

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Public Health Division  
Agency and Division

Chapter 333  
Administrative Rules Chapter Number

**Indoor Clean Air Act**

Rule Caption:

In the Matter of: Amending Oregon Administrative Rules 333-015-0030 and 333-015-0040 related to the Indoor Clean Air Act.

Statutory Authority: ORS 433.855

Other Authority:

Stats. Implemented: ORS 433.835 through 433.870

Need for the Rule(s):

Amendments to OAR 333-015-0030 and 333-015-0040 are needed to ensure consistency with the statute and to correct errors in the original filing that was made on August 15, 2008. The Oregon Indoor Clean Air Act was amended by the 2007 legislature to expand the scope of the law to include bars and taverns, bar areas of restaurants, bingo halls and bowling centers. Cigar bars and smoke shops are exempted under a set of specific criteria. Rules are necessary to provide governments, businesses, and the public with the basic framework for implementing the Act.

Documents Relied Upon, and where they are available:

Minutes of Rule Advisory Committee meetings 11/15/07, 11/29/07, 12/06/07, 12/20/07, 1/17/08, 2/14/08 are available at [www.healthoregon/tobacco.org](http://www.healthoregon/tobacco.org) or by calling the Tobacco Prevention and Education Program at 971-673-1020.

2007 Senate Bill 571-- <http://www.leg.state.or.us/07reg/measpdf/sb0500.dir/sb0571.en.pdf>

Scholarly journals were consulted in researching economic impact; detailed information can be obtained by calling the Tobacco Prevention and Education Program at 971-673-1020.

Fiscal and Economic Impact:

Food/Beverage Revenues of Eating and Drinking Establishments:

Research on studies of other regions' smoking bans find that the net effect to revenue is inconclusive. Of all studies that use objective statistical methods, the findings about the impacts to the restaurant industry came to very different conclusions - that smoke-bans cause no effect, a positive effect and in some cases a negative effect. There is evidence that while some bars suffer from reduced revenues after a ban, some bars thrive with much higher revenues as a result of smoke-free environments. One Oregon-based study that examined the health and economic effects of the Corvallis smoking ban found that in general there was no negative economic impact.

Charitable Contributions of Bingo Halls:

There is some evidence to suggest that Charitable Bingo Halls may be affected by smoke-free law but one economic study found evidence that Bingo Halls are not affected by smoke-free laws. In the nine years from 1997 to 2006, Bingo Halls in Oregon have experienced a decrease in their Handle (total of all bets placed) every year, on an average of 4.3% per year. As the Handle drops, a greater percentage of losses comes out of the contribution to charity than that covering bingo hall expenses and budget. From 1998 to 2006, the Handle dropped 33%, budget and expenses dropped 27%,

while contributions to charity dropped 41%. Due to the inconclusiveness of previous studies and the consistently declining trend of charitable contributions by Bingo Halls, a fiscal impact is not estimable.

#### Bowling Centers:

Many bowling centers are already smoke-free in Oregon, and it is not known what portion of Oregon's bowling industry allows smoking. One study, conducted by the Bowling Proprietors' Association of America (BPAA) found that only one segment of the bowling market, league play, may be affected. The study found a 10-20% drop in league play post implementation of a smoking ban, but with full recovery within 2 to 4 years. This does not account for any increased business by non-smoking customers during other-than-league bowling. Based on this information, no impact is determined.

#### Tobacco Shops:

Tobacco Shops remain exempt from the law (under certain conditions), but are now prohibited from allowing the consumption of alcoholic beverages. No estimated impact.

#### Hotel and Accommodations:

The maximum number of rooms permitted to allow smoking has been reduced to 25%. No estimated impact.

#### Reduction in health related costs due to reduction in heart attacks

Several studies have found that hospital admissions for acute myocardial infarction (AMI) decline after a comprehensive smoking ban law (affecting workplaces including restaurants, bars and taverns) went into effect. New York State experienced 8% fewer admissions for AMI after their comprehensive statewide law supplanted a patchwork of less restrictive laws.

Oregon expects declines in hospital admissions for AMIs once the comprehensive statewide law is in force, although declines are not expected to be as steep as New York's. This is because New York State previously allowed smoking in restaurants and bars, while currently Oregon restricts smoking in some restaurants.

#### Statement of Cost of Compliance:

##### 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department of Human Services, Public Health Division (PHD) will enforce the law. The Indoor Clean Air Act is a complaint driven law and the PHD already has a system for responding to complaints of violation of the law. 95% of all businesses were already covered by the 2001 version of the law. Changes in the rule will affect only the remaining businesses (approximately 5%). PHD estimates the total cost of compliance at approximately \$365,000 in fiscal year 2009. Thereafter, PHD anticipates a dramatic decline in compliance related costs. Enforcement in Oregon and other states strongly supports PHD's assertion that once initial education and compliance efforts are completed, continued enforcement requires very little expenditure; PHD estimates an annual impact on state and local government combined at less than \$50,000.

County Health Departments participate voluntarily in responding to complaints of violation through formal agreements with PHD. PHD provides funds to county health departments for implementation activities— county funds are not used.

##### 2. Cost of compliance effect on small business (ORS 183.336):

###### a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The Oregon Indoor Clean Air Act applies to all businesses. Therefore all of Oregon's small businesses (approximated 100,000) are subject to the rule. However, because the vast majority (95%) of businesses were covered under the 2001 version of the law, changes in the rule will only

affect the remaining 5% of all businesses. The 2007 version extends the law to bars, bar areas of restaurants, billiard halls and bingo. Accurate estimates of the numbers of bars and taverns in Oregon are not available. There are, however, approximately 6000 businesses with a "Full On Premises Liquor License." Businesses with this type of license may be bars or taverns but this category also includes "pub" type establishments that may have been subject to the 2001 version of the law.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

Cigar bars that choose to allow smoking must prepare and provide documentation to the Public Health Division demonstrating that they meet all the criteria set forth in the statute for allowing smoking. This includes providing the PHD with information about gross receipts of cigar products in the year 2006. For cigar bars this is a one-time report; the total cost for compiling required documentation is estimated at not more than \$500.

Smoke shops that choose to allow smoking must prepare and provide documentation to the PHD demonstrating that they meet all the criteria set forth in the statute for allowing smoking. They must provide the PHD with annual reports demonstrating that at least 75% of their gross receipts are derived from tobacco products. The cost of this reporting is estimated at not more than \$200 annually

c. Equipment, supplies, labor and increased administration required for compliance:

Nominal — As per 333-015-0070(2)(a) businesses will be supplied with required "no smoking" signs. There are no other required administrative, labor or supplies costs.

How were small businesses involved in the development of this rule? Small businesses were invited to attend the Rules Advisory Committee. One small business owner attended all rules committee meetings.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: An advisory committee was consulted for the rules that were previously filed on August 15, 2008. Since the proposed changes to OAR 333-015-0030 and 333-015-0040 had already been discussed with the committee at that time, the committee was not consulted to make these proposed amendments needed to correct errors in the original filing.

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Signature Printed name Date 9/15/08

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007