TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 55-2020
CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILING CAPTION: Implementation of Governor’s Executive Orders designated as public health laws – pools, spas, tourist facilities

EFFECTIVE DATE: 06/08/2020 THROUGH 12/04/2020

AGENCY APPROVED DATE: 06/08/2020

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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 several Executive Orders that have been designated as public health laws. The Executive Orders establish a number of 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 and facilities. Required closures included pools/spas and certain tourist facilities. However, some facilities are permitted to reopen if they operate in a county approved for Phase II or III reopening and comply with Oregon Health Authority (Authority) guidance. Requirements in the guidance include that certain businesses are required to have staff wear face coverings, sanitize the facilities according to identified standards, and to implement physical distancing measures. These rules are necessary to allow the Authority and local public health authorities to enforce the Orders and the accompanying guidance if necessary, as long as the Executive Orders are in effect. These temporary rules incorporate the requirements into the licensing standards for the specific facilities and allow the Authority or a local public health authority to enforce the requirements if necessary, but only as long as the underlying Executive Orders are in effect.

JUSTIFICATION OF TEMPORARY FILING:
The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and the public health of Oregonians. These rules need to be adopted promptly so that the Authority and local public health authorities can enforce requirements put in place by the Governor’s Executive Orders to limit the spread of COVID-19.

The Governor’s Executive Orders designated as public health laws are designed to conserve health resources and establish community mitigation strategies to help limit the spread COVID-19 in Oregon. Community mitigation strategies include, but are not limited to, requiring closure of pools and spas and certain tourist facilities unless located in a county approved for reopening and the phase allows for operation of those facilities, requiring compliance with
Authority guidance for limiting transmission when the facilities are operating, implementation of physical distancing measures, and others not listed here. These requirements are not currently included in the licensing requirements for pools and spas or the applicable tourist facilities. These rules allow the Authority and local public health authorities that are responsible for implementing public health law and licensing those facilities to implement and enforce these Orders through its licensing program. If these rules are not adopted, there will be less ability for the Authority and local public health authorities to enforcement these measures put in place to protect public health. This could result in the further spread of the COVID-19 virus. Adoption of these rules will allow the Authority and local public health authorities to enforce the Orders, slowing the spread of the virus.

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

Oregon Health Authority Reopening Guidance available at: https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le2351C.pdf

https://govstatus.egov.com/OR-OHA-COVID-19#collapseOHAGuidance

RULES:
333-003-3000, 333-003-3010, 333-003-3020, 333-003-3030, 333-003-3040

ADOPT: 333-003-3000

RULE TITLE: Definitions

RULE SUMMARY: Adopt 333-003-3000: Defines the types of pools, spas and tourist accommodations that are subject to these temporary rules.

RULE TEXT:
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 TITLE: Requirements for Tourist Facilities During Declared Emergency

RULE SUMMARY: Adopt 333-003-3010: Establishes the requirements for tourist facilities that are subject to Executive Orders during the declared emergency.

RULE TEXT:
(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 Oregon Health Authority (Authority) guidance implementing such an Executive Order.
(2) 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
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 TITLE: Disciplinary Action or Civil Penalties for Tourist Facilities During Declared Emergency

RULE SUMMARY: Adopt 333-003-3020: Establishes disciplinary action for tourist facilities that do not comply with the Executive Orders during the declared emergency.

RULE TEXT:
(1) The Authority, or its designee, may deny, suspend, or revoke the license of a subject tourist facility for failing to comply with all applicable requirements 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) The Authority, or its designee, may impose civil penalties against any applicant for a subject tourist facility license or a subject tourist facility licensee for failing to comply with all applicable requirements 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.
(3) Any action taken under this rule shall be taken in accordance with ORS chapter 183.
(4) 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

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 TITLE: Requirements for Subject Public Pools and Spas During Declared Emergency

RULE SUMMARY: Adopt 333-003-3030: Establishes requirements for pool and spa facilities during the declared emergency.

RULE TEXT:
(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) 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
STATUTES/OTHER IMPLEMENTED: ORS 431A.005, ORS 431A.010, ORS 431A.015, ORS 448.011
ADOPT: 333-003-3040

RULE TITLE: Disciplinary Action for Subject Public Pools and Spas During a Declared Emergency

RULE SUMMARY: Adopt 333-003-3040: Establishes disciplinary action for pool and spa facilities that do not comply with the Executive Orders during the declared emergency.

RULE TEXT:

(1) The Authority, or its designee, may deny, suspend, or revoke the license of a subject pool or spa for failing to comply with all applicable requirements 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

STATUTES/OTHER IMPLEMENTED: ORS 431A.005, ORS 431A.010, ORS 448.005, ORS 448.011, ORS 448.051