

Oregon Indoor Clean Air Act Policies and Procedures Manual



For questions about the Oregon Indoor Clean Air Act, please contact your liaison.

Contents

In this manual, you will find educational and instructional materials, along with guidelines on the following topics:

1. Conducting site visits
2. Documentation of site visits
3. Enclosed area enforcement

Chapter 1: Overview of the Oregon Indoor Clean Air Act (ORS 433.835-433.875 and 433.990(5))

Oregon Indoor Clean Air Act (ICAA) Policies and Procedures

The Policies and Procedures Manual serves as a guide for ICAA inspectors and supervisors. The content in the manual is intended to ensure consistent application of ICAA enforcement activities across the state. It was developed at the Oregon Health Authority (OHA) with input from Local Public Health Authority (LPHA) ICAA Inspectors and Supervisors. While every effort was made to cover key areas of the ICAA, we understand that the manual is not comprehensive. LPAs that have questions should continue to contact their liaisons in OHA's Health Promotion and Chronic Disease Prevention Section. The manual will be reviewed and updated after each legislative session and other times, as needed. Those who use the manual are welcomed to submit feedback and ideas at any time.

As a complement to this manual, OHA has developed guidance for businesses to help them navigate the ICAA and remain compliant with the law. Guidance for businesses can be found [here](#).

About the ICAA

The ICAA protects nearly all people in Oregon from the harms of secondhand smoke. The ICAA creates smoke-, vapor and aerosol-free public places and places of employment with the intent of protecting the health of employees and the public. Tobacco remains the main cause of preventable death and disease in the United States, including in Oregon.

The ICAA covers the smoking, vaporizing and aerosolizing of inhalants in and around public places and places of employment. A public place is defined as "an enclosed area open to the public." A place of employment is defined as "an enclosed area under the control of a public or private employer, including work areas, employee lounges, vehicles that are operated in the course of an employer's business and that are not operated exclusively by one employee, restrooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways." Under the ICAA, smoking, vaporizing and aerosolizing of inhalants is also prohibited within 10 feet of all entrances, exits, and accessibility ramps that lead to and from an entrance or exit, windows that open and air-intake vents. The [statute](#) and [rules](#) are accessible online.

What are tobacco products and inhalant delivery systems?

An **inhalant delivery system (IDS)** is a device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol. These are products such as e-cigarettes and heated tobacco products. IDS also include the components of these types of devices such as e-liquids and cartridges.

Tobacco products are products prepared in a manner that makes the tobacco suitable for chewing or smoking in a pipe or other device. Examples of tobacco products are cigarettes, cigars, stogies, chewing tobacco, snus, and other forms of tobacco used for chewing or smoking.

Tobacco products also include devices that can be used to deliver tobacco products such as standard pipes and glass pipes.

You can find the technical definitions of these products by looking at the statute (ORS [431A.175](#), [431A.183](#), [323.010](#)).

Affected workplaces and exceptions

All workplaces and enclosed public places must be smoke-, vapor- and aerosol-free. This includes work vehicles that are not operated exclusively by one employee as well as hotels and motels, with an exception (see below).

Note: Some cities and counties in Oregon have enacted local smoke-free workplace laws. Any standard or requirement that is stricter in local law than in state law will apply locally; however, OHA is responsible for enforcement of the state law only.

Exceptions to the ICAA include:

- Smoking tobacco products in certified smoke shops
- Smoking cigars in certified cigar bars
- Smoking in hotel or motel rooms that are designated as smoking allowed (may not exceed 25% of sleeping rooms)
- Smoking of non-commercial tobacco for American Indian ceremonial purposes

Enforcement

The ICAA is vital to the health of all people who live in Oregon and who visit Oregon. It is an essential part to maintaining a comprehensive tobacco control program in the state. The Oregon Health Authority enforces the ICAA and maintains Delegation Agreements ([Appendix A](#)) with LPHAs to carry out educational and remediation activities in their communities. LPHAs are required to carry out the activities laid out in the Delegation Agreement and should work with OHA for technical assistance. With regular updates to statutes and rules related to the ICAA, there is potential for a lack of clarity when it comes to enforcement. This manual, along with appropriate training and technical assistance from OHA and within the LPHA, seeks to minimize uncertainties by defining enforcement steps and clearly providing rationale for these steps.

Chapter 2: Standard operating procedure for complaints and site visits

Receiving and Evaluating a Complaint

The ICAA is a complaint-driven law. Enforcement activities for this law do not occur without a complaint from a member of the public. Complaints are primarily received in two ways and are uploaded into the Workplace Exposure Monitoring System (WEMS), a database housed at OHA:

1. Through OHA's online complaint form (<http://icaa.oha.oregon.gov>)
2. Through the telephone complaint line (1-866-621-6107). These complaints are entered into WEMS by OHA administrative staff.

Complaints are also received through email or direct calls to OHA and LPHA staff. All complaints received this way must be entered into WEMS. LPHAs should direct callers and emailers to enter complaints through the online form, or to call the telephone complaint line listed above. Staff at OHA entering complaints on behalf of a caller or emailer will indicate in the complaint text that the complaint was entered by staff.

When complaints are received, LPHAs must follow the process as laid out in the Delegation Agreement ([Appendix A](#)).

When a complaint is received in WEMS, the LPHA where the complaint was filed is notified through an auto-generated email. Within five business days of receiving the complaint email, the LPHA must verify the complaint in WEMS, as well as determine if the complaint is actionable. See the Timeline for Critical Actions in Oregon ICAA Implementation ([Appendix B](#)) for additional information regarding timeframes for taking specific actions.

When determining if the complaint is actionable, consider the text and any accompanying photos entered in the complaint. For example, "It smells like smoke within 10 feet of the entrance to Happy's Bar" is not actionable, as smoking within 10 feet was not stated in the complaint text. The text alone, if taken as true, must demonstrate a violation of the ICAA to be marked as actionable (or valid). The LPHA should not take into account personal knowledge, such as when the inspector has visited the location before, if the information is not included in the complaint text. If the text does not indicate an actionable complaint but the attached photo illustrates a clear violation of the ICAA, mark the complaint as actionable. Enter a note for the complaint describing what violation was illustrated in the photo.

If the text of the complaint, if taken as true, indicates that a violation of the ICAA has occurred, mark the complaint as actionable and determine the most appropriate category for the "nature of the complaint" from the dropdown menu in WEMS. Categories for actionable ICAA complaints include:

- Smoking/vaporizing/aerosolizing an inhalant inside
- Cigars or cigarette butts inside
- Ash receptacles inside
- Absent or insufficient signs at entrances and exits
- 10 ft rule violation for smoking/vaporizing/aerosolizing
- 10 ft rule violation for cigars or cigarette butts
- 10 ft rule violation for ashtrays
- 10 ft rule violation for tables not marked as nonsmoking/nonvaping
- Unlawful outside smoking area
- Smoke shop violation
- Cigar bar violation

Sending the Initial Response Letter (IRL) and the Complainant Letter

As required by [OAR 333-015-0075](#), the IRL must be issued within 10 business days of receiving an actionable complaint. LPHAs must send letters both to the physical address of the business as well as to the corporate address or registered agent. Ensure that the IRL goes to the correct addresses. To locate addresses of corporate entities and registered agents, visit the [Oregon Secretary of State](#) website and search for the business name.

LPHAs must use the OHA template for creating the IRL, which is provided in WEMS. Alterations to the letter should not be made without consultation with OHA, as it is paramount that communication to businesses about the ICAA be consistent.

If the complainant has provided contact information, LPHAs must send a letter to the complainant notifying him/her that the complaint has been received and is being investigated, that the complaint is not actionable, or that the workplace is not required to be smoke-free. If the complaint is received within the grace period (i.e. within five business of sending the IRL, or during an active inspection period), the LPHA must notify the complainant that the complaint falls within this window.

Site Visits

Site visits are inspections of businesses that have received two or more actionable complaints. The LPHA conducts a site visit to determine whether the employer or public place is complying with the ICAA. There are four types of site visits.

Note: Starting in 2018, OHA began reviewing all potential outside enclosed areas. Inspectors are required to carry additional site visit forms and document all potential outside enclosed areas for review by OHA. Details about this process are below and in Chapter 3.

- a. First Site Visit: Conducted when a second actionable complaint is received
 - i. Occurs within 30 days of the second actionable complaint being received
 - ii. Is unannounced
 - iii. A remediation plan is created if violations of the ICAA are discovered
 - iv. Photos/video of potential enclosed areas outside are taken and forwarded to OHA
- b. Follow-up Site Visit: Conducted when violations of the ICAA are discovered at a First Site Visit
 - i. Occurs after 15 days but within 45 days of the First Site Visit
 - ii. Is unannounced
 - iii. The business is evaluated for completion of the remediation plan
 - iv. May result in imposition of civil penalties if violations of the ICAA are discovered
- c. Post-remediation Plan Site Visit: Conducted if another actionable complaint is received within three years of the date the remediation plan was entered into
 - i. Occurs within 21 days of receiving complaint
 - ii. Is unannounced
 - iii. May result in imposition of civil penalties if violations of the ICAA are discovered
- d. Annual Smoke Shop Site Visit: Conducted each year for each certified smoke shop as part of the certification requirements.
 - i. Occurs once a year
 - ii. Is unannounced
 - iii. Is documented on the smoke shop site visit form

Site visit forms are Appendix J.

Preparing for Site Visits

Inspectors will be prepared for each site visit by carrying the following items:

1. County identification
2. Site visit and remediation plan forms (bring at least two copies of each)
3. A copy of the IRL sent to the business
4. Business cards
5. A camera or smartphone with camera
6. A tape measure
7. No smoking/vaping signs and decals
8. A copy of the Oregon Revised Statute (ORS) for the ICAA
9. A copy of the Oregon Administrative Rules (OAR) for the ICAA
10. Quit Line information

11. Pens

Conducting Site Visits

Inspectors must follow the protocol below when conducting site visits. OHA understands that these protocols will not always fit a particular site visit; however, they should be adhered to as a general rule.

- 1. Conduct site visits during business operating hours**
- 2. Upon entering the business, identify yourself to an employee and ask to speak to a manager or owner.**
 - a. Refrain from taking photos of the business prior to speaking with an employee. The business should allow full access to the premises so there is no need to take photos before identifying yourself.
 - b. If the employee/manager refuses to permit the inspection, if feasible inform the employee/manager that the business may be subject to civil penalty, confirm that access is denied, and leave the premises. Note the violation and record notes detailing the denial of access on the inspection forms and in WEMS.
- 3. Explain the purpose of your visit to the employee and provide the IRL if requested.**
 - a. The complaint and the name of the complainant are public records. Businesses should make a formal records request to OHA if they wish to obtain these records.
 - b. If the complaint was made anonymously, you may inform the employee that the complaint was made anonymously.
 - c. Remind the employee that the ICAA is a complaint-driven law and that, on behalf of the state, LPHA are required to follow up on all complaints.
- 4. Inspect the premises.**
 - a. Request access to all areas of the business, including those areas that are not open to the public. Refer to the OAR ([333-015-0075](#)) if there are questions about access to the premises.
 - b. Use the tape measure if there are questions about the distances from entrances, exits, accessibility ramps, windows that open and ventilation intakes. Note that stairs are included in "entrances" and "exits" as points of ingress or egress.
- 5. If there is a new or modified potential outside enclosed area**
 - a. Check "yes" on Form 1 in the "potential outside enclosed area" section
 - b. Fill out Form A.
- 6. If the potential outside enclosed area has a violation**
 - a. Take photos of all walls that enclose the area. Take several photos from various angles if needed to capture the area (or to capture wall materials, etc.).
 - b. Take a 360-view video of the inside.
 - c. Take a photo of the ceiling.
 - d. Inspect for correct signs in the area.
 - e. Inspect for signs, ashtrays and smoking related to the 10 ft. rule (outside of the area).
 - f. Follow the new procedure in Chapter 3 for any potential outside enclosed area.
- 7. If the business is a certified smoke shop:**
 - a. Explain to the employee whether it is an annual inspection or a site visit related to a complaint.
- 8. Explain the inspection results to the employee and check the violations on Form 1. Obtain employee's signature.**
 - a. Record the employee's name and contact information on the site visit form.
 - b. Double-check that the correct boxes are checked on the site visit form.

- i. If the form is not filled out correctly during the visit, OHA may have difficulty proving violations of the ICAA.
 - ii. If there is a mistake on the form, inform the employee and edit the form prior to giving the employee a copy and leaving the premises.
 - iii. Ensure that each instance of a violation is noted on the form (for example, list each entrance/exit that is missing a sign).
 - c. Discuss a remediation plan with the employee and confirm that he/she understands what needs to take place to come into compliance.
 - d. Confirm with the employee the date by which the remediation plan must be completed.
 - e. Inform the employee that a remediation plan site visit will be unannounced.
 - f. Sign and date the investigator line and ask the Person in Charge to sign and date on the appropriate line.
- 9. During a follow-up or post-remediation site visit,** follow the above steps using the associated follow-up (Form 2) or post-remediation (Form 3) site visit form. Note that you may need to document a potential outside enclosed area on a follow-up visit or a post-remediation plan visit.

Providing Guidance on the ICAA

LPHAs provide education to businesses on the ICAA and how they can comply with the law. LPHAs are welcome to share information about the law and remind business owners of the intent of the ICAA. However, they should not advise on the technical aspects of how to apply the statute and rules to an individual business and should direct businesses to consult legal counsel to help with interpretation of the law.

For guidance on potential outside enclosed areas, OHA does not have a process in place to approve ideas or business plans for outdoor structures. LPHAs that carry out ICAA activities on behalf of OHA must follow these guidelines during site visits as well as during other correspondence with businesses outside of ICAA activities. While LPHAs may engage owners or employees in discussion about these areas, they should remind business owners to construct areas in consultation with legal counsel.

Document Guidance

Detailed documentation and clear evidence that a business is in violation of the ICAA is imperative when conducting site visits. In order to make a solid case if the case receives a hearing, clear and consistent evidence that violations occurred is necessary.

When conducting a site visit, ensure that all boxes on the site visit form are checked correctly and transferred over to other site visit forms (if applicable) accurately. Write legibly and fill out each section of the form. Once the visit is complete, the LPHA must enter the site visit results into WEMS. Ensure that the correct date is entered to reflect when the site visit occurred (note: the process for entering site visit dates in WEMS is altered if the business has a potential outside enclosed area. See chapter 3 for details). Enter detailed notes in the Notes section of the WEMS complaint, clearly stating observed violations, communications with the Person in Charge during the visit and any other relevant information.

Inspectors are required to take photos during site visits as photos help illustrate potential violations. Take clear pictures that easily identify the observed violations. Label pictures with the date and a description of the violation. If a business refuses to allow the inspector to take photos, the inspector must make note of that on the site visit form and be prepared to thoroughly describe observed violations as this may be required if OHA pursues civil action against a business.

How OHA Determines Citations

If compliance is not attained through the remediation plan process, and/or ICAA violations are observed during the post-remediation plan site visit, the LPHA completes the County Citation Checklist (Appendix G), documents the appropriate information in WEMS, and sends the citation file and associated materials to OHA.

E-mail a scanned copy of the entire file to your TPEP Liaison at OHA.

Once received, OHA reviews the entire case file, along with the associated statute and rules, to determine if a civil penalty is warranted. Factors that OHA considers include, but are not limited to:

- If complaints are actionable
- If violations are clearly documented
- If there are previous citations for the business
- Types of complaints observed
- Frequency of complaints filed

If OHA determines that a citation is not warranted, OHA staff will enter that information into WEMS and notify the TPEP Coordinator. LPAs may discuss the rationale for the decision made by OHA with the Policy Specialist at any time.

If OHA determines that a citation is warranted, OHA informs the business through the *Notice of Violation and Intent to Impose Civil Penalty*. This notice informs the business of the nature of the violation(s), the dates on which these violations were observed, and which statutes the business has violated. The business is given the opportunity to request a hearing within 21 days or pay the civil penalty. If the business does not request a hearing, OHA issues the business a *Default Final Order Imposing Civil Penalty* along with an invoice for the required payment.

Hearings

If a business requests a hearing and a hearing is scheduled (settlement option is discussed below), OHA and the Department of Justice (DOJ) will contact the Inspector to discuss next steps. While hearings are rare, they sometimes occur and Inspectors are subpoenaed to testify at these hearings. OHA and DOJ will work with the Inspector to ensure that hearing dates and times are convenient for Inspectors. In addition, the DOJ will work with the Inspector to prepare for the hearing.

Settlement Agreements

A settlement agreement takes place outside of the court of law and is a resolution between OHA and the business about the citation, or civil penalty. If a business settles with OHA, OHA and the business sign a settlement agreement that contains the terms of the resolution. Often, these terms require that a business not have a violation of the ICAA for one year. Settlement agreements can also include language that requires the business to agree to a site visit (conducted by the LPHA) to ensure certain terms of the settlement are carried out. This can include agreements that the business carry out a proposed smoke-free plan. OHA will provide a copy of the settlement agreement to the TPEP Coordinator.

If an LPHA is required to conduct a site visit as described above, OHA will notify the TPEP Coordinator and create a plan to carry out the site visit as these agreements vary by case.

Payment of Civil Penalties

When a business is required to pay a civil penalty, either after a hearing or if no hearing is requested and OHA issues a *Default Final Order Imposing Civil Penalty*, OHA sends an invoice to the business. OHA follows up on all unpaid invoices.

Chapter 3: Outside Enclosed Areas

The ICAA applies to "enclosed areas" open to the public or under the control of an employer. However, discerning the exact meaning of an "enclosed area" has created some challenges. This can be particularly challenging for structures located outside the main premises. This chapter provides background, guidelines, and procedures for addressing enclosed areas.

A Recent History

Prior to 2015, "enclosed area" was defined by statute to mean: *"all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling."*

In the 2015 legislative session, the legislature removed the definition of enclosed area from statute and instead gave the Oregon Health Authority the authority to define "enclosed area" in rule. This provided an opportunity to clarify the applicability of the ICAA to outside spaces within and around public places and places of employment. After completing the rulemaking process, OHA adopted the following definition of an enclosed area: *"all space between a floor and a ceiling that is enclosed on two or more sides by permanent or temporary walls or windows, exclusive of doors, passageways or gaps. If no ceiling is present, 'enclosed area' means all space that is included by three or more sides by permanent or temporary walls or windows, exclusive of doors, passageways or gaps."*

Despite this definition, confusion among enforcement entities and businesses about what constitutes an enclosed area continued, particularly for outside areas. Due to this, OHA decided to suspend enforcement of the rule definition and instead continued to enforce the definition that was in statute prior to 2015.

In the 2017 legislative session, the legislature again adopted a definition of an enclosed area by statute with Senate Bill 235. As of January 1, 2018, enclosed area is defined to mean *"the entirety of the space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling."* This definition, though the first words are different, is the same definition used prior to 2015 and is currently used for enforcement activities.

OHA evaluates all enclosed areas

To consistently evaluate whether an outside area is an "enclosed area," LPHAs refer potential outside enclosed areas discovered during site inspections to OHA for a determination of whether OHA will enforce the ICAA for the outside enclosed area.

OHA continues to work with partners to define aspects of an enclosed area to help clarify which outside areas constitute "enclosed areas" that might otherwise cause confusion for enforcement entities and for business owners. OHA may conduct future rulemaking to further define enclosed area, such as further defining wall, ceiling, gap, and other features of an outside enclosed area. If you have questions or comments about these issues, email Ilana Kurtzig at ilana.s.kurtzig@state.or.us.

Providing Guidance on Enclosed Areas

OHA does not have a process in place to approve ideas or business plans for outdoor structures. LPHAs that carry out ICAA activities on behalf of OHA must follow these guidelines during site visits as well as during other correspondence with businesses outside of ICAA activities. LPHAs are welcome to share information about the law and remind business owners of the intent of the ICAA. In addition, while LPHAs may engage owners or employees in discussion about these areas, they should remind business owners to construct areas in consultation with legal counsel. (See Delegation Agreement: Appendix A)

Note: OHA provides information for business owners to help them understand the intent of the ICAA, what to expect during site visits and how to comply with the ICAA. Businesses can find information by visiting the ICAA webpage at www.healthoregon.org/morefreshair.

Enforcement entities and businesses have raised questions related to the following:

1. Gaps (of any size) in otherwise solid walls
2. Plants that trap smoke
3. Fences
4. Screens
5. Partial walls or ceilings

In the current Oregon Administrative Rules, the definition of a "wall" is:

Any architectural partition, permanent or temporary, with a height and length greater than its thickness, used to divide or enclose an area or to support another structure. Walls include, but are not limited to, partitions constructed of plastic, mesh or other screening materials, slats louvered blinds, fabric, or blankets, and partitions with latticing or other open frameworks. (OAR 333-015-0030)

Other components of an enclosed area are not currently further defined in rule.

OHA General Guidelines on Walls

While OHA determines enforcement action on potential outside enclosed areas, LPHAs will be required to communicate OHA's policy to businesses. OHA will provide LPHAs with detailed rationale for the determination ([Appendix C](#) – enclosed area review form). Note that outside enclosed areas could include stairwells, hallways or other structures that may be used for smoking, vaporizing or aerosolizing inhalants.

For potential outside enclosed areas, inspectors should refer to the new procedure described below.

Inspecting Potential Outside Enclosed Areas

Inspectors must use the definition of "enclosed area" as it is written in Oregon Revised Statute [433.835](#). Previous rule definitions should not be used when determining whether a site may have an enclosed area violation.

When inspecting areas that may fall under the definition of an "enclosed area," inspectors must take photos of all sides of the area, including the ceiling, and record detailed written notes. If

Helpful hint: When taking photos and recording notes, imagine you are providing testimony, photos and notes to a judge to explain why you determined the place of employment or public place was an enclosed area and violated the ICAA. This exercise may help when collecting evidence.

possible, inspectors should also take 360-degree video of the interior of the area. OHA may not be able to determine whether to pursue a citation if there is photographic evidence missing from the file. **See below for OHA's procedure for inspecting potential outside enclosed areas.**

If the inspector observes a potential outside enclosed area*, the inspector should:

1. Fill out Form A
2. Take photos of all walls that enclose the area. Take several photos if needed to capture the area (or to capture wall materials, etc.)
3. Take a photo of the ceiling
4. Take a 360-degree video of the interior of the area
5. Inspect for correct signs in the area
6. Inspect for signs, ashtrays and smoking related to the 10 ft. rule (outside of the area)
7. Follow the procedure below for any potential outside enclosed area.

*If an inspector observes more than one potential enclosed area on the premises, fill out Form A for each area and document each area separately. When submitting documentation to OHA through sharepoint, create a folder for each area and clearly label.

OHA determines its policy for enforcement of the ICAA and has many considerations when making a determination about whether to pursue a citation/civil penalty for a violation of the ICAA. If OHA determines not to move forward with a civil penalty, it **does not** necessarily mean that the business is in compliance or that the area does not meet the definition of "enclosed area." OHA will continuously update [its website](#) with examples of outside areas that were enforced and not enforced by OHA, along with rationale. These updates are for educational purposes for LPHAs, business owners and the public.

Procedure for Potential Outside Enclosed Areas

OHA WILL REVIEW ALL POTENTIAL OUTSIDE ENCLOSED AREAS.

What is a potential outside enclosed area?

A potential outside enclosed area is a structure that is outside the main premises of a business but associated with the business (i.e. at the same address). These are areas in which clients, patrons, residents or other users might smoke or are permitted by the business to smoke or vape tobacco products or use inhalant delivery systems and the structure appears to meet the definition of enclosed area. An outside enclosed area could also be a stairwell, an outside apartment hallway or other structure that is not designated or designed for smoking.

Inspectors who encounter potential outside enclosed areas during an initial site visit must follow the procedure below.

1. **Check "yes"** in the "presence of a potential enclosed area" section of Form 1, 2 or 3 and fill out Form A.
2. **If no violations are present**, indicate that on Form A, leave a copy of the form with the business and conduct other aspects of the inspection using forms 1-3 for the standard procedure.
3. **If violations are present**, take photos of the interior of the entire area, including:
 - a. All walls, ceiling, and floor;
 - b. Where the "walls" meet other "walls";

- c. Where the "walls" meet the ceiling;
d. Where the "walls" meet the floor;
e. Any openings such as doorways or windows without panes.
f. A 360-degree video
4. **From the exterior of the structure**, take photos of each side. Include photos of:
 - a. Each side of the structure;
 - b. Where the "walls" meet other "walls";
 - c. Where the "walls" meet the ceiling;
 - d. Where the "walls" meet the floor;
 - e. Where the structure meets a separate building (if applicable).
5. If one of the "walls" of a structure is another building, measure any gap between the structure and the separate building and note this in the pictures submitted to OHA.
6. From a distance, take at least 3 photos from different angles with the entire structure inside the frame.
7. Conduct the other aspects of the site visit using the standard procedure (filling out Form 1, 2 or 3).
8. Let the Person in Charge (PIC) know that you are forwarding the photos and notes about the potential outside enclosed area to OHA and will communicate OHA's determination within four weeks.
9. **If there are other violations**, create a remediation plan and fill out the site visit form (Form 1) using the standard procedure, leaving a copy with the PIC. **Note:** if you are conducting a follow-up visit or post-remediation plan visit (Form 2 or 3), follow the appropriate steps on that form.
10. **If there are no other violations**, fill out the site visit form (Form 1, 2 or 3) using the standard procedure, leaving a copy with the PIC.
11. **Upload documentation** of the potential outside enclosed area into your county folder on SharePoint within two business days of the visit and email Ilana Kurtzig at ilana.s.kurtzig@state.or.us and your liaison once documents are uploaded.
Documentation should include:
 - a. photos with captions
 - b. video
 - c. a diagram of the business (this can be hand-drawn) that helps OHA understand where the area is in relation to the main premises
 - d. forms filled out during the visit (e.g. Form A and Form 1)
 - e. any other relevant information that may help OHA make a determination
 - f. remember, if there is more than one potential enclosed area, create separate folders for the documentation of each area and label appropriately.
12. OHA will make a determination on whether the area is enclosed and communicate that information to the inspector within seven business days of receipt.

Submit forms as follows

- No ICAA violations of any kind: Conclude inspection, enter information into WEMS.
- No potential outside enclosed area violations, but other ICAA violations found: Proceed with remediation or citation process, enter information into WEMS.
- Potential outside enclosed area violation, but no other ICAA violations: Submit documentation on potential outside enclosed area to OHA. Wait to hear from OHA before submitting other forms, DO NOT enter a site visit date into WEMS.
- Potential enclosed area violation, and other ICAA violations: Submit documentation on the potential outside enclosed area to OHA. Proceed with remediation plan for other ICAA violations. WAIT to hear from OHA before entering a site visit date into WEMS or

before submitting citation packets. All forms on all types of violations will be submitted together to OHA.

OHA determination and next steps

1. If OHA determines the potential outside enclosed area IS enclosed:

- a. The inspector will return to the location* within four weeks and create a remediation plan with the business using Form B. OHA will provide the LPHA with detailed rationale of the determination using the enclosed area review form ([Appendix C](#)). This form is designed to be shared with businesses. (Note: during this visit, the inspector will continue using the standard procedure for other violations).
- b. LPHA will return to the business within 30 days of the remediation plan due date to ensure the outside enclosed area remediation plan is complete (Form C).
- c. The inspector will enter the site visit date into WEMS in the "site visit date" field (see WEMS information below)
- d. LPHA will forward all citation documentation (Forms 1-3 and A-C) to OHA at the same time. *Do not send separate mail for enclosed area and other types of violations.*

***If the inspector returns and finds that the area has been modified, the inspector must fill out Form A and take photos/video of the area.**

2. If OHA determines the potential outside enclosed area IS NOT enclosed:

- a. The inspector will enter the original site visit date into WEMS in the "site visit date" field (see WEMS information below).
- b. The inspector will mark the "no determination" on Form B and provide both Form B and the enclosed area review form to business when he/she returns for remedial activities for other violations. OHA will provide the LPHA with detailed rationale of the determination using the enclosed area review form. If there are no other violations, the inspector will mail Form B, the enclosed area letter, and the enclosed area review form to the business.
3. **If OHA moves forward with a civil penalty***, all violations will be included in one *Notice of Violation and Intent to Impose Civil Penalty*. OHA will not send separate *Notices of Violation* for enclosed areas and other ICAA requirements. This might extend the process at OHA, but it keeps the process streamlined.

Recording Site Visits in WEMS

The presence of a potential outside enclosed area will alter the schedule for site visits for LPAs. LPAs may be required to make an additional site visit to the business for educational and remediation activities for outside enclosed areas that will be enforced by OHA. As this process is currently dynamic, OHA seeks feedback about recording this process in WEMS in order to inform updates to the system. If you have questions, contact your liaison at OHA.

LPHA should use procedure below when entering information into WEMS if there is a potential outside enclosed area violation:

1. **Enter the site visit date only after a determination** has been made by OHA about the potential outside enclosed area. If necessary, work with your state liaison to assist you to enter dates.
2. **If OHA will enforce** the area as enclosed, enter the date in the "site visit date" module on which the outside enclosed area remediation plan was created (Form B site visit date).

3. **If OHA will not enforce** the area as enclosed, enter the date in the "site visit date" module on which the initial site visit was made (Form A site visit date).

*Refer to Chapter 2 for information on settlement agreements with businesses.