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Oregon Administrative Rules  
Department of Human Services, Public Health Division  
Chapter 333

DIVISION 15  
IMPLEMENTATION OF THE OREGON 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 ~~to~~ persons ~~in confined places~~ caused by inhaling smoke from tobacco products.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 – 875 and 433.990(4)

Hist.: ~~HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04~~

**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.~~

~~(2) "Cigar Bar" means a business that:~~

~~(a) Has on-site sales of cigars as defined in ORS 323.500;~~

~~(b) Has a humidor on the premises;~~

~~(c) Allows the smoking of cigars on the premises but prohibits the smoking of all other tobacco products in any form including, but not limited to, loose tobacco, pipe tobacco, cigarettes as defined in ORS 323.010 and cigarillos and defined by OAR 333-015-0030 (3);~~

~~(d) Has been issued and operates under a full on-premises sales license issued under ORS 471.175;~~

- (e) Prohibits persons under 21 years of age from entering the premises and posts notice of the prohibition;
- (f) Does not offer video lottery games as authorized under ORS 461.217;
- (g) Has a maximum seating capacity of 40 persons;
- (h) Has a ventilation system that is certified by the Assistant to the State Fire Marshal described in ORS 476.060 for the jurisdiction in which the cigar bar is located as adequate to remove the cigar smoke in the cigar bar and vents the smoke from the cigar bar in a manner that prevents the smoke from entering any other establishment; and
- (i) Requires all employees to read and sign a form approved and published by the Oregon Public Health Division, which explains the dangers of exposure to secondhand smoke.
- (3) "Cigarillos" means a smoking device wrapped in tobacco leaf, rather than paper, containing less than 3 grams of tobacco, and measuring less than 100 mm in length.
- (4) "DHS" means the Oregon Department of Human Services.
- (5) "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.
- (56) "Enclosed area" means all space between a floor and a ceiling that is enclosed on all three or more sides by solid permanent or temporary 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.~~

(7) "Entity in Charge of a Public Place" means any person or organization who has responsibility because of ownership, proprietorship, management, or oversight of a place that is open to the public. An entity in charge of a public place is used to refer to those instances where the person or organization in charge is not an employer.

~~(14) (8) "Entrance" means any point of entry to premises whereby a person gains access to the interior of enclosed space from the exterior of outdoor space.~~

~~(9) "Exit" means any point on a premises whereby a person gains access to the exterior of an enclosed space from the interior of an indoor space.~~

~~(10) "Gross Revenue" means all receipts from the sale of product(s) less the amount of any rebates, refunds or credits.~~

~~(11) "Humidor" means a storage container designed to allow controlled airflow and equipped with a device that maintains the internal humidity in the range of 70 to 75 percent and an internal temperature maintained between the range 68 to 70 degrees Fahrenheit.~~

~~(12) "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.~~

~~(13) "Maximum seating capacity" means the total number of seats available to patrons including bar stools, seating at cocktail tables, seats at buddy-bar tables, banquette seating, and dining seating.~~

~~(14) "Noncommercial Tobacco Products" means unprocessed tobacco plants or tobacco bi-products used for ceremonial or spiritual purposes by American Indians.~~

~~(15) "PHD" means the Public Health Division of the Oregon Department of Human Services~~

~~(16) "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 and work vehicles that are not operated exclusively by one employee. "Place of employment" does not include a private residence unless it is used as a child care facility as defined in ORS 657A.250 or a facility providing adult day care as defined in ORS 410-490.~~

~~(17) "Private residence" means a residence or part of a residence that is not used as a place of business where clients or customers use the premises. A residence that is considered a place of employment or public place is subject to ORS 433.835 to 433.875~~

during its hours of operation. Only that part of a residence used as a place of business will be subject to ORS 433.835 to 433.875.

(18) "Public place" means any enclosed area open to the public including but not limited to restaurants, as defined in ORS 624.010, bars, bowling centers, bingo halls, taverns, retail stores, banks, commercial establishments, educational facilities, nursing homes, auditoriums, arenas, meeting rooms, and grocery stores.

(19) "Temporary walls" means walls not intended to be permanent including walls constructed of non-permanent material including but not limited to plastic, mesh or other screening materials, slats, louvered blinds, fabric or blankets.

(20) "Rooms designated by the owner or entity in charge of a hotel or motel as rooms in which smoking is permitted" means sleeping rooms or suites in that hotel or motel.

(1521) "Smoking instrument" means any cigar, cigarette, pipe or other tobacco-smoking equipment.

(22) "Smoke shop" means a business that:

(a) Has at least 75 percent of gross revenues resulting from tobacco sales in every fiscal year;

(b) Prohibits persons under 18 years of age from entering the premises;

(c) Does not offer video lottery games as authorized under ORS 461.217, social gaming or betting on the premises;

(d) Does not sell or offer on-premises consumption of alcoholic beverages; and

(e) Is a stand-alone business with no other businesses or residential property attached to the premises.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04

~~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~~

~~Hist.: HD 19-1985(Temp), f. & ef. 9-26-85; HD 31-1985, f. & ef. 12-9-85; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04~~

**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)~~ (5) and (7) 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 ~~333-05-0035-(3)~~ 333-015-0035(5) and (7).

(3) No person shall smoke or carry any lighted smoking instrument within 10 feet of the following parts of public places or places of employment:

(a) Entrances;

(b) Exits;

(c) Windows that open;

(d) Ventilation intakes that serve an enclosed area;

(e) A service line or within 10 feet of a service line that extends an entrance; and

(f) An accessibility ramp that extends beyond 10 feet from the entrance exit.

~~(34) 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 or entity in charge of a hotel or motel may designate up to 25 percent of the sleeping rooms of the 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.~~

~~(45) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces designated for traditional ceremonies in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996.~~

~~(6) Smoking is prohibited in a room during the time that jurors are required to use the room:~~

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

~~(b) 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~~

~~(7) The following areas are not required to be smokefree:~~

(a) Smoke shops meeting the definition set forth in OAR 333-015-0030(22)

(b) Cigar bars if:

(A) The cigar bar generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006; and

(B) The cigar bar has provided the Public Health Division with proper documentation as required by OAR 333-015-0066

(C) Up to 25 percent of the sleeping rooms of a hotel or motel as designated by the owner or person or entity in charge.

(8) Nothing in these rules shall prevent an employer in charge of a place of employment (PIC) or a person in charge or an entity in charge (EIC) of a public place ~~listed in OAR 333-015-0035(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 433.855

Stats. Implemented: ORS 433.835 — 433.870

~~Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04~~

### **333-015-0040**

#### **Signs**

(1) An employer or ~~PIC~~entity in charge, except in those places described in OAR 333-015-0035~~(3)~~ (5) and (7), shall post signs prohibiting smoking. Signs shall use either the "no smoking" symbol (a cigarette with a diagonal slash through it within a circle) and the words "within 10 Feet" or the words "No Smoking within 10 Feet" or both. Signs shall be posted prominently at each ~~outside~~entrance and exit to the place of employment or ~~building~~public place.

~~(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)~~(2) In a cigar bar or smoke shop where smoking is allowed under 333-015-0035 (7), the employer or EIC shall post signage at each entrance and exit to clearly state that smoking is allowed in all or some of the premises and that anyone under the age of 21 for cigar bars and under 18 for smoke shops is prohibited from entering the premises.

(3) 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 433.855

Stats. Implemented: ORS 433.835 — 433.870

~~Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-~~

22-02; OHD-12-2002, f. & cert. ef. 8-27-02; PH-18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH-27-2004, f. & cert. ef. 8-19-04

### **333-015-0045**

#### **Ashtrays**

~~Ashtrays intended for use inside the place of employment or public place are prohibited where and when smoking is prohibited. Except for those areas described in 333-015-035 (7), ashtrays intended to be used for smoking are prohibited inside a public place, a place of employment, and within 10 feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area of any public place or workplace.~~

~~Stat. Auth.: ORS 433.855~~

~~Stats. Implemented: ORS 433.835 — 433.870~~

~~(1-83; OHD-8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD-12-2002, f. & cert. ef. 8-27-02; PH-18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH-27-2004, f. & cert. ef. 8-19-04~~

### ~~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~~

~~Hist.: HD-10-1983, f. & ef. 7-1-83; OHD-8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD-12-2002, f. & cert. ef. 8-27-02; PH-18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH-27-2004, f. & cert. ef. 8-19-04~~

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~~

~~Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04~~

### 333-015-0062

#### Vehicles

(1) An employer may allow smoking in vehicles only when the vehicle is permanently assigned to a single employee and no other employees, clients or members of public are required or compelled to operate or otherwise occupy the vehicle.

(2) Nothing in these rules shall prevent an employer from designating all vehicles as smokefree.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 — 433.870

### 333-015-0064

#### Outdoor Smoking Areas

The owner or entity in charge of a place of business may establish an outdoor smoking area if that area is:

- (a) Not within 10 feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area of any public place or workplace;
- (b) Not an enclosed area as defined in OAR 333-015-0030 (6);
- (c) In compliance with all other state, city and county codes.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 — 433.870

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~~

~~Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04~~

### **333-015-0066**

#### **Cigar Bars**

(1) A business must apply to DHS for certification before allowing cigar smoking on its premises.

(2) A business must apply for certification on a form prescribed by DHS and the following information or documentation must be included:

(a) A copy of the business's full on-premises liquor sales license issued by the Oregon Liquor Control Commission under ORS 471.175;

(b) A site-map of the premises including a detailed seating capacity chart;

(c) Certification from the Assistant to the State Fire Marshal, for the jurisdiction where the cigar bar is located, that the cigar bar's ventilation system is adequate to remove the cigar smoke in the cigar bar and prevent the smoke from entering any other establishment;

(d) Using the official form provided by the Oregon Tobacco Prevention and Education Program, proof that all employees have read and signed a document explaining the dangers of exposure to secondhand smoke. This form is available on the Internet at [www.healthoregon.org/tobacco](http://www.healthoregon.org/tobacco) or by calling the Oregon Public Health Division Tobacco Prevention and Education Program.

(e) Documentation demonstrating to the satisfaction of the State Public Health Officer that the cigar-bar generated onsite retail sales of cigars of at least \$5,000 in the calendar year 2006.

(3) DHS shall review application materials within 30 days of receipt and shall determine whether the application is complete.

(4) Within 10 days of an application being declared complete, DHS shall deny or grant the application. DHS shall grant a business' certification if upon review of the application materials, DHS finds that sufficient documentation has been provided to demonstrate the compliance with subsection (2) of this rule. In lieu of denying an application, DHS may request additional information from the applicant in order to determine compliance with subsection (2) of this rule.

(5) DHS may permanently deny the application for cigar bar certification if an applicant provides information that is false or deliberately misleading.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 — 433.870

### **333-015-0068**

#### **Smoke Shops**

(1) A business must apply to DHS for certification prior to allowing smoking on the premises.

- (2) A business must apply for certification on a form prescribed by DHS and the following information or documentation must be included:
- (a) Documentation demonstrating that at least 75% of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments
- (b) Documentation including written descriptions or visual aids demonstrating that the smoke shop is a stand-alone business with no other businesses or residential property attached to the premises
- (3) DHS shall review application materials within 30 days of receipt and shall determine whether the application is complete.
- (4) Within 10 days of an application being declared complete, DHS shall deny or grant the application. DHS shall grant a business' certification if upon review of the application materials DHS finds that sufficient documentation has been provided to demonstrate the compliance with subsection (2) of this rule. In lieu of denying an application, DHS may request additional information from the applicant in order to determine compliance with subsection (2) of this rule.
- (5) DHS may permanently deny the application for smoke shop certification if an applicant provides information that is false or deliberately misleading.
- (6) Every year, within 30 calendar days from the date certification was originally granted, a smoke shop must provide DHS with documentation demonstrating that at least 75% of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 — 433.870

### **333-015-0069**

#### **Revocation of Cigar Bar and Smoke Shop Certification**

DHS may revoke the certification of a cigar bar or smoke shop for up to one year upon finding that the business has had a violation of ORS 431.835 through 433.875 or these rules.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 — 433.870

### **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~~ signs and ~~assistance~~ posters at no cost to ~~places of employment~~ businesses and ~~the public places to help them comply with the Act, and;~~
- (b) ~~Upon request and satisfactory review, provide certification to cigar bars and smoke shops verifying that they have met the definitions and standards for allowing smoking as set forth in ORS 431.835 (1) and ORS 431.850 (d) and these rules;~~
- (c) ~~Provide education and assistance to employers and persons in charge of public places to help them comply with the Act, and~~
- (d) ~~Receive, respond to, and investigate complaints of non-compliance with the Act; prepare and these rules;~~

(e) Prepare and follow-up on remediation plans with sites found to be out of compliance with the Act ~~and~~/or these rules.;

(~~ef~~) 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 ~~C~~county ~~and~~/or Local Public Health Authority (LPHA) may assume any or all the responsibilities outlined in subsection (2) above of this rule. In such cases, DHS-~~HS~~ will, upon request of the LPHA, be available for consultation and technical assistance with enforcement procedures.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 — 433.870

Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04

### **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 assess 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 ~~PI~~public place 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~~30 days of complaint receipt, to determine whether the employer or ~~PI~~public place is in violation of the Act or ~~of~~-these rules.

(3) Finding of violation:

(a) A violation of indoor smoking prohibitions 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 ashtrays intended for employee lounges set forth in OAR 333-015-0050; or use;

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

(E) Observes that a cigar bar does not have proper certification from DHS;

(F) Observes that a smoke shop that allows smoking does not have proper certification from DHS;

(G) Observes the smoking of non-cigar tobacco products in a cigar bar;

(H) Observes smoking instruments intended for use; or rules

(e) Obtains signed written signed statements from at least two individuals who have personally witnessed smoking or, the carrying of a lighted smoking instrument, or the smoking of a prohibited tobacco product 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) A violation of outdoor smoking prohibitions is deemed to have occurred if during a site visit pursuant to a second or subsequent complaint DHS or the LPHA representative:

(A) Observes any person smoking or carrying a lighted smoking instrument within 10 feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area of any public place or workplace;

(B) Observes ashtrays intended to be used for smoking within 10 feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area of any public place or workplace; or

(C) Observes tables or outdoor seating or dining areas within 10 feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area of any public place or workplace that are not clearly marked as non-smoking.

(4) Remediation plan:

(a) After a finding of violation, the DHS or the LPHA representative and the employer or EIC will jointly develop a remediation plan. All remediation plans must be completed within 15 days of the site visit.

(b) An employer or PIC entity in charge of a public place 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 or designee.

(ec) A DHS-HS or LPHA representative shall make a follow-up visit within 430 days of the remediation plan completion date to confirm completion.

~~(5) Failure to complete remediation plan on schedule.~~ (5) Notice of Violation.

~~(a)~~ 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-DHS~~ or the LPHA shall notify the State Public Health Officer or designee for further enforcement activity.

~~(b)~~ Once notified under subsection (5)(a) ~~The of this section, the~~ State Public Health Officer or designee shall issue ~~to the employer or PIC~~ a citation notice of violation ~~containing the following information:~~

~~(A) Name and address of site and name, if applicable, notice of intent to impose civil penalties to the~~ employer or ~~PIC,~~

~~(B) Date~~ entity in charge of ~~initial site visit,~~ a public place. Such notices shall comply with the notice and civil penalty provision in ORS Chapter 183 and OAR 333-015-0085.

~~(C) Evidence~~ (c) The notice 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~~ notice of intent to impose 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 ~~forms~~ shall be provided by DHS-~~HS~~. This form shall be used for all citations.

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

~~(de)~~ Payment of civil penalties shall be made by mail to the State Public Health Officer and credited to the General Fund Tobacco Use Reduction Account, 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 public place including but not limited to requesting an injunction from a court to enjoin operation of the business or public place if the employer or public place has:

(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 433.855~~

~~Stats. Implemented: ORS 433.835 — 433.870~~

~~\_Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04~~

**333-015-0080**

**Public Places ~~which the DHS-HS Regularly Inspects~~ Regularly Inspected by DHS**

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 ORS 433.835 to 433.875 or these rules, the inspector shall report the violation to ~~the DHS-HS as a complaint of violation~~.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 — 433.870

Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04

### **333-015-0082**

#### **Public Places Regulated by Other State Agencies or Local Governments**

If during the course of an inspection of a public place, which is regulated by the State of Oregon or a local government, an inspector notes a possible violation of ORS 433.835 to 433.875 or these rules they may report the possible violation to the DHS.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 — 433.870

### **333-015-0085**

#### **Penalties**

A violation of the Act ~~and~~/or these rules shall be punishable by \$500.00 each day the workplace or public place is found to be out of compliance, not to exceed \$~~12~~2,000.00 in any 30-day period.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.855 and 433.990(4)

Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04

### **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.

January 1, 2009

Stat. Auth.: ORS 433.855

Stats. Implemented: ~~ORS 433-2007 Oregon Laws, Chapter 602~~

Hist.: PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04