

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED

12/10/2021 10:09 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adoption of a rule requiring masks to be worn in indoor spaces in Oregon

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: 01/20/2022

TIME: 10:00 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 389 374 45# for audio

only. The hearing will close no later

than 12:00 PM, 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 Oregon Health Authority (Authority), Public Health Division, is proposing to adopt an administrative rule under chapter 333, division 19, pertaining to the wearing of masks, face coverings or face shields in indoor spaces to control the spread of COVID-19. The Authority proposes that individuals be required to wear a mask, face covering or face

shield when in an indoor space, with few exceptions.

COVID-19 infection is transmitted predominately by inhalation of respiratory droplets generated when people cough, sneeze, sing, talk, or breathe. Studies show that masks and face coverings block the release of respiratory droplets into the environment and can also reduce the wearer's exposure to droplets. COVID-19 viral particles spread between people more readily indoors and when people are closer together for longer periods of time indoors.

This rule is necessary to control COVID-19, reduce hospitalizations and deaths, and provide general health protection to people in Oregon.

The burden of COVID-19 disease has fallen disproportionately onto vulnerable communities and communities of color in Oregon. Systemic racism and historical and contemporary injustices have led to health inequities in the state and these injustices are the root cause of COVID-19-related health inequities seen in Oregon today. Communities of color are overrepresented in the service industry and across the nation, there has been disproportionate burden of COVID-19 disease in this sector. By adopting this rule, the Authority seeks to reduce the disparate impact of COVID-19 on these communities who have had inequitable outcomes from COVID-19 disease. Wearing of face coverings in indoor spaces is an evidence-based, accessible intervention that protects all people in Oregon by slowing the spread of COVID-19.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- OHSU updated statement on COVID-19 forecast (12.02.2021): <https://news.ohsu.edu/2021/12/02/dec-2-forecast-covid-19-hospitalizations-continue-to-decline-in-oregon>
- OHSU COVID Forecast (12.02.2021): <https://www.ohsu.edu/sites/default/files/2021-12/OHSU-COVID-Forecast-20211202.pdf>
- Oregon's HOSCAP report (updated 12.03.2021): <https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19HospitalCapacity/BedAvailabilitybyRegion>
- COVID-19 Weekly Report (12.01.2021): <https://www.oregon.gov/oha/covid19/Documents/DataReports/Weekly-Data-COVID-19-Report-2021-12-01-FINAL.pdf>
- COVID-19 Breakthrough Report (12.02.2021): <https://www.oregon.gov/oha/covid19/Documents/DataReports/Breakthrough-Report-12-02-2021.pdf>
- The Science of Masking to Control COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/science-of-masking-full.pdf>
- Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2: <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>
- Guidance for Wearing Masks Help Slow the Spread of COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>
- Effectiveness of public health measures in reducing the incidence of covid-19, SARS-CoV-2 transmission, and covid-19 mortality: systematic review and meta-analysis. (Published 18 November 2021) *BMJ* 2021; 375 doi: <https://doi.org/10.1136/bmj-2021-068302>
- Brown CM, Vostok J, Johnson H, et al. Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County, Massachusetts, July 2021. *MMWR Morb Mortal Wkly Rep* 2021;70:1059-1062. DOI: <http://dx.doi.org/10.15585/mmwr.mm7031e2>
- Christie A, Brooks JT, Hicks LA, Sauber-Schatz EK, Yoder JS, Honein MA. Guidance for implementing COVID-19 prevention strategies in the context of varying community transmission levels and vaccination coverage. *MMWR Morb Mortal Wkly Rep* 2021;70:1044–7. <https://doi.org/10.15585/mmwr.mm7030e2>

- Donnelly, Kale. The Diversity of Oregon's Industries. Employment Department, State of Oregon. November 23, 2020. <https://www.qualityinfo.org/-/the-diversity-of-oregon-s-industries>
- Sobolik JS, Sajewski, ET, Jaykus L, Cooper DK, Lopman BA, Kraay ANM, Ryan PB, Leon JS. Controlling risk of SARS-CoV-2 infection in essential workers of enclosed food manufacturing facilities. Food Control. 2022. <https://doi.org/10.1016/j.foodcont.2021.108632>
- University of California, Merced. Fact Sheet: The Pandemic's Toll on California Workers in High Risk Industries. April 2021. https://clc.ucmerced.edu/sites/clc.ucmerced.edu/files/page/documents/fact_sheet_-_the_pandemics_toll_on_california_workers_in_high_risk_industries.pdf
- Yea-Hung Chen, Maria Glymour, Alicia Riley, John Balmes, Kate Duchowny, Robert Harrison, Ellicott Matthey, Kirsten Bibbins-Domingo. Excess mortality associated with the COVID-19 pandemic among Californians 18–65 years of age, by occupational sector and occupation: March through October 2020. <https://doi.org/10.1101/2021.01.21.21250266>.
- 2020 Small Business Profile: Oregon. U.S. Small Business Administration, Office of Advocacy. <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144149/2020-Small-Business-Economic-Profile-OR.pdf>

FISCAL AND ECONOMIC IMPACT:

The wearing of masks in indoors spaces reduces the transmission of COVID-19, and by extension, reduces hospitalizations and deaths from this disease. Decreased hospitalizations and deaths from COVID-19 reduce costs associated with managing and treating the disease.

Fiscal and economic impact related to small businesses is discussed 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) The Authority expects minimal impact to state agencies for compliance. The Oregon Health Authority has staff costs related to reviewing and responding to questions and complaints about the rule and compliance complaints. State agencies may have somewhat increased costs related to employee or customer requests for ADA accommodations, and costs associated with providing masks if individuals who need access to state offices don't have a mask. These same costs may be borne by local governments.

The Authority expects minimal costs to the public; however, members of the public will bear costs associated with purchasing masks for themselves and their families.

(2)(a)

- Generally, this rule applies to all businesses in Oregon. Businesses include an individual, organization or entity engaged in commercial, industrial, non-profit or professional activities.
- As of 2020, there are about 82,000 businesses with 1-19 employees, 93,000 businesses that have 1-499 employees and 295,000 that are non-employer firms for a total of about 388,000 small businesses.

(b)

- No projected costs for recordkeeping.
- Employers may have administrative impacts to train staff, contractors and volunteers on complying with the rule.

(c)

- Businesses are required to post signs (and post updated signs, when applicable). Therefore, businesses may have printing costs associated with ensuring signs are posted in visible locations at the business site(s).
- Businesses may have costs associated with monitoring for compliance and handling customer or visitor complaints/concerns at the premises.
- Businesses are not required to purchase and offer masks to customers and visitors, however businesses that offer masks may have cost associated with this process.
- Businesses may have costs associated with customer or visitor ADA accommodation requests.

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

The Authority included small businesses and organizations representing small business on the rules advisory committee, which met on December 2, 2021. The committee reviewed and provided feedback on the Authority's proposed rule text as well as on the draft Statement of Need and Fiscal Impact for the rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 333-019-1025

RULE SUMMARY: ADOPT 333-019-1025, Mask Requirements in Indoor Spaces

In this rule, the Authority proposes to require individuals to wear a mask, face covering or face shield in indoor spaces, with some exceptions.

The Authority proposes that the Oregon State Public Health Director or the Oregon State Health Officer have the authority to rescind and reinstate all or parts of the rule taking into consideration, at a minimum, information and data related to COVID-19 transmission, hospitalizations and deaths, disparate effects on communities of color and tribal communities, guidance from the U.S. Centers for Disease Control and Prevention and rates of vaccination for COVID-19.

The Authority proposes that persons who are responsible for an indoor space ensure that their employees, contractors and volunteers comply with the requirement to wear a mask, face covering or face shield when in an indoor space. In addition, the Authority proposes that persons responsible for an indoor space make reasonable efforts to ensure customers and visitors comply with the requirement and post signs at entrances with the mask, face covering, face shield requirement.

The Authority's proposed rule does not prohibit organizations from implementing more restrictive requirements, nor does it prevent an individual from complying with a more restrictive requirement.

The Authority proposes a civil penalty of up to \$500 per person per day for non-compliance with the rule.

CHANGES TO RULE:

333-019-1025

Masking Requirements for Indoor Spaces

(1) COVID-19 infection is transmitted predominately by inhalation of respiratory droplets generated when people

cough, sneeze, sing, talk, or breathe. Studies show that masks and face coverings block the release of respiratory droplets into the environment and can also reduce the wearer's exposure to droplets. COVID-19 viral particles spread between people more readily indoors, particularly when people are closer together for longer periods of time indoors. This rule is necessary to help control COVID-19, reduce hospitalizations and deaths, and provide general health protection to people in Oregon.

(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 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) Nothing in this rule is intended to:

(a) Prohibit an individual or person from complying with a more restrictive mask requirement.

(b) Prohibit a person, including a business or governmental entity from applying more restrictive requirements.

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

(a) "Business" includes an individual, organization or entity engaged in commercial, industrial, non-profit or professional activities.

(b) "Common or shared space" means an area where individuals may interact such as a restroom, breakroom, hallway, elevator, lobby, classroom, large room with cubicles, meeting rooms, conference rooms and any area open to the public.

(c) "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.

(d) "Face shield" means a clear plastic shield that covers the forehead, extends below the chin, and wraps around the sides of the face.

(e) "Household" means individuals who live together in a single residence.

(f) "Indoor spaces" means anywhere indoors, including but not limited to public and private workplaces, businesses, indoor areas open to the public, building lobbies, common or shared spaces, classrooms, elevators, bathrooms, transportation services and other indoor space where people may gather for any purpose. An indoor space does not include a private residence or a private automobile being used for personal use and that is not used for ride sharing services.

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

(h) "Person" has the meaning given that term in ORS 174.100.

(i) "Person responsible for an indoor space" means any person or governmental entity responsible for the activities within an indoor space.

(j) "Private individual workspace" means an indoor space within a public or private workplace 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.

(k) "Public and private workplaces" means indoor places where people work, including but not limited to businesses, banks, food processing plants, manufacturing facilities, construction sites, warehouses and farms.

(l) "Public transportation" means any form of transportation open to the public including but not limited to trains, buses, trolleys, street cars, vans, school buses, airplanes, boats, ride sharing services. Public transportation does not include private vehicles unless the private vehicle is being used for public transportation such as ride sharing services.

(m) "Ride sharing services" means transportation services, whether public or private, where a driver transports an individual or a group of people in a vehicle and charges a fare or bills for services. Ride sharing services include, but are not limited to, taxicabs, Uber, and Lyft.

(n) "Transportation hub" means any airport, bus terminal, marina, seaport or other port, subway station terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.

(5) Individuals, regardless of vaccination status, are required to wear a mask, face covering or face shield except as exempted in section (6) of this rule when in an indoor space.

(6) A mask, face covering, or face shield is not required when an individual:

(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, face covering or face shield briefly because the individual's identity needs to be confirmed by visual comparison, such as at a bank or if interacting with law enforcement.¶

(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.¶

(7) A person responsible for an indoor space must:¶

(a) Ensure that employees, contractors, and volunteers comply with this rule within the indoor space.¶

(b) Make reasonable efforts to ensure customers, guests, visitors and other individuals comply with this rule within the indoor space.¶

(c) Post signs at every entrance to the indoor space that masks, face coverings or face shields are required as described in this rule.¶

(8) Nothing in this rule is intended to prohibit an employer or place of public accommodation from making reasonable accommodations in order to comply with the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act, ORS 659.850 or applicable provisions of ORS chapter 659A¶

(9) Penalties: Any person or person responsible for an indoor space who violates any provision of this rule is subject to civil penalties of up to \$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