

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Health Authority- Public Health Division

333

Agency and Division  
Number

Administrative Rules Chapter

Food Sanitation Rule update to align with the 2022 Food and Drug Administration Code

Rule Caption

Statutory Authority: ORS 624.041, 624.355, 616.892

Other Authority:

Stats. Implemented: ORS 624.041, 624.355, 616.892

Need for the Rule(s):

The Oregon Health Authority (OHA), Public Health Division, Foodborne Illness Prevention Program is proposing to adopt the 2022 Food and Drug Administration (FDA) Food Code by reference. Oregon is currently referencing the 2009 FDA Food Code in the Food Sanitation Rules and there have been many changes and scientific research conducted since the last update, and the program would like to closer align to the national standards for food safety.

This update will incorporate changes that allow increased flexibility around topics like reduced oxygen packaging and cooling, making it easier for food service operators to comply safely with these rules in the future. It will also attempt to decrease the risk of foodborne illness by requiring food service workers to use utensils when touching food with their bare hands and for facilities to have staff that have completed food manager certification programs.

These proposed rules also implement provisions of Senate Bill 90, which implements a limit on food service establishments providing plastic straws to consumers unless requested (Oregon Laws 2019, chapter 362), which were passed during the 2019 Oregon Legislative Session. These rules were inadvertently removed from the rule text but have been in place since January 1, 2020.

Documents Relied Upon, and where they are available:

2022 FDA Food Code: <https://www.fda.gov/food/fda-food-code/food-code-2022>

Oregon Food Sanitation Rules draft user document: [www.healthoregon.org/foodsafety](http://www.healthoregon.org/foodsafety)

Senate Bill 90 (Oregon Laws 2019, chapter 362):

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB90>

Statement Identifying How Adoption of Rule(s) Will Affect Racial Equity in This State:

OHA, Public Health Division does not anticipate the proposed rule changes affecting racial equity in the state but will ensure that our training materials and resources are translated into as many languages as possible. We have 18 available currently and would like to maintain those and potentially add more. Many Food Manager Certification trainings are offered in English and Spanish, but not as many languages as OHA currently has available in fact sheets and other materials. This may present a racial equity barrier with regards to language access.

Fiscal and Economic Impact:

There will be no fiscal or economic impact on the OHA, Public Health Division as a result of the proposed changes. The rules will be implemented by existing program staff and are part of current staff responsibilities relating to statewide rulemaking, consultation, training of local health department inspectors, and technical assistance. Most food service facilities are small businesses, and the cost of compliance and fiscal impact is discussed below.

#### Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

Local health departments license and inspect these facilities under an existing intergovernmental agreement with OHA. Implementation of the rules may result in slower inspection times as inspectors discuss new provisions with the operators. The provisions of the proposed rules will be added to the current inspection protocol and there will be some training of local health department inspection personnel that is necessary. There will be no cost of compliance impact on other state agencies or the public.

2. Cost of compliance effect on small business (ORS 183.336): ORS 183.310(10) defines small business as "a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses, and which has 50 or fewer employees."

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

There are approximately 20,000 food service establishments that will be affected by an update to the rules, and most of these are small businesses.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

There may be a minor impact on businesses that will need to train staff on how to implement the provisions of the updated rules that apply specifically to their operation.

c. Equipment, supplies, labor and increased administration required for compliance:

There may potentially be a significant impact on food service establishments to come into compliance with food manager certification requirements. Businesses may need to pay for staff to attend Food Manager Certification training, which will have a grace period after adoption to allow establishments to meet this requirement. Businesses may also need to evaluate some of their current food preparation processes to determine how best to perform tasks using utensils and not handling food with their bare hands. Some facilities may incur costs of purchasing equipment such as tongs, scoops, spoons, spatulas, gloves, etc. to meet this requirement.

#### How were small businesses involved in the development of this rule?

OHA sent a survey to every licensed food service facility email contact statewide alerting them to the start of the rule update process as well as asking if they were interested in participating in the Rule Advisory Committee (RAC). The RAC membership included representatives of small businesses who reviewed and provided feedback on the proposed text, racial equity impact, and fiscal or cost of compliance impact to small businesses.

#### Administrative Rule Advisory Committee consulted?

Yes. Members included operators of both small and large food service facilities with varying menu types, the Oregon Restaurant and Lodging Association, a State Food Service Advisory Committee representative, the Federal Food and Drug Administration (FDA), Oregon Department of Agriculture, and local public health authority regulatory staff.

If not, why?

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Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon  
97310. ARC 925-2007