

DEPARTMENT OF HUMAN SERVICES, OREGON HEALTH DIVISION

DIVISION 15

**IMPLEMENTATION OF THE OREGON INDOOR CLEAN AIR ACT --
PROHIBITION OF TOBACCO SMOKING IN PUBLIC PLACES AND
WORKPLACES**

333-015-0025

Authority and Purpose

(1) These rules are adopted pursuant to the authority granted the Oregon Department of Human Services, Health Services (formerly the Oregon Health Division) in 433.835 through 433.875 and 433.990(4) concerning smokefree places of employment and public places.

(2) The purpose of the Oregon Indoor Clean Air Act is to reduce the health hazard of persons in confined places caused by inhaling smoke from tobacco products.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0030

Definitions

(1) "Act" means the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875 and 433.990(4).

(2) "Bars or taverns posted as off-limits to minors under rules adopted by the Oregon Liquor Control Commission" means, any enclosed area licensed by the Oregon Liquor Control Commission (OLCC) to serve alcohol by the drink for consumption on premises that are posted with an OLCC Minor Posting prohibiting minors anywhere on the premises or allowing minors only during certain specified days and hours, pursuant to OAR 845-006-0340. For the purposes of the Act, a bar or tavern is included in this definition only during those days and hours when minors are not allowed on the premises.

(3) "Bowling center" means an enclosed area where the primary purpose of the business is the provision of bowling facilities, including bowling lanes.

(4) "Employer" means any entity or individual who engages an individual to perform work or services in an enclosed area under the control of said employer.

(5) "Enclosed area" means all space between a floor and a ceiling that is enclosed on all sides by solid walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling, including all space therein screened by partitions that do not extend to the ceiling or are not solid, such as "office landscaping" or similar structures.

(6) “Local government” means any county, district, municipality, port, or political subdivision of this state.

(7) “Local Public Health Authority ” means the county government unless a health district has been formed under ORS 431.414 or the County has contracted with a person or agency to act as the public health authority or the county has relinquished its authority to the state.

(8) “Minors” means people under the age of 18 for the purpose of employee smoking lounges in OAR 333-015-0035(3)(g). “Minors” in reference to OLCC minors postings has the meaning given to the term in OLCC statute and rules.

(9) “Place of employment” means every enclosed area under the control of a public or private employer that employees frequent during the course of employment, including but not limited to work areas, employee lounges, rest rooms, conference rooms, classrooms, cafeterias and hallways. “Place of employment” does not include a private residence unless it is used as a child care facility as defined in ORS 657A.250, a facility providing adult day care as defined in ORS 410.490(3) or a health care facility as defined in ORS 442.015.

(10) “Person in Charge of a Public Place” means any person who has responsibility because of ownership, proprietorship, or management of a place that is open to or frequented by the public. A person in charge of a public place is used to refer to those instances where the person in charge is *not* an employer.

(11) “Public place” means any enclosed indoor area open to and frequented by the public, except those public places subject to ORS 441.815, including but not limited to restaurants, as defined in ORS 624.010, retail stores, banks, commercial establishments, educational facilities, nursing homes, auditoriums, arenas, meeting rooms and grocery stores.

(12) “Public places which the Department of Human Services regularly inspects” means food service facilities, tourist accommodations, public swimming pools, spas, wading pools and bathhouses.

(13) “Restaurants posted as off-limits to minors or areas of restaurants posted as off-limits to minors under rules adopted by the Oregon Liquor Control Commission” means any restaurant or portion of a restaurant that is posted with an OLCC Minor Posting prohibiting minors anywhere on the premises or allowing minors only during certain specified days and hours pursuant to OAR 845-006-0340. For purposes the Act, a restaurant or portion of a restaurant is included in this definition only in those specific locations and during those days and hours when minors are not allowed on the premises.

(14) “Rooms designated by the owner or person in charge of a hotel or motel as rooms in which smoking is permitted” means sleeping rooms or suites in that hotel or motel.

(15) "Smoking instrument" means any cigar, cigarette, pipe or other tobacco smoking equipment.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0034

Jury Rooms

(1) Smoking is prohibited in a room during the time that jurors are required to use the room.

(2) All jury rooms shall be posted prominently with "No Smoking" signs having letters no less than one inch in height.

(3) Nothing in this section is intended to allow smoking in a jury room when it would otherwise be prohibited by ORS 433.850 through 433.875.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0035

General Provision

(1) No person shall smoke or carry any lighted smoking instrument in a public place except in those areas that are not required to be smokefree pursuant to ORS 433.850 (2) and 333-015-0035 (3)(a) through (f) of these rules.

(2) Employers shall provide a place of employment that is free of tobacco smoke for all employees, except in those areas listed in ORS 433.850 (2) and in 333-015-0035 (3).

(3) The following areas are not required to be smokefree:

(a) Retail businesses primarily engaged in the sale of tobacco or tobacco products;

(b) Restaurants posted as off-limits to minors or areas of restaurants posted as off-limits to minors under rules adopted by OLCC;

(c) Bars or taverns posted as off-limits to minors under rules adopted by OLCC;

(d) Rooms or halls being used by charitable, fraternal or religious organizations during the time they conduct bingo games under a license issued pursuant to ORS 464.270;

(e) Bowling centers;

(f) Rooms designated by the owner or person in charge of a hotel or motel as rooms in which smoking is permitted;

(g) Employee lounges designated by an employer for smoking if:

(A) The lounge is not accessible to minors;

(B) The air in the lounge is exhausted directly to the outside by an exhaust fan and not recirculated to other parts of the building;

(C) The lounge is in compliance with ventilation standards and conditions set forth in OAR 333-015-0050.

(D) The lounge is located in a nonwork area where no employee is required to enter as part of the employee's work responsibilities. For purposes of this paragraph, "work responsibilities" does not include custodial or maintenance work carried out in a lounge when it is unoccupied; and

(E) There are sufficient nonsmoking lounges to accommodate nonsmokers.

(4) Nothing in these rules shall prevent an employer in charge of a place of employment (PIC) or a person in charge of a public place listed in OAR 333-015-035(3) from designating the entire place of employment or public place as smokefree.

(5) Nothing in ORS 433.835 through 433.875 or in these rules requires an employer to provide an employee smoking lounge.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0040

Signs

(1) An employer or PIC, except in those places described in OAR 333-015-0035(3), shall post signs prohibiting smoking. Signs shall use either the "no smoking" symbol (a cigarette with a diagonal slash through it within a circle) or the words "No Smoking" or both. Signs shall be posted prominently at each outside entrance to the place of employment or building.

(2) In a place of employment or public place such as a restaurant or tavern where minors are prohibited in a portion of the enclosed space or are prohibited only during certain times: the employer or PIC shall post signage at the entrances and wherever else necessary to clearly describe where and when smoking is prohibited.

(3) At each entrance to an employee lounge designated for smoking as permitted under section 333-015-0035(3)(g) of these rules, the employer shall post a sign with the words, "This is a smoking area. Occupants will be exposed to secondhand smoke."

(4) All signs used to describe whether smoking is prohibited or allowed in a place of employment or public place shall be placed at a height and location easily seen by a person entering the establishment and shall not be obscured in any way.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0045

Ashtrays

Ashtrays intended for use inside the place of employment or public place are prohibited where and when smoking is prohibited.

Stat. Auth.: ORS 433

Stats. Implemented: **ORS 433**

333-015-0050

Ventilation Standards

(1) Any employee smoking lounge provided by an employer as permitted under OAR 333-015-0035(3)(g) must be enclosed and shall meet the following ventilation standards and conditions:

(a) Smoking lounge must have a negatively pressurized ventilation system that exhausts air to the exterior of the building with smoke-tight ducts. Termination of ducts shall be more than 30 feet from any air intake to any building; from any doors to any building; and from any window capable of being opened in any building.

(b) Doors between the smoking lounge and other parts of the building must be solid and self-closing.

(c) Building heating, ventilation and air conditioning (HVAC) system must be balanced to prohibit any migration of smoke from the smoking room to other parts of the building.

(d) Smoking lounge ventilation system must operate at all times that the room is occupied.

(e) Smoking lounge must be clearly identified with signs as described in OAR 333-015-0040 (3).

(2) Prior to permitting smoking in an employee lounge, an employer must obtain written certification by an actively registered professional engineer (PE) that the design, installation and performance of the ventilation system meet the standards described in these rules; and that all conditions and standards described in OAR 333-015-0050(1)(a) through (e) are met. The employer must keep the certification on the premises and must produce it for inspection at the request of DHS-HS or the Local Public Health Authority (LPHA).

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0060

Waivers

The sole discretion for granting a waiver shall reside with the State Public Health Officer. The State Public Health Officer may waive the provision of these rules upon technical review:

- (1) If it is demonstrated to the satisfaction of the State Public Health Officer that strict compliance with the rule would be highly burdensome or impractical due to special conditions; and
- (2) If the public or private interest in the granting of the waiver is found by the State Public Health Officer to clearly outweigh the interest of the application of uniform rules; and
- (3) If alternate measures are provided which, in the opinion of the State Public Health Officer, will provide adequate protection to the health, safety and comfort of non-smoking employees and the public.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0065

Local Governments

- (1) A local government may not prohibit smoking in any areas listed in rule 333-015-0035 (3), unless the local government prohibition was passed before July 1, 2001.
- (2) No local government may allow smoking in any area where it is prohibited by ORS 433.835 through 433.875 or by these rules.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0070

Enforcement

- (1) The DHS-HS, shall maintain a system for receiving complaints, providing educational materials conducting site visits, and issuing notices of violation. (2) DHS-HS shall:
 - (a) Provide education and assistance to places of employment and public places to help them comply with the Act, and
 - (b) Receive, respond to, and investigate complaints of non-compliance with the Act; prepare and follow-up on remediation plans with sites found to be out of compliance with the Act and/or these rules.
 - (c) Issue citations to violators of the Act and/or these rules, and as necessary conduct contested cases under ORS chapter 183.
- (3) On written agreement with DHS-HS, a County and/or LPHA may assume any or all the responsibilities outlined in (2) above. In such cases, DHS-HS will, upon request of the LPHA, be available for consultation and technical assistance with enforcement procedures.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0075

Complaint Response

The DHS-HS or the LPHA shall respond to complaints as follows:

(1) Initial complaint:

(a) The DHS-HS or the LPHA shall whether the assess site in question is required to be smokefree under the provisions of ORS 433.835 through 433.850.

(b) If the DHS-HS or the LPHA determines that the place of employment (or some portion) or public place is required to be smokefree, the DHS-HS or the LPHA shall send a letter (“initial response letter”) to the place of employment or public place named in the complaint within 10 business days after receipt of the complaint of violation. The letter shall contain notification that the employer or PIC has been reported as being in violation of the Act and or these rules, educational materials about how to comply with the Act and or these rules, and information on whom to contact for further information and assistance in compliance.

(c) The DHS-HS or the LPHA shall send a form letter to the complainant, if the complainant has supplied their name and contact information, notifying them that the complaint has been received and is being investigated, or that the workplace is not required to be smokefree under ORS 433.835 through 433.850.

(2) Second or subsequent complaint:

(a) If the DHS-HS or the LPHA receives additional complaint(s) about the site within 5 business days after the “initial response letter” was sent, the DHS-HS or the LPHA shall send a form letter to the complainant, if the complainant has supplied their name and contact information, telling them that the complaint has been received and the investigation process begun.

(b) If the DHS-HS or the LPHA receives a second or subsequent complaint about the site more than 5 business days after the “initial response letter” was sent, a representative of the DHS-HS or the LPHA shall make an unannounced site visit within 10 business days of complaint receipt, to determine whether the employer or PIC is in violation of the Act or of these rules.

(3) Finding of violation: A violation is deemed to have occurred if during a site visit pursuant to a second or subsequent complaint, at a time and in an area where smoking is prohibited, the DHS-HS or LPHA representative:

(a) Observes any person smoking or carrying a lighted smoking instrument; or

(b) Observes cigar or cigarette butts; or

(c) Observes any violation of rules concerning ventilation standards for employee lounges set forth in OAR 333-015-0050; or

(d) Observes no signs or insufficient signs as required under these rules; or

(e) Obtains written signed statements from at least two individuals who have personally witnessed smoking or the carrying of a lighted smoking instrument at a time and in an area where smoking is prohibited.

(4) Remediation plan: After a finding of violation, the DHS-HS or the LPHA representative and the employer or PIC will jointly develop a remediation plan.

All remediation plans must be completed:

(a) Within 15 days of the site visit if the employer has fewer than 500 employees and fewer than three separate work sites;

(b) Within 15 days of the site visit for public places with no employees;

(c) Within 45 days of the site visit if the employer has 500 or more employees and three or more work sites.

(d) An employer or PIC may request in writing an extension of time in which to complete the remediation plan in special circumstances. An extension may be granted only by the State Public Health Officer.

(e) A DHS-HS or LPHA representative shall make a follow-up visit within 14 days of the remediation plan completion date to confirm completion.

(5) Failure to complete remediation plan on schedule. If, during the follow-up visit, the DHS-HS or the LPHA representative finds that the remediation plan has not been implemented and/or finds additional evidence of violations, the DHS-HS or the LPHA shall notify the State Public Health Officer or designee for further enforcement activity.

(a) The State Public Health Officer or designee shall issue to the employer or PIC a citation of violation containing the following information:

(A) Name and address of site and name of employer or PIC,

(B) Date of initial site visit,

(C) Evidence of violation and citation of rule violated,

(D) Summary of remediation plan and completion date,

(E) Findings and date of follow-up visit,

(F) Citation of legal authority for fine,

(G) Amount of civil penalty,

(H) Options: either pay civil penalty in full within 10 days, request a hearing within 10 days, or have default judgment entered against employer or PIC,

(I) Statement of hearing and appeal rights under ORS chapter 183, and

(J) Signature and title of State Health Officer or designee issuing the citation.

(b) A citation form shall be provided by DHS-HS. This form shall be used for all citations.

(c) The citation shall be personally delivered to the employer or PIC or mailed to the place of employment or public place address by both first class mail and certified mail, return receipt requested.

(d) Payment of civil penalties shall be made by mail to the State Public Health Officer and credited to the General Fund, as required by ORS 433.855(1)(c).

(6) Failure to Cooperate. In addition to assessing fines under OAR 333-015-0075(5) above, the State Public Health Officer may initiate further legal action against an employer or PIC upon notification that they have:

(A) Refused to allow an on-site visit to assess status of compliance;

(B) Refused to cooperate in the development of a remediation plan;

(C) Incurred repeated or multiple violations of the Act or these rules.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0080

Public Places which the DHS-HS Regularly Inspects

If, in public places which the DHS-HS regularly inspects and which are required to be smokefree under these rules, the DHS-HS or the LPHA inspector, during a regular inspection, notes a possible violation of these rules, the inspector shall report the violation to the DHS-HS as a complaint of violation.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0085

Penalties

A violation of the Act and/or these rules shall be punishable by \$50.00 each day the workplace or public place is found to be out of compliance not to exceed \$1000.00 in any 30-day period.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433

333-015-0090

Effective Date

The effective date for rules 333-015-0025, 333-015-0030, 333-015-0034, 333-015-0035, 333-015-0040, 333-015-0045, 333-015-0050, 333-015-0060, 333-015-0065, 333-015-0070, 333-015-0075, 333-015-0080, 333-015-0085 and 333-015-0090 shall be August 27, 2002.

Stat. Auth.: ORS 433

Stats. Implemented: ORS 433