. § 1247(A)]

"Nonsmoking area" or "nonsmoking space" means a ~~smokefree~~ smoke-free area or space.

"Public transportation" means transportation services, facilities and equipment with multiple passenger capabilities, available to the public on a scheduled or demand basis including intercity, regional and city bus, minibus, van pool, car pool and taxicab services, and commuter rail services. [69:4005]

"Recirculate" means movement of air or smoke from one area to another either mechanically by way of the heating, air conditioning and ventilation system or by other means of circulation, drifting, transfer or migration.

~~**"Restaurant"** means any eating establishment regardless of seating capacity. [63:1-1522.7]~~

"Secondhand smoke" means the aerosol produced from vapor devices or combustion of marijuana or tobacco products---consisting of a combination of many different gases, types of particulate matter, and semi-volatile organic compounds, visible and invisible, odorless and with odors---including smoke or vapor exhaled by smokers, smoke from the burning tip of a cigarette or other marijuana or tobacco product, and materials escaping through cigarette paper.

"Smoke-free location" means a location where the use of tobacco, nicotine, marijuana or other lawful products consumed in a smoke or vaporized manner are prohibited. [21 O.S. § 1247]

"Smoke" means smoke from combustion of marijuana or tobacco products, including secondhand smoke.

"Smokefree Smoke-free area" or "smokefree smoke-free space" means an area or space within or outside a building where smoking is prohibited. Within a building that is not entirely exempt from the Act [63:1-1521 et seq], if smoking is permitted anywhere in the building, the air in the ~~smokefree~~ smoke-free areas inside the building is protected from secondhand tobacco smoke from the smoking spaces by a combination of direct exhaust from the smoking spaces to the outside, full enclosure surrounding the smoking spaces, and sufficient negative air pressure in the smoking spaces relative to the ~~smokefree~~ smoke-free areas to prevent the escape of smoke from the smoking spaces to any ~~smokefree~~ smoke-free areas.

SUBCHAPTER 3. SMOKING PROHIBITIONS AND EXEMPTIONS [REVOKED]

310:355-3-1. Indoor prohibition and exemptions [REVOKED]

~~To protect the health of nonsmokers, no smoking shall be permitted inside public places or indoor workplaces except under certain limited situations specifically provided in 63:1-1523.~~

310:355-3-2. Public transportation prohibition [REVOKED]

~~No smoking shall be permitted in any vehicle used to provide public transportation.~~

310:355-3-3. Outdoor prohibitions at restaurants [REVOKED]

~~No smoking shall be permitted outside, including on a deck or patio, within 15 feet of an exterior public doorway to a restaurant or any air intake to a restaurant.~~

310:355-3-4. Outdoor prohibitions at educational facilities [REVOKED]

~~No smoking shall be permitted outside on the premises of a public or private educational facility offering any programs for students from early childhood education or kindergarten through grade 12, except as allowed in 63:1-1523.B.~~

SUBCHAPTER 5. SITUATIONS IN WHICH SMOKING MAY BE PERMITTED

310:355-5-1. Smoking spaces

~~Smoking spaces are those spaces where smoking is permitted as provided in 63:1-1523, 63 O.S. § 1-1523 including (1) smoking rooms within restaurants, (2) smoking rooms in other public places and indoor workplaces, and (3) exempted places as listed in 63:1-1523(G) that elect to permit smoking, provided such exempted places either occupy an entire building or meet the requirements for a smoking room under subchapters 7, 9, 11, 13 and 15 of this Chapter with respect to any nonsmoking spaces within the same building.~~

310:355-5-4. Exempted spaces occupying an entire building

~~Exempted places as listed in 63:1-1523(G) 63 O.S. § 1-1523(H) that occupy an entire building so that smoke cannot escape to adjacent indoor nonsmoking spaces are exempt from the rules in this Chapter.~~

SUBCHAPTER 7. PLANS REVIEW AND INSPECTIONS

310:355-7-2. Inspections

Personnel of the Department, including employees and others designated by the Commissioner of Health, shall have access to the premises for inspections, announced or unannounced, including examination and testing for compliance and including access to ~~smokefree~~ smoke-free areas and smoking spaces.

SUBCHAPTER 9. SMOKING ROOM ENCLOSURE

310:355-9-1. Fully enclosed

The enclosure for a smoking room shall be continuous including floor, ceiling and all sides so that smoke is contained within the smoking room and away from ~~smokefree~~ smoke-free areas.

310:355-9-2. Door opening and closure

Any tendency for air to escape from the smoking room because of doors opening or closing shall be counterbalanced by increased exhaust ventilation or other means to assure that air containing ~~tobacco~~ smoke is kept within the smoking room and prevented from recirculating to nonsmoking areas.

SUBCHAPTER 11. SMOKING ROOM NEGATIVE AIR PRESSURE ~~AND~~ AND SMOKE CONTAINMENT

310:355-11-1. Negative pressure and full enclosure relationship

Negative air pressure shall be provided continuously while a smoking room is in use and until it has been cleared as specified in section 3 of this subchapter, to assure that the flow of air is from ~~smokefree~~ smoke-free spaces into the smoking room. The more that normal leakage occurs, such as through cracks and under doors, the greater will be the direct exhaust required to provide adequate negative air pressure to meet the conditions in OAC 310:355-13-1.

310:355-11-3. Negative air pressure after smoking ends

After smoking ends, negative air pressure must be maintained at levels required to satisfy the requirements of OAC 310:355-13-1 until ~~tobacco~~ smoke components are cleared from the air.

310:355-11-4. Successive smoking and nonsmoking uses of a smoking space

If a space used at one time as a smoking room or other smoking space is to be used as a ~~smokefree~~ smoke-free area at a subsequent time, the space must first be cleared of ~~tobacco~~ smoke components.

SUBCHAPTER 15. PRESENCE OF SMOKE AND NEGATIVE AIR PRESSURE

310:355-15-1. Visual indications and odors

Observations of ~~tobacco~~ smoke or odors of ~~tobacco~~ smoke in nonsmoking areas may be an indicator of smoke in these areas and a basis for air quality testing pursuant to 310:355-15-2 ~~or 310:355-15-3~~.

310:355-15-3. Detecting smoke by instrument [REVOKED]

~~For purposes of measuring presence or absence of secondhand smoke by instrument, if necessary, an indicator of tobacco smoke widely accepted by the scientific community such as fine respirable suspended particles or nicotine measurements will be used.~~

SUBCHAPTER 17. SIGNAGE

310:355-17-1. Entrances to buildings where smoking is prohibited

All buildings that are public places and where smoking is prohibited inside the entrance pursuant to the Act shall have posted at each such entrance a conspicuous sign or decal at least 4" x 2" in size clearly stating that smoking ~~or tobacco use~~ is prohibited or that a ~~smokefree~~ smoke-free environment is provided. Signs provided by the Department for this purpose shall meet this requirement.

310:355-17-2. Entrances to smoking rooms

- (a) The owner or operator of a place with a smoking room shall post outside each entrance to a smoking room a sign at least two inches by four inches identifying the space inside as a smoking room.
- ~~(b) Signs shall be in place within 30 days of the effective date of these rules.~~

310:355-17-4. Entrances to other smoking spaces within shared buildings

- (a) The owner or operator of a place exempted from the Act, which shares a building with nonsmoking spaces and which elects to permit smoking within its exempted space, shall post outside each interior entrance from a nonsmoking space to its smoking space a sign at least two inches by four inches identifying the space inside as a space in which smoking is permitted.
- ~~(b) Signs shall be in place within 30 days of the effective date of these rules.~~

(e) Commencing 30 days after these rules become effective, as exempted places establish new smoking spaces inside buildings shared with nonsmoking spaces, this signage shall be in place prior to occupancy.

SUBCHAPTER 19. DUTIES OF OWNER OR OPERATOR

310:355-19-1. Signage [REVOKED]

~~For any indoor public place, the owner or operator shall see that signage is posted as required in Subchapter 17 of this Chapter.~~

SUBCHAPTER 21. COMPLIANCE

310:355-21-3. Enforcement proceedings

The Department may initiate enforcement proceedings against any responsible party whom the Department has reason to believe is presently in violation of this Chapter ~~or~~, the Act, 21 O.S. § 1247, or 63 O.S. § 427.8(L) by imposing administrative penalties including fines, seeking injunctive relief in the district court, and/or by referring the complaint to the district attorney for criminal prosecution.

310:355-21-4. Administrative hearings ~~and~~, appeals, and fines

(a) Any hearing and appeal requested under this Chapter shall be conducted in accord with the Oklahoma Administrative Procedures Act ("Oklahoma APA") and Chapter 2 of this title. ~~The Department must prove by a preponderance of the evidence that the responsible person has violated a provision of this Chapter or the Act in order to assess an administrative penalty against the responsible person.~~

(b) ~~Any final order of the Department may be appealed to the district court by an aggrieved party within thirty (30) days as provided in Article II of the Oklahoma APA [75 O.S., §§ 308a et seq]~~ Administrative fines for violations will be in accordance with 63 O.S. § 1-1526.1.

310:355-21-5. Nursing homes and employees of nursing facilities [REVOKED]

~~In instances of violations of the Act by a nursing home or employee of a nursing home, following notice and hearings as provided in this Subchapter, the Department may assess an administrative penalty against the facility and/or individual in the amount of \$50.00 for the first offense within a one-year period, \$100.00 for the second offense within a one-year period, and \$200.00 for a third or subsequent offense within a one-year period.~~

SUBCHAPTER 23. REBATE PROGRAM FOR THE CLEAN AIR IN RESTAURANTS ACT [REVOKED]

310:355-23-1. Definitions [REVOKED]

~~In addition to the definitions contained at OAC 310:355-1-6, the following words or terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~"CARA" means the Clean Air in Restaurants Act, [63 O.S. § 1-1515].~~

~~"Construction" means the physical modification of an existing space, the physical modification of an expansion of an existing space, or the physical modification of a space in a new structure to meet the requirements of a smoking room, excluding decorations.~~

~~"Depreciation" means a capitalized expenditure reported as an expense on a federal tax return.~~

~~"Expenditure" means the actual payment of cash or cash equivalent for the construction of a smoking room, as evidenced by a receipt, invoice, voucher or other similar document and reported on a federal tax return, whether capitalized or not.~~

"Legal entity" means a partnership, limited liability corporation or other corporation, lawfully doing business in the State of Oklahoma that has filed all the necessary documentation and is in good standing with the Oklahoma Secretary of State.

"OAC" means Oklahoma Administrative Code.

"O.S." means Oklahoma Statute.

"Owner" means a person or other legal entity that owns a restaurant.

"Smokefree" means free from smoke.

"Smoking room" means a room in a restaurant constructed pursuant to the requirements of 21 O.S. § 1247 (J) and the requirements of OAC 310:355.

310:355-23-2. Eligibility [REVOKED]

The owner of a restaurant may be eligible for a rebate for the construction of a smoking room, if the owner can demonstrate to the satisfaction of the Department:

- (1) That the smoking room was constructed after June 6, 2003 and before November 1, 2010;
- (2) That the smoking room was not found by the Department to be in violation of the requirements located at 21 O.S. § 1247 (J) and contained in OAC 310:355; and
- (3) That the restaurant is smokefree prior to the time of receiving the rebate, but no later than January 1, 2013.

310:355-23-3. Application [REVOKED]

The owner of a restaurant, who requests a rebate for expenditures in the construction of a smoking room, pursuant to the Clean Air in Restaurants Act, shall file an application with the Department on forms prescribed by the Department. All applications must be received by the Department no later than January 1, 2014 for eligibility to receive the rebate. The application shall include:

- (1) The name and address of the owner of the restaurant;
- (2) The name and address of the restaurant;
- (3) When the smoking room was constructed;
- (4) The plans detailing the construction of the smoking room;
- (5) Documentation of the capitalization of the construction, depreciation taken for federal tax purpose and agreement that the Department can have access to review the actual tax returns for the relevant years depreciation of the smoking room was taken;
- (6) Documentation that the construction of the smoking room met the requirements of 21 O.S. § 1247 (J) and OAC 310:355; and
- (7) An agreement that the restaurant will remain completely smokefree under the current or any future owners.

310:355-23-4. Rebate [REVOKED]

(a) Upon a determination by the Department that an application, filed in compliance with the requirements of OAC 310:355-23-3, meets the requirements contained in OAC 310:355-23-2 and confirmation by the Department that the restaurant is completely smokefree, the owner of a restaurant shall receive a rebate from the Tobacco Prevention and Cessation Revolving Fund for fifty percent (50%) of the capitalized expenditures for construction of the smoking room, minus any depreciation taken from said expenditures.

(b) If the Tobacco Prevention and Cessation Revolving Fund does not have sufficient monies to pay the rebate in the fiscal year the application was received, in accordance with the requirements of OAC 310:355-23, payment of the rebate may be made in the subsequent fiscal year.

310:355-23-5. Waiver [REVOKED]

(a) Any requirement established for the Rebate Program for the Clean Air in Restaurants Act contained at OAC 310:355-23 may be waived by the Commissioner of Health or designee, if the Commissioner or

~~designee determines that the requirements, as applied to the Owner, conflicts or is inconsistent with CARA.~~

~~(b) A request for waiver of any requirement established for the Rebate Program for the Clean Air in Restaurants Act contained at OAC 310:355-23 shall be made by the Owner, in writing, and submitted to the Department. The request shall specify the need for the waiver.~~

~~(c) The approval or denial of a waiver is at the discretion of the Commissioner of Health or designee. Any approval or denial of the waiver shall be made, in writing, and mailed, by certified mail, to the Owner.~~