

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

"Unofficial Version"

Subchapter	Section
1. General Provisions	310:355-1-1
3. Smoking Prohibitions and Exemptions	310:355-3-1
5. Situations in Which Smoking May Be Permitted	310:355-5-1
7. Plans Review and Inspections	310:355-7-1
9. Smoking Room Enclosure	310:355-9-1
11. Smoking Room Negative Air Pressure and Smoke Containment	310:355-11-1
13. Smoking Room Evaluation for Compliance	310:355-13-1
15. Presence of Smoke and Negative Air Pressure	310:355-15-1
17. Signage	310:355-17-1
19. Duties of Owner or Operator	310:355-19-1
21. Compliance	310:355-21-1
23. Rebate Program for the Clean Air in Restaurants Act	310:355-23-1

[**Authority:** 63 O.S.Supp. 2003, § 1-1521 et. seq.]

[**Codified:** 12-31-1991]

SUBCHAPTER 1. GENERAL PROVISIONS

Section

- 310:355-1-1. Purpose and scope
- 310:355-1-2. Policy Development [REVOKED]
- 310:355-1-3. Signs [REVOKED]
- 310:355-1-4. Implementation [REVOKED]
- 310:355-1-5. Administrative penalties [REVOKED]
- 310:355-1-6. Definitions

310:355-1-1. Purpose and scope

This Chapter implements 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.

[Source: Amended at 18 Ok Reg 2031, eff 6/11/2001; Amended at 23 Ok Reg 2363, eff 6-25-2006; Amended at 28 Ok Reg 2290, eff 9-1-11]

310:355-1-2. Policy Development [REVOKED]

[Source: Amended at 18 Ok Reg 2031, eff 6/11/2001; Revoked at 23 Ok Reg 2363, eff 6-25-2006]

310:355-1-3. Signs [REVOKED]

[Source: Amended at 18 Ok Reg 2031, eff 6/11/2001; Revoked at 23 Ok Reg 2363, eff 6-25-2006]

310:355-1-4. Implementation [REVOKED]

[Source: Revoked at 23 Ok Reg 2363, eff 6-25-2006]

310:355-1-5. Administrative penalties [REVOKED]

[Source: Added at 18 Ok Reg 2031, eff 6/11/2001; Revoked at 23 Ok Reg 2363, eff 6-25-2006]

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.

"Nonsmoking area" or "nonsmoking space" means a smokefree 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 combustion of 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 exhaled by smokers, smoke from the burning tip of a cigarette or other tobacco product, and materials escaping through cigarette paper.

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

"Smokefree area" or "smokefree 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 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 areas to prevent the escape of smoke from the smoking spaces to any smokefree areas.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

SUBCHAPTER 3. SMOKING PROHIBITIONS AND EXEMPTIONS

Section

- 310:355-3-1. Indoor prohibition and exemptions
- 310:355-3-2. Public transportation prohibition
- 310:355-3-3. Outdoor prohibitions at restaurants
- 310:355-3-4. Outdoor prohibitions at educational facilities

310:355-3-1. Indoor prohibition and exemptions

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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-3-2. Public transportation prohibition

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

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-3-3. Outdoor prohibitions at restaurants

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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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

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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

SUBCHAPTER 5. SITUATIONS IN WHICH SMOKING MAY BE PERMITTED

Section

310:355-5-1. Smoking spaces

310:355-5-2. Requirements for smoking spaces

310:355-5-3. No required smoking

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

310:355-5-1. Smoking spaces

Smoking spaces are those spaces where smoking is permitted as provided in 63:1-1523, 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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-5-2. Requirements for smoking spaces

Smoking rooms, as well as other smoking spaces, must meet the conditions in subchapters 7, 9, 11, 13 and 15 of this Chapter.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-5-3. No required smoking

No public place or indoor workplace is required to permit smoking. Any such place may prohibit all smoking.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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

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

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

SUBCHAPTER 7. PLANS REVIEW AND INSPECTIONS

Section

310:355-7-1. Plans review by the Department

310:355-7-2. Inspections

310:355-7-1. Plans review by the Department

The Department may review plans for smoking rooms to assist the proprietor, if requested. This review may assist in identifying obvious design deficiencies, but it cannot assure that the installed and operating smoking rooms will comply with these rules.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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 areas and smoking spaces.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

SUBCHAPTER 9. SMOKING ROOM ENCLOSURE

Section

- 310:355-9-1. Fully enclosed
- 310:355-9-2. Door opening and closure
- 310:355-9-3. Transfer air vents

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 areas.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-9-3. Transfer air vents

Transfer air vents may be part of the enclosure to allow flow of air from the adjacent nonsmoking areas into the smoking room as a result of the negative air pressure in the smoking room. Such vents shall automatically close when airflow into the smoking room stops, to prevent recirculation of air from the smoking room to nonsmoking areas.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

SUBCHAPTER 11. SMOKING ROOM NEGATIVE AIR PRESSURE AND SMOKE CONTAINMENT

Section

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

310:355-11-2. Negative air pressure requirements with changing occupancy and activity

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

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

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 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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-11-2. Negative air pressure requirements with changing occupancy and activity

(a) Exhaust from and ventilation to a smoking room can be reduced with reduced occupancy, as permitted by local mechanical codes, providing that sufficient negative air pressure is maintained to satisfy OAC 310:355-13-1.

(b) As activity in a smoking room increases, causing more frequent opening and closing of the doors, greater negative air pressure shall be utilized, if needed, to contain smoke within the smoking room and prevent its recirculation to nonsmoking areas.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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 area at a subsequent time, the space must first be cleared of tobacco smoke components.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

SUBCHAPTER 13. SMOKING ROOM EVALUATION FOR COMPLIANCE

Section

310:355-13-1. Compliance

310:355-13-2. Testing

310:355-13-1. Compliance

For a public place or indoor workplace with a smoking room or other smoking space to be in compliance with the Act, no smoke shall escape or be recirculated to any nonsmoking areas.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-13-2. Testing

Smoking rooms and spaces may be examined and tested for compliance by Department personnel, including employees and others designated by the Commissioner of Health, as part of normal inspection processes or in response to complaints, as provided in OAC 310:355-7-2.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

SUBCHAPTER 15. PRESENCE OF SMOKE AND NEGATIVE AIR PRESSURE

Section

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

310:355-15-2. Airflow into the smoking room or other smoking space

310:355-15-3. Detecting smoke by instrument

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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-15-2. Airflow into the smoking room or other smoking space

The direction of airflow through an open doorway to a smoking room can be observed, with airflow into the room indicating negative air pressure with respect to the nonsmoking areas. The rate of airflow required into a smoking room or other smoking space shall comply with sections 9-2, 11-1, 11-2, 11-3, and 13-1 of this Chapter.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-15-3. Detecting smoke by instrument

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

Section

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

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

310:355-17-3. Sign contents for entrances to smoking rooms

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

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 environment is provided. Signs provided by the Department for this purpose shall meet this requirement.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-17-3. Sign contents for entrances to smoking rooms

Signs outside smoking rooms shall be white text on red or other highly visible contrasting colors including at least the words "SMOKING ROOM" in letters at least 1/2 inch high.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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.

(c) 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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

SUBCHAPTER 19. DUTIES OF OWNER OR OPERATOR

Section

310:355-19-1. Signage

310:355-19-2. Required intervention in public places

310:355-19-3. Compliance by employees

310:355-19-1. Signage

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

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-19-2. Required intervention in public places

(a) When the owner or operator or an employee in a public place observes smoking in an area where smoking is prohibited, the owner, operator or operator's designee shall ask the smoker to refrain from smoking.

(b) When anyone reports smoking in violation of the Act to the owner, operator or an employee of an establishment, the owner, operator or operator's designee shall ask the smoker to refrain from smoking.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-19-3. Compliance by employees

Employers shall be responsible for compliance by their employees with these rules.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

SUBCHAPTER 21. COMPLIANCE

Section

310:355-21-1. Enforcement by political subdivisions

310:355-21-2. Complaint resolution

310:355-21-3. Enforcement proceedings

310:355-21-4. Administrative hearings and appeals

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

310:355-21-1. Enforcement by political subdivisions

Any provision of these rules may, pursuant to 63 O.S. § 1-215, be enforced in the manner provided herein by any City/County Health Department. Cities and incorporated towns of the State of Oklahoma may, pursuant to the provisions of 63 O.S. § 1-209, incorporate these rules in their respective ordinances by reference.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-21-2. Complaint resolution

(a) Any person who observes a violation of this Chapter may report the violation to the owner, operator or employee of the place where the smoking has occurred and/or may report the condition to the Department or local law enforcement.

(b) Complaints received by the Department may result in the issuance of a letter stating the nature and description of the complaint lodged and providing information regarding Oklahoma's laws on smoking and the health hazards related to secondhand smoke. The letter shall request that the responsible person respond to the Department within ten (10) calendar days with information as to how the condition causing or creating the complaint will be resolved.

(c) Based upon the complaint, the response received and any other evidence that may be available to the Department, the Department may determine whether a violation of this Chapter has occurred.

(d) If the Department determines that a violation has occurred, the Department may issue a warning letter to the responsible person and seek other remedial measures authorized by law.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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, 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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

310:355-21-4. Administrative hearings and appeals

(a) Any hearing 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*].

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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

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.

[Source: Added at 23 Ok Reg 2363, eff 6-25-2006]

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

Section

- 310:355-23-1. Definitions
- 310:355-23-2. Eligibility
- 310:355-23-3. Application
- 310:355-23-4. Rebate
- 310:355-23-5. Waiver

310:355-23-1. Definitions

In addition to the definitions contained at OAC 310:355-1-6, the 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.

[Source: Added at 28 Ok Reg 2290, eff 9-1-11]

310:355-23-2. Eligibility

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.

[Source: Added at 28 Ok Reg 2290, eff 9-1-11]

310:355-23-3. Application

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.

[Source: Added at 28 Ok Reg 2290, eff 9-1-11]

310:355-23-4. Rebate

- (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.

[Source: Added at 28 Ok Reg 2290, eff 9-1-11]

310:355-23-5. Waiver

- (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.

[Source: Added at 28 Ok Reg 2290, eff 9-1-11]