

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

**FILED**  
4-11-16 1:40 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Oregon Health Authority, Public Health Division  
Agency and Division

333  
Administrative Rules Chapter Number

Standards for Reducing the Sale of Tobacco and Inhalant Delivery Systems to Minors

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

In the Matter of:

Permanently adopting administrative rules in chapter 333, division 15, relating to the implementation of HB 2546 (Oregon Laws 2015, chapter 158).

**Statutory Authority:**

ORS 163.575, 167.400, 167.402, 167.407, 431A.175, 431A.178, 431A.183

**Other Authority:**

**Statutes Implemented:**

ORS 431A.175, 431A.178, 431A.183

**Need for the Rule(s):**

On January 1, 2016, the Oregon Health Authority (Authority), Public Health Division temporarily adopted administrative rules in chapter 333, division 15. The Oregon Health Authority has reorganized and rules for reducing the sale of tobacco products and inhalant delivery systems to minors are now implemented by the Public Health Division. The rules for reducing tobacco use by minors were previously implemented by the Oregon Health Authority, Addictions and Mental Health Division, and were located in chapter 415, division 60. The temporary rulemaking amended those rules and adopted them under chapter 333 (Public Health Division).

In addition to relocating rules for reducing the sale of tobacco products and inhalant delivery systems to minors, the temporary rules revised the content of the Notice that retailers of inhalant delivery systems are required to post to comply with statutory changes from the passage of House Bill 2546, subsection (4)(2). The temporary rulemaking expires June 28, 2016.

In this rulemaking, the Authority is proposing to make the temporary rules permanent through the rulemaking process before expiration.

The proposed permanent rulemaking:

1. Creates definitions in rules to reflect the purpose of the statute, and add clarity to the rules.
2. Requires tobacco and inhalant delivery system retailers to post a notice substantially similar to the content of notice as defined in rules.
3. Adds inhalant delivery systems to requirements specifying the location tobacco products within a retail store.
4. Adds inhalant delivery systems to the Authority's enforcement activities for implementing sales to minors regulations.

**Documents Relied Upon, and where they are available:**

1. Oregon Revised Statutes 431A.175 through 431A.183. [https://www.oregonlegislature.gov/bills\\_laws/ors/ors431A.html](https://www.oregonlegislature.gov/bills_laws/ors/ors431A.html)
2. Oregon Administrative Rules 415-060-0010 to 415-060-0050. [http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_415/415\\_tofc.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_415/415_tofc.html)
3. HB 2546 (Oregon Laws 2015, chapter 158): <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2546/Enrolled>

**Fiscal and Economic Impact:**

These proposed administrative rules are not predicted to have a fiscal or economic impact on the Oregon Health Authority, local public health authorities or small businesses.

**Statement of Cost of Compliance:**

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

The implementation of these administrative rules is predicted to minimally increase enforcement costs for the Oregon Health Authority. The Authority currently conducts inspections in collaboration with Oregon State Police to ensure retailers are in compliance with laws prohibiting sales of tobacco products to minors. Inspectors will incorporate mechanisms to add inhalant delivery systems in these inspections.

The Authority may have increased costs associated with education and awareness efforts to help businesses come into compliance with the law. Staff time to investigate complaints and, if appropriate, to issue citations may also increase costs.

There is no anticipated cost of compliance impact on other state agencies, units of local government or the public as a result of the proposed rules.

**2. Cost of compliance effect on small business (ORS 183.336):**

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

As of March 17, 2016 there are approximately 284 inhalant delivery system retailers in Oregon. This estimate is based on a search of the Secretary of State's online business registry using the following search criteria: "vape, vapor, electronic cigarette and e-cig."

Inhalant delivery systems are also sold in retail establishments that have a primary business other than selling inhalant delivery systems. These include grocery stores, convenience stores, gas stations and other businesses. Using Synar data and Oregon Health Authority's assessment of the tobacco retail environment, there are an estimated 2,878 retailers that currently sell tobacco in Oregon. It is likely that many of these also sell inhalant delivery systems, although there are no data to confirm exact numbers.

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

No additional reporting, recordkeeping or administrative activities are predicted

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

Some outlets may be required to modify signs or the location of products to ensure compliance. Costs will vary.

**How were small businesses involved in the development of this rule?**

The 2016 Sales to Minors RAC included representatives from the North West Vapor Association and the North West Grocery Association.

**Administrative Rule Advisory Committee consulted?: Yes**

**If not, why?:**

05-23-2016 5:00 p.m.	Tracy Candela	tracy.candela@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address