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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 83-2021

CHAPTER 333

OREGON HEALTH AUTHORITY

PUBLIC HEALTH DIVISION

FILED

11/23/2021 12:01 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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

EFFECTIVE DATE: 11/23/2021 THROUGH 02/08/2022

AGENCY APPROVED DATE: 11/22/2021

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Filed By:

Public Health Division

Rules Coordinator

NEED FOR THE RULE(S):

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.

The previous version of this rule, filed and effective August 27, 2021 (Temporary Administrative Order PH 41-2021), required individuals to wear a mask, face covering or face shield when outdoors and not able to maintain at least six feet of distance from those outside of their household. Requiring wearing of masks outdoors when physical distancing was not possible reduced the spread of the highly contagious Delta variant, particularly in crowded outdoor areas such as sporting events and parades. With the decrease in COVID-19 cases since the end of summer, masking outdoors likely will not reduce spread to the same extent. Unvaccinated individuals, those who are immunocompromised, individuals at higher risk for complications from COVID-19, or individuals who live with someone in one of these categories would still have increased protection from wearing a mask in these outdoor settings.

This filing replaces Temporary Administrative Order PH 41-2021 filed and effective August 27, 2021.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest and the Authority. This rule needs to be adopted promptly to focus safety measures more directly on settings that pose a higher risk of transmission in order to help control COVID-19, reduce hospitalizations and deaths, and provide general health protection to people in Oregon.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ADOPT: 333-019-1025

SUSPEND: Temporary 333-019-1025 from PH 41-2021

RULE TITLE: Masking Requirements for Indoor Spaces

RULE SUMMARY: ADOPT 333-019-1025

The Oregon Health Authority is proposing the adoption of a rule under chapter 333, division 19 pertaining to wearing masks in indoor spaces.

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.

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

Section (5) of the rule provides that 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.

Definitions used in the rule:

- "Business" includes an individual, organization or entity engaged in commercial, industrial, non-profit or professional activities.
- "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.
- "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.
- "Face shield" means a clear plastic shield that covers the forehead, extends below the chin, and wraps around the sides of the face.
- "Household" means individuals who live together in a single residence.
- "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.
- "Mask" means a medical grade mask.
- "Person responsible for an indoor space" means any person or governmental entity responsible for the activities within an indoor space.
- "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.

- "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.
- "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.
- "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.
- "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

Employers and places of public accommodation must still make 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 659A.

Any person who violates any provision of this rule is subject to civil penalties of up to \$500 per day per violation.

RULE TEXT:

(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 and 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) 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.

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

- (i) "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.
- (j) "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.
- (k) "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.
- (l) "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.
- (m) "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.
- (4) Individuals, regardless of vaccination status, are required to wear a mask, face covering or face shield except as exempted in section (5) of this rule when in an indoor space.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) Penalties: Any person 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