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April 27, 2012

TO: Clinical Laboratories Performing Toxicology Testing

FROM: Rita Youell, BS, MT(ASCP), Laboratory Compliance Section Manager

SUBJECT: Repeal of Outdated Oregon Administrative Rules (OAR)

The Oregon Health Authority, Public Health Division is proposing to permanently repeal a number of Administrative rules in chapter 333 which are outdated and no longer needed. OAR 333-013-0001 Forms and 333-013-0004 Definitions, pertains to an old requirement of the Authority to determine methods for testing alcoholic content of blood. Effective January 1, 2004, a blood alcohol test is valid under Oregon Revised Statute (ORS) 813.300, if it is performed in a laboratory certified or accredited under the Clinical Laboratory Improvement Amendments (CLIA) for toxicology testing, or a forensic laboratory established by the Department of State police under ORS 181.080 that is accredited by a national forensic accrediting organization.

We are enclosing the "Notice of Proposed Rulemaking", "Statement of Need and Fiscal Impact", and only the section of the rule related to blood alcohol testing.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Health Authority, Public Health Division	333	
Agency and Division	Administrative Rules Chapter Number	
Brittany Sande	800 NE Oregon St., Suite 930; Portland, OR 97232	(971) 673-1291
Rules Coordinator	Address	Telephone

**RULE CAPTION**

Clean-up of outdated rules that are no longer needed by the Public Health Division

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:**

**AMEND:** 333-013-0004

**REPEAL:** 333-010-0340, 333-012-0002, 333-012-0003, 333-012-0004, 333-012-0010, 333-012-0035, 333-012-0040, 333-012-0041, 333-012-0043, 333-012-0045, 333-013-0001, 333-013-0100, 333-021-0150, 333-021-0500, 333-021-0600

Stat. Auth.: ORS 183, ORS 222, ORS 277, ORS 431, ORS 431.834, ORS 433, ORS 435, ORS 448, ORS 690, ORS 813.160

Other Auth.:

Stats. Implemented: ORS 431.831 – 431.836, ORS 813.010 & 813.160

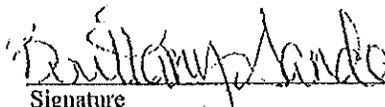
**RULE SUMMARY**

The Oregon Health Authority, Public Health Division is proposing to permanently repeal Oregon Administrative Rules in chapter 333, divisions 10, 12, 13, and 21. Various rules in these divisions are outdated and/or pertain to programs that the Public Health Division no longer administers. In addition to the proposed repeals, OAR 333-013-0004 is being permanently amended to remove outdated language referencing OARs that have been repealed previously. This rulemaking is being proposed to clean-up chapter 333 rules and remove outdated language that is no longer needed.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

May 22, 2012 by 5:00 p.m.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Brittany Sande, Administrative Rules Coordinator

4/13/12

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Health Authority, Public Health Division

333

Agency and Division  
Number

Administrative Rules Chapter

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Clean-up of outdated rules that are no longer needed by the Public Health Division

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## Rule Caption

In the Matter of: Repealing various rules in chapter 333, divisions 10, 12, 13, and 21. Amending OAR 333-013-0004

Statutory Authority: ORS 183, ORS 222, ORS 277, ORS 431, ORS 431.834, ORS 433, ORS 435, ORS 448, ORS 690, ORS 813.160

Other Authority:

Stats. Implemented: ORS 431.831 – 431.836, ORS 813.010 & 813.160

## Need for the Rule(s):

The Oregon Health Authority (Authority), Public Health Division is proposing to permanently repeal Oregon Administrative Rules in chapter 333, divisions 10, 12, 13, and 21. Various rules in these divisions are outdated and pertain to programs that the Public Health Division no longer administers. In addition to the proposed repeals, OAR 333-013-0004 is being permanently amended to remove outdated language referencing OARs that have been repealed previously. This rulemaking is being proposed to clean-up chapter 333 rules and remove outdated language that is no longer needed.

The Oregon Health Authority, Public Health Division is proposing to permanently repeal OAR 333-010-0340 related to school-based prevention programs. This rule pertains to an old program administered by the Public Health Division. In 2007, the Centers for Disease Control and Prevention issued Best Practices for Comprehensive Tobacco Control Programs. In this edition of Best Practices, the CDC recommends that tobacco control programs in schools become integrated into tobacco prevention programs with the community in which they reside, rather than function as separate programs.

Also proposed are the repeals of OAR 333-012-0002 through 333-012-0045. These rules lay out the procedures for conducting contested case hearings. The Public Health Division relies on the Administrative Procedures Act and the Office of Administrative Hearings when conducting contested case hearings. OARs 333-012-0002 through 333-012-0045 are therefore outdated and no longer necessary.

Also proposed are repeals in chapter 333, division 13. OAR 333-013-0001 pertains to an old requirement of the Authority to determine methods for testing the alcoholic content of blood. Since 1987, analysis of a person's blood for alcohol content while driving or boating had to be performed by a method approved by the Authority. Due to the passage of HB 2157 during the 2003 legislative session, the Authority is no longer involved in maintaining and updating rules related to blood alcohol methods. Effective January 1, 2004 a blood alcohol test is valid under ORS 813.300, if it is performed in a laboratory certified or accredited under the Clinical Laboratory Improvement Amendments (CLIA) for toxicology testing, a laboratory licensed under ORS 438.110 and approved for toxicology testing, or a forensic laboratory established by the Department of State Police under ORS 181.080 that is accredited by a national forensic accrediting organization. OAR 333-013-0100 also pertains to an outdated requirement of a statute that was repealed in 1983 (ORS 482.141). The purpose of this rule was to require health care providers to report conditions that

may affect a person's ability to safely drive. The Division contracted with physicians to provide the Department of Motor Vehicles (DMV) with a recommendation on whether an individual should continue to drive. In 2007 the Oregon Legislature passed HB 2176, which amended ORS 807.710 requiring that health care providers report cognitive and functional impairments directly to the DMV. DMV has implemented reporting requirements in OAR 735-074-0090, 0110, and 0120.

Also proposed are repeals in chapter 333, division 21. OAR 333-021-0150 pertains to civil penalties for failure to comply with rabies inoculation requirements. This rule is being repealed because it contains incorrect information on the maximum penalty and imprisonment. The information in OAR 333-021-0150 is also duplicative of information in statute (ORS 433.990) and therefore it is unnecessary to also have it in administrative rule. OAR 333-021-0500 pertains to standards for rubber, skin and plastic condoms. This rule is outdated and no longer necessary because condoms must now meet Food and Drug Administration (FDA) requirements. OAR 333-021-0600 pertains to marriage certificates. This rule is outdated and no longer necessary because HB 3120 passed in 2007 moved the responsibility for the form of the commemorative marriage certificate from the Director of Human Services to the county clerks.

Documents Relied Upon, and where they are available: None

Fiscal and Economic Impact: There is no fiscal or economic impact as a result of repealing rules in divisions 10, 12, 13, and 21 because the Public Health Division no longer administers the programs described in the rules being repealed. This rulemaking is to clean-up outdated rules that are no longer needed.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

There is no impact on state agencies, units of local government, or the public as a result of the repeals.

2. Cost of compliance effect on small business (ORS 183.336): None

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

None.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

None.

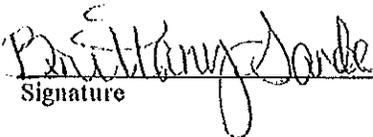
c. Equipment, supplies, labor and increased administration required for compliance:

None.

How were small businesses involved in the development of this rule? Small businesses were not involved in this rulemaking, as they are not affected by the repeal of outdated rules in divisions 10, 12, 13, and 21.

Administrative Rule Advisory Committee consulted?: No

If not, why?: Due to the nature of this rulemaking, it was decided that a Rule Advisory Committee did not need to be convened and consulted. This rulemaking only removes outdated rules from chapter 333 that are no longer being used by the Public Health Division.



Brittany Sande, Administrative Rules Coordinator  
Printed name

4/13/12  
Date

## DIVISION 13

### CHEMICAL ANALYSIS FOR ALCOHOLIC CONTENT OF BLOOD

#### ~~333-013-0001~~

##### ~~Forms~~

~~The use of the term ORS 483.644 and subdivisions thereof in forms of the Oregon State Health Division are designated as referring to ORS 487.815.~~

~~Stat. Auth.: ORS 483~~

~~Stats. Implemented:~~

#### 333-013-0004

##### Definitions

The term "Blood" as used in ORS 813.010 and 813.160 ~~and in OAR 333-013-0006(1) and (2) and 333-013-0026(1)~~ means any of the following:

- (1) "Plasma" means the liquid portion of blood including the clotting factors, prepared by mechanical separation of the liquid from cellular components after the inhibition of the clotting process.
- (2) "Serum" means the liquid portion of blood minus the clotting factors, prepared by separation of the liquid from the clot upon completion of the clotting process.
- (3) "Whole Blood" means the fluid that circulates through the heart, arteries and veins; composed of cellular and liquid components.

Stat. Auth.: ORS 813.160

Stats. Implemented: ORS 813.010 & ORS 813.160