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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 28-2020
CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED
04/28/2020 4:55 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary rule adoption to adjust ICAA requirements due to COVID-19 restrictions and implications

EFFECTIVE DATE: 04/30/2020 THROUGH 10/26/2020

AGENCY APPROVED DATE: 04/28/2020

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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) via Executive Order 20-03. The Governor has also issued Executive Order 20-12, directing individuals to stay home to the maximum extent possible, closing certain businesses, and requiring other retail businesses that remain open to implement physical distancing policies or close.

In light of these restrictions, it may be difficult for businesses certified by the Authority as smoke shops or cigar bars to gather and prepare certain required documentation or to have documents notarized due to business closures. In addition, individuals may be personally affected by COVID-19, including suffering from the disease themselves or caring for others during this time.

The COVID-19 emergency and public health response also affects Local Public Health Authorities (LPHAs) and the Oregon Health Authority (Authority). Direct response to COVID-19 such as the physical distancing recommendations impacts LPHAs' and the Authority's ability to conduct in-person inspections, as do other indirect impacts including the agencies' focus on COVID-19 response during the emergency.

The temporary rule adjusts Indoor Clean Air Act requirements for LPHAs, the Authority and for businesses certified under ORS 433.847 to take into account some of the repercussions of the COVID-19 emergency. This rule will be suspended when the state of emergency or public health emergency is terminated.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in prejudice to the public interest. Failure to quickly adopt the rule will result either in the failure to comply with rule timelines for inspection or in potential exposure to COVID-19 for

the Authority, Local Public Health Authorities and Oregonians. In addition, failure to adopt the rule may place undue burden on businesses certified under ORS 433.847 that are required to comply with the Governor's Executive Orders and fails to support the goal of stay home, save lives.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- ORS 433.835-433.875 and 433.990 (available at: https://www.oregonlegislature.gov/bills_laws/ors/ors433.html)
- OAR 333-015-0025 to 333-015-0090 (available at: <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1230>)
- Governor's Executive Orders 20-03 and 20-12 available at <https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx>

ADOPT: 333-015-3000

RULE TITLE: Oregon Indoor Clean Air Act: Declared Emergency Provisions

RULE SUMMARY: ADOPT 333-015-3000: Oregon Indoor Clean Air Act: Declared Emergency Provisions

In this rule, the Authority:

- Removes notary requirements for certified smoke shop applications, renewals and other required documentation and extends deadlines for this documentation;
- Suspends portions of rules that require certified smoke shops and cigar bars to remain in operation at all times to avoid termination of their certification; and
- Amends ICAA complaint response requirements for the Authority and LPHA to allow for flexibility in response timing, comply with physical distancing requirements, and consistency with best practices for public health during the public health emergency.

RULE TEXT:

- (1) This rule applies during a state of emergency declared by the Governor under ORS 401.165, or a public health emergency declared under ORS 433.441. This rule will be suspended when the state of emergency or public health emergency is terminated.
- (2) For documentation required to be notarized under OAR 333-015-0058(2) or 333-015-0059, the Authority may accept as valid documents without notarization.
- (3) The Authority may extend the deadline to submit documentation required under OAR 333-015-0058(2) if the smoke shop submits a written extension request by June 1, 2020 that demonstrates hardship or circumstances outside of the smoke shop's control that prevent or impede timely submission of the required documentation. The Authority shall extend the deadline in writing.
- (4) The following rules are suspended for the duration of the declared state of emergency:
 - (a) OAR 333-015-0058(6);
 - (b) OAR 333-015-0058(7); and
 - (c) OAR 333-015-0066(6).
- (5) To apply to renew a smoke shop Type B or Type C Certification under OAR 333-015-0059, the applicant must submit, and the Authority must receive, a complete application including any supporting documentation before the expiration of the current certification.
- (6) The Authority or LPHA shall to the extent reasonably possible send initial response letters, notwithstanding the notification requirements in OAR 333-015-0075(1)(b), if staffing shortages, physical distancing recommendations, or the Authority's or LPHA's emergency response efforts prevent notification in accordance with that rule.
- (7) Unannounced site visits after a second or subsequent complaint as described in OAR 333-015-0075(2), (5) and (6) are not required, but may be conducted, during a state of emergency declared by the Governor under ORS 401.165, or a

public health emergency declared under ORS 433.441. The Authority or LPHA shall conduct an unannounced site visit as soon as reasonably possible after the emergency terminates in accordance with staffing availability, physical distancing recommendations, other public health concerns, and consistent with the Authority's or LPHA's other public health priorities and obligations.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 through 433.875, 433.990, Governor's Executive Orders No. 20-03 and No. 20-12