

CHAPTER He-P 1900 INDOOR SMOKING RULES

PART He-P 1901 DEFINITIONS

He-P 1901.01 Definitions.

(a) “Act” means RSA 155:64 to RSA 155:77, the Indoor Smoking Act, and includes the rules adopted pursuant to the Act.

(b) “Acute care facility” means the following:

- (1) A hospital as defined in (i) below;
- (2) Infirmaries;
- (3) Ambulatory surgical centers;
- (4) Outpatient clinics;
- (5) Prenatal clinics;
- (6) Well-baby clinics;
- (7) Well-child clinics;
- (8) Free-standing kidney dialysis units;
- (9) Free-standing radiological therapy units;
- (10) Free-standing birthing centers;
- (11) Mobile and free-standing x-ray units;
- (12) Mobile and free-standing laboratory units;
- (13) Mobile and free-standing emergency medical services units; and
- (14) Mobile medical units.

(c) “Cocktail lounge” means “cocktail lounge” as defined in RSA 155:65, I.

(d) “Commissioner” means “commissioner” as defined in RSA 155:65, III.

(e) “Department” means “department” as defined in RSA 155:65, IV.

(f) “Determining preference” means ascertaining whether an individual prefers to reside in or to work in a no-smoking designated area of a facility or a smoking-permitted designated area of a facility that is effectively segregated.

(g) “Effectively segregated” means “effectively segregated” as defined in RSA 155:65, V.

(h) “Health care facility” means “health care facility” as defined in RSA 155:65, VII, and includes hospitals licensed under RSA 151 which provide psychiatric, substance abuse, and physical rehabilitation care on an outpatient or inpatient basis.

(i) “Hospital” means a health care facility where the ill or injured can receive medical, surgical, or psychiatric treatment and nursing care on an inpatient or outpatient basis.

(j) “Multi-resident building” means a building containing multiple separate and distinct domiciles such as rooms, suites of rooms, or apartments.

(k) “Person in charge” means “person in charge” as defined in 155:65, IX.

(l) “Public housing” means dwelling units, which are funded through public funds.

(m) “Resident room” means the place in which a person resides and has sleeping accommodations within a multi-resident building.

(n) “Restaurant” means “restaurant” as defined in RSA 155:65, XIV.

(o) “Subsidized housing” means dwellings which are rented with the renter receiving monetary support to pay the rent, in whole or in part from public funds.

(p) “Unreasonably intrude” means a condition whereby smoke from a smoking-permitted area enters a no-smoking area such that ambient air quality standards for fine particulate matter exceed United States Environmental Protection Agency (USEPA) standards per 40 CFR part 50.

(q) “Written policies” means “written policies” pursuant to RSA 155:68, I and II.

(r) “Written procedures” means “written procedures” as specified in RSA 155:69 and also means written procedures for effectively segregating all smoking-permitted designated areas from no-smoking designated areas.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

PART He-P 1902 SMOKING PROHIBITED AND SMOKING PERMITTED IN EFFECTIVELY SEGREGATED AREAS

He-P 1902.01 Smoking Prohibited. Pursuant to RSA 155:66, I, smoking shall be prohibited in:

(a) Public educational facilities at any time, and in child care agencies licensed under RSA 170-E during the hours of operation, except foster family homes and foster family group homes;

(b) Hospitals and other acute care facilities;

(c) Grocery stores by customers;

(d) Elevators, tramways, gondolas, and other such public conveyances;

(e) Public conveyances;

(f) Restaurants;

(g) Cocktail lounges; and

(h) Enclosed places owned and operated by social, fraternal, or religious organizations when open to the general public. Purposes for which such places may be open to the general public may include, but not be limited to, public meetings, voting, suppers, bingo games, theatrical events, fairs, and bazaars.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

He-P 1902.02 Smoking Permitted in Effectively Segregated Areas. Pursuant to RSA 155:66, II:

(a) Smoking may be permitted in enclosed places of public access and publicly owned buildings and offices, including workplaces, other than those listed in He-P 1902.01, in effectively segregated smoking-permitted areas designated by the person in charge;

(b) Smoking shall be totally prohibited in any such enclosed place, if smoking cannot be effectively segregated; and

(c) The person in charge may declare any facility non-smoking in its entirety.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

PART He-P 1903 INQUIRIES AND COMPLAINTS

He-P 1903.01 Inquiries. Inquiries regarding the Act, He-P 1900, and registering complaints shall be made to the Tobacco Prevention and Control Program at 1-800-852-3345, ext. 8949, or electronically at: <http://www.dhhs.state.nh.us/DHHS/ATOD/TPCP.htm>.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

He-P 1903.02 Registering Complaints.

(a) Pursuant to RSA 155:73, a complainant shall register with the department a complaint regarding non-compliance with the Act once the following requirements have been met:

- (1) The complainant has registered the complaint with the person in charge; and
- (2) The complaint has not been resolved within one calendar month of registering the complaint in (a)(1).

(b) The complainant shall register a complaint with the department by submitting to the department a completed Indoor Smoking Act Complaint Form, including:

- (1) A statement regarding whether or not the complainant wishes to remain anonymous; and
- (2) The signature of the complainant and date of signature.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99; EXPIRED: 12-21-07

New. #9054, eff 12-29-07

He-P 1903.03 Complainant Confidentiality. Confidentiality of the complainant shall be protected pursuant to RSA 155:74, II, as follows:

(a) In accordance with RSA 91-A, all information contained in a complaint shall be furnished to the public on request, except that the complainant's name shall not be supplied without express written approval of the complainant;

(b) All physical copies of complaints shall be stored in a receptacle secured from public or unrestricted access, such as a locked file cabinet, when not in use; and

(c) Electronic information regarding complaints that include the complainant's name shall be stored on computer hard drive(s) or disk(s) and be secured from unauthorized access, as follows:

(1) Removable disks which contain such data shall be secured in the same manner as physical copies, as detailed in He-P 1903.03(b); and

(2) Non-removable disks or computer hard drives which contain such data shall be secured by using password protection of those computer files.

Source. #9054, eff 12-29-07

PART He-P 1904 COMPLAINT INVESTIGATION AND FACILITY INSPECTION PROCEDURES

He-P 1904.01 Complaint Investigation Procedures.

(a) Upon receipt of a letter from the department informing the person in charge of the registered complaint, the person in charge shall respond to the department, in writing, by providing the following:

(1) The date the initial complaint was registered with the person in charge;

(2) A description of the situation about which the complaint has been registered;

(3) The status of implementing the facility's written smoking policy;

(4) A description of specific procedures being undertaken to remedy the complaint and the time frame involved;

(5) A description of any mediation about the complaint which might have occurred or that is ongoing;

(6) A description of the facility's procedures for designating and effectively segregating any smoking-permitted areas;

(7) Any other information relative to how the person in charge has addressed or is addressing the complaint; and

(8) A copy of the facility's written policies and procedures regarding smoking in the facility.

(b) The person in charge shall submit the information in (a) above to the department within 10 business days of the date on the department's letter. This deadline date shall be included in the department's letter.

(c) If the response of the person in charge is not received by the department by the date specified in the department's letter, the facility in question shall be subject to an on-site inspection per He-P 1904.02.

(d) If the materials submitted by the person in charge, pursuant to He-P 1904.01(a), are incomplete, the person in charge shall be required to provide such additional information as is needed to complete the submission.

(e) If the department cannot make a determination of compliance or non-compliance based solely on the submitted materials, then the facility in question shall be subject to an on-site inspection per He-P 1904.02.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

He-P 1904.02 On-Site Inspection Procedures.

(a) In order to determine compliance with the Act, pursuant to He-P 1904.01(c) and (e), the facility shall be subject to an on-site inspection.

(b) If the facility subject to an on-site inspection is a facility where smoking is permitted in effectively segregated areas, pursuant to He-P 1902.02 and RSA 155:66, II, the department shall determine if the smoking-permitted area(s) has been effectively segregated, as follows:

(1) Determine if procedures for accurately and fairly determining preference as defined in He-P 1901.01(f) have been followed; and

(2) Conduct ambient air quality testing for fine particulate matter using USEPA recommended monitoring equipment and USEPA methods and standards, per 40 CFR part 50, in order to:

a. Determine if the design, designation, or juxtaposition of no-smoking and smoking-permitted areas are such that smoke does not cause harm or unreasonably intrude into areas occupied by persons who are not smoking; and

b. Determine if the smoking-permitted area(s) are in proximity to exhaust fans, if possible, and areas designated as no-smoking areas have ambient air quality standards for fine particulate matter that do not exceed USEPA standards, per 40 CFR part 50.

(c) If the facility subject to an on-site inspection is a facility where smoking is prohibited in its entirety, pursuant to He-P 1902.01 and RSA 155:66, I, the department shall determine if smoking is or has been permitted or if smoking is occurring or has occurred by conducting ambient air quality testing for fine particulate matter using USEPA recommended monitoring equipment and USEPA methods and standards, per 40 CFR part 50.

(d) As part of an on-site inspection, the department shall also determine if the facility has:

(1) Written smoking policies per RSA 155:68;

(2) Written smoking procedures per RSA 155:69; and

(3) Sign requirements per RSA 155:71 and He-P 1908.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99; EXPIRED: 12-21-07

New. #9054, eff 12-29-07

PART He-P 1905 NOTIFICATION OF INVESTIGATION FINDINGS

He-P 1905.01 Notification of a Finding of Compliance. If the department determines that the person in charge is in compliance with the Act, both the complainant and the person in charge shall be notified in writing of that determination.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99; EXPIRED: 12-21-07

New. #9054, eff 12-29-07

He-P 1905.02 Notification of a Finding of Violation. If the department determines that a violation of the Act has occurred, the following procedures shall be followed:

(a) The person in charge shall be issued a factual summary of the investigation, along with a statement of the department's findings related to the violation;

(b) The notification in (a) shall include:

(1) Specific directives as to the necessary steps to be taken to come into compliance with the Act, including one or more of the following:

a. When the facility has no written policies or the facility's written policies do not comply with the Act, that the facility's written policies shall be written or revised to meet specifications set forth in RSA 155:68 and these rules;

b. When the facility has no written procedures or the facility's written procedures do not comply with the Act, that the facility's written procedures shall be written or revised to meet specifications set forth in RSA 155:69 and these rules;

c. When written policies and procedures exist but are not enforced, that the written policies and procedures shall be fully implemented pursuant to the Act;
or

d. When a smoking-permitted area is not effectively segregated, that the facility shall be designated no-smoking in its entirety;

(2) The deadline by which the person in charge shall comply with the directives in the notification and the Act;

(3) A statement that the facility in question shall be subject to on-site inspection(s) to determine compliance with the directives and the Act;

(4) A description of the possible consequences for not complying with the directives, including a description of the penalty scale to be used in assessing the fine, as described in He-P 1906.02(a) and (b); and

(5) A statement that the person in charge may request an adjudication proceeding, pursuant to RSA 155:74, I;

(c) The deadline in (b)(2) shall be 30 days from the date of the notification of probable violation;

(d) Upon request of the person in charge, the department may extend the deadline by which the person in charge shall comply with the directives in the notification and the Act;

(e) The facility shall be subject to an on-site inspection by the department to determine if the person in charge has come into compliance with the directives in the notification and the Act by the deadline established in the notification or by an extension granted in (d); and

(f) The complainant shall be notified in writing of the determination of a violation and of the directives issued by the department to the person in charge, to be carried out in order to achieve compliance with the Act.

Source. #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

PART He-P 1906 ADJUDICATION PROCEEDINGS

He-P 1906.01 Request for Adjudication Proceeding.

(a) After receiving a notification of a violation of the Act, a person in charge may request an adjudication proceeding, pursuant to RSA 155:74, I.

(b) If the department determines that the person in charge has not complied with the Act by the deadline established in He-P 1905.02(c) and (d):

(1) The department may request an adjudication proceeding under He-C 200 in order to seek a penalty pursuant to He-P 1906.02; and

(2) If a request in (b)(1) is made, the person in charge shall be notified of the request in writing.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

PART He-P 1907 CRITERIA FOR SMOKING-PERMITTED AREAS

He-P 1907.01 Designation of Smoking-Permitted Areas.

(a) The criteria established in He-P 1907 shall apply to the following facilities, referred to in RSA 155:67 V, VI, VII, and X:

- (1) Dormitories;
- (2) Public housing facilities;
- (3) Nursing homes;
- (4) Sheltered care facilities;
- (5) Residential treatment facilities;

- (6) Prisons and detention facilities;
- (7) Rehabilitation facilities;
- (8) Health care facilities, except for acute care facilities; and
- (9) All other facilities listed in RSA 155:67.

(b) The criteria as set forth in this part shall apply to all staff, administrators, volunteers, residents, visitors, consultants, contractors, and other vendors and purveyors of services in the facilities referenced in (a) above.

(c) The following designation criteria for smoking-permitted areas, specific for each facility, shall be followed for each of the facilities referenced in (a) above:

(1) Where smoking is permitted in resident dormitories operated by postsecondary educational institutions, the following shall apply:

- a. Preference for smoking or non-smoking resident room assignments shall be determined for each resident by the person in charge;
- b. Determining preference for smoking or non-smoking resident room assignments shall be completed prior to the beginning of each school year or semester by the person in charge;
- c. Housing application forms which student residents fill out prior to assignment of housing shall include a section to indicate preference for smoking or non-smoking room assignment, or a separate form shall be developed for this purpose;
- d. Either smoking or non-smoking designated rooms may be assigned to those individuals who do not indicate a preference relative to smoking when making application for room assignments;
- e. The number of such smoking-designated rooms or areas shall be commensurate with the number of residents indicating a preference to smoke;
- f. No student resident who prefers non-smoking accommodations shall be housed with a smoker nor shall any student resident who prefers non-smoking accommodations have a room assigned in the smoking-permitted areas; and
- g. All non-smoking designated rooms and accommodations shall meet the USEPA standard for ambient air quality;

(2) Where smoking is permitted in any public housing facility, the following shall apply:

- a. Preference for smoking or non-smoking dwelling unit assignments shall be determined for each resident by the person in charge;
- b. Determining preference for smoking or non-smoking dwelling unit assignments shall be completed prior to the assignment of a dwelling unit by the person in charge;

- c. Public housing application forms which residents fill out prior to assignment of housing shall include a section to indicate preference for smoking or non-smoking, or a separate form shall be developed for this purpose;
- d. Either smoking or non-smoking designated dwelling units may be assigned to those individuals who do not indicate a preference relative to smoking when making application for public housing;
- e. The number of such smoking-designated dwelling units shall be commensurate with the number of residents indicating a preference to smoke;
- f. No resident who prefers non-smoking accommodations shall have a dwelling unit assigned in the smoking-permitted areas; and
- g. All non-smoking designated dwelling units shall meet the USEPA standard for ambient air quality;

(3) Where smoking is permitted in resident rooms in nursing homes, residential care facilities, supported residential care facilities, residential treatment and rehabilitation facilities, the following shall apply:

- a. Preference for smoking or non-smoking resident room assignments shall be determined for each resident;
- b. Determining preference for smoking or non-smoking resident room assignments shall be completed prior to the assignment of resident rooms by the person in charge;
- c. Resident room application or admission forms which residents fill out prior to assignment of resident rooms shall include a section to indicate preference for smoking or non-smoking, or a separate form shall be developed for this purpose;
- d. Either smoking or non-smoking designated resident rooms may be assigned to those individuals who do not indicate a preference relative to smoking when making application for room assignments or admission;
- e. The number of such smoking-designated resident rooms shall be commensurate with the number of residents indicating a preference to smoke;
- f. No resident who prefers non-smoking accommodations shall have a resident room assigned in the smoking-permitted areas; and
- g. All non-smoking designated resident rooms shall meet the USEPA standard for ambient air quality;

(4) Where smoking is permitted in the resident rooms of health care facilities, such as drug and alcohol treatment facilities and mental health facilities, exclusive of hospitals or other acute care facilities as listed in He-P 1901.01(b) and He-P 1901.01 (j), the following shall apply:

- a. Preference for smoking or non-smoking assignments shall be determined for each patient by the person in charge;

- b. Determining preference for smoking or non-smoking patient room assignments shall be completed prior to admission to the facility by the person in charge;
- c. Patient admission forms shall include a section to indicate preference for smoking or non-smoking, or a separate form shall be developed for this purpose;
- d. Either smoking or non-smoking designated patient rooms may be assigned to those individuals who do not indicate a preference relative to smoking when filling out admission forms;
- e. The number of such smoking-designated patient rooms shall be commensurate with the number of patients indicating a preference to smoke;
- f. No patient who prefers non-smoking accommodations shall be housed with a smoker nor shall any patient who prefers non-smoking accommodations have a patient room assigned in the smoking-permitted areas; and
- g. All non-smoking designated patient rooms shall meet the USEPA standard for ambient air quality;

(5) If a hospital has, as part of its facility, a wing or unit which is not free-standing and which is used on an in-patient basis for the care and treatment of patients suffering from mental illness, drug and alcohol withdrawal or for the delivery of physical rehabilitation services, the resident rooms of the wing or unit shall be subject to He-P 1907.01(a)(8), (b), and (c)(4)a.-g.;

(6) Where smoking is permitted in private sector facilities providing out-patient care, including doctors offices and dental offices, and exclusive of acute care facilities as defined in He-P 1901.01(b) and He-P 1901.01(i):

- a. Examination rooms, diagnostic testing rooms, and treatment rooms shall be designated as no smoking; and
- b. If smoking-permitted areas are to be designated for the use of staff for such facilities then RSA 155:66, II shall apply;

(7) Where smoking is permitted in resident rooms or cells of prisons and detention facilities, the following shall apply:

- a. Preference for smoking or non-smoking inmate room or cell assignments shall be determined for each inmate by the person in charge;
- b. Determining preference for smoking or non-smoking inmate room assignments shall be completed prior to the assignment of a inmate room or cell by the person in charge;
- c. Incarceration forms shall include a section to indicate preference regarding smoking or non-smoking, or a separate form shall be developed for this purpose;
- d. Either smoking or nonsmoking designated inmate rooms or cells may be assigned to those individuals who do not indicate a preference relative to smoking when incarcerated;

e. The number of such smoking-designated inmate rooms or cells shall be commensurate with the number of inmates indicating a preference to smoke;

f. If security and space permit, no inmate who prefers non-smoking accommodations shall have an inmate room or cell assigned in the smoking-permitted areas; and

g. All non-smoking designated inmate rooms or cells shall meet the USEPA standard for ambient air quality; and

(8) If smoking-permitted areas are to be designated for the use of staff of the facilities referenced in (a) above, they shall be subject to the provisions of RSA 155:66, II.

(d) If the facilities referenced in (a) above have rooms or areas wherein residents receive medical or dental services, the designation of no smoking shall prevail in these rooms or areas for staff, patients, and visitors, pursuant to RSA 155:66, I (b).

(e) The areas referred in (d) above shall include:

- (1) Examining rooms;
- (2) Diagnostic testing rooms;
- (3) Treatment rooms;
- (4) Infirmaries; and
- (5) Dental examination and treatment rooms.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

PART He-P 1908 SIGNS RESTRICTING OR PROHIBITING SMOKING

He-P 1908.01 Exterior Signs.

(a) Signs for notification relative to smoking restrictions or prohibitions shall be placed on the exterior of buildings, facilities, or other enclosed places as defined in RSA 155:65, VI, proximate to all major entrances.

(b) All exterior signs shall be of a permanent nature.

(c) Where smoking is prohibited, signs shall state that “smoking is prohibited in this building or facility”, or words to that effect, or the international symbol for no-smoking, as depicted in Figure 1900.1, may be substituted for or used in conjunction with the prohibition statement.



Figure 1900.1 The International Symbol for No-Smoking

(d) Where smoking is restricted to effectively segregated smoking-permitted areas, signs shall state that “smoking is prohibited in this building or facility except in designated smoking-permitted areas”, or words to that effect, or the international symbol for no-smoking, as depicted in Figure 1900.1, may be used in conjunction with the restriction statement.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

He-P 1908.02 Interior Signs.

(a) Signs for notification relative to smoking restrictions or prohibition, in buildings or facilities which permit smoking in designated areas only, shall be placed inside those buildings, facilities, or other enclosed places as defined in RSA 155:65, VI in the following areas, including, but not limited to:

- (1) Offices;
- (2) Waiting rooms;
- (3) Entrances areas;
- (4) Elevators;
- (5) Rest rooms;
- (6) Cafeterias;
- (7) Break rooms;
- (8) Meeting rooms;
- (9) Hallways;
- (10) Stairwells; and
- (11) Other common-use areas.

(b) Interior signs shall be of a permanent nature, except as allowed by (f)-(h) below.

(c) Interior signs shall be affixed to a permanent structure such as a wall, door, permanent room divider, or partition, except as allowed by (f)-(h) below.

(d) Where smoking is prohibited, signs shall state that “smoking is prohibited in this room or area of the facility or building”, or words to that effect, or the international symbol for no-smoking, as depicted in Figure 1900.1, may be substituted for or used in conjunction with the prohibition statement.

(e) Where smoking is prohibited in every room and area of a given building and He-P 1908.01 is abided by, then interior signs shall not be required.

(f) Where smoking is permitted in an effectively segregated smoking-permitted room or area of a given facility, pursuant to RSA 155:66, II and RSA 155:67, III, V, VI, VII, and X, interior signs may be affixed to interior structures or placed on table tops or surfaces in those rooms or areas, stating that “smoking is permitted in this room or area of the facility”, or words to that effect, or the international symbol for smoking-permitted, as depicted in Figure 1900.2, may be substituted for or used in conjunction with the smoking-permitted statement.

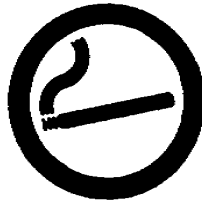


Figure 1900.2 The International Symbol for Smoking-Permitted

(g) Where smoking is permitted, pursuant to RSA 155:67, II and IV, interior signs may be temporarily affixed to interior structures or placed temporarily on table tops or surfaces in those rooms or areas, stating that “smoking is permitted in this room or area of the facility”, or words to that effect, or the international symbol for smoking-permitted, as depicted in Figure 1900.2, may be substituted for or used in conjunction with the smoking-permitted statement.

(h) Table top signs may be used in conjunction with other interior signs.

(i) In a facility containing 2 or more rooms or areas comparable in size and which are used for the same activity, the person in charge may place smoking-permitted signs in one entire room or area provided that the other comparable-in-size room or area is posted as a no-smoking area and is effectively segregated from the smoking-permitted area.

(j) Signs demarcating smoking-permitted areas shall not be placed in areas more than proportionate in size to the number of users who show preference for this designation.

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

He-P 1908.03 Size of Signs. Signs shall meet the following size requirements as specified in Table 1900.1.

Table 1900.1 Size of Signs

Farthest Distance from which Sign Is	Height of Lettering	Diameter of Outer Circle for International Symbol
--------------------------------------	---------------------	---

to Be Read		for Smoking or No-Smoking
25 feet	1/2 inch	3 inches
50 feet	1 inch	4 inches
150 feet	2 inches	6 inches
350 feet	4 inches	8 inches
500 feet	6 inches	12 inches

Source. #5759, eff 12-20-93; ss by #7172, eff 12-21-99, EXPIRED: 12-21-07

New. #9054, eff 12-29-07

PART He-P 1909 WAIVERS

He-P 1909.01 Request for Waiver.

(a) Pursuant to RSA 155:75, a person in charge shall request a waiver for the purpose of seeking a period of time to comply with the Act by submitting a written waiver request to the commissioner.

(b) A waiver request shall be made for one or more of the following:

- (1) A waiver request for complying with RSA 155:68, relative to the development of written policies;
- (2) A waiver request for complying with RSA 155:69, relative to the development of written procedures;
- (3) A waiver request for complying with RSA 155:70 and He-P 1908, relative to the placement of signs that restrict, prohibit, or permit smoking; and
- (4) A waiver request for creating an effectively segregated smoking-permitted area pursuant to He-P 1902.02(a) and in compliance with RSA 155:65, V.

(c) A waiver request shall include the following information:

- (1) The name, address, and telephone number of the facility in question;
- (2) The name of the person in charge;
- (3) The type of facility;
- (4) A description of the facility/area in question, including descriptors relative to the physical enclosure;
- (5) A description of the ventilation system, if any exists;
- (6) The specific requirement(s) of He-P 1900 and/or the Act requested to be waived;
- (7) The specific reason(s) the waiver is being requested;
- (8) A description of the hardship involved in complying with the specific requirement(s) stated in (c)(6) above, as applicable;

(9) The period of time being requested in order to comply with the specific provision(s) stated in (c)(6) above;

(10) The effect the waiver would have on non-smokers in the facility, if the waiver were to be approved; and

(11) The plans for coming into compliance with the specific provision(s) stated in (c)(6) above.

(d) In addition to the requirements in (c) above, a waiver request shall include the following, as applicable:

(1) If the facility requesting the waiver currently has written policies or written procedures relative to smoking in place, then a copy of those policies or procedures shall be attached to the waiver request;

(2) If the facility is requesting a waiver in order to develop or to amend written policies or written procedures relative to smoking, then a copy of the draft of the proposed written policies or procedures shall be attached to the waiver request, if available; and

(3) If the facility is requesting a waiver because the requirement the facility wishes to be waived causes undue hardship pursuant to RSA 155:75, II, the waiver request shall include documentation for the claim of undue hardship, such as, but not limited to, a construction estimate with financial records that show the person in charge is unable to pay, or proof that the requirement in question would interfere with other requirements imposed by policies of the facility, such as but not limited to, a copy of those policies.

[Source.](#) #9054, eff 12-29-07

He-P 1909.02 Determining Eligibility and Approval for a Waiver.

(a) Pursuant to RSA 155:75, III, the commissioner shall determine eligibility for a waiver.

(b) A person in charge shall be determined to be eligible for a waiver if the following criteria are met:

(1) The waiver request requirements described in He-P 1909.01 are met;

(2) The waiver request is not in response to a finding of a violation of the Act;

(3) The waiver request is not contrary to fire, safety, or sanitation requirements or other state or federal statutes; and

(4) The waiver, if granted, would not create a condition whereby smoke causes harm or unreasonably intrudes into any areas designated as no-smoking or any areas occupied by persons who do not smoke.

[Source.](#) #9054, eff 12-29-07

He-P 1909.03 Time Period for Approved Waivers. The time period for which an approved waiver shall extend shall be as follows:

(a) A waiver request for complying with RSA 155:68, relative to the development of written policies, shall be granted for 30 calendar days;

(b) A waiver request for complying with RSA 155:69, relative to the development of written procedures, shall be granted for 30 calendar days;

(c) A waiver request for complying with RSA 155:70 and He-P 1907, relative to the placement of signs that restrict, prohibit, or permit smoking, shall be granted for 60 calendar days;

(d) A waiver request for complying with an effectively segregated smoking-permitted area pursuant to He-P 1902.02(a) and in compliance with RSA 155:65, V, shall be granted as follows for the following time frames:

(1) If exterior construction is being proposed in the waiver request, such as building an addition to the existing facility, then a waiver shall be granted for one year; and

(2) If interior construction or modification of the facility is being proposed in the waiver request, such as building partitions or moving walls, then a waiver shall be granted for 6 months;

(e) Waivers shall not be approved for any period of time exceeding one year, for any purpose; and

(f) Extensions for waivers shall not be granted.

[Source.](#) #9054, eff 12-29-07

He-P 1909.04 Notification of Waiver Decision.

(a) The person in charge shall be notified in writing of the department's decision to grant a waiver, including the specific provisions of the waiver and the time period for which the waiver has been granted.

(b) The facility for which a waiver has been approved shall be subject to an on-site inspection by the department to determine if the waiver requirements have been met.

(c) The person in charge shall be notified in writing of the department's decision to deny the waiver request, including:

(1) The reasons for the denial; and

(2) A directive to come into compliance with the Act within 30 days from receipt of the written waiver denial.

[Source.](#) #9054, eff 12-29-07

Appendix

Rule	Specific State or Federal Statutes the Rule Implements
He-P 1901	RSA 155:65
He-P 1902	RSA 155:66
He-P 1903	RSA 155:71, III, V; 155:73; 155:74, II
He-P 1904	RSA 155:74, I
He-P 1905	RSA 155:71, III
He-P 1906	RSA 155:74, I; 155:76, III
He-P 1907	RSA 155:67, V, VI, VII, X; 155:71, I
He-P 1908	RSA 155:70; 155:71, II
He-P 1909	RSA 155:71, IV; 155:75, I, II, III