

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rulemaking related to smokefree air

The Department of Health and Human Services (Department) hereby rescinds Chapter 153, “Smokefree Air,” Iowa Administrative Code and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code Chapter 142D.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code Chapter 142D.

Purpose and Summary

This rule chapter defines procedure in implementing Iowa’s Smokefree Air Act. This includes the duty of employers, owners, or other persons having control of an area where smoking is prohibited to inform employees and persons accessing the site of that prohibition through proper signage. The rules also describe procedure for receiving complaints and implementing enforcement actions against persons who fail to comply with provisions of the Act. Enforcement action may be taken against a person who smokes in an area where smoking is prohibited or a person who owns, operates, manages or otherwise has custody or control of a place where smoking is prohibited and fails to properly prohibit smoking.

This rule chapter describes procedure to support the requirements for signage, complaints, and enforcement detailed in Iowa Code. This chapter does not create additional, substantive requirements to be complied with.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7366C**. Two public hearings were held on February 14,

2024, at 11:30 a.m., and February 26, 2024, at 12 p.m. No public comments were received. Since the publication of the original Notice, additional changes to the rules were made to provide further clarification on what constitutes a solid wall. An Amended Notice of Intended Action was published on September 18, 2024. Additional Public Hearings were held on October 8, 2024 and October 9, 2024. No one attended the public hearings and no comments were received.

Adoption of Rulemaking

This rulemaking was adopted by the Tobacco Commission on XYZ, 123, 2024.

Commented [JC1]: Need to confirm a date for adoption with Tabetha.

Fiscal Impact

This rulemaking has fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Health and Human Services for a waiver of the discretionary provisions, if any, pursuant to 441—6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on June 1, 2025.

Commented [JC2]: Based on conversation with Sonya before ARRC.

The following rulemaking action is adopted:

ITEM 1. Rescind 641—Chapter 153 and adopt the following **new** chapter in lieu thereof:

CHAPTER 153
SMOKEFREE AIR

641—153.1(142D) Definitions. For the purposes of this chapter, definitions found in Iowa Code section 142D.2 and the following definitions apply:

“Ashtray” means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs. However, “ashtray” shall not include any receptacle located outdoors and on the perimeter of any public place, the perimeter of the grounds of any public building, the perimeter of school grounds, or the perimeter of any other outdoor space subject to the prohibition in Iowa Code chapter 142D.

“Entrance” means any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. “Entrance” also includes the commonly understood points of entry to an outdoor area, subject to the prohibitions of this chapter, such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way.

“Grounds of any public building” means an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water. Nothing in this definition prohibits any owner, operator, manager, or other person having custody or control of an area that is exempt from the prohibitions of Iowa Code chapter 142D from declaring the entire area or property a nonsmoking place.

“Public building” means an enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.

641—153.2(142D) Duties of employers, owners, operators, managers, and persons having custody or control of a public place, place of employment, area declared nonsmoking pursuant to Iowa Code chapter 142D or outdoor areas where smoking is prohibited.

153.2(1) The employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under Iowa Code chapter 142D shall:

a. Not permit smoking in a public place, place of employment, outdoor area where smoking is prohibited, or area declared nonsmoking pursuant to Iowa Code chapter 142D.

b. Inform all current employees and all prospective employees upon application for employment of the prohibitions of Iowa Code chapter 142D.

c. Not retaliate against any employee, applicant for employment, or customer who exercises any rights, registers a complaint, or attempts to prosecute a violation pursuant to Iowa Code chapter 142D.

d. Post signs in and at every entrance to the public place, place of employment, area declared nonsmoking, and outdoor area where smoking is prohibited that inform persons that they are entering a “no smoking” facility or area.

(1) The signs shall be clear and conspicuous in or at the entrance where posted.

(2) The signs shall be at least 24 square inches in size (for example, 4 inches by 6 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1.888.944.2247; and the department website,

hhs.iowa.gov/smokefreeair.

e. Place “no smoking” signs in every vehicle that constitutes a public place, place of employment, or area declared nonsmoking pursuant to Iowa Code section 142D.5.

(1) Such signs shall be clear and conspicuous from the exterior of the vehicle.

(2) The signs shall be at least 9 square inches (for example, 3 inches by 3 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1.888.944.2247; and the department’s website, hhs.iowa.gov/smokefreeair.

(4) Nothing in this rule requires the placement of a sign in any vehicle that the director of the department of administrative services or the director of transportation orders to receive a regular registration plate pursuant to Iowa Code section 321.19.

f. Remove all ashtrays from areas where smoking is prohibited.

153.2(2) The owner or operator of a building or facility that contains more than one public place, place of employment, or area declared nonsmoking pursuant to Iowa Code chapter 142D which is controlled by other employers, owners, or operators shall comply with the provisions of these rules for the area of the building or facility under the owner’s or operator’s control.

153.2(3) An employer, owner, or operator of a public place, place of employment or area declared nonsmoking pursuant to Iowa Code chapter 142D that is within a public place that is owned or operated by another person shall comply with the provisions of these rules for the area under the control of the employer, owner, or operator within that public place.

153.2(4) An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under Iowa Code chapter 142D shall inform any individual smoking in a place where smoking is prohibited that the individual is violating the smokefree air Act and shall request that the individual stop smoking immediately.

a. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may discontinue service to that individual.

b. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may request that the individual leave the area where smoking is prohibited.

c. If the individual refuses to leave the area where smoking is prohibited, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

641—153.3(142D) Leases. Any lease entered into by the state or its political subdivisions shall require that all areas where smoking is prohibited pursuant to Iowa Code chapter 142D comply with the provisions of these rules and Iowa Code chapter 142D.

641—153.4(142D) Complaints and enforcement.

153.4(1) Duties of department. The department will maintain a system for receiving and investigating complaints against persons who own, operate, manage, or otherwise have custody or control of a place where smoking is prohibited and who fail to comply with the provisions of Iowa Code chapter 142D.

a. The department may designate one or more public agencies through a 28E agreement or other written contract to assist with enforcement.

b. The department may refer complaints regarding a violation to the law enforcement authorities of the state or of the political subdivision of the state in which the alleged violation occurred.

153.4(2) Enforcement against a person who smokes in an area where smoking is prohibited. Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. A peace officer may issue a citation in lieu of arrest pursuant to Iowa Code chapter 805 against a person who smokes in an area where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay a civil penalty pursuant to Iowa Code section 805.8C(3) for each violation.

153.4(3) Enforcement against a person who owns, operates, manages, or otherwise has control of a place where smoking is prohibited. Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. The department or its designee may initiate a civil action against an owner, operator, manager, or person who otherwise has custody or control of a place where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay the applicable civil penalty pursuant to Iowa Code chapter 142D.

153.4(4) Manner of filing a complaint. Any person may register a complaint with the department by calling the toll-free number, 1.888.944.2247, or registering a complaint on the department's website, hhs.iowa.gov/smokefreeair.

153.4(5) Contents of the complaint. A complaint filed with the department shall include:

a. The name or location of the public place, place of employment, area declared a nonsmoking place pursuant to Iowa Code chapter 142D, or outdoor area where smoking is prohibited which is the subject of the complaint;

b. A description of the occurrence that prompted the complaint; and

c. Any other information relevant to the occurrence.

153.4(6) Review of complaint by department. Upon receipt of a complaint, the department or its designee may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.

153.4(7) Information from inspections. Information received by the department of one or more violations of Iowa Code chapter 142D as a result of an inspection of a public place by the state or political subdivision of the state shall be considered a credible complaint under this rule.

153.4(8) Notice of potential violation. If the department determines that a complaint against a public place, place of employment, area declared nonsmoking pursuant to Iowa Code chapter 142D, or outdoor areas where smoking is prohibited is credible:

a. For the first complaint, the department shall:

(1) Issue a written notice of potential violation to the owner, operator or person having custody or control including the details of the complaint.

(2) Include in the notice educational materials about how to comply with Iowa Code chapter 142D, and information on whom to contact for further information and assistance for compliance.

b. For the second and subsequent complaints within one year, the department:

(1) Shall issue a subsequent notice of potential violation to the owner, operator, or person having custody or control.

(2) May authorize one or more public agencies to conduct a compliance check of the location.

(3) May pursue any remedy authorized by Iowa Code chapter 142D, including the enforcement of civil penalties.

641—153.5(142D) Limitation of rules. Nothing in these rules is intended to limit any other state administrative rule or federal regulation that prohibits smoking.

These rules are intended to implement Iowa Code chapter 142D.