TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 19-2020
CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILING CAPTION: COVID-19 and implementation of Governor’s Executive Orders 20-07 and 20-12

EFFECTIVE DATE: 03/31/2020 THROUGH 09/20/2020

AGENCY APPROVED DATE: 03/31/2020

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NEED FOR THE RULE(S):
The Governor has declared an emergency due to the public health threat posed by the novel infectious coronavirus (COVID-19) and issued Executive Order 20-07, prohibiting food service establishments from offering or allowing on-premises consumption of food or drink, and Executive Order 20-12, requiring businesses to designate an employee or officer to establish, implement and enforce social distancing policies. These Executive Orders are considered public health laws and these rules are necessary to allow the Oregon Health Authority (Authority) and local public health authorities to enforce the Orders if necessary, as long as the Executive Orders are in effect. These temporary rules provide the Authority or a local public health authority with the ability to issue civil penalties and enforce the provisions of the Executive Orders, but only as long as the Executive Orders are in effect. The rules related to the prohibition on on-site consumption will be suspended when the Governor rescinds that Executive Order. The rules related to social distancing will be suspended when the Governor rescinds that Executive Order. This temporary rule filing replaces Temporary Administrative Order PH 15-2020 filed and effective March 25, 2020.

JUSTIFICATION OF TEMPORARY FILING:
The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and all Oregonians that may be affected by the transmission of novel infectious coronavirus (COVID-19). These rules need to be adopted promptly because the Authority and local public health authorities do not currently have the ability to conduct enforcement in the event that facilities or individuals refuse to comply with the Governor’s Executive Orders.

The Governor’s Executive Orders 20-07 and 20-12 were issued to help limit the spread of novel infectious coronavirus (COVID-19) in Oregon. Food service establishments have been ordered to close their dining rooms and provide only takeout or delivery services to the public. Businesses have been ordered to designate an employee to enforce social distancing procedures. The Oregon Health Authority (Authority) and local public health authorities are responsible for implementing public health law and currently do not have rules in place to implement and enforce these Orders.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:
RULES:
333-003-1000, 333-003-1010, 333-003-1020, 333-003-1030, 333-003-1040

ADOPT: 333-003-1000

SUSPEND: Temporary 333-003-1000 from PH 15-2020

RULE TITLE: Declared Emergency: Definitions

RULE SUMMARY: Adopt OAR 333-003-1000: Defines social distancing officer and local public health authority.

RULE TEXT:
The following definitions apply to OAR 333-003-1000 to 333-003-1040:
(1) "Social distancing officer" means an employee or officer designated to establish, implement, and enforce social distancing policies.
(2) "Local public health authority" means:
   (a) A county government;
   (b) A health district formed under ORS 431.443; or
   (c) An intergovernmental entity that provides public health services pursuant to an agreement entered into under ORS 190.010(5).

STATUTORY/OTHER AUTHORITY: ORS 401.168, ORS 413.042, ORS 433.441

STATUTES/OTHER IMPLEMENTED: ORS 401.990, ORS 431A.005, ORS 431A.010
ADOPT: 333-003-1010
SUSPEND: Temporary 333-003-1010 from PH 15-2020

RULE TITLE: Declared Emergency: Enforcement of Governor’s Executive Orders via Civil Penalties

RULE SUMMARY: Adopt OAR 333-003-1010: Establishes civil penalties for non-compliance with OAR 333-003-1000 to 333-003-1040 and the Governor’s Executive Orders 20-07 and 20-12. Executive Order 20-07 prohibits food service establishments from offering or allowing on-premises consumption of food or drink. Food service establishments may offer food or drink for off-premises consumption or delivery but social distancing of six feet is required between customers and employees when practical. Executive Order 20-12 requires businesses to designate an employee or officer to establish, implement and enforce social distancing policies. Civil penalties can only be issued when the Executive Order is in effect.

RULE TEXT:
(1) The Oregon Health Authority (Authority) or a local public health authority may impose civil penalties up to $500 per day per violation on any person for violating any provision of Governor’s Executive Order Nos. 20-07 or 20-12, or any provision of OAR 333-003-1000 to OAR 333-003-1040.
(2) Any civil penalties imposed by the Authority shall be imposed in accordance with ORS chapter 183.745. Civil penalties imposed by the local public health authority shall be imposed in a manner substantially equivalent to ORS chapter 183.745.
(3) Civil penalties may not be imposed under this rule if the Executive Order alleged to have been violated is not in effect at the time the Notice of Imposition of Civil Penalties is issued.

Note: Copies of the Executive Orders are available at: https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx

STATUTORY/OTHER AUTHORITY: ORS 401.168, ORS 413.042, ORS 433.441

STATUTES/OTHER IMPLEMENTED: ORS 401.990, ORS 431A.005, ORS 431A.010
ADOPT: 333-003-1020

SUSPEND: Temporary 333-003-1020 from PH 15-2020

RULE TITLE: Declared Emergency: Prohibition on On-Premises Consumption of Food or Drink; Civil Penalties

RULE SUMMARY: Adopt OAR 333-003-1020: Prohibits onsite consumption of food or drinks and sets requirements for off-site consumption. Exempts certain establishments from the onsite consumption prohibition and establishes civil penalties. This rule will be suspended when the Governor lifts the prohibition related to on-site consumption.

RULE TEXT:

(1) Restaurants, bars, taverns, brew pubs, wine bars, cafes, food courts, coffee shops, clubs, or other similar establishments that offer food or drink may not offer or allow on-premises consumption of food or drink. This prohibition includes, but is not limited to:

(a) Both indoor and outdoor areas of an establishment.

(b) Continental breakfast operations, buffets, or other self-service operations.

(2) Establishments may only offer food or drink for off-premises consumption if the establishment:

(a) Implements social distancing protocols of at least six feet between customers while ordering, waiting, in line, and at any time on the premises.

(b) Implements social distancing protocols of at least six feet between staff whenever possible.

(c) Complies with ORS chapter 471 and any rules adopted thereunder when offering or selling alcoholic beverages for off-premises consumption.

(d) Designates a social distancing officer.

(3) Continental breakfast operations, buffets, and other self-service operations may only offer food or drink for off-premises consumption if they comply with section (2) of this rule and only staff are permitted to prepare and package food or drinks for off-premises consumption.

(4) Health care facilities, child care facilities, workplaces, essential government buildings, essential emergency response facilities, essential school-based food programs, and essential shelter and meal programs serving vulnerable populations are exempt from this rule.

(5) This rule will be suspended when the Governor lifts the prohibition related to on-site consumption.

STATUTORY/OTHER AUTHORITY: ORS 401.168, ORS 413.042, ORS 433.441

STATUTES/OTHER IMPLEMENTED: ORS 401.990, ORS 431A.005, ORS 431A.010, ORS 431A.015
ADOPT: 333-003-1030
SUSPEND: Temporary 333-003-1030 from PH 15-2020

RULE TITLE: Declared Emergency: Disciplinary Action for Violation of On-Premises Consumption Prohibition

RULE SUMMARY: Adopt OAR 333-003-1030: Establishes that non-compliance with OAR 333-003-1020 may serve as the basis for the Oregon Health Authority to take any enforcement or licensing action permitted under ORS chapter 624. This rule will be suspended when the Governor lifts the prohibition related to on-site consumption.

RULE TEXT:
(1) Violation of OAR 333-003-1020 constitutes a violation of the Oregon Food Sanitation Rules OAR 333-150-0000.
(2) Violation of OAR 333-003-1020 may serve as the basis for the Authority to take any enforcement or licensing action permitted under ORS chapter 624 against any food establishment as defined in OAR 333-150-0000(4)(q) regulated by the Authority, including but not limited to:
(a) Restaurants;
(b) Bed and breakfast facilities;
(c) Mobile food units;
(d) Commissaries;
(e) Warehouses;
(f) Vending machines;
(g) Traveler’s accommodations; or
(h) Organizational camps.
(3) Any enforcement or licensing action taken under this rule shall be taken in accordance with ORS chapter 183.
(4) This rule will be suspended when the Governor lifts the prohibition related to on-site consumption.

STATUTORY/OTHER AUTHORITY: ORS 433.441, ORS 413.042
STATUTES/OTHER IMPLEMENTED: ORS 401.990, ORS 431A.005, ORS 431A.010, ORS 624.020, ORS 624.041, ORS 624.355, ORS 624.415
ADOPT: 333-003-1040
SUSPEND: Temporary 333-003-1040 from PH 15-2020
RULE TITLE: Declared Emergency: Designation of Social Distancing Officer
RULE SUMMARY: Adopt OAR 333-003-1040: Requires that businesses designate a social distancing officer and to
provide the name and contact information of the social distancing officer to the Oregon Health Authority, local public
health authority, or another state agency with authority to enforce the Executive Order, upon request. This rule will be
suspended when the Governor lifts the social distancing requirements for businesses.

RULE TEXT:
(1) Businesses required to designate a social distancing officer pursuant to a Governor’s Executive Order or by rule shall
immediately provide the name and contact information of the social distancing officer to the Authority, a local public
health authority, or any other state agency with responsibility for enforcing an Executive Order, upon request.
(2) This rule will be suspended when the Governor lifts the social distancing requirements for businesses.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 433.441
STATUTES/OTHER IMPLEMENTED: ORS 401.990, ORS 431A.005, ORS 431A.010, ORS 431A.015, ORS 624.020, ORS
624.041, ORS 624.355, ORS 624.415