

Regulatory Analysis

Smokefree Air Administrative Rules

**Notice of Intended Action
ARC 6990B**

**Adopted and Filed Emergency
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Iowa Department of Public Health

**Thomas Newton, Director
Bonnie Mapes, Division Director
Barb Nervig, Agency Rules Administrator**

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I. Background

The Iowa legislature passed House File 2212, the Smokefree Air Act (SAA), on April 8, 2008. The Governor signed the SAA on April 15, 2008, with an effective date of July 1, 2008. (HF 2212; HJ 1280). The purpose of the SAA is to protect the public health and the health of employees. (HF 2212, Section 1). The SAA prohibits smoking in all public places, all enclosed areas within places of employment, and certain outdoor areas of the state including school grounds and the grounds of any public building. (HF 2212, Section 3). The law contains several limited exemptions, including private residences. (HF 2212, Section 4). The SAA imposes requirements on employers and owners and operators of businesses to post “no smoking” signage and to remove ashtrays. (HF 2212, Section 6). The law contains an enforcement section and provides for civil penalties as well as other remedies against violators. (HF 2212, Section 9).

The SAA directs the Department to adopt rules to administer this chapter, including rules regarding enforcement. (HF 2212, Section 8). The SAA requires that the Department adopt administrative rules to effectively implement and enforce the Act and to provide necessary guidance for those businesses and persons subject to the Act, including the following:

- X The SAA provides that the chapter shall be enforced by the department or the department’s designee. (HF 2212, Section 8). The Department through rulemaking must formally designate which agencies or entities may enforce the provisions of the Act.
- X The SAA prohibits smoking on the grounds of any public building and on “school grounds.” (HF 2212, Section 3). In order to effectively implement and enforce the Act, defining these phrases through rule is necessary.
- X The SAA prohibits smoking in outdoor seating or serving areas of restaurants. (HF 2212, Section 3). Smoking is allowed at outdoor areas of bars. This distinction necessitates a definition in rules between restaurants and bars in order to effectively implement and enforce the Act and to provide required guidance to the owners of these facilities.
- X The SAA provides that the chapter shall be enforced by the department. (HF 2212, Section 8). This provision requires the Department to outline, in rule, a process for receiving and investigating complaints and a process for enforcement of violations.

The Department undertook substantial efforts to draft, receive input on, publicize, and adopt the rules prior to the effective date of the statute. Following the passage of the SAA the Department in conjunction with the Attorney General's Office immediately commenced drafting the administrative rules. The Department gathered model rule language from other states which have passed similar statutes and began drafting those definitions and enforcement provisions which are Iowa-specific. The Department hosted a meeting with affected state agencies and other entities on May 6, 2008, to gather input and comment from those groups. This meeting was attended by 33 people from 11 different agencies, including representatives from the state universities, the Department of Public Safety, the Secretary of State, the Governor's Office, and the Department of Inspections and Appeals. The Department then met individually with several state agencies to address agency-specific items. The Department also met with the Iowa State Association of Counties, the Iowa League of Cities and other interested associations and received input from the Iowa Restaurant Association.

The Department posted a draft of the administrative rules on the Department's website on June 2, 2008, and began receiving public comment regarding the rules immediately upon posting. Department staff met informally with the Administrative Rules Review Committee on June 11, 2008, and received comment from the Committee regarding the proposed rules. The Board of Health was scheduled to adopt the rules on June 11, 2008, but this meeting was postponed due to issues related to the flooding in Central and Eastern Iowa. The State Board of Health and the Department adopted these administrative rules -- 641 Iowa Administrative Code chapter 153 -- pursuant to Chapter 17A's expedited rulemaking process on June 27, 2008, with an effective date of July 1, 2008.

The Department is also proceeding with adopting the rules through the standard rule-making process. The notice of intended action was filed at the same time as the emergency rules, on June 30, 2008. (Iowa Code § 17A.4(1)"a"). Both the emergency rule and the notice of intended action for the standard rulemaking process were published in the Iowa Administrative Bulletin on July 30, 2008. (Iowa Code § 17A.4(1)"a"). The Department is in the process of receiving public comment on the rules. The chapter was scheduled to be adopted by the Board of Health and the Department on September 10, 2008, with an effective date of November 12, 2008. Due to this request for regulatory analysis, the timeframe for adoption has been delayed to November 12, 2008, with an effective date of January 7, 2009.

II. Request for Regulatory Analysis

On July 2, 2008, the Iowa Restaurant Association submitted a request to the Department pursuant to Iowa Code section 17A.4A(1) to conduct a regulatory analysis of the SAA administrative rules. Pursuant to this section, an agency “shall issue a regulatory analysis of a proposed rule ...if the rule would have a substantial impact on small business and if, within thirty-two days after the published notice of the proposed rule adoption, a written request for analysis is submitted to the agency by ...an organization representing at least twenty –five [persons who qualify as small business owners].” While the Department does not believe that the administrative rules will have a substantial impact on small business for the reasons outlined below, the Department has completed the requested regulatory analysis in the interest of furthering the public discussion on this important topic.

III. Elements of the Regulatory Analysis

The elements to be included in a regulatory analysis are specifically identified as follows:

- (1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.
- (2) A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.
- (3) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
- (4) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.
- (5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

(6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

(Iowa Code section 17A.4A(2)"a"(1) – (6)).

In addition, the regulatory analysis must contain a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

- (1) Establish less stringent compliance or reporting requirements in the rule for small business.
- (2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.
- (3) Consolidate or simplify the rule's compliance or reporting requirements for small business.
- (4) Establish performance standards to replace design or operational standards in the rule for small business.
- (5) Exempt small business from any or all requirements of the rule.

(Iowa Code section 17A.4A(2)"b"(1) – (5)).

Each of these elements will be addressed in turn as follows. It must be noted that the smoking prohibitions are contained in the Smokefree Air Act and the rules simply implement certain portions of that Act.

1. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Classes that will benefit from the SAA and the proposed rules: Employees, members of the general public, the citizens of the state of Iowa.

Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic, including formaldehyde, benzene, vinyl chloride, arsenic, ammonia, and hydrogen cyanide. Secondhand smoke has been designated as a Group A carcinogen (known to cause cancer in humans) by the U.S. Environmental Protection Agency, National Toxicology Program and the International Agency

for Research on Cancer (IARC). The National Institute for Occupational Safety and Health also has concluded that secondhand smoke is an occupational carcinogen.

The U.S. Surgeon General has concluded that the only way to fully protect employees and the public is to completely eliminate smoking in indoor spaces. Separate smoking sections and ventilation systems have proven not to be effective approaches. The Smokefree Air Act makes all enclosed workplaces and some outdoor areas non-smoking for the purpose of reducing “the level of exposure by the general public and employees to environmental tobacco smoke in order to improve the public health of Iowans.”

Numerous studies have shown that smoke-free laws are associated with substantial and rapid reductions in environmental tobacco smoke (also called secondhand smoke) exposure in nonsmoking restaurant and bar workers and improvements in respiratory and sensory symptoms and pulmonary function among these workers. With a few exceptions, primarily employees working on the gaming floors of casinos, all employees and members of the public that patronize businesses in Iowa will benefit from reduced exposure to secondhand smoke.

Classes that will bear the costs of the SAA and the proposed rules: Employers and business establishments.

There are 82,087 business establishments with employees in Iowa. Approximately 1,481,100 Iowans are employed by these businesses. (Source: <http://www.iowadatacenter.org/quickfacts>). Of these businesses, 14,613 are licensed food service establishments (Source: Iowa Department of Inspections and Appeals).

According to the 2006 Iowa Adult Tobacco Survey, 77% of adults in Iowa reported that their workplace had an official policy that restricted smoking in some way, prior to passage of the law. However, only 39% of restaurants (excluding national “fast food” outlets) and 2% of bars were among those workplaces offering smoke-free work environments (See Center for Behavioral Research survey, “Smoking Policies at Food Serving Businesses in Iowa,” February 2007 for the Iowa Department of Public Health). The law now requires all restaurants and bars to be non-smoking in all enclosed areas.

2. A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.

Health Impact

Secondhand smoke has been shown to cause premature death and disease in nonsmokers. Non-smokers who are exposed to secondhand smoke, at home or at work, increase their risk of developing heart disease by 25% to 30%. Non-smokers who are exposed to secondhand smoke, at home or at work, increase their risk of developing lung cancer by 20% to 30%. Even brief exposure to secondhand smoke can result in upper airway changes in healthy persons and can lead to more frequent and more severe asthma attacks in children who already have asthma. (See U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)

Smokefree workplace policies have an immediate impact on air quality and improved health outcomes, particularly for workers in the hospitality industry. After New York implemented a state law in 2003 requiring virtually all indoor workplaces and public places (including restaurants and bars) to be smoke-free, average levels of respirable suspended particles (a measure of secondhand smoke levels) declined by 84% in 20 hospitality settings. (See Centers for Disease Control and Prevention. “Indoor Air Quality in Hospitality Venues Before and After Implementation of a Clean Indoor Air Law—Western New York, 2003”. *Morbidity and Mortality Weekly Report*, 2004;53(44):1038–104.) One year after New York's law took effect, self-reported secondhand smoke exposure on the job among nonsmoking employees of restaurants, bars, and bowling facilities decreased by 98% and their saliva cotinine levels (a biological marker of secondhand smoke exposure) decreased by 78%. (See Farrelly MC, Nonnemaker JM, Chou R, Hyland A, Peterson KK, Bauer UE. “Changes in Hospitality Workers’ Exposure to Secondhand Smoke Following the Implementation of New York’s Smoke-Free Law”. *Tobacco Control*. 2005;14(4):236–241.)

Scotland's comprehensive 100% smoke free air law for all workplaces, restaurants, bars and pubs went into effect on March 26, 2006. The law was associated with an 86% reduction in respirable particles within two months, and rapid improvements in a number of health outcomes in nonsmoking bar workers, including: reductions in self-reported respiratory symptoms, improvements in objectively measured lung

function, and reductions in objectively measured systemic inflammation. (See Menzies D, Nair A, et. al. “Respiratory Symptoms, Pulmonary Function, and Markers of Inflammation Among Bar Workers Before and After a Legislative Ban on Smoking in Public Places,” Journal of the American Medical Association. 2006; 296(14):1742–1748)

A study conducted in Ireland after implementation of a comprehensive national smoke-free law yielded much the same results: an 83% reduction in particulate matter levels in pubs; a 79% reduction in exhaled carbon monoxide in bar workers, improvements in objectively measured lung function among nonsmoking bar workers, and reductions in self-reported respiratory and sensory symptoms among nonsmoking bar workers. (See Goodman P, Agnew M, et. al. “Effects of the Irish Smoking Ban on Respiratory Health of Bar Workers and Air Quality in Dublin Pubs,” American Journal of Respiratory and Critical Care Medicine. 2007)

A survey of California bar owners, managers, assistant managers and bartenders found overwhelming support for the state’s smoke-free bar law, with more than eight in ten bar managers and employees (83%) saying they think the smoke-free workplace law protects their health and the health of other bar employees, and 77% of bar managers and employees saying that complying with the law has been "very" or "fairly" easy. (See Field Research Corporation, “Bar Establishment Survey,” conducted September – October 2002 for California Department of Health Services (CDHS).)

Smokefree workplace laws not only protect non-smokers from the health impacts of exposure to secondhand smoke, they encourage smokers to quit or to reduce the number of cigarettes they smoke. A study in the July 1999 *American Journal of Public Health* that examined the impact of smoke-free laws and policies on smoking in the United States and Australia concluded that:

All of the 19 studies we reviewed reported either declines in daily cigarette consumption by continuing smokers or reductions in smoking prevalence after bans on smoking in the workplace were introduced... Because of the duration of time spent at work, workplaces are probably the most significant sites where smoking restrictions cause smokers to reduce their tobacco consumption. (See Chapman, S, et al., “The Impact of Smoke-Free Workplaces on Declining Cigarette Consumption in Australia and the United States,” *AJPH* 89(7):1018-1023, July 1999).

Comprehensive smoke-free policies can also reduce the number of youth who become smokers. A national study found that adolescents who work in smokefree workplaces are significantly less likely to be smokers than adolescents who work in workplaces with no smoking restrictions or a partial work-area smoking ban.

(See Farkas AJ, Gilpin EA, White MM, Pierce JP. Association Between Household and Workplace Smoking Restrictions and Adolescent Smoking. Journal of the American Medical Association. 2000; 284(6):717–722)

Costs Incurred In Complying with the SAA



The only cost incurred by businesses to comply with the law is related to the required posting of no-smoking signs at all entrances to nonsmoking areas (including outdoor areas) and in all company vehicles. These signs must comply with specific requirements: contain either the international no-smoking symbol or the words “No Smoking” and include the Department’s toll-free number and website for information and to register complaints about the violations of the law. Schools and all government agencies must also post signs in the same manner. The rules require that the signs be at least 24 square inches, be clear and conspicuous at the entrance, and be in a legible font type.

To help allay the cost of producing or purchasing signs, the Act allowed businesses to post free signs provided by the Department for download from the Department’s web site at www.IowaSmokefreeAir.gov. In addition, all current food service licensees in the state were mailed one free sign by the Department and outdoor, reflective metal signs (2,000) which conform to the Act are being distributed free-of-charge to tobacco-free schools throughout Iowa.

Given the wide variety of signs that may be produced or purchased from private vendors, it is difficult to estimate the cost of producing signage. The following costs were provided by Iowa Prison Industries, which is producing compliant no-smoking signs for governmental and non-profit agencies.

No Smoking Decals

- Suitable for indoor or outdoor use unless noted otherwise
- Will affix to glass, metal or wood doors, vehicles or nearly any flat surface

Size	Model	Price
12x12 No Smoking Decal, Black Background	#FISI-2212X12DECAL	\$4.80
12x12 No Smoking Decal, White Background	#FISI-2112X12DECAL	\$4.80
6x4 No Smoking Decal, Transparent For Inside Glass	#FISI-216X4DECAL	\$2.00
8.75x5.75 No Smoking Decal, Black Background	#FISI-228.75X5.7DECAL	\$2.40
8x3 No Smoking Decal, Transparent For Inside Glass	#FISI218X3DECAL	\$2.00
8x8 No Smoking Decal, Black Background	#FISI-228X8DECAL	\$2.60
8x8 No Smoking Decal, White Background	#FISI-218X8DECAL	\$2.60

No Smoking Aluminum Signs

- Produced on .080 aluminum
- Suitable for indoor or outdoor use
- Come pre-drilled for mounting to a post, the side of a building or other structure

Size	Model	Price
12x12 No Smoking Sign, Black Background	#FISI-2212X12EA	\$4.20
12x12 No Smoking Sign, White Background	#FISI-2112X12EA	\$4.20
12x18 No Smoking Sign, Black Background	#FISI-2018X12EA	\$6.20
12x18 No Smoking Sign, White Background	#FISI-1918X12EA	\$6.20

Source:

http://www.iaprisonind.com/html/prodserv/signs/signs_nosmoking2.asp.

Prices valid as of 8-5-08.

Potential Economic Impact

Twenty-four states and hundreds of municipalities now have laws in place which prohibit workplace smoking. At least 98 studies have been published which examine the economic impact of these laws. Evidence from all the peer-reviewed

studies that examine objective measures such as sales tax revenues, employment levels or business license applications shows that smoke-free laws do not have an adverse economic impact on business revenues, including revenues in the hospitality industry. In fact, numerous careful scientific and economic analyses show that smoke-free laws do not hurt restaurant and bar patronage, employment, sales, or profits. Some examples:

- An evaluation of the New York’s Clean Indoor Air act found that the law had no negative impact on sales in full-service restaurants and bars. (See New York State Department of Health. Second Annual Independent Evaluation of New York’s Tobacco Control Program, 2005.) Restaurant and bar revenues in New York City increased by 8.7% from April 2003 through January 2004 following implementation of the city’s smoke-free law. Employment in the city’s restaurants and bars increased by approximately 2,800 seasonally adjusted jobs from March 2003 to December 2003. The number of restaurants and bars in the city remained essentially unchanged between the third quarter of 2002 and the third quarter of 2003. (See New York City Department of Finance, New York City Department of Health and Mental Hygiene, New York City Department of Small Business Services, New York City Economic Development Corporation. “The State of Smoke-Free New York: A One-Year Review.” New York, New York: New York City Department of Health and Mental Hygiene, 2004.)
- A study conducted by research economists at the University of Florida’s Bureau of Economic and Business Research found that the state’s smoke-free law has not hurt sales or employment in the hotel, restaurant and tourism industries. The proportion of retail sales by Florida’s restaurants, lunchrooms, and catering services actually increased by 7.37% after the smoke-free law went into effect. (See Dai, C, et al., *The Economic Impact of Florida’s Smoke-free Workplace Law*, Bureau of Economic and Business Research, Warrington College of Business Administration, University of Florida, June 25, 2004.)
- In Delaware, data from the Delaware Alcohol Beverage Control Commission show that the number of restaurant, tavern and taproom licenses increased in the year since the state’s smokefree law took effect. Data from the Delaware Department of Labor show that employment in the state’s food service and drinking establishments also increased in that first year. (See Meconi, Vincent, Secretary of the Delaware Department of Health and Social Services, “Secondhand Smoke Deserves Regulations,” *Delaware State News*, (December 30, 2003). See also American Lung Association of Delaware, “Delaware’s Clean Indoor Air Act – The 1st Anniversary Story”, <http://www.alade.org/main.html>.)

- A study of Massachusetts' comprehensive statewide smoke-free law found that, "Analyses of economic data prior to and following implementation of the law demonstrated that the Massachusetts state-wide law did not negatively affect statewide meals and alcoholic beverage excise tax collections. Furthermore, the number of employees in food services and drinking places and accommodation establishments, and keno sales were not affected by the law." (See Connolly G, et al, *Evaluation of the Massachusetts Smokefree Workplace Law: A Preliminary Report*, Division of Public Health Practice, Harvard School of Public Health, Tobacco Research Program, April 4, 2005.)
- A study conducted by researchers at the Gatton College of Business and Economics of the Lexington-Fayette County, Kentucky comprehensive smoke-free law that took effect April 27, 2004 found that: "There was no effect of the smoke-free law on payroll withholding taxes (workers' earnings) in restaurants, bars, or hotels/motels in the 10 months after the law went into effect, after taking seasonal variation into account. The smoke-free law was not related to business openings or closures in alcohol-serving establishments or at non-alcohol serving establishments." (See Hahn E, et al, *Economic Impact of Lexington's Smoke-free Law: A Progress Report*, University of Kentucky College of Nursing and Gatton College of Business and Economics, April 18, 2005)

In Iowa, both Ames and Iowa City implemented smokefree air ordinances that were struck down by the Iowa Supreme Court on preemption grounds. However, studies of that limited experience strongly suggest that there was no negative economic impact. One study showed that there was no net change in the number of restaurants operating in Iowa City under the local smoking ordinance compared to neighboring Coralville where there was a net loss in the number of restaurants despite the lack of similar smoking restrictions. (See Sheffer, M., and Squier, C., "Up in Smoke: An Assessment Process Related to Smoke-Free Restaurant Ordinances in Iowa," Needs and Capacity Assessment Strategies for Health Education and Health Promotion, 3d Ed., Gilmore and Campbell (eds.) 2005).

Anecdotal reports from business owners about the impact of the first month of Iowa's statewide law also suggest that businesses have not been negatively impacted. For example, an article in the Daily Iowan on July 28, 2008, reported that bar owners in Iowa City have seen business increase during the first four weeks the Smokefree Air Act has been in effect. (See Putnam, J., "Weeks After Smoking Ban, Some Businesses See Surge," The Daily Iowan, July 28, 2008). Even some opponents of the Smokefree Air Act now see that their business has not been hurt. (See Officials: Smoking Law Working Well, Opponents Say Smoking Customers Haven't Stayed Away, July 30, 2008, at www.kcci.com/print/17044407/detail.html).

Additional indicators of the potential economic impact of the SAA, including decreased economic burdens on employers and reductions in health care expenditures, are discussed in section 4 below.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department is responsible for educating the public and business owners about the requirements of the law and for enforcing the law. No additional state revenues were allocated by the Legislature in FY 2009 to support education and enforcement. The resources necessary to carry out these responsibilities have been provided by the Department, specifically by the Division of Tobacco Use Prevention and Control through budget reductions for other programs supported by the Division. Consequently, there is no anticipated effect upon state revenues.

The probable costs to the Department for the third quarter of fiscal year 2008, fiscal year 2009 and fiscal year 2010 total \$452,500.

1. Personnel expenses: \$208,219

A total of 4.0 full-time equivalent (FTE) staff at the Department of Public Health are currently involved in direct support of education and enforcement activities related to the Smokefree Air Act. One additional full-time staff was hired in July 2008 to respond to inquiries and complaints received via the Smokefree Air Act helpline and web site. Five existing staff have been temporarily re-assigned part-time to assist with responses to web and email inquiries, to collect written public comments about the rules, to prepare required comments documents, to investigate complaints about violations of the Act, and to maintain the database supporting complaint enforcement, including dissemination and tracking of notifications of potential violations. It is expected that staff required to support enforcement will drop to 2.0 FTE by the end of Fiscal Year 2009 and to 1.25 FTE by the end of Fiscal Year 2010.

2. Materials, Postage, Other Operating Expenses: \$77,874

Public education activities have included development of the www.IowaSmokefreeAir.gov web site, establishment of the Helpline at 1-888-944-2247, printing and distribution of brochures and fact sheets for businesses and the general public; bulk mailings to all food service license holders, chambers of commerce, local law enforcement agencies, local public health departments, and

county tobacco control program grantees; travel and materials for a series of trainings for business owners and law enforcement agencies, and ICN trainings. In addition, outdoor, reflective metal signs (2,000) which conform to the SAA are being distributed free-of-charge to tobacco-free schools throughout Iowa.

An estimated 1,000 to 1,100 Notices of Potential Violation letters will be sent to employers via certified mail in fiscal year 2009 at a cost of \$5.23 per letter. That number is expected to decrease to about 570 in fiscal year 2010 at an anticipated cost of \$6.32 per letter.

3. Enforcement contract: \$160,000

Complaint tracking system: \$6,500

The Department has contracted with the Alcoholic Beverages Division (ABD) to coordinate compliance checks by local law enforcement agencies of businesses which have received a second or subsequent notice of potential violation. This contract includes a \$100 payment from ABD to law enforcement agencies for each compliance check they conduct. ABD was also contracted to develop the on-line complaint and compliance check tracking system accessed by both DPH and ABD staff managing the enforcement process.

4. Civil penalties collected

The revenue from civil fines collected is not expected to be significant and will not have an impact upon state revenues. It is anticipated that not more than 75 citations will be issued for violations during FY 2009 and not more than 57 citations will be issues in FY 2010. The majority of these citations will be issued by local authorities and “civil penalties paid shall be deposited in the general fund of the respective city or county.”

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The rules are necessary for implementation of the Smokefree Air Act, specifically the process for enforcement of the Act. Inaction on the rules would create confusion regarding the definition of key phrases of the SAA and would hamper the enforcement process, ultimately resulting in decreased compliance with the law. Allowing smoking to continue in workplaces in Iowa would prevent businesses, the State, and the citizens of Iowa from realizing the substantial economic and health benefits engendered by smokefree work environments.

As detailed in Section 2, there is no credible evidence that smokefree workplace laws have had any negative impact on business revenues in the states and municipalities which have enacted such laws. In fact, there is considerable evidence that these laws enhance business profitability by decreasing operating costs while sales revenues are unaffected or even increase.

Smoking in the workplace places a considerable economic burden on employers. Workers who smoke and workers who are exposed to secondhand smoke experience more smoking-related illnesses and miss more days of work than workers in a smoke-free environment. The U.S. Centers for Disease Control and Prevention estimates that an employee who smokes costs an employer \$3,391 more per year than a nonsmoker: \$1,760 in lost productivity and \$1,623 in excess medical expenditures. Estimated costs for nonsmoking employees exposed to secondhand smoke are estimated at \$490 per year. (See Fellow, J., et. al., “Annual Smoking Attributable Mortality, Years of Potential Life Lost and Economic Costs—United States, 1995-1999,” Journal of the American Medical Association, May 8, 2002, 287(18), pp. 2335-2356).

Smoking in the workplace also contributes to increased maintenance and cleaning costs, estimated at about \$500 per smoker per year. (See Weis, W., “Can You Afford to Hire Smokers?” Personnel Administrator 1981, pp. 71-78). The U.S. Environmental Protection Agency estimates that four to eight *billion* dollars in building operations and maintenance costs would be saved if policies prohibiting smoking in workplaces were adopted nationwide. (See Reducing Tobacco Use: A Report of the Surgeon General, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2000).

Other increased costs due to smoking in the workplace include property losses from smoking-caused fires, smoking breaks, on-the-job performance declines, higher worker compensation costs, and early termination of employment due to smoking-caused disability.

Smokefree workplace policies reduce operating costs and do not negatively impact revenues, meaning smokefree businesses operate at a higher profit margin than businesses that are not smokefree. Two studies, one of restaurants and a second of bars, show that smokefree laws enhance both profits and value: restaurants in areas with a smokefree ordinance sold for 16% more than comparable restaurants in areas with no restrictions. (See Alamar, B., and Glantz, S., “Smoke-free Ordinances Increase Restaurant Profit and Value,” Contemporary Economic Policy, October 2004, Vol. 22, No. 4, pp.520-525; and Alamar B., and Glantz, S., “Effects of Smoke-free Laws on Bar Value and Profits,” American Journal of Public Health, August 2007, Vol. 97, pp. 1400-1402).

Any costs to businesses and to the state to implement the law will be more than offset by decreased expenditures due to reductions in smoking prevalence and reduced consumption of cigarettes by continuing smokers, especially among employees. Smokefree workplace laws not only protect non-smokers from the health impacts of exposure to secondhand smoke, they are at least as effective as tobacco tax increases in encouraging smokers to quit or to reduce the number of cigarettes they smoke. A 2002 review of 26 studies concluded that a complete smoking ban in the workplace reduces smoking prevalence among employees by 3.8% and daily cigarette consumption by 3.1 cigarettes among employees who continue to smoke. (See Fichtenberg, C., and Glantz, S., "Effect of Smoke-free Workplaces on Smoking Behavior: Systematic Review," British Medical Journal, July 27, 2002, pp. 174-175).

A 3.8% reduction in the adult smoking rate in Iowa will result in more than \$160 million in reduced healthcare expenditures over the lifetime of the adults who quit (based upon the current adult smoking rate of 19.8% and excess lifetime healthcare costs of \$9,500 for smokers as compared to nonsmokers).

According to the Centers for Disease Control and Prevention, smoking-caused healthcare expenditures and productivity losses cost Iowa at least \$10.28 per each pack of cigarettes sold. Total health care costs directly caused by smoking in Iowa now total \$1 billion per year and productivity losses total \$964 million each year.

5. A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

The enforcement process established by the rules is the least costly and least intrusive, practicable method available to effectively enforce the requirements of the Smokefree Air Act.

Businesses are given at least two written notices of noncompliance and the opportunity for on-site technical assistance from a representative of the Department before an on-site inspection of the business by a law enforcement officer is initiated.

The enforcement process is complaint driven. The Department receives complaints from the public concerning observed violations of the Act. A First Notice of Potential Violation will be sent by certified mail to the business owner based upon validation of a first complaint. This Notice provides specific information about the reported violations and educational materials to assist the business owner with coming into compliance with the law. The business owner or manager is also offered the opportunity to meet voluntarily with a representative

from a Department grantee who can provide the business with technical assistance to come into compliance with the law.

A Second Notice of Potential Violation will be sent by certified mail based upon validation of a second complaint. This Second Notice is also forwarded to the appropriate law enforcement authority with a request that an on-site inspection of that business be conducted. If, upon inspection, the law enforcement officer determines that the business is not in compliance with the law, a civil citation may be pursued.

No less intrusive or less costly method is feasible for achieving compliance with the law.

6. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

As stated above, the SAA dictates the smoking prohibitions and the requirements on businesses for compliance. The rules define key phrases and effectuate a process for enforcement of the Act.

In drafting the definition section, the Department did seriously consider alternatives to the definition of the term “bar.” This definition is key to enforcement of the SAA as smoking is prohibited in the outdoor seating or serving areas of restaurants but is allowed in the outdoor areas of a bar. (HF 2212, Section 3). The SAA defines a “bar” as “an establishment where one may purchase alcoholic beverages as defined in section 123.3, for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages.” (HF 2212, Section 2). The rules further define “*Serving of food incidental to the consumption of alcoholic beverages*” to mean “food preparation that is limited to the service of ice, pre-packaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, pre-packaged sandwiches, or other prepackaged, ready-to-serve products.” (641 IAC 153.2). This definition is based upon existing Department of Inspections and Appeals criteria for the “Tavern without food preparation” designation “check-off” on food service license applications.

Utilizing existing food service license or liquor license criteria is a common method used by states with smokefree workplace laws to differentiate a bar (an establishment where the serving of food is incidental to sales of alcohol) from a restaurant. In Iowa, there is no liquor license type that delineates an establishment where food sales are incidental to alcohol sales from a full-service restaurant with a liquor license.

Another common method used to differentiate a bar from a restaurant is based upon the annual percentage of food sales compared to alcohol sales in that establishment. In order to be defined as a bar, an establishment must show its food sales are limited to a specific percentage of overall sales (typically no greater than 20% to 25%). This method was considered by the Department; however, it was determined not to be a practical or effective option in Iowa for a number of reasons.

First, states which utilize the percentage of food sales method either had a system in place for collecting financial information from bars prior to passage of a smokefree workplace law or established such a system as part of smokefree workplace legislation and provided funding to support that system. The State of Iowa has no existing system for collecting financial records from liquor licensees. Some cities in Iowa have local ordinances which require submission of financial records by liquor licensees, but the methods for collecting and verifying those records varies widely from city to city and not all cities or counties have this requirement. All liquor licensees in Iowa must maintain dram shop insurance, and many insurers require submission of financial records of alcohol sales. Again however, the requirements for submission differ from insurer to insurer and not all dram insurers require the submission of such records.

Second, development and implementation of a statewide system to collect and audit financial records for purposes of certification of bars in Iowa would have taken several months beyond implementation of the Act on July 1, 2008. Additionally, the resources necessary to develop and maintain such a system were not made available to the Department or to any other state agency.

Third, defining bars according to a percentage of food sales definition would impose a substantial additional reporting burden for liquor licensees. States which currently use the food sales definition typically require that businesses apply for initial certification before qualifying for an exemption to a smokefree workplace law by submitting records of sales for the preceding one to three years. In some states, these records must be certified as accurate by a Certified Public Accountant. Regular recertification and resubmission of sales records is required and is often tied to reapplications for liquor licenses. Utilizing such a definition would impose additional reporting and record keeping requirements on these establishments.

Finally, enforcement of the law utilizing a percentage of food sales designation would result in a more cumbersome and intrusive enforcement process. The “bar or restaurant” status of a business could not be determined by a law enforcement officer during a compliance inspection but would have to be verified by an audit of

financial records by a state agency such as the Department of Revenue or the Alcoholic Beverages Division. There could also be a considerable time lag between reported violations of the law and any enforcement actions resulting from violations having to be confirmed via an audit. Enforcement of the SAA would be more difficult, complex, and confusing for business owners and for the public.

In addition, the regulatory analysis must contain a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rule on small business:

1. Establish less stringent compliance or reporting requirements in the rule for small business.

First, the rules establish no reporting requirements on businesses and so a discussion of less stringent reporting requirements is not applicable here.

Second, the rules establish no compliance requirements beyond those established by the Smokefree Air Act. Namely, in order to be in compliance, the Smokefree Air Act provides that the “owner, operator, manager or other person having custody of a...place of employment” shall:

- a. Post signs at every entrance to all areas and in all vehicles declared as nonsmoking pursuant to the law. (HF 2212: Page 10, Lines 8-20)
 - i. The rules simply establish a minimum size requirement for posted signage: “The signs shall be...at least 24 square inches in size and shall be in legible font type.” (641 IAC 153.5(1)“d”)
- b. Remove all ashtrays from areas declared as nonsmoking (HF 2212: Page 10, Lines 30-34)
- c. Communicate the requirements of the law with current and prospective employees (HF 2212: Page 10, Lines 4-7)
- d. Inform person violating the law of the provisions of the law. (HF 2212: Page 11, Line 34 – Page 12, Line 4)

- i. The rules further clarify this requirement to inform in 153.5(4): “An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under 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.”
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small business.

The Smokefree Air Act went into effect on July 1, 2008. The rules establish no additional schedules or deadlines for compliance, and establish no reporting requirements on businesses whatsoever.

3. Consolidate or simplify the rule’s compliance or reporting requirements for small business.

Again, the rules establish no compliance requirements beyond those stipulated in the Smokefree Air Act and neither the SAA nor the rules establish any reporting requirements.

4. Establish performance standards to replace design or operational standards in the rule for small business.

This standard is not applicable.

5. Exempt small business from any or all requirements of the rule.

The Smokefree Air Act applies to all enclosed places of employment. It makes no exception for small businesses. The rules, therefore, cannot establish such an exemption and to do so would be in violation of the law. (Iowa Code sections 17A.2(11), 17A.9A(1))