



**STATE OF DELAWARE
CLEAN INDOOR AIR ACT REGULATIONS**

Adopted November 1, 2002 Amended March 1, 2003
by the Secretary of the Department of Health and Social Services
under Authority of 16 Delaware Code,
Chapter 29, §2906(b).

Date of Effect: March 10, 2003

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Section 99.1 GENERAL PROVISIONS

99.101 Preamble

These Regulations are adopted in accordance with the authority vested in the Secretary, Department of Health and Social Services, by 16 Delaware Code Chapter 29 §2906(b). These Regulations establish standards for the enforcement of the Clean Indoor Air Act as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted. Regulations establishing standards for the enforcement of the Clean Indoor Air Act affecting employers, employees and the workplace are adopted by the Department of Labor.

99.102 Purpose

These regulations shall be construed and applied to protect the nonsmoker from involuntary exposure to environmental tobacco smoke in most enclosed indoor areas to which the public is invited or in which the general public is permitted. The purpose of the Clean Indoor Air Act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.

99.103 Severability

In the event any particular clause or section of the regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

99.104 Date of Effect

These regulations shall be effective March 10, 2003.

99.105 Inspections

The Secretary, DHSS, or authorized designee shall have right of entry into any enclosed indoor area subject to 16 Delaware Code Chapter 29.

99.106 Waiver

The Department of Health and Social Services may upon written request waive the provisions of these Regulations if the Department determines there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of non-consumers of tobacco products.

99.107 **Definitions**

The following words, terms, and phrases when used in these regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

For the purposes of these Regulations:

- 99.107.1** “Department” means the Delaware Health and Social Services (DHSS) as defined in 29 Delaware Code, Section 7901.
- 99.107.2** “Environmental tobacco smoke” (ETS), or "secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as sidestream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking" or "involuntary smoking."
- 99.107.3** “Enclosed Indoor Area” means an indoor area that is neither open nor partially enclosed, except for normal means of access and egress through doors or passageways.
- 99.107.4** “Fraternal Benefit Society” means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of 18 Delaware Code 6237(a)(2) of this title, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government and which provides benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.
- 99.107.5** “Private Club” means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria.
- a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;
 - b. Limits access and use of facilities, services and activities of the organization to members and guests of the members;
 - c. Is controlled by its membership and operates solely for the benefit and pleasure of its members;

d. Advertises exclusively and only to its members, excluding membership drives.

99.107.6 “Private social function” means a function to which the public is neither invited nor generally permitted access and which is held in a separate indoor enclosed indoor area.

99.107.7 “Public transportation of children” means transportation which involves the transportation of children by a vehicle under the control of a daycare, school or other organizations.

99.107.8 “Secretary” means the Administrator of the Delaware Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

99.107.9 “Smoking” means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

99.107.10 “Volunteer fire company” means a fire, ambulance, or rescue company recognized as such by the Delaware State Fire Prevention Commission.

99.2 SMOKING PROHIBITIONS

99.201 Except as is provided in 99.301 of these regulations, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any of the following areas:

A. Any enclosed indoor area, including, but not limited to, those listed in 16 Delaware Code, Section 2903, to which the general public is invited or in which the general public is permitted. This shall apply to any organization, business or establishment which caters to or offers goods or services or facilities to, or solicits patronage from the general public.

Organizations or businesses that maintain lists and/or that charge nominal “membership fees” or cover charges to the general public prior to admission are not considered private clubs and will not be exempt from the Clean Indoor Air Act.

B. Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines.

- C. Functions or activities of private clubs or organizations, as defined by Section 99.107.5 of these regulations, when access by the general public is allowed or solicited.
- D. Any private vehicle used for the public transportation of children or as part of health care or day care transportation.
- E. In private homes or private residences when such homes or residences are being used for childcare or day care.

99.202 No owner of any indoor enclosed area subject to 16 Delaware Code Chapter 29 and/or person(s) responsible for the management of such area or employee thereof, shall permit or authorize smoking by any person(s) in areas not designated specifically for the smoking of tobacco products as permitted by Section 99.301.

99.3 SMOKING PROHIBITIONS INAPPLICABLE

99.301 Smoking prohibitions shall not apply in the following:

- A. Private homes, private residences and private automobiles,
- B. Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;
- C. Limousines under private hire
- D. A hotel or motel room rented to one or more guests provided that the total percentage of such hotel or motel rooms does not exceed twenty-five percent (25%).
- E. Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company; provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance company.
- F. Any fund raising activity or function sponsored by a fraternal benefit society as defined by 18 Delaware Code §6201; provided, however, that the fund raising activity or function takes place upon property owned or leased by said organization.

- G. Any enclosed indoor area operated or in use exclusively by a private club as defined in 99.107.5 of these regulations.

99.4 POSTING OF SIGNS

99.401 Failure to Properly Post and Maintain Signs

Owners, operators, managers or other person(s) having control of enclosed indoor areas subject to the regulations of 16 Delaware Code Chapter 29 shall post signs which indicate **“Warning: Smoking Permitted”** prominently to indicate those locations where smoking is permitted pursuant to Regulation 99.301, B and D. Failure to prominently post properly maintained signs with letters at least one (1) inch in height and in accord with the CLEAN INDOOR AIR ACT shall be a violation subject to administrative penalties as set forth in Regulation 99.501 of the Clean Indoor Air Act Regulations.

99.5 COMPLIANCE AND ENFORCEMENT PROCEDURES

99.501 Administrative Penalties

Whoever violates any provision of these regulations shall be subject to an administrative penalty of \$100.00 for the first violation and not less than \$250.00 for each subsequent violation.

99.502 Right to Administrative Hearing

Upon due notice that the Department intends to assess an administrative penalty, as indicated in 99.501, the entity may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing.

99.503 Orders of the Department

Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department of Health and Social Services, shall be fined not less than \$100.00 and not more than \$1,000.00, together with cost, unless otherwise provided by law.