TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 82-2020
CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILING CAPTION: Amending rules related to COVID-19 to implement the Governor's Executive Orders.

EFFECTIVE DATE: 12/18/2020 THROUGH 06/15/2021

AGENCY APPROVED DATE: 12/18/2020

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NEED FOR THE RULE(S):
The Governor has declared an emergency due to the public health threat posed by coronavirus disease 2019 (COVID-19) and issued several Executive Orders that have been designated as public health laws. They include prohibitions on onsite consumption of food or drink unless the establishment operates in a county in a designated risk level that allows it and complies with Oregon Health Authority (Authority) guidance. In addition, establishments offering or providing food or drink must comply with certain conditions and Authority guidance. The Governor has also issued Executive Orders that establish other community mitigation strategies including but not limited to, prohibitions and limitations on social and recreational gatherings, required physical distancing when outside the home, and closure of certain businesses. These Executive Orders are public health laws. The Authority previously adopted these rules to allow the Authority and local public health authorities to enforce the Orders if necessary, as long as the Executive Orders are in effect.

On December 2, 2020, the Governor issued Executive Order 20-66, which adjusted the framework for the community mitigation strategies from a phased approach to a county-by-county metrics approach. These temporary rules amend existing rules to adjust the requirements and provisions to the new metrics approach. The revisions allow the Authority or a local public health authority to issue civil penalties and enforce the provisions of the Executive Orders, but only as long as the underlying Executive Orders are in effect. The rules also clarify the Authority or local public health authority authorization to act under their licensing authorities for food establishments and tourist facilities to enforce applicable Executive Order and Authority guidance requirements, including through closures, suspension, revocation, and civil penalty.

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 amended promptly to ensure that the Authority and local public health authorities 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 were issued to help limit the spread of COVID-19 in Oregon. The community mitigation strategies including mask requirements, physical distancing, and in some instances closure of certain businesses, are necessary to preserve and protect public health. For example, food establishments have been ordered to close their dining rooms and provide only takeout or delivery services to the public unless they are operating in a county that has been approved to offer or allow on-premises consumption of food or drink based upon the designated risk level and if they comply with Authority guidance. The rules for enforcing these requirements must be amended to adjust for the change to the county-by-county metrics approach in Executive Order 20-66 and facilitate Authority and local public health authorities’ ability to enforce the requirements. Current rules do not clearly facilitate all potential mechanisms for enforcement. Without the rules, the public would suffer if the Authority and local public health authorities are not fully able to enforce the community mitigation requirements. These temporary rules facilitate enforcement and help to avoid and mitigate that risk.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:
Governor’s Executive Orders available at https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx

RULES:
333-003-1001, 333-003-1011, 333-003-1021, 333-003-1031, 333-003-3010, 333-003-3020, 333-003-3030

AMEND: 333-003-1001

RULE SUMMARY: Amend OAR 333-003-1001- Adds definition of “Authority guidance” to clarify applicable requirements relating to COVID-19.

CHANGES TO RULE:

333-003-1001
COVID-19 Related Requirements: Definitions
The following definitions apply to OAR 333-003-1001 to 333-003-3040.¶
(1) “Authority” means the Oregon Health Authority. ¶
(2) “Authority guidance” means guidance issued by the Authority implementing any Governor’s Executive Order that the Governor has designated as a public health law as defined in ORS 431A.005.¶
(3) “Local public health authority” has the meaning given that term in ORS 431.003.¶
(4) “Physical distancing officer” or “physical distancing monitor” means an individual designated to establish, implement, and enforce physical distancing requirements.

Statutory/Other Authority: ORS 413.042, ORS 433.441, ORS 624.020, ORS 624.355, ORS 624.415, ORS 624.041, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66
AMEND: 333-003-1011

RULE SUMMARY: Amend OAR 333-003-1011 – Adds note with location of where to find Authority guidance relating to COVID-19.

CHANGES TO RULE:

333-003-1011

COVID-19 Related Requirements: Enforcement of Governors Executive Orders and State Guidance

(1) The 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:

(a) Any Governor's Executive Order that the Governor has designated as a public health law as defined in ORS 431A.005;
(b) Authority guidance implementing such an Executive Order; or
(c) OAR 333-003-1009 to OAR 333-003-3040.

(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

Note: Authority guidance is available at: https://govstatus.egov.com/OR-OHA-COVID-19

Statutory/Other Authority: ORS 413.042, ORS 433.441, ORS 431A.010, ORS 624.415, ORS 624.020, ORS 624.041, ORS 624.355, ORS 624.415, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66

Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66
AMEND: 333-003-1021

RULE SUMMARY: Amend OAR 333-003-1021: Adjusts requirements for eating and drinking establishments relating to COVID-19 to reflect the new metrics approach. Requirements include, but are not limited to, compliance with Authority guidance relating to physical distancing, face coverings, capacity and party size limits, customer self-service and the prohibition of indoor dining unless allowed as part of a county's designated risk level.

CHANGES TO RULE:

333-003-1021 COVID-19 Related Requirements: Food and Drink Establishments

(1) For the purposes of this rule, “eating and drinking establishments” means food and drink establishments, including but not limited to, restaurants, bars, taverns, breweries, brew-pubs, taverns, wine bars, cafes, food courts, coffee shops, clubs, mobile food units, food cart pods, or other similar establishments that offer food or drink may not offer or allow on-premises consumption of food or drink unless permitted as described in section (2) of this rule.

(a) 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.

(b) Off-premises consumption is permitted for clubs, wineries, tasting rooms and distilleries or other similar establishments that offer or allow food or drink.

(2) Eating and drinking establishments must comply with the requirements in Authority guidance as applicable to the county where the establishment is located. Such requirements include but are not limited if the establishment:

(A) Implements physical distancing protocols of at least six feet between customers not in the same party while ordering, waiting, in line, and at any time on the premises.

(B) Implements physical 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 physical distancing officer.

(E) Complies with all applicable Authority guidance, including but not limited to the Statewide Mask, Face Shield, Face Covering Guidance.

(f) Prohibiting indoor on-site consumption when required by Authority guidance based on the designated risk level for the county where the establishment is located.

(3) Continental breakfast operations, buffets, and other self-service operations may only offer or allow consumer self-service operations if:

(a) Only staff prepare and package the food or drinks; and

(b) The establishment complies with the Authority's Guidance, including but not limited to the Statewide Mask, Face Shield, Face Covering Guidance.

(4) Health care facilities, child care facilities, workplaces, government buildings, emergency response facilities.
school-based food programs, and shelter and meal programs serving vulnerable populations are exempt from
section (1) of this rule for Self-Service Operations based on the designated risk level of the county where the
operation is located.¶
(4) This rule does not apply to persons or entities exempt under the Governor’s Executive Order 20-66, paragraph
8.¶
(5) The prohibition and requirements of this rule do not apply if the Governor has terminated the Executive Order
underlying the prohibition or requirement.¶
Note: Authority guidance is available at: https://govstatus.egov.com/OR-OHA-COVID-19
Statutory/Other Authority: ORS 401.168, ORS 413.042, ORS 433.441, Governors Executive Orders relating to
COVID-19 including but not limited to EO 20-59, 20-66
Statutes/Other Implemented: ORS 401.990, ORS 431A.005, ORS 431A.010, ORS 431A.015, Governors Executive
Orders relating to COVID-19 including but not limited to EO 20-59, 20-66
RULE SUMMARY: Amend OAR 333-003-1031: Clarifies how non-compliance with OAR 333-003-1021 may serve as the basis for the Oregon Health Authority or the local public health authorities to assess civil penalties up to $1000 per day per violation. Enforcement or licensing action may not be taken under this rule if the Governor has terminated the Executive Order underlying the prohibition or requirement that serves at the basis for the violation.

CHANGES TO RULE:

333-003-1031
COVID-19 Related Requirements: Disciplinary Action for Violation of an Executive Order or Authority Guidance

1) Violation of OAR 333-003-1021 constitutes a violation of the Oregon Food Sanitation Rules OAR 333-150-0000.

2)(a) The requirements and prohibitions of OAR 333-003-1021 and Authority guidance applicable to food establishments are “priority items” as that term is used in OAR chapter 333, divisions 150 and 157.

(b) As used in ORS chapter 624 and OAR chapter 333, divisions 150 and 157, violations of OAR 333-003-1021 and applicable Authority guidance, including but not limited to, failure to implement mask, face covering, face shield requirements, failure to comply with maximum capacity or party size limitations, failure to implement physical distancing requirements, or failing to comply with a prohibition on on-site consumption as applicable, may constitute:

(A) Critical violations that are a potential danger to the public health; and

(B) Critical violations that create an imminent or present danger to public health.

(C) The Authority or the local public health authority shall determine whether a violation of OAR 333-003-1021 or of Authority guidance constitutes a critical violation creating a potential danger to public health or creating an imminent or present danger to public health by reviewing the information available to the Authority or the local public health authority at the time and the scope of the violation, including any known mitigating or aggravating factors.

2) Violation of OAR 333-003-1021 may serve as the basis for the Authority, or its designee, 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)(a) In addition to the bases for imposing civil penalties under OAR 333-157-0045, a local public health authority may impose civil penalties against any food establishment as defined in OAR 333-150-0000(4)(q) regulated by the Authority for any violation of OAR 333-003-1021 or applicable Authority guidance that poses an imminent and present danger to public health.

(b) Civil penalties imposed under this section may be up to $1000 per day per violation.

4) Any enforcement or licensing action taken under this rule shall be taken in accordance with ORS chapter 183.

45) Enforcement or licensing action may not be taken under this rule if the Governor has terminated the Executive Order underlying the prohibition or requirement that serves as the basis for the violation.

Note: Authority guidance is available at: https://govstatus.egov.com/OR-OHA-COVID-19

Statutory/Other Authority: ORS 433.441, ORS 413.042, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66

Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 624.020, ORS 624.041, ORS 624.355, ORS 624.415, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66
AMEND: 333-003-3010

RULE SUMMARY: Amend OAR 333-003-3010 – Amends the tourist facilities requirements to make clear physical distancing requirements apply between individuals not in the same party. Tourist facilities must continue to comply with all applicable requirements and prohibitions imposed by the Governor’s Executive Orders and Authority guidance.

CHANGES TO RULE:

333-003-3010
Requirements for Tourist Facilities During Declared Emergency

(1) Subject tourist facilities must comply with all applicable requirements and prohibitions imposed by a Governor’s Executive Order that is designated as a public health law as defined in ORS 431A.005 and any provision of Authority guidance implementing such an Executive Order.

(2) Compliance with a Governor’s Executive Order designated as a public health law as described in subsection (1) includes, but is not limited to:

(a) Operating a facility or portion of a facility required by an Executive Order or Authority guidance to be closed;

(b) Failing to comply with the requirements of Authority guidance implementing an Executive Order, including but not limited to:

(A) Failing to implement protocols or take other action necessary to maintain physical distancing of six (6) feet between individuals not in the same party when and as required by Authority guidance;

(B) Failing to comply with restrictions on party size when and as required by Authority guidance;

(C) Failing to implement the Authority Statewide Mask, Face Shield, Face Covering Guidance or Oregon General Guidance for Employers on COVID-19 when and as required by Authority guidance;

(D) Failing to clean and disinfect in accordance with Authority guidance;

(E) Failing to prohibit activities or close facilities when and in accordance with Authority guidance; and

(F) Failing to post signs required by Authority guidance.

(3) The requirements of this rule do not apply if the Governor has terminated the Executive Order that imposes the requirement or prohibition or terminated the Executive Order underlying the Authority guidance.

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

Copies of Authority guidance are available at: https://govstatus.egov.com/OR-OHA-COVID-19

Statutory/Other Authority: ORS 413.042, ORS 433.441, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66

Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 431A.015, ORS 446.310, ORS 446.330, ORS 446.340, ORS 446.349, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66
RULE SUMMARY: Amend OAR 333-003-3020 – Clarifies the authority to impose civil penalties for tourist facilities that fail to comply with applicable requirements of the Governor’s Executive Orders or Authority guidance.

CHANGES TO RULE:

333-003-3020
Disciplinary Action or Civil Penalties for Tourist Facilities During Declared Emergency
(1) The Authority, or its designee, may deny, suspend, or revoke the license of a subject tourist facility, or impose civil penalties against a subject tourist facility for failing to comply with any applicable requirement imposed by a Governor’s Executive Order that is designated as a public health law as defined in ORS 431A.005 and any provision of Authority guidance implementing such an Executive Order.¶
(2) Any action taken under this rule shall be taken in accordance with ORS chapter 183.¶
(3) No action under this rule shall be taken if the Governor has terminated the Executive Order underlying the prohibition or requirement that serves as the basis for the violation.¶
(4) Violation of a Governor’s Executive Order, any provision of Authority guidance implementing such an Executive Order, or OAR 333-003-3010 is a Class III violation as described in OAR 333-029-0130.¶

Note: Authority guidance is available at: https://govstatus.egov.com/OR-OHA-COVID-19
Copies of the Executive Orders are available at: https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx

Statutory/Other Authority: ORS 413.042, ORS 433.441, ORS 446.310 - 446.350, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66

Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 446.310, ORS 446.324, ORS 446.340, ORS 446.347 - 446.349, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66
AMEND: 333-003-3030

RULE SUMMARY: Amend OAR 333-003-3030 – Amends the public pools and spas requirements to make clear physical distancing requirements apply between individuals not in the same party. Public pools and spas must continue to comply with all applicable requirements and prohibitions imposed by the Governor’s Executive Orders and Authority guidance.

CHANGES TO RULE:

333-003-3030
Requirements for Subject Public Pools and Spas During Declared Emergency
(1) Subject public pools and spas must comply with all applicable requirements and prohibitions imposed by a Governor’s Executive Order that is designated as a public health law as defined in ORS 431A.005 and any provision of Authority guidance implementing such an Executive Order.
(2) Compliance with a Governor’s Executive Order designated as a public health law as described in subsection (1) includes, but is not limited to:
(a) Operating a facility or portion of a facility required by an Executive Order or Authority guidance to be closed;
(b) Failing to comply with the requirements of Authority guidance implementing an Executive Order, including but not limited to:
(A) Failing to limit the number of individuals inside the premises or implement other protocols necessary to maintain physical distancing of six (6) feet between individuals not in the same party when and as required by Authority guidance;
(B) Failing to implement the Authority Statewide Mask, Face Shield, Face Covering Guidance or Oregon General Guidance for Employers on COVID-19 when and as required by Authority guidance;
(C) Failing to designate a physical distancing monitor in accordance with Authority guidance;
(D) Failing to clean and disinfect in accordance with Authority guidance; and
(E) Failing to prohibit employees or visitors with symptoms associated with COVID-19 from entering premises in accordance with Authority guidance.
(3) The requirements of this rule do not apply if the Governor has terminated the Executive Order that imposes the requirement or prohibition or terminated the Executive Order underlying the Authority guidance.

Note: Copies of Executive Orders are available at: https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx
Copies of Authority guidance are available at: https://govstatus.egov.com/OR-OHA-COVID-19
Statutory/Other Authority: ORS 413.042, ORS 433.441, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 431A.015, ORS 448.011, Governors Executive Orders relating to COVID-19 including but not limited to EO 20-59, 20-66