
ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Smoke Free Illinois Code
- 2) Code Citation: 77 Ill. Adm. Code 949
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
949.10	New Section
949.20	New Section
949.30	New Section
949.40	New Section
- 4) Statutory Authority: Implementing and authorized by the Smoke Free Illinois Act [410 ILCS 82]
- 5) Effective Date of Rules:
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposed Rules Published in Illinois Register: 38 Ill. Reg. 17283, August 15, 2014
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Difference(s) between proposal and final version:

The following changes were made in response to comments received during the first notice or public comment period:

1. In line 17, delete “38” and replace it with “39”.
2. After line number 52, insert a new definition as follows: *“Enclosed area” or “indoors” means all space between a floor and a ceiling that is enclosed or partially enclosed with (i) solid walls or windows, exclusive of doorways, or (ii) solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors.*

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A wall includes any retractable divider, removable wrapping or other physical barrier added to a wall, regardless of size, whether temporary or permanent, and whether or not containing windows or other openings of any kind, size or number. (Section 10 of the Act)

3. In line 58, add “or” after the semicolon.
4. In line 60, delete “office of the state’s attorney; or”.
5. In line 109, add “take” after “may”, delete “serve themselves”, and add “for consumption” after “both”.
6. In line 113, add “, except that employees may enter such areas for cleaning and maintenance before or after the daily public operating hours of the business” after “employment”.
7. Delete line 142 through line 179.
8. In line 187, delete “www.idph.state.il.us” and replace it with “www.dph.illinois.gov” after “website”.
9. In line 204, add “and other identifying information” after “name”.
10. In line 212, add “in accordance with the local health department’s Smoke-Free Illinois enforcement policy on file with the Department,” after “complaint”.
11. In line 215, delete “and” and replace with “or”.
12. In line 222, delete “, but not be limited to,” after “consider”.
13. In line 229, add “smoke or” before “smoking”.
14. In line 237, add “or ashtrays” after “smoke”.
15. In line 264, add “and Section 100.25(d) of the Department’s rules entitled Practice and Procedure in Administrative Hearings” after “Act”.
16. In line, 267, delete “30” and replace it with “10” after “within”.

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The following changes were made in response to comments and suggestions of JCAR:

1. Delete line 11
2. In line 12, change “40” to “30”.
3. In line 13, change “50” to “40”.
4. In line 15, after “by” add “the” and at end add a period.
5. In line 55, change “(i)” to a colon and drop remaining text.
6. In line 56, after “doorways” add a semicolon, delete “(ii)” and drop remaining text.
7. In line 58, after the period add “(Section 10 of the Act)” and drop the remaining text.
8. In line 60, change “or not containing” to “the wall contains”.
9. In line 80, delete “self-service outdoor area”.
10. Delete lines 115-122.
11. In line 126, after “*equipment*” add “or smoked product”.
12. In line 151, change “40” to “30”.
13. In line 175, change “and” to “or”.
14. In line 186, delete the comma.
15. In line 195, change “public-health” to “public health”.
16. In line 221, change “50” to “40”.
17. In line 209, after the semicolon add “and”.
18. In line 212, change “; and” to a period”.

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19. Delete line 214
20. In line 238, change “Section” to “77 Ill. Adm. Code” and delete the 2nd “of the”.
21. In line 239, add an opening parenthesis before “Department” and a closing parenthesis after “Hearings”.
22. In line 249, after “*between*” add “Article 10 of”.

In addition, various typographical, grammatical, and form changes were made in response to the comments from JCAR.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This rulemaking implements the Smoke Free Illinois Act, Public Act 95-0017, which authorizes the Illinois Department of Public Health to enforce the provisions of the Act and to assess fines for violation of the Act. This rulemaking includes provisions regarding filing of complaints and enforcement provisions.
- 16) Information and questions regarding these adopted rules shall be directed to:

Elizabeth Paton
Assistant General Counsel
Division of Legal Services
Department of Public Health
535 West Jefferson, 5th Floor
Springfield, Illinois 62761

(217) 782-2043
e-mail: dph.rules@illinois.gov

The full text of the adopted rules begins on the next page:

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER u: MISCELLANEOUS PROGRAMS AND SERVICES

PART 949
SMOKE FREE ILLINOIS CODE

Section	
949.10	Definitions
949.20	Referenced Materials
949.30	Complaints
949.40	Enforcement

AUTHORITY: Implementing and authorized by the Smoke Free Illinois Act [410 ILCS 82].

SOURCE: Adopted at 39 Ill. Reg. _____, effective _____.

Section 949.10 Definitions

"Act" means the Smoke Free Illinois Act [410 ILCS 82].

"Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives no more than 10% of its gross revenue from the sale of food consumed on the premises. "Bar" includes, but is not limited to, taverns, nightclubs, cocktail lounges, brew pubs, saloons, microbreweries, sports bars, adult entertainment facilities, and cabarets. (Section 10 of the Act)

"Clear and conspicuous" means that signage is designed so that letters, numbers and symbols are of sufficient size to be clearly legible and visible to an individual who is not visually impaired from a distance of 10 feet.

"Complaint" means a written or oral report of an alleged violation of the Act or this Part.

"Department" means the Department of Public Health. (Section 10 of the Act)

"Drift" means the physical movement of smoke, regardless of cause, into any area where smoking is prohibited.

"Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profits, including, but not limited to, an independent contractor, or a person who volunteers his or her services for a non-profit entity. (Section 10 of the Act)

"Employer" means a person, business, partnership, association, or corporation, including a municipal corporation, trust, or non-profit entity, that employs the services of one or more individual persons. (Section 10 of the Act)

"Enforcing agency" means State-certified local public health departments and local law enforcement agencies.

"Enclosed area" or "indoors" means all space between a floor and a ceiling that is enclosed or partially enclosed with:

solid walls or windows, exclusive of doorways; or

solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors. (Section 10 of the Act)

A wall includes any retractable divider, removable wrapping or other physical barrier added to a wall, regardless of size, whether temporary or permanent, and whether the wall contains windows or other openings of any kind, size or number.

"Local law enforcement agency" means:

police department of a city, town, village or other incorporated area;

sheriff's department; or

special jurisdictions that provide police services for defined entities or areas, including, but not limited to, parks, universities, schools, or transportation resources, such as airports, subways, etc.

"Place of employment" means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including, but not limited to, entrances and exits to places of employment, including a minimum distance, as set forth in Section 70 of the Act, of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; offices and work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult day care, or other similar social services care on the premises, is not a "place of employment". (Section 10 of the Act)

"Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the State of Illinois, or any other public entity, and regardless of whether a fee is charged for admission, including a minimum distance, as set forth in Section 70 of the Act, of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A "public place" does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises. "Public place" includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theatres, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, enclosed

or partially enclosed sports arenas, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, all government owned vehicles and facilities, including buildings and vehicles owned, leased, or operated by the State or State subcontract, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, places of worship, and no less than 75% of the sleeping quarters within a hotel, motel, resort, inn, lodge, bed and breakfast, or other similar public accommodation that are rented to guests, but excludes private residences.
(Section 10 of the Act)

"Restaurant" means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that gives or offers for sale food to the public, guests, or employees, and a kitchen or catering facility in which food is prepared on the premises for serving elsewhere. "Restaurant" includes a bar area within the restaurant. (Section 10 of the Act)

"Smoke" or "smoking" means the carrying, smoking, burning, inhaling or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted smoking equipment or smoked product. (Section 10 of the Act)

"State-certified local public health department" means a local health department that is certified under the Certified Local Health Department Code.

Section 949.20 Referenced Materials

- a) The following State and federal laws are referenced in this Part:
 - 1) Smoke Free Illinois Act [410 ILCS 82]
 - 2) Freedom of Information Act [5 ILCS 140]
 - 3) Illinois Administrative Procedure Act [5 ILCS 100]
- b) The following administrative rules are referenced in this Part:
 - 1) Access to Records of the Department of Public Health (2 Ill. Adm. Code 1127)
 - 2) Certified Local Health Department Code (77 Ill. Adm. Code 600)
 - 3) Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)

Section 949.30 Complaints

- a) *Any person may register a complaint with the Department, a State-certified local public health department, or a local law enforcement agency for a violation of the Act or this Part. (Section 40(b) of the Act) Complaints shall be registered with the Department by calling the following toll-free telephone number: 1-866-973-4646 or by registering a complaint or downloading a complaint form from the Department's website (www.dph.illinois.gov). A complaint registered with the Department, a State-certified local public health department, or a local law enforcement agency shall include:*
 - 1) The name and address of the public place or place of employment that is the subject of the complaint (if available) and the name and address of the business owner (if available);
 - 2) The date and approximate time of the occurrence that prompted the complaint;
 - 3) A description of the occurrence that prompted the complaint; and
 - 4) Any other information relevant to the occurrence that prompted the complaint.
- b) The Department will protect the confidentiality of the complainant and will not disclose the complainant's name or other identifying information, including pursuant to any Freedom of Information Act request, unless he or she consents to the disclosure.
- c) Information about the complaint, including the date and time of the complaint, the complainant's name, the name of the public place or place of employment, and the specific allegations registered, will be maintained by the Department.
- d) After the receipt of a complaint, a State-certified local public health department or a local law enforcement agency shall investigate the complaint in accordance with the local health department's Smoke-Free Illinois enforcement policy on file with Department by:
 - 1) Notifying the proprietor at the public place or place of employment of the complaint; or

- 2) Conducting an inspection of the public place or place of employment for compliance with the Act and this Part.
- e) In determining whether a violation of the Act or this Part has occurred, the Department, State-certified local public health department, or local law enforcement agency shall consider the following:
- 1) The presence of a used ashtray or container with ashes or cigarette butts in an area where smoking is prohibited;
 - 2) The lack of a sign that is required under the Act and this Part;
 - 3) The presence of smoke or smoking;
 - 4) The presence of ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
 - 5) The presence of smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems or other means; and
 - 6) The presence of smoke or ashtrays within 15 feet from entrances, open windows or ventilation systems.
- f) Information concerning complaints can be requested pursuant to the Freedom of Information Act and the Department's rules titled Access to Records of the Department of Public Health; however, the identity of the complainant is not disclosable.

Section 949.40 Enforcement

- a) The Department, State-certified local public health departments, and local law enforcement agencies shall enforce the provisions of the Act and this Part. Fines may be assessed pursuant to Section 45 of the Act and this Part.
- b) Any employer, owner, manager, operator or employee of any public place or place of employment shall immediately inform persons who are violating the Act or this Part of the requirements of the Act and this Part that are applicable to the public place or place of employment.
- c) Upon observing or being notified of any violation of the Act or this Part, an employer, owner, manager, operator or employee shall immediately ask persons to cease smoking in prohibited areas. If smoking does not immediately cease, the employer, owner, manager, operator or employee shall immediately notify local law enforcement.
- d) In accordance with Section 40(c) of the Act and 77 Ill. Adm. Code 100.25(d) (Department's rules entitled Practice and Procedure in Administrative Hearings), any person or entity receiving a citation or a notice of violation of the Act may request an administrative hearing, provided that the request is in writing and is delivered to the enforcing agency identified on the citation or notice of violation within 10 days after the person or entity receives the citation or notice of violation. *Upon receipt of a request for hearing to contest the imposition of a fine imposed by a citation, the enforcing agency shall immediately forward a copy of the citation and notice of the request for hearing to the Department for initiation of a hearing conducted in accordance with Article 10 of the Illinois Administrative Procedure Act and the Department's rules titled Practice and Procedure in Administrative Hearings, except that, in case of a conflict between Article 10 of the Illinois Administrative Procedure Act and the Act, the provisions of the Act shall control. Parties to the hearing shall be the enforcing agency and the violator.* (Section 40(d) of the Act)