

## **Rules Advisory Committee (RAC) Meeting Notes**

Related to the Passage of Senate Bill 754

### ***Revisions to OAR 333-15-0200 to -0220:***

**Tobacco and Inhalant Delivery System Sales to Persons Under 21 Years of Age**

**OAR 333-015-0025 to -0070:**

**Implementation of Requirements for Oregon's Indoor Clean Air Act**

September 15, 2017; 1:30-3:30pm

**RAC members attending:** Christopher Friend (American Cancer Society Cancer Action Network), Karen Girard (Oregon Health Authority), Rami Jouni (Oregon Hookah Association), Ilana Kurtzig (Oregon Health Authority), Kari McFarlan (Multnomah County Health Department), Shawn Miller (Northwest Grocery Association), Matt Minahan (Inhalant Delivery System Representative), Clay River (Native American Youth and Family Center), Erin Schulten (Klamath County Public Health), Jesse Sweet (Oregon Liquor Control Commission), Tara Weston (Oregon Health Authority), Erin Williams (Oregon Department of Justice), and Gregg Withers (Oregon State Police).

**Observers:** Gwyn Ashcom (Washington County Public Health), Eric Brodell (Preventing Tobacco Addiction Foundation) and Amy Wilson (Multnomah County Health Department).

### **Introduction and Background**

The purpose of the RAC is to address rulemaking for the passage of Senate Bill 754, which was signed into law on August 9, 2017 by Governor Brown. OHA is legislatively mandated to revise rules relating to SB 754. RAC members were selected to provide expertise and advice in rulemaking, and are in an advisory role to provide OHA with feedback on the proposed rules. The RAC is not tasked with reaching consensus; advice and feedback from the meeting will be taken, and OHA will write rules to best reflect the statute.

Among other things, SB 754 increases the minimum age for the legal sale of tobacco products and inhalant delivery systems from 18 to 21 years of age. It also created a tiered violation system for store clerks, managers and owners, and amended the definition of tobacco products to include any device that can deliver tobacco.

Proposed rules will be filed and open to public comment in November. There will also be public hearings in Medford and Portland. Final rules will most appropriately serve the intent and purpose of the statute as determined by OHA, while taking into account feedback and advice. Enforcement of the law begins on January 1, 2018.

### **Overview of Sales to Persons Under 21 Regulations**

An overview of Oregon laws related to the sale of tobacco products and inhalant delivery systems was provided (see Attachment Laws on Sale of Tobacco Products and Inhalant Delivery Systems). It was noted that the statutory changes from SB 754 Enrolled are not yet reflected in the Oregon Revised Statute, but will be incorporated in the coming months.

### **Proposed Rule Language**

The RAC reviewed the proposed rule language, which included:

- Removing the definition of “minor” and changing “minors” to “persons under 21 years of age” throughout to reflect changes from SB 754;
- Changing “18” to “21” throughout to reflect changes from SB 754;
- Removing the definition of “smoking instrument” and references to “smoking instruments” throughout, as these are now included in the definition of “tobacco products;”
- Amending the definition of “tobacco products” to include any device that can be used to deliver tobacco products to a person using the device,” as defined in SB 754; and
- Amending the definition of “vending machine” to reflect changes from SB 754.

Categories of proposed rule language that were discussed include:

- Definitions: OAR 333-015-0200
- Notice Posting Requirement: OAR 333-015-0215
- Location of Tobacco Products Within a Retail Store: OAR 333-015-0210
- Enforcement: OAR 333-015-0215
- Annual Report: OAR 333-015-0220

RAC members discussed the possibility of glass pipes and rolling papers being covered under the new definition of “tobacco products,” and therefore only being sold to people 21 and older. The RAC discussed the definition of an “outlet” and whether a manufacturer or retailer would be allowed to distribute to a retailer or consumer in another state that doesn’t have a Tobacco 21 law, and therefore could potentially sell to people under the age of 21. It was reiterated that a person is in violation if they sell or allow tobacco products or inhalant delivery systems to be sold to a person under the age of 21, as stated in SB 754.

A question was raised as to what it would look like if a person age 18-20 was found in possession of tobacco. It was stated that SB 754 has not changed the law regarding possession of a tobacco product or inhalant delivery system. There is currently no violation for people ages 18, 19 and 20 to possess tobacco products or inhalant delivery systems. Youth under the age of 18 found to be in possession of tobacco products or inhalant delivery systems would continue to be in violation under the new law.

### **Overview of the Indoor Clean Air Act (ICAA)**

Background: In 2001 the Oregon Indoor Clean Air Act (ICAA) was passed. The ICAA protects nearly every Oregonian from the health risks of secondhand smoke. The ICAA, also known as the Smokefree Workplace Law, prohibits smoking in the workplace and within 10 feet of all entrances, exits, and accessibility ramps that lead to and from an entrance or exit, windows and air-intake vents. The ICAA is a complaint driven law and is investigated only when there is a complaint made by a member of the public.

OHA reviewed the categories of smoke shops currently certified by OHA to allow smoking on the premises. Cigar bars were not addressed as SB 754 did not affect this type of certification.

Oregon currently has a total of 23 smoke shops and 10 cigar bars. There are currently no smoke shops A, 3 smoke shops B and 20 smoke shops C.

### **Proposed Indoor Clean Air Act Rule Language**

The RAC reviewed the proposed rule language, which included:

- Changing “minors” to “persons under 21 years of age” throughout to reflect changes from SB 754;
- Changing “18” to “21” throughout to reflect changes from SB 754;
- Updating signs for smoke shops to comply with SB 754 and to include signs stating that alcohol consumption is prohibited on the premises.
  - Note: Smoke shops A and B must not allow persons under the age of 21 to enter the premises. Smoke shops C may allow those 18, 19 and 20 to enter the premises, but sales to and use of tobacco products is prohibited for this age group. This difference is in statute.
- Updating rule language to require smoke shops B to meet renewal criteria for recertification, rather than meet original criteria.
  - This change was made because original certification criteria required that no one under the age of 18 be permitted on the premises. The renewal criteria requires this for those under the age of 21.
  - Smoke shops B and C are now separated in rule due to the difference in entry-age requirements.

Categories of proposed rule language that were discussed include:

- Authority and Purpose: OAR 333-015-0025
- Definitions: OAR 333-015-0030
- Signs: OAR 333-015-0040
- Smoke Shops: OAR 333-015-0068
- Oregon Health Authority Responsibilities: OAR 333-015-0069

RAC members questioned what processes hookah lounge employees are taking to make sure people under 21 aren't using tobacco products. It was shared that employees have to watch individuals between ages 18-20 who are in the lounge to make sure that they are not using tobacco products.

### **Statement of Need and Fiscal Impact**

The RAC reviewed the Statement of Need and Fiscal Impact document, which predicts minimal increase in costs for OHA, Local Public Health Authorities and small businesses.

Increases for small businesses are predicted for training employees. LPHAs expect cost increases for education and outreach efforts in the community.

The Oregon Liquor Control Commission anticipates a minimal cost increase around making licensees aware of the law, particularly marijuana dispensaries, restaurants and bars who primarily don't sell to persons under 21.

### **Process review and final questions**

OHA will follow up with committee members, observers and interested parties with information next steps.

Hearings will be held on 11/27/17 Medford at Jackson County Public Health at 10:00am, and on 11/28/17 in Portland at the Portland State Office Building at 1:30pm. The public comment period will be open from November 16-30.

RAC members were thanked for their participation and the meeting was adjourned.