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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED

12/10/2021 10:08 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Masking requirements in Schools; Vaccination Requirements for Teachers and School Staff

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/24/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: COVID Response and Recovery Unit
503-945-5488
publichealth.rules@dhsosha.state.or.us

800 NE Oregon St.
Portland, OR 97232

Filed By:
Public Health Division
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 01/24/2022

TIME: 9:00 AM

OFFICER: Staff

ADDRESS: Microsoft Teams - Video/teleconference call

Due to COVID-19 public
meetings are being held remotely
Portland, OR 97232

SPECIAL INSTRUCTIONS:

Due to COVID-19, public meetings are
being held remotely. To provide oral
testimony during this hearing, please
contact

publichealth.rules@dhsosha.state.or.us
to sign-up and receive the link for the
Microsoft Teams video conference.

Alternatively, you may dial 971-277-
2343, Phone conference ID 662 539 793# for audio
only. The hearing will close no later

than 11:00 AM, but may close early if all individuals that have
signed up to testify have had the opportunity to enter their comments into the record. Written comments are
accepted until 5:00 PM on January 24, 2022 and should be sent to publichealth.rules@dhsosha.state.or.us.

NEED FOR THE RULE(S)

The two rules proposed for adoption and amendment concern:

- Masking requirements in schools.
- Vaccination Requirements for Teachers and School Staff

OAR 333-019-1015: Children are required to attend school, which is a congregate setting where COVID-19 can spread easily if precautions are not taken. Two of the most important tools the state has to control COVID-19 are vaccination and masking. To protect students, including individuals who are not vaccinated, and those with underlying health conditions that make them more susceptible to complications from COVID-19, as well as to minimize the disruption of student education in schools because of COVID-19 illnesses or exposures to others with COVID-19, requiring universal use of masks inside schools is necessary.

OAR 333-019-1030: Children are required to attend school, which is a congregate setting where COVID-19 can spread easily if precautions are not taken. Families often also need to use school-based programs for before and after school care, and these programs are also congregate settings. COVID-19 undergoes frequent mutations as it replicates, which over time have resulted in variants that are more transmissible and cause more severe disease. Being vaccinated is critical to preventing the spread of COVID-19. COVID-19 variants have and can continue to spread through the state's unvaccinated population and can infect some—particularly those with compromised immune systems—who are fully vaccinated. This rule is necessary to help control COVID-19, and to protect students, teachers, school staff, and volunteers, and school-based program staff.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

For OAR 333-019-1015:

<https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/09242021.html>

<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>

<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html#mask-use>

For OAR 333-019-1030:

<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>

FISCAL AND ECONOMIC IMPACT:

The fiscal and economic impact of the proposed rules is detailed below.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) 333-019-1015: This rule may have some fiscal impact on the Oregon Health Authority, the Oregon Department of Education, and the Early Learning Division in situations where there are complaints of non-compliance, or questions about how the rule is to be interpreted and applied. The impacts would be experienced in terms of staff time needed to respond to complaints. Schools are expected to incur the costs of providing masks for students, teachers and staff; the Oregon Department of Education supports schools in replenishing supplies of masks and other COVID-19 health and safety supplies. Requiring masks may, however, reduce both the number of students infected and the number considered "exposed" to an infected person in school, thereby reducing the number of days in which students must stay home.

Some school-based programs (e.g., "outdoor school") could lose significant funding if schools deem the masking requirement too burdensome to enforce and cancel them, or the programs lose enrollment because of the masking requirement.

The rule is not expected to impose costs on the general public. The public may benefit from reduced transmission of COVID-19 in schools.

333-019-1030: Fiscal impacts may be higher for schools and school-based programs in areas with significant proportions of people opposed to vaccination requirements; they may lose staff and incur costs of hiring new staff, possibly needing to pay higher salaries to do so; this would include staff involved not only in teaching but in transportation, custodial, or food services. Some school-based programs already operate on a small budget and may not be able to replace staff.

Requiring vaccinations may, however, reduce both the number of students infected and the number considered "exposed" to an infected person in school, thereby reducing the number of days in which students must stay home.

OHA acknowledges that communities of color have been disproportionately affected by COVID-19 and therefore may be expected to also bear a disproportionate cost of compliance with this rule. OHA has had to weigh the impacts of the disease in terms of illness, disability and death, against what can be difficult measures to control the disease.

Communities of color may also benefit from the vaccination requirements as these requirements reduce the spread of disease and serious illness.

(2)(a) There are 465 private schools in Oregon, many of which employ fewer than 50 persons.

An unknown number of small businesses operate school-based programs in Oregon's 1200+ public schools.

After-school programs that serve children or students in school facilities would be considered "school-based programs" and therefore subject to the vaccination requirements of OAR 333-019-1030. OregonASK has estimated that at least 970 program sites operate in school buildings throughout Oregon.

(b) OAR 333-019-1015:

- This rule does not require recordkeeping.
- Requiring compliance with mask requirement may entail small administrative costs of enforcing and perhaps disciplining employees. There may also be costs related to requests for ADA or religious accommodations.

OAR 333-019-1030:

- Schools and school-based programs are required to maintain for each employee documentation of vaccination or of medical or religious exception for at least 2 years and provide it to OHA upon request. There may also be costs related to requests for ADA or religious accommodations.

(c) OAR 333-019-1015:

- Masks, perhaps as many as one mask per employee per day, and masks for students and visitors.

OAR 333-019-1030:

- Documentation: filing or maintaining electronic records and responding to requests from OHA will require some labor and perhaps a small amount of supplies.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

A representative from Catholic Youth Organization (CYO)-Camp Howard participated in the rule advisory committee (RAC), which met on October 28, 2021. A representative from a child care facility was invited to participate in the RAC. OHA staff consulted by email with OregonASK regarding numbers of their after-school programs.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

333-019-1015, 333-019-1030

ADOPT: 333-019-1015

RULE SUMMARY: OAR 333-019-1015, Masking Requirements in Schools:

- Section (1) details the rationale for the rule.
- Section (2) authorizes the State Public Health Director or the State Public Health Officer to rescind some or all of the requirements of the rule if they are no longer necessary to control COVID-19.
- Section (3) defines the following terms:
 - o COVID-19
 - o Face covering
 - o Face shield
 - o Mask
 - o Private individual workspace
 - o School
- Section (4) requires schools to ensure that all individuals wear a mask or a face covering when indoors during specified times and when activities.
- Section (5) authorizes a face shield to be worn, in lieu of a mask or face covering, for medical reasons.
- Section (6) specifies exceptions to the requirements to wear masks or face coverings.
- Section (7) clarifies that the rule does not prohibit schools from complying with relevant federal and Oregon laws regarding discrimination.
- Section (8) subjects schools to civil penalties for violations of the rule.

CHANGES TO RULE:

333-019-1015

Masking Requirements in Schools

(1) The Oregon Health Authority has the authority to adopt rules to prescribe measures and methods for controlling reportable diseases, including COVID-19. Children are required to attend school, which is a congregate setting where COVID-19 can spread easily if precautions are not taken. Two of the most important tools the state has to control COVID-19 are vaccination and masking. To protect students who for reasons of age or medical conditions are not eligible to be vaccinated, and those with underlying health conditions that make them more susceptible to complications from COVID-19, as well as to minimize the disruption of student education in schools because of exposure to a confirmed or suspected case of COVID-19, requiring universal use of masks or face coverings in schools is necessary.

(2) The requirements in this rule remain in effect unless the State Public Health Director or State Public Health Officer issues an order stating that the some or all requirements in this rule are no longer necessary to control COVID-19. If such an order is issued the Oregon Health Authority must provide notice to interested parties and otherwise take reasonable steps to ensure notice of the order is provided to those affected by this rule in accordance with ORS 183.335(1). The State Public Health Director or State Public Health Officer may also rescind such an order, and such a rescission must also be noticed as provided in this section. In determining whether this rule should remain in effect the State Public Health Director or State Public Health Officer will take into consideration as least the following information:

(a) The degree of COVID-19 transmission, as measured by case rates, percent positivity, and any other objective metrics indicative of current or potential transmission in Oregon.

(b) COVID-19 related hospitalizations and deaths.

(c) Disparate COVID-19 related health impacts on communities of color and tribal communities.

(d) Guidance from the U.S. Centers for Disease Control and Prevention.

(e) Proportion of the population partially or fully vaccinated.

(3) For purposes of this rule the following definitions apply:

(a) "COVID-19" means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(b) "Face covering" means a cloth, polypropylene, paper or other face covering that covers the nose and the mouth and that rests snugly above the nose, below the mouth, and on the sides of the face.

(c) "Face shield" means a clear plastic shield that covers the forehead, extends below the chin, and wraps around

the sides of the face.

(d) "Mask" means a medical grade mask.

(e) "Private individual workspace" means an indoor space within a school used for work by one individual at a time that is enclosed on all sides with walls from floor to ceiling and with a closed door.

(f) "School" means a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof.

(4) Schools must ensure that all individuals, including but not limited to staff, students, contractors and visitors wear a mask or face covering, except as provided in sections (5) and (6) of this rule, when in an indoor setting:

(a) At school during regular school hours;

(b) Engaged in educational activities such as field trips or off-campus classes during regular school hours; and

(c) At school engaged in educational activities outside of regular school hours.

(5) A face shield may be worn instead of a mask or face covering if an individual cannot wear a mask or face covering for medical reasons.

(6) An individual is not required to wear a mask or face covering under section (4) of this rule if the individual is:

(a) Is under five years of age or not yet in kindergarten; unless an individual is using public transportation or in transportation hubs in which case an individual under two years of age is not required to wear a mask, face covering or face shield.

(b) Is sleeping.

(c) Is actively eating or drinking.

(d) Is engaged in an activity that makes wearing a mask, face covering or face shield not feasible, such as when actively swimming.

(e) Is in a private individual workspace.

(f) Must remove the mask or face covering briefly because the individual's identity needs to be confirmed by visual comparison.

(g) Is practicing or playing a competitive sport at any level.

(h) Is officiating a competitive sport that requires a high level of physical exertion by the official.

(i) Is performing, including but not limited to playing music, delivering a speech to an audience, and theater. This exception does not apply to teaching.

(7) Nothing in this rule is intended to prohibit a school from complying with the Americans with Disabilities Act (ADA), the Rehabilitation Act, the Individuals with Disabilities Education Act., Title VII of the Civil Rights Act, ORS 659.850 or applicable provisions of ORS chapter 659A.

(8) A school that violates this rule is subject to a civil penalty of \$500 per day per violation.

Statutory/Other Authority: ORS 413.042, ORS 431.110, ORS 431A.010, ORS 433.004

Statutes/Other Implemented: ORS 431.110, ORS 431A.010, ORS 433.004

ADOPT: 333-019-1030

RULE SUMMARY: OAR 333-019-1030, Vaccination Requirements for Teachers and School Staff

- Section (1) details the rationale for the rule.
- Section (2) defines the following terms:
 - o COVID-19
 - o Documentation of a medical exception
 - o Documentation of a religious exception
 - o Fully vaccinated
 - o Medical exception
 - o Proof of vaccination
 - o Religious exception
 - o School
 - o School-based program
 - o School-based program staff and volunteers
 - o Teachers, school staff, and volunteers
- Section (3) requires teachers and others to be fully vaccinated or to have an approved or accepted medical or religious exception; and prohibits schools from employing, contracting, with, or accepting volunteer services of workers who are not fully vaccinated or do have approved or accepted medical or religious exception to the requirement.
- Section (4) requires schools that grant medical or religious exceptions take reasonable steps to protect persons with such exceptions from contracting and spreading COVID-19.
- Section (5) requires school-based program staff and volunteers to be fully vaccinated or to have an approved or accepted medical or religious exception; and prohibits schools from employing, contracting, with, or accepting volunteer services of workers who are not fully vaccinated or do have approved or accepted medical or religious exception to the requirement.
- Section (6) requires school-based programs that grant medical or religious exceptions take reasonable steps to protect persons with such exceptions from contracting and spreading COVID-19.
- Section (7) authorizes schools to request attestation by school-based programs operating at the schools regarding compliance with the rule; and requires school-based programs to respond.
- Section (8) authorizes school-based programs to request attestation by schools in which they intend to operate regarding compliance with the rule; and requires school-based programs to respond.
- Section (9) clarifies that the rule does not prohibit schools or school-based programs from
 - o Complying with the federal Americans with Disabilities Act, Title VII of the federal Civil Rights Act, and equivalent Oregon laws, for individuals unable to be vaccinated due to medical conditions or sincerely held religious beliefs;
 - o Having more restrictive or additional vaccination requirements; or
 - o Allowing school districts or other governing bodies to collect required documentation of vaccinations and exceptions.
- Section (10) specifies requirements for maintaining and providing to OHA documentation of vaccination and medical and religious exceptions.
- Section (11) subjects schools and school-based programs to civil penalties for violations of the rule.

CHANGES TO RULE:

333-019-1030

COVID-19 Vaccination Requirements for Teachers and School Staff

(1) Children are required to attend school, which is a congregate setting where COVID-19 can spread easily if precautions are not taken. COVID-19 undergoes frequent mutations as it replicates, which over time has resulted in variants that are more transmissible or cause more severe disease. Being vaccinated is critical to prevent the spread of COVID-19. COVID-19 variants have and can run through the state's unvaccinated population and cause

an increase in breakthrough cases for those who are fully vaccinated. This rule is necessary to help control COVID-19, and to protect students, teachers, school staff, and volunteers.

(2) For purposes of this rule, the following definitions apply:

(a) "COVID-19" means a disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(b) "Documentation of a medical exception" means a form prescribed by the Oregon Health Authority, signed by a medical provider who is not the individual, certifying that the individual has a physical or mental impairment that limits the individual's ability to receive a COVID-19 vaccination based on a specified medical diagnosis, and that specifies whether the impairment is temporary in nature or permanent.

(c) "Documentation of a religious exception" means a form prescribed by the Oregon Health Authority, signed by the individual, stating that the individual is requesting an exception from the COVID-19 vaccination requirement on the basis of a sincerely held religious belief and includes a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.

(d) "Fully vaccinated" means having received both doses of a two-dose COVID-19 vaccine or one dose of a single-dose COVID-19 vaccine and at least 14 days have passed since the individual's final dose of COVID-19 vaccine.

(e) "Medical exception" means that an individual has a physical or mental impairment that prevents the individual from receiving a COVID-19 vaccination.

(f) "Religious exception" means that an individual has a sincerely held religious belief that prevents the individual from receiving a COVID-19 vaccination.

(g) "Proof of vaccination" means documentation provided by a tribal, federal, state or local government, or a health care provider, that includes an individual's name, date of birth, type of COVID-19 vaccination given, date or dates given, depending on whether it is a one-dose or two-dose vaccine, and the name/location of the health care provider or site where the vaccine was administered. Documentation may include but is not limited to a COVID-19 vaccination record card or a copy or digital picture of the vaccination record card, a print-out from the Oregon Health Authority's immunization registry, or a Quick-Response (QR) code from a verified digital vaccine record.

(h) "School":

(A) Means a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof.

(B) Does not mean stand-alone preschool program that goes up through kindergarten.

(i) "School-based program" means a program serving children or students that takes place at or in school facilities.

(j) "School-based program staff and volunteers":

(A) Means anyone age 16 and older:

(i) Who is employed by a school-based program or who is not employed but is otherwise engaged to provide goods or services to a school-based program through any formal or informal agreement, whether compensated or uncompensated, and includes but is not limited to teachers, administrative staff, child care staff, cleaning staff, coaches, school-based program drivers, family volunteers; and

(ii) Providing goods or services at or for a school-based program that includes direct or indirect contact with children or students.

(B) Does not mean short-term visitors or individuals making deliveries.

(k) "Teachers, school staff and volunteers":

(A) Means anyone age 16 and older:

(i) Who is employed at a school or anyone who is not employed but is otherwise engaged to provide goods or services to or at a school through any formal or informal agreement, whether compensated or uncompensated, and includes but is not limited to teachers, administrative staff, cleaning staff, coaches, school bus drivers, family volunteers and substitute teachers; and

(ii) Providing goods or services at or for a school that includes direct or indirect contact with students.

(B) Does not mean short-term visitors, individuals making deliveries, or school board members unless they are also volunteering in a school.

(3) After October 18, 2021:

(a) Teachers, school staff and volunteers may not teach, work, learn, study, assist, observe, or volunteer at a school unless they are fully vaccinated or have provided documentation of a medical or religious exception and the exception has been approved or accepted.

(b) A school may not employ, contract with, or accept the volunteer services of teachers, school staff or volunteers who are teaching, working, learning, studying, assisting, observing, or volunteering at a school unless the teachers or school staff are fully vaccinated against COVID-19 or have an approved or accepted medical or religious exception.

(4) Schools that grant a medical or religious exception to the vaccination requirement must take reasonable steps to ensure that unvaccinated teachers, school staff and volunteers are protected from contracting and spreading COVID-19.

(5) After October 18, 2021:¶

(a) School-based program staff and volunteers may not teach, work, provide care, learn, study, assist, observe, or volunteer for a school-based program unless they are fully vaccinated or have provided documentation of a medical or religious exception and the exception has been approved or accepted.¶

(b) A school-based program may not employ, contract with, or accept the volunteer services of school-based program staff or volunteers who are teaching, working, providing care, learning, studying, assisting, observing, or volunteering at a school-based program unless the staff or volunteers are fully vaccinated against COVID-19 or have an approved or accepted medical or religious exception.¶

(6) School-based programs that grant a medical or religious exception to the vaccination requirement must take reasonable steps to ensure that unvaccinated school-based program staff and volunteers are protected from contracting and spreading COVID-19.¶

(7) A school may request that a school-based program operating at that school, attest to whether it is, or is not, in compliance with this rule. If a school-based program receives such a request from a school, it must respond.¶

(8) A school-based program may request that a school at which it intends to operate, attest to whether it is, or is not, in compliance with this rule. If a school receives such a request from a school-based program, it must respond.¶

(9) Nothing in this rule is intended to prohibit schools or school-based programs from:¶

(a) Complying with the Americans with Disabilities Act and Title VII of the Civil Rights Act, and state law equivalents, for individuals unable to be vaccinated due to a medical condition or a sincerely held religious belief.¶

(b) Having more restrictive or additional requirements, including but not limited to requiring teachers, school staff and volunteers, and school-based program staff and volunteers to have documentation of an additional or booster dose of a COVID-19 vaccine if that is recommended by the U.S. Centers for Disease Control and Prevention.¶

(c) Allowing a school district or other governing body to collect the vaccination and exception documentation required under this rule.¶

(10) Proof of vaccination documentation and documentation of medical and religious exceptions must be:¶

(a) Maintained in accordance with applicable federal and state laws;¶

(b) Maintained for at least two years; and¶

(c) Provided to the Oregon Health Authority upon request.¶

(11) Schools and school-based programs that violate any provision of this rule are subject to civil penalties of \$500 per day per violation.

Statutory/Other Authority: ORS 413.042, ORS 431A.010, ORS 431.110, ORS 433.004

Statutes/Other Implemented: ORS 431A.010, ORS 431.110, ORS 433.004