NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

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

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/16/2020 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Heather Owens
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HEARING(S)
Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 09/15/2020
TIME: 10:00 AM
OFFICER: Heather Owens
ADDRESS: CALL IN ONLY
Following direction from the Gov/CDC public meetings are via conference call
Portland, OR 97223

SPECIAL INSTRUCTIONS:
Due to COVID-19 public meetings are being held via conference call. To provide oral testimony during this hearing, please dial 1-877-848-7030, access code: 2030826

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 approved for Phase I, II, or III reopening and complies with Oregon Health Authority (Authority) guidance. Establishments offering or providing food or drink for off-site consumption 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, requiring compliance with Authority guidance, and closure of certain businesses. These Executive Orders are public health laws and these rules are necessary to allow the Authority and local public health authorities to enforce the Orders if necessary, as long as the Executive Orders are in effect. These rules provide the Authority or a local public health
authority with the ability to issue civil penalties, take other disciplinary actions against Authority licensees, and enforce the provisions of the Executive Orders, but only as long as the underlying Executive Orders are in effect.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:
None

FISCAL AND ECONOMIC IMPACT:
There will be no fiscal or economic impact on the 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 and technical assistance.

COST OF COMPLIANCE:
(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:
There are approximately 30,000 licensed food, pool and lodging facilities in Oregon, many of these considered small businesses. In addition, the Governor's Orders are considered public health law and may apply to many other small businesses that are not subject to the licensing statutes in ORS 624, 448 and 446. The number of these unlicensed businesses is unknown.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
The rules impose minimal or no reporting, recordkeeping, or other administrative activities to comply. Facilities that fail to comply with these rules, the Governor's Orders and Authority guidance may be subject to civil penalties or license suspension, revocation or denial.

c. Equipment, supplies, labor and increased administration required for compliance:
Depending upon how a facility or business decides to operate during the COVID-19 emergency, there could be several costs for compliance. Some facilities are required to designate a physical distancing officer or monitor, and most are required to provide face coverings for employees. Some businesses are not permitted to operate during certain phases of the reopening or have not been approved to reopen at this time. Facilities and business may also incur costs based on the community mitigation strategies required such as physical distancing required between employees, between parties of customers, and between staff and customers. Food service establishments that have not been approved for Phase I, II or III reopening may not provide on-premises consumption and will be limited to takeout and delivery. Self-service operations will be prohibited unless permitted and in compliance with Authority guidance. Public pools may not operate in Phase I and must meet occupancy limits and follow any other Authority reopening guidance. Some businesses and facilities are required to obtain and use additional cleaning and sterilizing supplies and incur additional labor costs for cleaning activities. Some businesses and operators are subject to party-size limitations or maximum capacity requirements which may increase costs or decrease revenue. However, the Authority expects that much of the increase in costs is due to the requirements in the Executive Orders themselves and not imposed by these rules. Costs imposed by these rules include potential penalties for noncompliance including civil penalties or licensing actions.
DESCRIPTIE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

These rules were developed by the Authority to provide the legal framework to implement and enforce the Governor’s Executive Orders relating to the COVID-19 emergency and small businesses were consulted as participants on the Rule Advisory Committee that took place on July 22, 2020.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:
333-003-1000, 333-003-1010, 333-003-1020, 333-003-1030, 333-003-1040, 333-003-3000, 333-003-3010, 333-003-3020, 333-003-3030, 333-003-3040

ADOPT: 333-003-1000

RULE SUMMARY: Adds definitions for Oregon Health Authority, Local Public Health Authority and physical distancing officer.

CHANGES TO RULE:

333-003-1000

COVID-19 Related Requirements: Definitions
The following definitions apply to OAR 333-003-1000 to 333-003-3040:

(1) “Authority” means the Oregon Health Authority.

(2) “Local public health authority” has the meaning given that term in ORS 431.003.

(3) “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
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010
ADOPT: 333-003-1010

RULE SUMMARY: Authorizes civil penalties for violation of the Governor’s Executive Orders or Authority guidance.

CHANGES TO RULE:

333-003-1010
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 333-003-1000 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
Statutory/Other Authority: ORS 413.042, ORS 433.441, ORS 431A.010, ORS 624.041, ORS 624.355, ORS 624.415, ORS 624.020
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010
ADOPT: 333-003-1020

RULE SUMMARY: Prohibits on-premises unless a food service establishment is in Phase I, II, or III of reopening or if the Governor’s Executive Orders are rescinded. Prohibits customer self-service, requires six-foot physical distancing and requires designation of a physical distancing officer. Exempt certain facilities.

CHANGES TO RULE:

333-003-1020
COVID-19 Related Requirements: Food and Drink Establishments
(1) Restaurants, bars, taverns, brew pubs, 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 if the establishment:
   (A) Implements physical distancing protocols of at least six feet between customers 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 Statewide Mask, Face Shield, Face Covering Guidance. ¶
   (c) Continental breakfast operations, buffets, and other self-service operations may only offer food or drink for off-premises consumption if they comply with subsection (1)(b) of this rule and only staff are permitted to prepare and package food or drinks for off-premises consumption. ¶
(2) Restaurants, bars, taverns, brew pubs, wine bars, cafes, food courts, coffee shops, clubs, mobile food units, food cart pods, or other similar establishments offering food or drink operating in a county that has been approved for Phase I, II, or III reopening may offer or allow on-premises consumption of food or drink and must comply with Authority guidance, including but not limited to Statewide Mask, Face Shield, Face Covering Guidance. ¶
(3) Continental breakfast operations, buffets, and other self-service operations may offer or allow consumer self-service operations in a county that has been approved for Phase I, II or III reopening if permitted and in compliance with Authority guidance, including but not limited to 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. ¶
(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: Copies of Executive Orders and Authority guidance are available on the Oregon Health Authority’s webpage: https://govstatus.egov.com/OR-OHA-COVID-19

Statutory/Other Authority: ORS 624.020, ORS 413.042, ORS 433.441, ORS 624.041, ORS 624.355
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 431A.015
ADOPT: 333-003-1030

RULE SUMMARY: Establishes that a violation of OAR 333-003-1020 is a violation of the Food Sanitation Rules and may result in enforcement action.

CHANGES TO RULE:

333-003-1030
COVID-19 Related Requirements: Disciplinary Action for Violation of an Executive Order or Authority Guidance
(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, 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)(g) 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) 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: Copies of Executive Orders and Authority guidance are available on the Oregon Health Authority's webpage: https://govstatus.egov.com/OR-OHA-COVID-19
Statutory/Other Authority: ORS 433.441, ORS 413.042
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 624.020, ORS 624.041, ORS 624.355, ORS 624.415
ADOPT: 333-003-1040

RULE SUMMARY: Requires that business or facilities designate a physical distancing officer and report the name and contact information to the Authority on request.

CHANGES TO RULE:

333-003-1040
COVID-19 Related Requirements: Designation of Physical Distancing Officer
(1) Businesses or facilities required to designate a physical distancing officer or physical distancing monitor pursuant to a Governor’s Executive Order, Authority guidance implementing a Governor’s Executive Order, or by rule shall immediately provide the name and contact information of the physical distancing officer or monitor to the Authority, a local public health authority, or any other state agency with responsibility for enforcement, upon request.

(2) This rule shall be suspended when the Governor lifts the physical distancing requirements for businesses and facilities.

Statutory/Other Authority: ORS 413.042, ORS 433.441
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 431A.015, ORS 624.020, ORS 624.041, ORS 624.355, ORS 624.415
ADOPT: 333-003-3000

RULE SUMMARY: Establishes definitions to implement the Governor’s Executive Orders relating to Covid-19 in public pools and tourist facilities.

CHANGES TO RULE:

333-003-3000
Definitions
The following definitions apply to OAR 333-003-3000 to 333-003-3040:

(1) “Subject public pools and spas” includes:
(a) Public swimming pools as defined in OAR 333-060-0015(19);
(b) Public spa pools as defined in OAR 333-062-0015(14);
(c) Public wading pools as defined in OAR 333-060-0015(20);
(d) Spray pools as defined in OAR 333-060-0015(20)(a); and
(e) Interactive fountains as defined in OAR 333-060-0015(20)(b).

(2) “Subject tourist facilities” include:
(a) Hostels as defined in OAR 333-029-0015(5);
(b) Organizational camps as defined in ORS 446.310(7);
(c) Recreation parks as defined in OAR 333-031-0002(12); and
(d) Travelers’ accommodations as defined in OAR 333-029-0015(10).

Statutory/Other Authority: ORS 413.042, ORS 433.441
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 446.310 - 446.350, ORS 448.005 - 448.100
ADOPT: 333-003-3010

RULE SUMMARY: Requires tourist facilities 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 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 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 and Authority guidance are available on the Oregon Health Authority’s webpage: https://govstatus.egov.com/OR-OHA-COVID-19
Statutory/Other Authority: ORS 413.042, ORS 433.441
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 431A.015, ORS 446.310, ORS 446.330, ORS 446.340, ORS 446.349
ADOPT: 333-003-3020

RULE SUMMARY: 333-003-3020 – Authorizes license denial, suspension or revocation for tourist facilities that fail to comply with applicable requirements of the Governor’s Executive Orders or Authority guidance.

CHANGE TO RULE:

333-003-3020
Disciplinary Action for Tourist Facilities During Declared Emergency
(1) The Authority, or its designee, may deny, suspend, or revoke the license of 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 at the basis for the violation.

Statutory/Other Authority: ORS 413.042, ORS 433.441, ORS 446.310 - 446.350, ORS 431.010
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 446.310, ORS 446.324, ORS 446.340, ORS 446.347 - 446.349
ADOPT: 333-003-3030

RULE SUMMARY: Requires public pools 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 when and as required by Authority guidance;
      (B) Failing to implement 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 and Authority guidance are available at: https://govstatus.egov.com/OR-OHA-COVID-19

Statutory/Other Authority: ORS 413.042, ORS 433.441
Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 431A.015, ORS 448.011
ADOPT: 333-003-3040

RULE SUMMARY: Authorizes license denial, suspension or revocation for public pools that fail to comply with applicable requirements of the Governor’s Executive Orders or Authority guidance.

CHANGES TO RULE:

333-003-3040
Disciplinary Action for Subject Public Pools and Spas During a Declared Emergency

(1) The Authority, or its designee, may deny, suspend, or revoke the license of a subject pool or spa for failing to comply with any applicable requirements imposed by a Governor’s Executive Order that is designated as a public health law as defined in ORS 431A.005, any provision of Authority guidance implementing such an Executive Order, or any provision of OAR 333-003-3030.

(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.

Note: Copies of Executive Orders and Authority guidance are available on the Oregon Health Authority’s webpage: https://govstatus.egov.com/OR-OHA-COVID-19

Statutory/Other Authority: ORS 413.042, ORS 433.441

Statutes/Other Implemented: ORS 431A.005, ORS 431A.010, ORS 448.005, ORS 448.011, ORS 448.051