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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 84-2021

CHAPTER 333

OREGON HEALTH AUTHORITY

PUBLIC HEALTH DIVISION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Masking Requirements in Schools

EFFECTIVE DATE: 11/23/2021 THROUGH 01/28/2022

AGENCY APPROVED DATE: 11/22/2021

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Public Health Division

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NEED FOR THE RULE(S):

The Oregon Health Authority is adopting a temporary rule, OAR 333-019-1015, pertaining to wearing of masks in K-12 schools. 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. In order to protect students and others 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 exposure to a confirmed or suspected case of COVID-19, requiring universal use of masks inside schools is necessary.

The previous version of this rule, filed and effective September 3, 2021 (Temporary Administrative Order PH 44-2021), required schools to ensure that individuals wear a mask, face covering or face shield when outdoors at a school and not able to consistently maintain at least six feet of distance from those outside of their household. Requiring wearing of masks outdoors at schools when physical distancing was not possible reduced the spread of the highly contagious Delta variant, particularly at crowded school event areas such as athletic competitions and school carnivals. With the decrease in COVID-19 cases since the end of summer, masking outdoors at schools 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 school settings.

This filing replaces Temporary Administrative Order PH 44-2021 filed and effective on September 3, 2021.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and students and staff in K-12 schools. These rules need to be adopted promptly so that we can protect, to the greatest extent possible, students, staff and others from being exposed to or contracting COVID-19 during the 2021-2022 school year. An indoor masking requirement will help to focus safety measures more directly on settings that pose a

higher risk of transmission to avoid school disruptions from COVID-19 school-related outbreaks.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ADOPT: 333-019-1015

SUSPEND: Temporary 333-019-1015 from PH 44-2021

RULE TITLE: Masking Requirements in Schools

RULE SUMMARY: ADOPT OAR 333-019-1015:

OAR 333-019-1015 will require all individuals, including but not limited to staff, students, contractors and visitors, to wear a mask or face covering in indoor settings at schools as follows, with certain exceptions:

- At school during regular school hours;
- When engaged in educational activities such as field trips or off-campus classes during regular school hours; and
- At school when engaged in educational activities outside of regular school hours.

A school must still provide reasonable accommodations and otherwise comply with the ADA, the Rehabilitation Act, and the Individuals with Disabilities Education Act, Title VII of the Civil Rights Act, ORS 659.850, or applicable provisions of ORS chapter 659A.

A school that violates the rule is subject to civil penalties of \$500 per day per violation.

OHA will review this rule monthly to determine if it is still needed.

Definitions used in the rule:

- "School" is defined as a public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof.
- "Face covering" is defined as 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" is defined as a clear plastic shield that covers the forehead, extends below the chin, and wraps around the sides of the face.
- "Mask" is defined as a medical grade mask.
- "Private individual workspace" is defined as 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.

RULE TEXT:

(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. In order to protect students and others 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 exposure to a confirmed or suspected case of COVID-19, requiring universal use of masks or face coverings inside schools is necessary.

(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) "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.

(3) 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 (4) and (5) 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.

(4) 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.

(5) An individual is not required to wear a mask or face covering under section (3) 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.

(6) 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.

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

(8) The Oregon Health Authority will review the continued need for this rule on a monthly basis, based on scientific information related to the spread and control of COVID-19.

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