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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**PH 5-2022**

CHAPTER 333

OREGON HEALTH AUTHORITY

PUBLIC HEALTH DIVISION

**FILED**

01/12/2022 5:04 PM  
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& LEGISLATIVE COUNSEL

FILING CAPTION: Process for requesting an alternative deadline for school and childcare immunization review and exclusion

EFFECTIVE DATE: 01/12/2022 THROUGH 07/10/2022

AGENCY APPROVED DATE: 01/12/2022

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Filed By:

Public Health Division

Rules Coordinator

**NEED FOR THE RULE(S):**

Due to the recent case surge caused by the Omicron variant of the COVID-19 virus, local public health authorities (LPHAs) have indicated they may be unable to meet the current deadlines in rule related to reviewing school and children's facilities immunization records for compliance with immunization requirements and issuing exclusion letters for noncompliance. These temporary rules would allow LPHAs with good cause for needing additional time, flexibility for review of records and issuance of exclusion letters. Failure to adopt these temporary rules will mean that some LPHAs are out of compliance with state rules or negatively impact LPHA response to COVID-19.

**JUSTIFICATION OF TEMPORARY FILING:**

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, local public health authorities, and schools and children's facilities required to report immunization completion rates. Failure to immediately amend the rules may result in resources being diverted from addressing the current Omicron variant surge and further straining public health resources to address the ongoing COVID-19 epidemic. For example, some local public health authorities rely on the same staff that review immunization records to also support COVID-19 public health efforts. The current deadline for completing primary and secondary review is no later than 35 days prior to the third Wednesday in February, or Wednesday, January 12, 2022. Therefore, it is necessary to immediately amend the rules so that formal requests can be made and granted to extend the required reporting deadlines while still having adequate time to notify affected schools and children's facilities and alleviate potential straining of public health resources. The temporary rules will allow local public health authorities, the Authority, schools, and children facilities to focus their resources on addressing the current Omicron surge, while allowing for immunization record review to be completed later in the school year.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

1. Oregon's COVID-19 Update:

<https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonCOVID-19Update/DailyDataUpdate>

2. Oregon Health Authority's COVID-19 Data Dashboards:

<https://public.tableau.com/app/profile/oregon.health.authority.covid.19/viz/OregonsCOVID-19DataDashboards-TableofContents/TableofContentsStatewide>

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RULES:

333-050-0060, 333-050-0070, 333-050-0080, 333-050-0110, 333-050-0200

AMEND: 333-050-0060

RULE SUMMARY: Amend OAR 333-050-0060 – Amended to recognize that an alternative primary review due date may be established in accordance with OAR 333-050-0200.

CHANGES TO RULE:

333-050-0060

Primary Review of Records ¶¶

(1) At least annually the administrator will conduct a primary review of each child's record to determine the appropriate category of each child. This review shall be completed no later than 35 calendar days prior to the third Wednesday in February unless otherwise:¶¶

(a) The administrator requests and receives approval in writing first by the local health department and then by the Public Health Division; or¶¶

(b) The Public Health Division approves in writing an alternative deadline for primary review as described in OAR 333-050-0200.¶¶

(2) The administrator shall categorize all children as follows:¶¶

(a) "Complete or Up-to-Date";¶¶

(b) "Nonmedical Exemption": This category applies to any child whose incomplete immunizations are covered by a nonmedical exemption;¶¶

(c) "Permanent Medical Exemption": This category applies to any child who is susceptible as evidenced by a medical exemption statement on file as specified by OAR 333-050-0050(6), whose medical exemption statement has been reviewed by the local health department and has been determined to be based on a contraindication that is permanent;¶¶

(d) "Temporary Medical Exemption": This category applies to any child who is susceptible as evidenced by a medical exemption statement on file as specified by OAR 333-050-0050(7), whose medical exemption statement has not been reviewed by the local health department, or whose medical exemption is not permanent;¶¶

(e) "Incomplete/Insufficient";¶¶

(f) "No Record": This category applies to any child with no record on file at the school or facility. This category also applies to any child with a nonmedical exemption signed on or after August 1, 2008 with no vaccines selected for nonmedical exemption and with no vaccine dates;¶¶

(g) "Children not to be counted": School age children also attending a facility should be counted by the school. Children enrolled in a school but physically attending another school should be counted by the school they physically attend. Children attending a preschool or Head Start program and another facility should be counted by the preschool or Head Start program. Children physically attending more than one child care facility or school should be counted by the facility or school where they attend the most hours.¶¶

(3) Thirty-five calendar days prior to the third Wednesday in February, unless otherwise approved in writing first by the local health department and then by the Public Health Division or in accordance with an alternative deadline for primary review approved in writing by the Public Health Division in accordance with OAR 333-050-0200, the administrator shall provide to the local health department for secondary review:¶¶

(a) Organized alphabetically within category, copies of records or a computer printout of the records for all children with incomplete immunizations or insufficient information;¶¶

(b) Copies of records of children with a medical exemption, except those records that have been certified by the local health department as having a permanent medical exemption or immunity documentation and are otherwise complete with no further review required.¶¶

(c) A completed Primary Review Summary form that includes an alphabetical list for each category and includes children with no record. The form must include each child's name, current grade level, parent names and current mailing address. A computer-generated list from a system currently approved by the Public Health Division may be submitted in lieu of the Primary Review Summary form.¶¶

(4) The administrator shall review the completed Primary Review Summary form for mathematical accuracy and

correct any errors before forwarding the completed Primary Review Summary form to the local health department.¶

(5) All copies of records provided to the local health department for secondary review must contain at least the following: The child's name, date of birth, and evidence of immunization or exemption. A copy of the records or a computer printout of the records must be used in place of the original record.¶

(a) Computer printouts and the results from computer-generated immunization assessments (computer outputs) must have the prior approval of the Public Health Division. To receive approval to be used for the primary review report in January, computer printouts and computer outputs must be received by the Public Health Division no later than the last working day of November in the year prior to the year in which the primary review reports are due.¶

(b) The Public Health Division will review computer printouts and computer outputs for essential data elements, the sequence of data elements, and specific test results as calculated by the computerized system.¶

(c) Provisional approval will be given to a computer tracking system after correct assessment has been confirmed for test data and essential data elements in required reports. Computer tracking systems with provisional approval will be reviewed after use during the annual review and exclusion cycle. Final approval will be given after any programming errors identified during the cycle have been corrected by the tracking system and additional reports have been approved by the Public Health Division.¶

(d) The Public Health Division also reserves the right to withdraw computer system approval.¶

(e) When ORS 433.235 through 433.284 or these rules are amended, computer systems must be updated within 120 calendar days. The Public Health Division will then allow 60 calendar days for review, needed changes and final approval. Computer outputs that are not in compliance will not be authorized for use during the annual review and exclusion cycle.¶

(6) Additional review cycles for incomplete or insufficient records with specific time-frames are allowable if:¶

(a) Mutually agreed upon by the affected local health department and school or facility.¶

(b) Additional exclusion cycles may be required at the direction of the local health department or the Public Health Division. Exclusion dates shall be no less than 14 calendar days from the date that the Exclusion Orders are mailed.¶

(7) It is the responsibility of the administrator to see that primary review of immunization records is accomplished according to these rules. All or part of the actual review may be delegated by mutual agreement of parties affected to a third party subject to this requirement.

Statutory/Other Authority: ORS 433.001, ORS 433.004, ORS 433.006, ORS 433.235 - 433.284

Statutes/Other Implemented: ORS 433.004, ORS 433.267, ORS 433.273

AMEND: 333-050-0070

RULE SUMMARY: Amend OAR 333-050-0070 - Amended to recognize that an alternative secondary review timeline may be established in accordance with OAR 333-050-0200.

CHANGES TO RULE:

333-050-0070

Secondary Review of Records ¶¶

(1) The local health department shall conduct a secondary review of those records received from the administrator. The review shall begin 35 calendar days prior to the third Wednesday in February, unless otherwise approved in writing by the Public Health Division or in accordance with an alternative deadline for secondary review approved in writing by Public Health Division in accordance with OAR 333-050-0200.¶

(2) In conducting secondary review of the records, the local health department shall review the Primary Review Summary for mathematical accuracy. Any errors should be corrected by contacting the affected school or facility. The local health department shall review each child's record that was received for appropriate medical or nonmedical exemptions and then use the Primary Review Table to determine each child's current immunization status for each of the required vaccines.¶

(3) The local health department shall indicate on the Primary Review Summary form those children whose records are judged to be:¶

(a) Complete/Up-to-date; or¶

(b) Medically exempt, and whether temporary or permanent.¶

(4) The local health department shall indicate on the Primary Review Summary form the specific vaccines that the exclusion order will need to be issued for children whose records are judged to be:¶

(a) Incomplete/Insufficient; or¶

(b) No record.¶

(5) In the event that any of the above records are original documents, the local health department shall return such records to the administrator.¶

(6) The local health department shall submit an updated copy of the Primary Review Summary form to the administrator.¶

(7) The local health department shall initiate exclusion procedures for those children whose records are judged to have insufficient information or incomplete immunizations, or who have no record, in accordance with OAR 333-050-0080.¶

(8) Additional secondary review cycles with specific time frames are allowable for incomplete or insufficient records as mutually agreed upon in writing by the affected local health department and school or facility.

Exclusion dates shall be no less than 14 calendar days from the date that the Exclusion Orders were mailed.¶

(9) It is the responsibility of the local health department to see that secondary review of immunization records is accomplished according to these rules. All or part of the actual review may be delegated by mutual agreement of parties affected to a third party subject to this requirement.¶

~~[ED-NOTE: Tables referenced are available from the agency]~~ the Primary Review Table is available in OAR 333-050-0120.

Statutory/Other Authority: ORS 433.004, 433.273

Statutes/Other Implemented: ORS 433.001, 433.004, 433.006, 433.235 - 433.284

AMEND: 333-050-0080

RULE SUMMARY: Amend OAR 333-050-0080 - Amended to recognize that an alternative date of exclusion may be established in accordance with OAR 333-050-0200.

CHANGES TO RULE:

333-050-0080

Exclusion ¶¶

(1) The date of exclusion shall be the third Wednesday in February or as set by the alternative deadline for exclusion approved in writing by Public Health Division in accordance with OAR 333-050-0200.¶¶

(a) If additional exclusion cycles are conducted, the exclusion dates shall be set at no less than 14 calendar days from the date that the Exclusion Orders are mailed.¶¶

(b) Exclusion occurs when records have not been received or updated by the starting time of the school or facility on the specified exclusion day.¶¶

(2) The local health department shall use an Exclusion Order for Incomplete Immunization or Insufficient Information or an Exclusion Order for No Record depending upon the reason the child is found to be in non-compliance with ORS 433.267(1) and these rules:¶¶

(a) At least 14 days before the exclusion day, the local health department shall mail by first class mail an appropriately completed and signed order of exclusion to the parent of each child determined to be out of compliance with these rules.¶¶

(b) If a student is listed by the school as the "person responsible," the Exclusion Order will be sent to the student.¶¶

(c) In the event that the local health department has knowledge that the address of the parent provided on the Primary Review Summary form is incorrect, the local health department shall use all reasonable means to notify the parent, including inquiries to the school or facility administrator, to establish the appropriate mailing address and sending home from the school a copy of the Exclusion Order with the child.¶¶

(d) For all orders issued, one copy of the Exclusion Order shall be sent to the administrator and the local health department shall retain one copy. The local health department shall also retain copies of the records of children to be excluded until notification from the school or facility that such children are in compliance, or for one year.¶¶

(3) On the specified date of exclusion, the administrator shall exclude from school or facility attendance all children so ordered by the local health department until the requirements specified by the local health department are verified by the administrator in accordance with section (9) of this rule.¶¶

(4) The local health department shall maintain copies of immunization records of children excluded and shall maintain contact with administrators regarding the status of such children.¶¶

(5) If children whose records are not updated on the specified exclusion day arrive at their school or facility, the administrator shall make every effort to contact their parent by phone. The administrator shall place excluded children in a space away from the other children until their parent arrives to pick them up or until they are returned home by regular school district transportation.¶¶

(6) If the excluded children do not meet the requirements specified by the local health department in accordance with section (9) of this rule and do not return to school within four school days, it is the responsibility of the public school administrator, as proper authority, to notify the attendance supervisor of the unexcused absence. The attendance supervisor is required to proceed as required in ORS 339.080 and 339.090.¶¶

(7) Children who have been issued an Exclusion Order are not entitled to begin or continue in attendance in any school or facility in Oregon while the Exclusion Order is still in effect. Administrators who receive or are otherwise made aware of the records of a child from another school or facility containing an Exclusion Order that has not been cancelled shall notify the parent and immediately exclude the child until the requirements specified on the Exclusion Order are met and verified by the administrator.¶¶

(8) Students in treatment facilities or court-mandated residential correctional facilities, including but not limited to Oregon Youth Authority closed custody sites, are not subject to exclusion. The administrator of such treatment or residential correctional facilities must comply with all other provisions of these rules, including submission of the required reports as specified by these rules. The administrator must ensure that students have complete or up-to-date immunization records, a medical or nonmedical exemption or immunity documentation for all vaccines required for the student's grade.¶¶

(9) Compliance:¶¶

(a) For children excluded for insufficient information or incomplete immunizations, compliance will be achieved by submitting to the administrator one of the statements allowed in OAR 333-050-0040(1);¶¶

(b) For children excluded for no record, compliance will be achieved by submitting to the administrator evidence of immunizations that includes at least one dose of each vaccine required for that grade or age, a medical or nonmedical exemption or immunity documentation.¶¶

(c) When the administrator verifies that the required information has been provided or that an appropriate immunity documentation or medical or nonmedical exemption has been provided, the child shall be in compliance with ORS 433.267(1) and these rules and qualified for school or facility attendance.¶

(10) Twelve calendar days after the mandatory exclusion date, the administrator shall ensure that:¶

(a) The Primary Review Summary form returned from the local health department is updated by appropriately marking the current status of each child as specified (including children listed as having no record);¶

(b) The mathematics on the Primary Review Summary form are accurate including the number of children in the full school or children's facility, kindergarten and seventh grade with:¶

(A) The specified number of doses of each vaccine or all the doses required for the child's grade;¶

(B) Nonmedical exemptions for each vaccine;¶

(C) Nonmedical exemptions from each source, whether documentation from a health care practitioner or vaccine educational module;¶

(D) Nonmedical exemptions;¶

(E) Medical exemptions; and¶

(F) No record.¶

(c) A copy of the revised Primary Review Summary form is submitted to the local health department on that day. The administrator shall maintain a file copy of the updated Primary Review Summary form.¶

(11) The local health department shall review the updated Primary Review Summary form for mathematical accuracy. Any errors should be corrected by contacting the affected school or facility.

Statutory/Other Authority: ORS 433.004, 433.273

Statutes/Other Implemented: ORS 433.001, 433.004, 433.006, 433.235 - 433.284

AMEND: 333-050-0110

RULE SUMMARY: Amend OAR 333-050-0110 – Adjusts the due dates of annual reports.

CHANGES TO RULE:

333-050-0110

Annual Reporting Requirements ¶¶

- (1) The local health department shall submit a County Immunization Status Report to the Public Health Division annually no later than 23 calendar days after the ~~third Wednesday in February~~ date of exclusion. ¶¶
- (2) On or before the last day of ~~April~~ June, the Public Health Division shall publicize a summary of the immunization status of children in schools, children's facilities, kindergarten and seventh grade attending schools and facilities for each local public health jurisdiction. ¶¶
- (3) On or before ~~May~~ July 15, the local health department shall make available immunization rates to each school and children's facility in the area served by the local health department, by disease, of children in the local area: ¶¶
- (a) Compiled from school reports for kindergarten through 12th grade combined; and ¶¶
- (b) Calculated from ALERT IIS for children 19 months up to kindergarten age. ¶¶
- (4) The local health department may request assistance from the Oregon Health Authority in calculating the rates described in section (3) of this rule. ¶¶
- (5) The administrator of the school or children's facility must make available a summary of the immunization status, for the school or children's facility and local area, by 30 days after the first day of school and by 30 days after the ~~third Wednesday in February~~ date of exclusion. ¶¶
- (a) The summary of immunization status for the school or children's facility must include: ¶¶
- (A) The percentage of children with all the doses required for each child's age or grade, by vaccine, for the school or children's facility and for the local area; ¶¶
- (B) The percentage of children with nonmedical exemptions by vaccine for the school or children's facility; ¶¶
- (C) The percentage of children with no record for the school or children's facility; ¶¶
- (D) The percentage of children with medical exemptions for one or more vaccine for the school or children's facility; ¶¶
- (E) The number of children for whom documentation of immunization status is required at the school or children's facility; ¶¶
- (F) The number of enrolled children for whom documentation of immunization status is not required at the school or children's facility; ¶¶
- (G) The number of children 18 months of age and younger in attendance at the school or children's facility who are not required to have completed the full series of vaccines required before kindergarten because of their age. ¶¶
- (b) Rates must be made available: ¶¶
- (A) In the main office; ¶¶
- (B) On the school or children's facility website, if available. Rates may be posted on a social media website, such as Facebook, if this is the primary website for the school or children's facility. Public school rates must also be made available on the district website. If individual school webpages are linked to a district website, a central district webpage containing the required information for each school may be used to comply with this requirement; and ¶¶
- (C) By sending to a parent of each child for whom documentation of immunization status is required at the school or children's facility, in electronic or paper format, in a clear and easy to understand manner. ¶¶
- (c) Children's facilities shall make rates available based on the school calendar in the local area. ¶¶
- (d) Rates may include immunization data collected in the previous school year. ¶¶
- (6) Schools and children's facilities for which immunization records are required for fewer than 10 children in attendance 18 months of age up to kindergarten are exempt from the requirements of OAR 333-050-0110(5) for these children. These sites must still comply with the reporting requirements specified in OAR 333-050-0060 and 333-050-0080. ¶¶
- (7) Schools and children's facilities for which immunization records for a vaccine are required for fewer than 10 students in attendance in kindergarten grade and older are exempt from the requirements of OAR 333-050-0110(5) for that vaccine for these students. These sites must still comply with the reporting requirements specified in OAR 333-050-0060 and 333-050-0080.

Statutory/Other Authority: ORS 433.004, 433.273

Statutes/Other Implemented: ORS 433.001, 433.004, 433.006, 433.235 - 433.284

ADOPT: 333-050-0200

RULE SUMMARY: Adopt OAR 333-050-0200 - Establishes a process for requesting an alternative timeline based on good cause for conducting primary and secondary review of children's records for compliance with immunization requirements. Establishes a process for requesting an alternative deadline based on good cause for excluding children from school or facilities due to non-compliance with ORS 433.267 and applicable rules. Adopts a due date of 14 calendar days prior to the third Wednesday in February by which a request for an alternative timeline must be submitted in writing to the Oregon Health Authority, Public Health Division (agency).

CHANGES TO RULE:

333-050-0200

Requests to Postpone Review of Records and Exclusion Day

(1) Primary Review. In a form provided by the Public Health Division, the local health department may request and propose an alternate deadline for completing the primary review of records described in OAR 333-050-0060. The request shall include information supporting good cause to approve the proposed alternative deadline.¶

(a) Requests must be received by the Public Health Division no later than 14 calendar days prior to the third Wednesday in February. ¶

(b) An alternate deadline proposed or approved must be no later than 35 days before the last Wednesday in April of the current school year. ¶

(2) Secondary Review. In a form provided by the Public Health Division, the local health department may request and propose an alternate deadline for beginning the secondary review of records described in OAR 333-050-0070. The request shall include information supporting good cause to approve the proposed alternative deadline.¶

(a) Requests must be received by the Public Health Division no later than 14 calendar days prior to the third Wednesday in February. ¶

(b) An alternate deadline proposed or approved must be no later than 35 days before the last Wednesday in April of the current school year. ¶

(3) Exclusion Day. In a form provided by the Public Health Division, the local health department may request and propose an alternate deadline for the date of exclusion described in OAR 333-050-0080(1). The request shall include information supporting good cause to approve the proposed alternative deadline.¶

(a) Requests must be received by the Public Health Division no later than 14 calendar days prior to the third Wednesday in February. ¶

(b) An alternate deadline proposed or approved must be no later than the last Wednesday in April of the current school year. ¶

(4) The Public Health Division shall review a request submitted under this rule for good cause and may, in its discretion, for good cause grant a request for an alternative deadline that complies with this rule. The approval must be in writing.¶

(5) "Good cause" for the purposes of this rule includes but is not limited to undue strain on local resources due to a declared emergency.

Statutory/Other Authority: ORS 433.001, ORS 433.004, ORS 433.006, ORS 433.235 - 433.284

Statutes/Other Implemented: ORS 433.004, ORS 433.267, ORS 433.273