

DATE: February 7, 2022

TO: Hearing Attendees and Commenters –
Oregon Administrative Rules chapter 333, division 19

- Masking Requirements for Indoor Spaces

FROM: Brittany Hall, Hearing Officer

SUBJECT: Presiding Hearing Officer’s Report on Rulemaking Hearing and Public Comment Period

Hearing Officer Report

Date of hearing: January 20, 2022

Purpose of hearing and public comment period: To receive testimony and comments regarding the Oregon Health Authority’s (OHA) proposed adoption of administrative rule 333-019-1025 related to mask requirements to control COVID-19 in indoor spaces.

In August 2021, OHA issued temporary administrative rule 333-019-1025 in order to control the spread of COVID-19 and reduce hospitalizations in Oregon associated with COVID-19. Wearing face masks is an important strategy that plays a role in controlling COVID-19. Under [Oregon Revised Statute 183.335](#), temporary rules cannot be extended past six months. Because under Oregon law, temporary rules cannot be extended, OHA has proposed to adopt this rule as permanent until it is no longer needed as a strategy to control spread of disease and maintain acute healthcare capacity.

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Comments and Testimony received: In [OHA’s Notice of Proposed Rulemaking](#), OHA announced that individuals could submit written comments by sending them to OHA’s designated email address for receiving such comments, or by fax or mail. In addition, OHA took public testimony at the public hearing that was held on January 20, 2022. OHA received oral testimony from 110 individuals at the public hearing and received many written public comments. OHA staff have considered the written comments and public testimony received prior to the deadline on January 24, 2022, at 5:00 p.m. OHA thanks all Oregonians who

provided public comment and appreciates the varied input they have provided to the rulemaking process.

Themes of the testimony and written comments, in no particular order, are summarized below.

- OHA heard concerns from commenters that Oregon is not following the lead of other states in that Oregon is one of few states with a mask requirement.

Agency response: *During the course of the COVID-19 pandemic, Oregon has had better outcomes than most other states in the country. Oregon has maintained lower cumulative case rates and death rates from COVID-19 than most states and has aligned with other western states on COVID-19 policies. Oregon has seen high levels of compliance with wearing of masks in accordance with state requirements and adherence to other measures to reduce risk during times of increased transmission. Oregonians have also outpaced many other states in obtaining vaccination and as a result has been able to maintain hospital capacity to ensure Oregonians have access to emergency care, even throughout the surges of Delta and Omicron variants. In Oregon we are following the science and the data and continue to believe that, for now, these rules remain necessary to control COVID-19. The agency would like to thank the vast majority of Oregonians who have taken these steps as these successes are due to the collective efforts of Oregonians.*

- OHA heard concerns from commenters that believe there are studies that masks don't work to prevent the spread of COVID-19 or media outlets reporting that masks don't work to prevent the spread of COVID-19.

Agency response: *Universal mask wearing as part of layered mitigation strategies that include vaccination and isolation or quarantine, as needed helps prevent transmission of COVID-19.*

Effectiveness has been demonstrated across multiple scientific studies including, but not limited to:

- <https://www.bmj.com/content/375/bmj-2021-068302>
 - [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31142-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31142-9/fulltext)
 - <https://www.pnas.org/content/117/51/32293>
- OHA heard concerns from commenters who believe that requiring masks in indoor public places does not take into account accommodations needed for people with disabilities who may not be able to wear a mask.

Agency response: *OHA's rules require compliance with all federal, state and local disability laws, including providing accommodations under the Americans with*

Disabilities Act. OHA recognizes that people with disabilities have a right to reasonable accommodations to ensure equitable access to public places and services. In addition, OHA recognizes that those responsible for public places must work with individuals to determine whether there are reasonable accommodations for customers or visitors that cannot wear a mask, face covering or face shield. Some common reasonable accommodations are free curbside pick-up, free delivery or an appointment by phone or video.

- OHA heard concerns from commenters that believe broad mask requirements in indoor spaces does not recognize the personal choices of Oregonians, and individuals should choose for themselves whether they wear a mask.

Agency response: *Unfortunately, wearing a mask is not just about individual choice, because that individual choice has considerable impacts on others. Reducing the spread and burden of communicable disease relies on all of us working together to implement protections that benefit individuals, as well as the entire community, including those in the community who may be more vulnerable to severe illness or death from disease. Masks are most effective when all individuals in indoor settings are wearing them consistently, acting as source control in the event that an individual has COVID-19 and protecting all individuals who are in close contact. That is why universal masking as part of layered mitigation strategies is important in indoor settings. In addition, universal masking is an important tool to protect individuals with underlying conditions that put them at risk for more severe illness from COVID-19 or who are immunocompromised. Masking, along with other mitigation strategies, such as vaccination, protects the general community.*

- OHA heard recommendations from commenters that those who are vaccinated against COVID-19 should not be subject to requirements related to masking.

Agency response: *OHA is grateful to all people in Oregon who have chosen to get vaccinated. The more individuals that are up to date with vaccinations, the less likely we are to see hospitalizations and more variants of COVID-19, and the quicker we get to easing restrictions that help control the disease. Reducing the spread and burden of communicable disease relies on all of us to work together to implement protections that benefit individuals, as well as the entire community, including those in the community who may be more vulnerable to severe illness or death from disease, such as those who are not vaccinated against COVID-19, immunocompromised or at increased risk of complications. While it is extremely rare for those who are fully vaccinated to experience severe illness and hospitalization, they could get infected with COVID-19 and spread the disease to those who are more vulnerable to severe disease and hospitalization. In addition, OHA hopes that maintaining a general requirement prevents additional burden on businesses to verify the vaccine status of customers or visitors.*

- OHA heard recommendations from commenters to update the rule to require people to use N95 masks for additional protection.

Agency response: *OHA appreciates the recommendation from commenters and understands that recently there have been studies released discussing the efficacy of various types of masks. Generally, universal masking is part of a layered approach to mitigating the spread of COVID-19 and any mask is better than no mask to help prevent transmission. To be most effective, in line with the [Centers for Disease Control and Prevention](#), OHA recommends individuals wear the most protective mask that fits them well, and that they can wear consistently. Wearing a highly protective mask or respirator such as an N95 may be more important in high-risk settings and for those who are at increased risk for severe COVID-19 illness.*

- OHA heard concerns from commenters that the mask requirement generally may be affecting negatively the mental health of people, particularly children.

Agency response:

OHA recognizes the impact of the pandemic on the physical and emotional health of Oregonians. OHA also recognizes that people in Oregon are fatigued and ready to get back to a sense of normalcy in their lives. Universal masking is one of several strategies that helps prevent transmission of COVID-19 and in turn, reduces severe illness requiring hospitalization. The reassurance of a layered approach that includes masking, in addition to the benefit of protecting those who are at higher risk of severe COVID-19 illness, serves to promote a culture of safety and address some of the major stressors affecting our communities.

- OHA heard concerns from commenters who believe that decisions about COVID-19 mitigation strategies should be made at the local level.

Agency response: *OHA is proposing to adopt these rules until they are no longer needed statewide. COVID-19 does not recognize borders and Oregonians do travel between counties. Community spread of COVID-19 remains high in Oregon. OHA expects to lift the statewide restrictions when disease spread lowers significantly over a sustained period of time, available staffed hospital capacity increases, and epidemiologists and public health experts agree that statewide policies in healthcare settings are no longer needed.*

- OHA heard concerns from commenters that believe masks may pose a danger to wearers, including oxygen deprivation and exposure to mold and bacteria.

Agency response: *There are numerous scientific studies that prove masks do not deprive users of oxygen or lead to higher levels of carbon dioxide (<https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science->*

[sars-cov2.html](#)). Prolonged masking is common in many occupations to protect workers. Some examples include health care workers (e.g., performing prolonged surgery), construction (e.g., protection against dust and other particles) and environmental workers (e.g., removing mold). OHA is not aware of evidence that wearing a mask increases the risk of fungal or bacterial infections, however, OHA understands that increased irritation and a humid environment can also be hard on your skin, causing problems ranging from acne and peeling skin to rashes and itchiness. Individuals, therefore, should frequently clean reusable masks and not wear disposable masks when they are soiled or wet. It is also important that individuals wear a mask that is comfortable on the face and limits irritation.

- OHA heard from commenters concerns that the rule is difficult to enforce and requests that OHA provide resources to support enforcement.

Agency response: OHA is grateful to all people in Oregon who comply with the requirement to wear a mask indoors. Consistent and correct wearing of masks has helped Oregon maintain some of the lowest burden from COVID-19 in the country. When OHA receives complaints about non-compliance with its masking rule, it takes an education-first approach, providing information about the rules as well as recommendations on how entities can help their employees, customers, visitors and clients understand the rule and comply. Oregon OSHA also helps in enforcing masking requirements in Oregon.

- OHA heard feedback from commenters recommending that OHA not lift any preventive measures for COVID-19 when the Omicron variant is still prevalent in communities and hospital capacity is low.

Agency response: OHA agrees that right now, during the Omicron surge, the general indoor masking requirement continues to be necessary to slow the spread of COVID-19. OHA regularly reviews research and data on prevention and control of COVID-19.

Hospital capacity in Oregon [remains low](#) due to the current Omicron surge. The risk of hospitalization and death from COVID-19 is extremely rare in individuals who are fully vaccinated. Even as cases have risen sharply during the current surge, hospitalizations and deaths among the fully vaccinated individuals have remained low.

Universal masking, along with other mitigation measures like vaccination, reduces the spread of COVID-19 which helps protect employees, visitors and customers in indoor public settings. These strategies in turn protect healthcare workers and hospital capacity, both of which are vital to ensuring a broad spectrum of care to Oregonians.

OHA intends to lift COVID-19 control requirements when they are no longer necessary statewide.

- OHA heard concerns that mask wearing is impacting the environment and that disposal of surgical and N95 and KN95 masks in the trash increases the spread of disease.

Agency response: *There is no evidence that discarded face masks increase the spread of COVID-19. OHA understands that there is an increase in waste associated with controlling the spread of COVID-19. This includes masks used by the general public, as well as personal protective equipment used in healthcare settings. Masks, like all waste, should be disposed of properly in receptacles and not littered where it can reach wildlife and get into our rivers and oceans.*

- OHA heard concerns from commenters there are no specific metrics for rescinding or suspending the rule so the public does not know when to expect the requirements to be lifted.

Agency response: *OHA can rescind the masking requirements if it believes the rules or parts of the rules are no longer necessary to control COVID-19. OHA will consider at least, the following information in making that decision:*

- (a) The degree of COVID-19 transmission, as measured by case rates, percent positivity, and any other objective metrics indicative of current or potential transmission in Oregon.*
- (b) COVID-19 related hospitalizations and deaths.*
- (c) Disparate COVID-19 related health impacts on communities of color and tribal communities.*
- (d) Guidance from the U.S. Centers for Disease Control and Prevention.*
- (e) Proportion of the population partially or fully vaccinated.*