ICAA 2014 Rule Changes & Site Visit Resources

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Learning Objectives

- ICAA Background
- 2014 Rule Changes
- Site Visit Form Changes
- HPCDP Resources
- Successful Site Visits

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By the end of this tutorial you will

- Have an understanding of the Oregon Indoor Clean Air Act and the 2014 Administrative Rule Changes
- Be able to identify changes in the site visit forms
- Be able to access resources regarding the ICAA, Administrative Rules and Site Visits on HPCDP Connection
- Be able to develop a strategy for a successful site visit

Background of Oregon Indoor Clean Air Act (ICAA)

- **2001** - Smokefree Workplace Law
- **2007** - Bars, Bingo Halls, Bowling Centers
- **2011** - Smoke Shop Exemption
- **2014** - Revised to add clarity and consistency

2001:excluded bars and taverns, bars of restaurants, bingo halls, bowling centers
2009: amended Act went into effect (1/1/09); rules revised
2011:Rules revised (smoke shops and cigar bars)
2014: rules revised to amend and add definitions to bring additional clarity and consistency to the rules. RAC 7/23/14; two public hearings in 9/14

2014 Rule Changes - Overview

- Definitions
  - Employer
  - Entrance & Exit
- Removal of Civil Penalty Limitation
- Consequences for:
  - Denying a site visit
  - Smoke Shop Certifications
- New Penalties & Violations
- Complaint Response Timeline

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Definitions

- Employer
- Entrance & Exit

DEFINITIONS*:* The following amendments to definitions to bring rules into line with the ICAA, better reflect the purpose of the statute, and add clarity to the rules:

- Changes the definition of “Employer” by deleting “enclosed” and adding “where smoking is prohibited.”

- Changes in definitions of “Entrance” and “Exit” to include “an accessibility ramp.”

Civil Penalty Limitation

REMOVAL OF CIVIL PENALTY LIMITATION:

- The language "with a maximum of $4,000 in a 30-day period" was removed, as it only applies to fines and not to civil penalties. Note: delete this on the IRL when generating this in WEMS.

New Consequences

- Denying a Site Visit
- Smoke Shop Certification

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***CONSEQUENCES FOR**:*

The new rules clarify consequences for

- *Denying a site visit*: *An employer, entity in charge of a public place, smoke shop or cigar bar must permit the Authority or the LPHA access to the place of employment, public place (or any portion thereof), or smoke shop or cigar bar, in order to determine compliance with the ICAA. Failure to permit the Authority or LPHA access is a violation and may result in the imposition of civil penalties under OAR 333-015-0085(1).*
- *When smoke shop certifications expire or are not renewed: Certification may be revoked if a smoke shop is closed for an extended period of time or ceases operating at the location that is certified. The certificate holder must notify the Authority immediately if the smoke shop is closing for an extended period of time or will no longer be operating.*
- *Defines "Extended period of time" to mean more than 365 consecutive days.*
- *When smoke shop certifications expire or are not renewed: Certification may be revoked if a smoke shop fails to meet certification requirements or fails to submit required documentation in accordance with subsection (7)(b) of this rule.*

NEW PENALTIES & VIOLATIONS:

- Failure of an employer or entity in charge to cooperate in developing a remediation plan.

- Failure of an employer or entity in charge of a public place, a cigar bar or smoke shop to permit the Authority or the Local Public Health Authority to inspect all or any part of the premises.

- Failure of an employer to provide a smokefree place of employment by permitting smoking within 10 feet of the entrances, exits, windows that open, ventilation intakes that serve an enclosed area, and accessibility ramps.

COMPLAINT RESPONSE TIMELINE:
If an additional complaint is received within three years ***of the date the remediation plan was entered into***, the Authority or the LPHA shall make an unannounced site visit within 21 days of complaint receipt. If a violation is found the Authority may impose a civil penalty.

Site Visit Form Changes

- Electronic Forms - HPCDP Connection

General FAQ's:

All site visit forms, smoke shop visit forms, and cigar bar visit forms will **ONLY** be in electronic format.

1. Please discard all old copies of forms and use the new forms found on HPCDP Connection (https://partners.health.oregon.gov/Partners/HPCDPConnection/Tobacco/Pages/ICAAToolkit.aspx). **YOU MUST PRINT OFF TWO COPIES**.
2. The Person In Charge (PIC) of the business **MUST SIGN BOTH COPIES**.

2. There have been changes made to the forms to reflect the new Oregon Indoor Clean Air Act (ICAA) rules. However, many of these changes have not been made on WEMS. (Removing $4000 maximum

3. Clarification around Signs – 333-015-0040:

1. Enforcement does not include **windows/ventilation.**

HPCDP Connection

- Community Workplans
- Training and Events
- Technical Assistance
- Tobacco
- Nutrition
- Physical Activity
- Self-Management
- Early Detection
- Cross Agency Health Improvement Project

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HPCDP Connection

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Tobacco

These pages contains resources and guidance for Oregon Tobacco Prevention and Education Program (TPEP) and Healthy Communities county and tribal grantees working on tobacco-related policy, systems, and environment changes in their communities.

Policy Resources

Information, resources, and guidance related to federal and statewide legislation, passing community-wide tobacco control policy, and supporting adoption of tobacco-free policies in a variety of local settings.

Federal Legislation

- Tobacco Control Legal Consortium
- The Family Smoking Prevention and Tobacco Control Act (the "2009 FDA Law")
  1. What tobacco products are covered

Statewide Legislation

- Oregon Tobacco Laws and Policies
- Indoor Clean Air Act Enforcement Toolkit

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Tobacco

These pages contains resources and guidance for Oregon Tobacco Prevention and Education Program (TPEP) and Healthy Communities county and tribal

Indoor Clear Air Act (ICAA) Enforcement Toolkit

This page contains materials and guidance for county TPEP programs for responding to complaints of violation of the Oregon Indoor Clean Air Act and performing other duties related to the enforcement of the ICAA.

Complaints of violation are processed through the web-based Workplace Exposure Monitoring System (WEMS), which includes Initial Response Letters and Complainant Letters. Site Visit forms are available in hard-copy only, except for forms for certified cigar bar site visits, which are available as PDF files here.

Employers and the public can access general information about Oregon's Smokefree Workplace Law, report a violation, or place an order for brochures and decals by visiting this site.

For additional information, questions, or resource needs, please contact your liaison.

On this page:

LPHA Enforcement Responsibilities

ICAA Enforcement Materials and Guidance

ICAA Statutes and Administrative Rules

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Forms

- County Citation Checklist
- WEMS Username and Password Registration Form
- **Site Visit Forms (Print two copies for each visit)**
  - Form 1 - Initial Site Visit and Remediation Plan
  - Form 2 - Follow-Up Visit
  - Form 3 - Post-Remediation Plan Visit
- **Smoke Shop Complaint Response Site Visit Forms (Print two copies for each visit)**
  - Form 1 - Smoke Shop - Complaint Response Initial Site Visit and Remediation Plan
  - Form 2 - Smoke Shop - Complaint Response Follow-Up Visit
  - Form 3 - Smoke Shop - Complaint Response Post-Remediation-Plan Visit
- **Smoke Shop Inspection Site Visit Forms (Print two copies for each visit)**
  - Form 1 - Smoke Shop - Inspection Site Visit and Remediation Plan
  - Form 2 - Smoke Shop - Inspection Follow-Up Visit
  - Form 3 - Smoke Shop - Inspection Post-Remediation Plan Visit
- **Cigar Bar Site Visit Forms (Print two copies for each visit)**
  - Form 1 - Cigar Bar Initial Site Visit and Remediation Plan
  - Form 2 - Cigar Bar Follow-Up Visit
  - Form 3 - Cigar Bar Post-Remediation-Plan Visit

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https://partners.health.oregon.gov/Partners/HPCDPConnection/Tobacco/Pages/ICAAToolkit.aspx#materials

Site Visit Form Changes

General FYI:

- Electronic Forms - HPCDP Connection

There have been changes made to the forms to reflect the new Oregon Indoor Clean Air Act (ICAA) rules. However, many of these changes have not been made on WEMS.

Clarification around Signs – 333-015-0040:

1. Enforcement does not include **windows/ventilation.**

Oregon Health Authority
Public Health Division
Health Promotion and Chronic Disease Prevention
Tobacco Prevention and Education Program

Form 1
Initial Site Visit and Remediation Plan
Oregon Indoor Clean Air Act
(ORS 433.835-875 and 433.990(5))

Date:	County:	Investigator name and phone:
Workplace or public place name:		Person in charge (PIC) name and title:
Address:		Phone:
Headquarters or corporate office name, if applicable:		Contact name:
Address: ☐ N/A ☐ Unknown		Phone:

Observed violations *check "Yes" or "No" for each of the following:*			Remediation plan *check all that apply*
Indoors:			**Indoors:**
Yes	No		
☐	☐	Any person smoking or carrying a lighted smoking instrument	☐ Do not smoke or allow smoking by anyone at any time.
☐	☐	Cigar or cigarette butts	☐ Remove ash receptacles
☐	☐	Ash receptacles	☐ Post signs at each exit and entrance that use the "no smoking" symbol and the words "within 10 feet" and/or state "no smoking within 10 feet."
☐	☐	Absence or insufficiency of signs (at entrances and exits)	
☐	☐	Smoking instruments intended for use indoors	☐ Other:
Outdoors: **Any of the following are violations if they occur within 10 feet of any entrance, exit, accessibility ramp, window or air-intake vent.**			**Outdoors:**
Yes	No		
☐	☐	Any person smoking or carrying a lighted smoking instrument	☐ Do not smoke, allow anyone to smoke, carry a lighted smoking instrument, or allow anyone to carry a lighted smoking instrument within 10 feet of any entrance, exit, accessibility ramp, window or air-intake vent at any time.
☐	☐	Ash receptacles	☐ Remove ash receptacles.
☐	☐	Tables, outdoor seating or dining areas not clearly marked as nonsmoking	☐ Post signs on tables, outdoor seating, or dining areas that include the "no smoking" symbol and/or the words "no smoking."
			☐ Other:
Compliance With Site Visit and Remediation Plan Development:			
Yes	No		
☐	☐	Failure of an employer or PIC to cooperate in developing a remediation plan.	
☐	☐	Failure of an employer or PIC to permit OHA or the Local Public Health Authority to inspect all or any part of the premises	

Site Visit Results/ Violation Summary:	Notes:
☐ No violations	
☐ Violations observed: *Remediation Plan must be completed within 15 days.* **Due Date:** _____	
☐ Violations observed; failure of PIC to develop Remediation Plan – *forward to OHA*	
☐ Site Visit denied - *forward to OHA*	

A follow-up visit will be conducted within 30 days of the Remediation Plan due date. Any violations observed during or after the follow-up visit may result in civil penalties of up to $500 per violation per day (OAR 333-015-0085).

Signatures:

Investigator _____ Date _____ Person in Charge _____ Date _____

(Provide one copy to PIC. Retain one copy for LPHA.) OHA 2601 (11/2014)

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New Penalties & Violations

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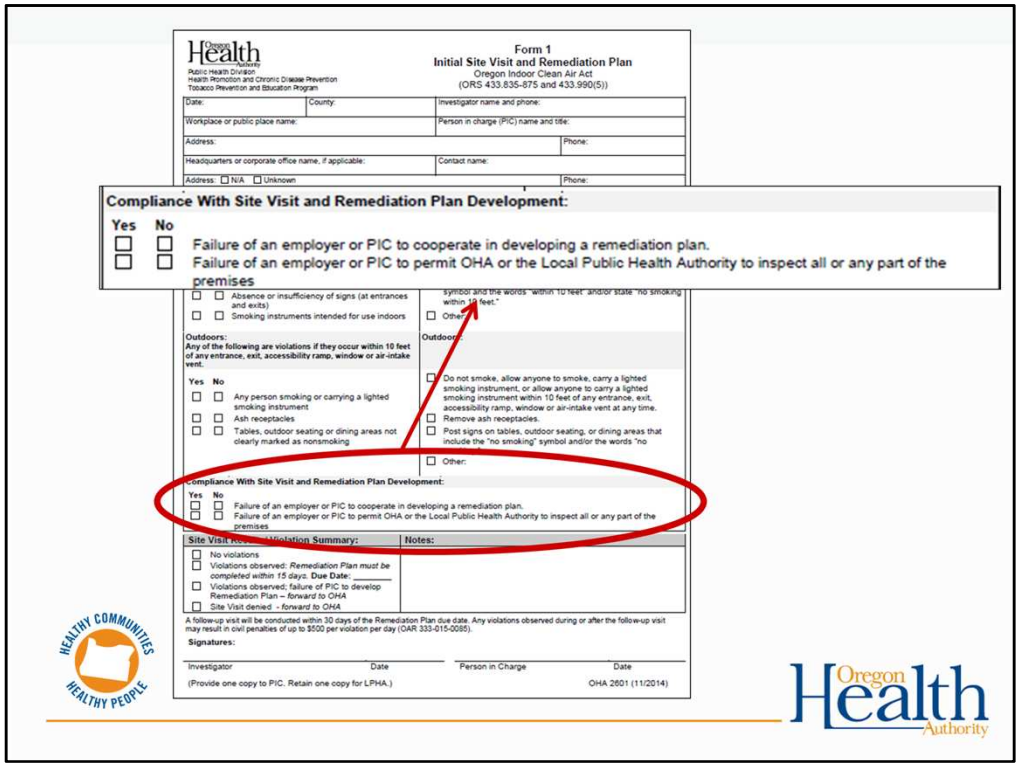

The new rules adds penalties and violations for:

1. **Failure of an employer or PIC to cooperate in developing a remediation plan.**
2. **Failure of an employer or PIC to permit OHA or the Local Public Health Authority to inspect all or any part of the premises.**

Compliance with site visit section appears on all 12 forms:

- Complaint Response – Initial Site Visit & Remediation Plan (Form 1), Follow-Up Visit (Form 2), Post-Remediation Plan Visit (Form 3)
- Smoke Shop Inspection - Site Visit & Remediation Plan (Form 1), Follow-Up Visit (Form 2), Post-Remediation Plan Visit (Form 3)
- Smoke Shop Complaint Response – Initial Site Visit & Remediation Plan (Form 1), Follow-Up Visit (Form 2), Post-Remediation Plan Visit (Form 3)
- Cigar Bar - Initial Site Visit & Remediation Plan (Form 1), Follow-Up Visit (Form 2), Post-Remediation Plan Visit (Form 3)

Removal of Civil Penalty

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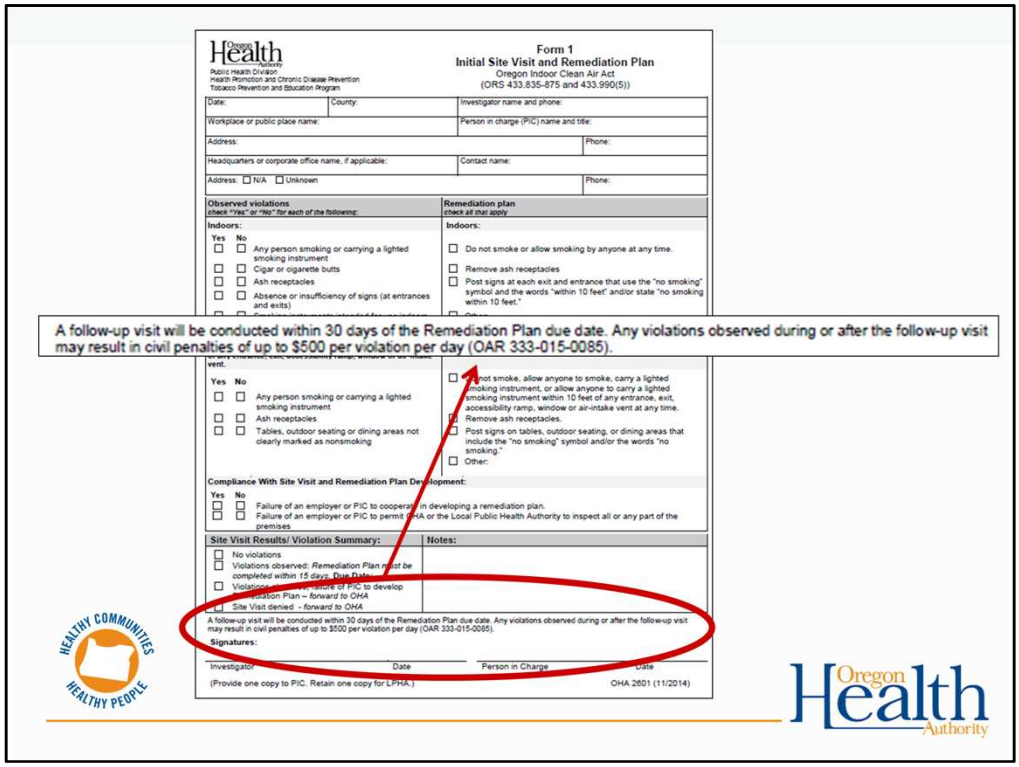

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Date:	County:	Investigator name and phone:
Workplace or public place name:		Person in charge (PIC) name and title:
Address:		Phone:
Headquarters or corporate office name, if applicable:		Contact name:
Address: ☐ N/A ☐ Unknown		Phone:

Observed violations *check "Yes" or "No" for each of the following:*			Remediation plan *check all that apply*
Indoors:			**Indoors:**
Yes	No	Any person smoking or carrying a lighted smoking instrument	☐ Do not smoke or allow smoking by anyone at any time.
☐	☐	Cigar or cigarette butts	☐ Remove ash receptacles
☐	☐	Ash receptacles	☐ Post signs at each exit and entrance that use the "no smoking" symbol and the words "within 10 feet" and/or state "no smoking within 10 feet."
☐	☐	Absence or insufficiency of signs (at entrances and exits)	
Yes	No	Any person smoking or carrying a lighted smoking instrument	☐ Do not smoke, allow anyone to smoke, carry a lighted smoking instrument, or allow anyone to carry a lighted smoking instrument within 10 feet of any entrance, exit, accessibility ramp, window or air-intake vent at any time.
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			☐ Other:

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Site Visit Results/ Violation Summary:	Notes:
☐ No violations	
☐ Violations observed: *Remediation Plan must be completed within 15 days. Date Due:*	
☐ Violations observed: *Failure of PIC to develop Remediation Plan – forward to OHA*	
☐ Site Visit denied - *forward to OHA*	

A follow-up visit will be conducted within 30 days of the Remediation Plan due date. Any violations observed during or after the follow-up visit may result in civil penalties of up to $500 per violation per day (OAR 333-015-0085).

Signatures:

Investigator _____ Date _____ Person in Charge _____ Date _____

(Provide one copy to PIC. Retain one copy for LPHA.) OHA 2601 (11/2014)

1. The new rules removes the civil penalty limit of $4000: the limit in **ORS 433.990 only applies to fines and not to civil penalties**.

Language change appears on all 12 site visit forms:

- Complaint Response – Initial Site Visit & Remediation Plan (Form 1), Follow-Up Visit (Form 2), Post-Remediation Plan Visit (Form 3)
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2. The new rules also remove language regarding 2 LPHD staff recording site visit observations

Site Visit Form Changes

General FYI:

- Electronic Forms - HPCDP Connection
- WEMS
- Signage Clarification

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HPCDP CONNECTION CHANGES

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ICAA Enforcement Materials and Guidance

Please note that documents below pertaining to ICAA complaint response procedures have not yet been updated to align with changes to the Oregon Administrative Rules (OARs) that went into effect October 2014. Please refer to the current OARs and contact your HPCDP liaison with any questions.

Procedures and Training Materials

- 2014 ICAA Administrative Rule Changes
- ICAA Implementation Flow Chart (For workplaces other than smoke shops and cigar bars)
- Timeline for Critical Actions in Oregon ICAA Implementation
- ICAA Smoke Shop Inspections Presentation
- Seniors and People with Disabilities Memo
- WEMS User Manual

Under Procedures and Training Materials

These documents were **revised**:

- ICAA Implementation Flow Chart
- Timeline for Critical Actions in Oregon ICAA Implementation

ICAA Enforcement Materials and Guidance

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These were **added**

- 2014 ICAA Administrative Rule Changes
- Smoke Shop Inspections

Smoke Shops and Cigar Bars

Summary of Cigar Bar and Smoke Shop Exemptions *Note: If you receive questions from a business about applying for or maintaining smoke shop or cigar bar certification, please refer the business to the state TPEP program.*

Smoke Shop Complaint Response and Inspections

- Complaint Response and Inspections Flow Chart
- Inspections Checklist
- Inspections Form Instructions and Guidance for Observing Violations

Under Smoke Shops and Cigars Bars

This document was **revised**:

- Complaint Response and Inspections Flow Chart

Under Forms

This document was **revised**:

County Citation Checklist

Forms

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All site visit forms added here.

Questions?

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