

OREGON ADMINISTRATIVE RULES
OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION
CHAPTER 333

DIVISION 15

**IMPLEMENTATION OF REQUIREMENTS FOR SMOKEFREE ENVIRONMENTS IN
WORKPLACES AND PUBLIC PLACES AND FOR NUTRITIONAL
INFORMATION AT CHAIN RESTAURANTS**

333-015-0030

Definitions

For purposes of OAR chapter 333, division 15, the following definitions shall apply:

- (1) "Accessibility ramp" means a ramp intended to provide access for people with disabilities to and from an entrance or exit.
- (2) "Act" means the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875 and 433.990(5).
- (3) "Authority" means the Oregon Health Authority.
- (4) "Certificate holder" means the individual or entity on record with the Oregon Health Authority as the owner of a certified cigar bar or smoke shop.
- (5) "Cigar bar" means a business that:
 - (a) Has on-site sales of cigars as defined in ORS 323.500;
 - (b) Has a humidor on the premises;
 - (c) Allows the smoking of cigars on the premises but prohibits the smoking, aerosolizing or vaporizing of other inhalants on the premises;
 - (d) Has been issued and operates under a full on-premises sales license issued under ORS 471.175;
 - (e) Prohibits persons under 21 years of age from entering the premises and posts notice of the prohibition;
 - (f) Does not offer video lottery games as authorized under ORS 461.217;
 - (g) Has a maximum seating capacity of 40 persons;
 - (h) Has a ventilation system that exhausts smoke from the business, and is designed and terminated in accordance with the state building code standards for the occupancy classification in use; and
 - (i) Requires all employees to read and sign a form approved and published by the Public Health Division that explains the dangers of exposure to secondhand smoke.
- (6) "Cigarillos" means a smoking device wrapped in tobacco leaf, rather than paper, that contains less than three grams of tobacco and measures less than 100 mm in length.
- (7) "Employer" means any entity or individual who engages an individual to perform work or services in an area where smoking is prohibited under the employer's control.
- (8) "Enclosed area" means all space between a floor and a ceiling that is enclosed on two or more sides by permanent or temporary walls or windows, exclusive of doors, passageways or gaps. If no ceiling is present, "enclosed area" means all space that is included by three or more sides by permanent or temporary walls or windows, exclusive of doors, passageways or gaps.

- (9) "Entity in charge of a public place" means any person or organization that has responsibility because of ownership, proprietorship, management, or oversight over a place that is open to the public. Entity in charge of a public place is used to refer only to a person or organization in charge that is not also an employer.
- (10) "Entrance" means any point of ingress, including an accessibility ramp, to an enclosed area from a non-enclosed area.
- (11) "Exit" means any point of egress, including an accessibility ramp, from an enclosed area to a non-enclosed area.
- (12) "Extended period of time" means more than 365 consecutive days.
- (13) "Gross revenue" means all receipts from the sale of product(s) less the amount of any rebates, refunds, or credits.
- (14) "Humidor" means a storage container designed to allow controlled airflow and equipped with a device that maintains the internal humidity in the range of 68 percent to 75 percent and an internal temperature in the range of 68 degrees to 70 degrees Fahrenheit.
- (15) "Inhalant" means nicotine, a cannabinoid or any other substance that:
- (a) Is in a form that allows the nicotine, cannabinoid or substance to be delivered into a person's respiratory system;
 - (b) Is inhaled for the purpose of delivering the nicotine, cannabinoid or other substance into a person's respiratory system; and
 - (c)(A) Is not approved by, or emitted by a device approved by, the United States Food and Drug Administration for a therapeutic purpose; or
 - (B) If approved by, or emitted by a device approved by, the United States Food and Drug Administration for a therapeutic purpose, is not marketed and sold solely for that purpose.
- (16)(a) "Inhalant delivery system" means:
- (A) A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device; or
 - (B) A component of a device described in this subsection or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this subsection, whether the component or substance is sold separately or is not sold separately.
- (b) Inhalant delivery system does not include:
- (A) Any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose; and
 - (B) Tobacco products.
- (17) "Local Public Health Authority" or "LPHA" means the county government, unless a health district has been formed under ORS 431.414, the county has contracted with a person or agency to act as the public health authority, or the county has relinquished its authority to the state.
- (18) "Maximum seating capacity" means the total number of seats available to patrons, including, but not limited to, bar stools, seating at cocktail tables, seats at buddy-bar tables, banquette seating, dining seating, couch space, and floor pillows intended as seating; as well as the total number of patrons a business permits inside the business at the same time.
- (19) "Noncommercial tobacco products" means unprocessed tobacco plants or tobacco by-products used for ceremonial or spiritual purposes by American Indians.
- (20) "Place of employment" means an enclosed area under the control of a public or private employer, including work areas, employee lounges, vehicles that are operated in the course of an

employer's business and that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways. Place of employment does not include a private residence unless it is used as a child care facility as defined in ORS 657A.250 or a facility providing adult day care as defined in 410.490.

(21) "Private residence" means a residence or part of a residence that is not operated as a place of business where clients or customers use the premises. A residence that is considered a place of employment or public place is subject to ORS 433.835 through 433.875 during its hours of operation. Only that part of a residence used as a place of business is subject to ORS 433.835 through 433.875.

(22) "Public Health Director" means the director of the Public Health Division of the Oregon Health Authority.

(23) "Public Health Division" means the Public Health Division of the Oregon Health Authority.

(24) "Public place" means an enclosed area open to the public.

(25) "Rooms designated by the owner or entity in charge of a hotel or motel as rooms in which smoking is permitted" means sleeping rooms or suites in that hotel or motel.

(26) "Smoking instrument" means any cigar, cigarette, pipe, or other instrument used to smoke tobacco, marijuana or any other inhalant.

(27) "Smoke shop" means a business that is certified with the Oregon Health Authority as a smoke shop under OAR 333-015-0068.

(28) "Stand-alone business" means a business that is not attached to, does not use or occupy the same space as, is not located within, and does not share a common entryway or area with another business, another place of employment, or residential property.

(29) "Tobacco Prevention and Education Program" means the Tobacco Prevention and Education Program in the Public Health Division of the Oregon Health Authority.

(30) "Wall" means any architectural partition, permanent or temporary, with a height and length greater than its thickness, used to divide or enclose an area or to support another structure. Walls include, but are not limited to, partitions constructed of plastic, mesh or other screening materials, slats, louvered blinds, fabric, or blankets, and partitions with latticing or other open frameworks.

(31) "10 feet" means 10 linear feet, measured in a straight line between the points in question. Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835

333-015-0035

General Provision

(1) No person shall smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument in a public place except in those areas that are not required to be smoke, aerosol or vapor free under ORS 433.850(2) and OAR 333-015-0035(5) and (6). (2) Employers shall provide for employees a place of employment that is free of all smoke, aerosols and vapors containing inhalants; and may not allow employees to smoke, aerosolize or vaporize inhalants at the place of employment, except in those areas listed in ORS 433.850(2) and in OAR 333-015-0035(4) through (7). In providing a smoke, aerosol, or vapor free place of employment, an employer is responsible for taking steps to ensure that no person smokes, aerosolizes or vaporizes an inhalant within 10 feet of the following parts of a place of employment:

(a) Entrances;

- (b) Exits;
 - (c) Windows that open;
 - (d) Ventilation intakes that serve an enclosed area; and
 - (e) Accessibility ramps.
- (3) No person shall smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument within 10 feet of the following parts of public places or places of employment:
- (a) Entrances;
 - (b) Exits;
 - (c) Windows that open;
 - (d) Ventilation intakes that serve an enclosed area; and
 - (e) Accessibility ramps.
- (4) The owner or entity in charge of a hotel or motel may designate up to 25 percent of the sleeping rooms of the hotel or motel as rooms in which smoking, aerosolizing or vaporizing is permitted.
- (a) If the owner or entity in charge of a hotel or motel chooses to designate up to 25 percent of sleeping rooms as smoking, aerosolizing or vaporizing permitted, all smoking, aerosolizing or vaporizing rooms on the same floor must be contiguous. The status of the rooms may not be changed, except to add more non-smoking, non-aerosolizing or non-vaporizing rooms.
 - (b) The owner or entity in charge of a hotel or motel shall provide written notice to patrons upon check-in as to the smoking, aerosolizing or vaporizing status of the sleeping rooms.
 - (c) The owner or entity in charge of a hotel or motel shall post signs at each entrance and exit in accordance with OAR 333-015-0040, with the exception of sleeping room entrances and exits. Signs shall notify all patrons that smoking, aerosolizing or vaporizing is limited to certain sleeping rooms.
 - (d) The owner or entity in charge of a hotel or motel shall provide written information to patrons upon check-in, describing how patrons may notify management of smoking, aerosolizing or vaporizing occurring in non-smoking, non-aerosolizing or non-vaporizing areas or rooms.
 - (e) Nothing in these rules shall prevent the owner or entity in charge of a hotel or motel from prohibiting smoking, aerosolizing or vaporizing on the entire premises.
- (5) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces designated for traditional ceremonies in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996.
- (6) The following areas are not required to be smokefree:
- (a) Smoke shops that are certified by the Authority under OAR 333-015-0068;
 - (b) Cigar bars if:
 - (A) The cigar bar generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006; and
 - (B) The cigar bar has provided the Public Health Division with proper documentation as required by OAR 333-015-0066.
 - (c) Up to 25 percent of the sleeping rooms of a hotel or motel, as designated by the owner or entity in charge. The hotel or motel must be in compliance with the rules set forth in OAR 333-015-0035(4).
- (7) The medical use of marijuana is permitted in the place of employment of a licensee of a professional licensing board as described in ORS 475.328.

(8) Nothing in these rules shall prevent an employer in charge of a place of employment or an entity in charge of a public place from designating the entire place of employment or public place as smoke, aerosol or vapor free.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

333-015-0040

Signs

(1) An employer or entity in charge, except in those places described in OAR 333-015-0035(5) and (6), shall post signs prohibiting smoking, aerosolizing or vaporizing of inhalants. Nothing in these rules shall prevent an employer from increasing the amount of property where smoking, aerosolizing or vaporizing of inhalants is prohibited beyond the 10-foot requirement or from designating the entire premises as smoke, aerosol or vapor free. Signs may be used without specifically including the words "within 10 feet" if the signs specify a restriction greater than 10 feet or designate the entire premises as smoke, aerosol or vapor free. Signs shall be posted prominently at each entrance and exit to the place of employment or public place.

(2) In addition to requirements under this rule, an owner or entity in charge of a hotel or motel shall comply with signage requirements as described in OAR 333-015-0035(4).

(3) An owner or entity in charge of tables or outdoor seating or dining areas within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of a public place or place of employment, or any portion of an accessibility ramp shall clearly mark the tables or outdoor seating or dining areas as non-smoking, non-vaporizing and non-aerosolizing.

(4) In a cigar bar where smoking is allowed under OAR 333-015-0035(6), the employer or entity in charge shall post signs at each entrance and exit clearly stating that:

(a) Smoking is allowed on all or part of the premises;

(b) Smoking, aerosolizing or vaporizing of inhalants that are not cigars is prohibited; and (c) Anyone under the age of 21 is prohibited from entering the premises.

(5) In a smoke shop where smoking is allowed under OAR 333-015-0035(6), the employer or entity in charge shall post signs at each entrance and exit clearly stating that:

(a) Smoking is allowed on all or part of the premises;

(b) Anyone under the age of 18 is prohibited from entering the premises; and

(c) Cigarette smoking is prohibited on the premises, in smoke shops where cigarette smoking is not allowed under OAR 333-015-0068(7)(e).

(d) Smoking, aerosolizing or vaporizing of inhalants that are not tobacco products is prohibited.

(6) All signs used to describe whether smoking is prohibited or allowed in a place of employment or public place shall be placed at a height and location easily seen by a person entering the establishment and shall not be obscured in any way.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

333-015-0045

Ashtrays

(1) Ashtrays and any receptacles to be used for smoking, aerosolizing or vaporizing or depositing cigarette or inhalant delivery system debris are prohibited within 10 feet of entrances, exits,

windows that open, ventilation intakes that serve an enclosed area of a public place or place of employment, and any portion of an accessibility ramp.

(2) Except for those areas described in OAR 333-015-0035(6), ashtrays and any receptacles to be used for smoking or depositing cigarette or inhalant delivery system debris are prohibited inside public places and places of employment.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

333-015-0064

Outdoor Smoking Areas

(1) The owner or entity in charge of a place of business may establish an outdoor smoking, aerosolizing or vaporizing of inhalants area if that area is:

(a) Not within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or place of employment, or any portion of an accessibility ramp;

(b) Not, at any time, an enclosed area as defined in OAR 333-015-0030(8); and

(c) In compliance with all other state, city, and county codes.

(2) Nothing in these rules shall prevent an employer from increasing the amount of property where smoking, aerosolizing or vaporizing is prohibited beyond the 10-foot requirement or from designating the entire premises as smokefree.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

333-015-0068

Smoke Shops

(1) A business must apply to the Authority for certification prior to allowing smoking on the premises.

(2) A business must apply for smoke shop certification on a form prescribed by the Authority (this form is available at www.healthoregon.org/smokefree or by calling the Tobacco Prevention and Education Program at 971-673-0984).

(3) To obtain certification as a smoke shop under any part of this rule, a business must agree to allow the Authority or LPHA to make unannounced inspections of the business to determine compliance with the Act.

(4) Smoke shop certification is only valid for the business location authorized by the Authority.

(5) Certification Criteria:

(a) A business may apply for smoke shop certification by submitting the following documentation to the Authority, along with a completed application form:

(A) A notarized, sworn statement attesting that the business:

(i) Is primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, and derives at least 75 percent of its gross revenue from such sales;

(ii) Prohibits persons under 18 years of age from entering the premises;

(iii) Does not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;

- (iv) Does not sell or offer food, beverages or alcoholic beverages. On-premises consumption of food or beverages, excluding alcoholic beverages is permitted;
- (v) Has a maximum seating capacity of no more than four persons;
- (vi) Allows the smoking of tobacco product samples only for the purpose of making retail purchase decisions, in a manner that complies with ORS 180.486 and 431.840; and
- (vii) Does not allow the smoking, aerosolizing or vaporizing of inhalants that are not tobacco products.
- (B) Documentation of the business's sales, broken down by category of product;
- (C) Evidence, such as photographs, of signs prohibiting:
 - (i) Persons under 18 years of age from entering the premises, and
 - (ii) On premises consumption of alcohol.
- (D) A building map and photographs of the premises demonstrating that the business is a stand-alone business;
- (E) A site map of the premises that denotes maximum seating capacity and includes a detailed seating chart; and
- (F) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.
- (b) A business existing on December 31, 2008, may apply for certification as a smoke shop by submitting the following documentation to the Authority, along with a completed application form:
 - (A) Proof of registration with the Oregon Secretary of State, Corporation Division, since 2008 or, if not required to be registered, tax documentation proving that the business has been in operation since 2008;
 - (B) A notarized, sworn statement attesting that:
 - (i) On December 31, 2008, the business:
 - (I) Was primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, and derived at least 75 percent of its gross revenue from such sales;
 - (II) Prohibited persons under 18 years of age from entering the premises;
 - (III) Did not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises; and
 - (IV) Did not sell or offer food or beverages, including alcoholic beverages. On premises consumption of food and beverages, excluding alcohol, is permitted.
 - (ii) Presently, the business meets the criteria listed under subparagraph (5)(b)(B)(i) of this rule;
 - (C) Documentation of the business's sales, broken down by category of product;
 - (D) Either of the following:
 - (i) Documentation, such as a building map or photographs, demonstrating that on December 31, 2008, the business was a stand-alone business with no other businesses or residential property attached; or
 - (ii) Documentation demonstrating that on December 31, 2008, it had a ventilation system that exhausted smoke from the business and was designed and terminated in accordance with the state building code standards for the occupancy classification in use. Such documentation must include either:

- (I) A certificate of occupancy that was current on December 31, 2008, and official documentation from the building authority with jurisdiction of the occupancy classification for which the business was approved; or
 - (II) If the documentation described in (5)(b)(D)(ii)(I) of this rule is unavailable, a current certificate of occupancy, proof that the business's ventilation system was installed in 2008 or earlier, and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;
 - (E) Either of the following:
 - (i) Documentation, such as a building map or photographs, demonstrating that the business presently is a stand-alone business with no other businesses or residential property attached; or
 - (ii) A current certificate of occupancy and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;
 - (F) Evidence, such as photographs, of signs prohibiting persons under 18 years of age from entering the premises; and
 - (G) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.
- (c) A business that filed an application with the Authority for certification as a smoke shop prior to June 30, 2011, may be certified by the Authority on or before December 31, 2012, according to the requirements of the Act as it was in effect on June 29, 2011. To achieve certification under these criteria, the business must submit the following documentation to the Authority:
- (A) A notarized, sworn statement attesting that:
 - (i) At the time of application, the business:
 - (I) Was primarily engaged in the sale of tobacco products and smoking instruments, and derived at least 75 percent of its gross revenue from such sales;
 - (II) Prohibited persons under 18 years of age from entering the premises;
 - (III) Did not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;
 - (IV) Did not sell or offer on-premises consumption of alcoholic beverages; and
 - (V) Was a stand-alone business with no other businesses or residential property attached to the premises; and
 - (ii) Presently, the business meets the criteria listed under subparagraph (5)(c)(A)(i) of this rule;
 - (B) Documentation of the business's sales, broken down by category of product, including cigarette sales; and
 - (C) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.
- (6) Application Review:
- (a) The Authority shall review application materials within 45 days of receipt and determine whether the application is complete.
 - (b) Within 15 days of declaring an application complete, the Authority shall deny or grant the application. The Authority shall grant a business certification if, upon review of the application materials, the Authority finds that sufficient documentation has been provided to demonstrate the business's compliance with this rule. In lieu of denying an application, the Authority may request additional information from the business for the purpose of assessing compliance with this rule.

- (c) The Authority may deny an application for smoke shop certification if the Authority issued a civil penalty against an applicant for any violation of the Act or these rules within 12 months prior to application.
- (d) The Authority may deny an application for smoke shop certification and prohibit an applicant from reapplying for up to two years if the applicant provides information that is false or deliberately misleading.
- (7) Ongoing Requirements for Certification:
- (a) A smoke shop certified under this rule must continue to meet the criteria for certification once certified. The Authority may revoke certification if the smoke shop ceases to meet the criteria for certification.
- (b) Every year, within 30 days of the calendar date on which certification was originally granted, a smoke shop must provide the Authority with documentation demonstrating that at least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments. Such documentation must include:
- (A) A notarized, sworn statement attesting that at least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments; and
- (B) Documentation of the smoke shop's sales broken down by category of product, including cigarette sales if the business is certified under subsection (5)(b) or (5)(c) of this rule and permits cigarette smoking on the premises.
- (c) The Authority may inspect a business's financial records to determine compliance with the Act and these rules. The Authority shall attempt to contact the business and provide at least 48 hours' notice prior to conducting such an inspection.
- (d) A smoke shop must maintain up-to-date contact information with the Authority. If the Authority is unable, despite a good-faith effort, to contact the smoke shop because the smoke shop's mailing address, phone number, and other contact information are out of date, then the Authority may suspend the smoke shop's certification until up-to-date contact information is provided.
- (e) A smoke shop certified under subsection (5)(b) or (5)(c) of this rule may not allow the smoking of cigarettes unless at least 75 percent of its gross revenue, as reflected in the documentation described in paragraph (7)(b)(B) of this rule, is derived from the sale of cigarettes.
- (f) A smoke shop that is closed for an extended period of time or otherwise ceases to operate at the location that is certified is considered by the Authority to not meet certification requirements.
- (8) Renewal of Certification:
- (a) A smoke shop certified under subsection (5)(b) or (5)(c) of this rule must renew its certification every five years within 30 days of the calendar date on which certification was originally granted.
- (b) To renew certification, a smoke shop certified under subsection (5)(b) or (5)(c) of this rule must submit:
- (A) Updated versions of the documentation required for initial certification under subsection (5)(b) or (5)(c) of this rule, respectively; and
- (B) If the smoke shop allows the smoking of cigarettes, documentation demonstrating that the smoke shop derives at least 75 percent of its gross revenue from the sale of cigarettes.
- (9) Transfer of Certification with Ownership:

(a) Smoking is not permitted on the premises of a smoke shop operating under new ownership until certification is effectively transferred from the certificate holder to the new owner in accordance with this section.

(b) If a smoke shop certified under subsection (5)(a) of this rule changes ownership, the following steps must be completed before the Authority shall transfer certification to the new owner:

(A) The certificate holder must notify the Authority of the intent to transfer ownership and certification;

(B) The new owner must submit a notarized, sworn statement to the Authority attesting that the smoke shop will continue to meet the certification requirements under the new ownership; and

(C) The certificate holder or the new owner must update the business's certification documentation with the Authority.

(c) If a smoke shop certified under subsection (5)(b) or (5)(c) of this rule changes ownership, the certificate holder or new owner of the smoke shop must submit the following documentation to the Authority to transfer certification to the new owner:

(A) Proof of transfer of ownership of the smoke shop, including, where applicable, updated registration with the Oregon Secretary of State, Corporation Division;

(B) A notarized, sworn statement attesting that the business will continue to meet the requirements for certification under the new ownership; and

(C) A completed application for transfer of certification (available on the Internet at www.healthoregon.org/smokefree or by calling the Tobacco Prevention and Education Program at 971-673-0984).

(d) After certification is transferred, the new certificate holder must submit financial documentation, including, but not limited to, sales receipts, demonstrating that at least 75 percent of the smoke shop's gross revenue during the first 90 days of operation under new ownership was derived from the sale of tobacco products or smoking instruments.

(10) Change of Location:

(a) A smoke shop certified under subsection (5)(a) of this rule that seeks to operate the business at a different location must reapply for certification in the new location.

(b) A smoke shop certified under subsection (5)(b) or (5)(c) of this rule that seeks to operate the business at a different location must submit the following documentation to the Authority, along with a completed application for transfer of certification, at least 30 days prior to permitting smoking at the new location:

(A) A copy of the deed or rental lease for the new location, indicating that the business does not occupy more than 3,500 square feet unless the original location exceeded 3,500 square feet;

(B) If the new location occupies more than 3,500 square feet, documentation demonstrating that the square footage of the new location is no more than 110 percent of the square footage of the location at which the smoke shop was originally certified;

(C) A notarized, sworn statement attesting that the smoke shop will cease to operate in the old location; and

(D) Documentation demonstrating that the smoke shop, as operated in the new location:

(i) Meets the original requirements for certification set forth in subsection (5)(b) or (5)(c), respectively;

(ii) Does not allow the smoking of cigarettes unless at least 75 percent of the gross revenue of the business is derived from the sale of cigarettes.

(c) Smoking is not permitted on the premises of the new location until the Authority certifies the new location pursuant to subsection (10)(a) or (10)(b) of this rule.

(11) Certification may be revoked if a smoke shop is closed for an extended period of time or ceases operating at the location that is certified. The certificate holder must notify the Authority immediately if the smoke shop is closing for an extended period of time or will no longer be operating.

(12) Certification may be revoked if a smoke shop fails to meet certification requirements or fails to submit required documentation in accordance with subsection (7)(b) of this rule.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

333-015-0070

Oregon Health Authority Responsibilities

(1) The Authority shall maintain a system for receiving complaints, providing educational materials, conducting site visits, and issuing notices of violation.

(2) The Authority shall:

(a) Upon request and satisfactory review, provide certification to cigar bars and smoke shops verifying that they have met the definitions and standards for allowing smoking as set forth in ORS 433.835(1) and ORS 433.850(2)(d) and these rules;

(b) Provide education and assistance to employers and entities in charge of public places to help them comply with the Act;

(c) Receive, respond to, and investigate complaints of non-compliance with the Act and these rules;

(d) Prepare and follow up on remediation plans with sites found to be out of compliance with the Act or these rules; and

(e) Issue citations to violators of the Act or these rules, and conduct contested cases under ORS chapter 183 as necessary.

(3) Upon request of the LPHA that assumes authority for any or all of the responsibilities pursuant to ORS 433.855(4), provide consultation and technical assistance to the LPHA.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

333-015-0075

Complaint Response

The Authority or the LPHA shall respond to complaints as follows:

(1) Initial Complaint:

(a) The Authority or the LPHA shall assess whether the site in question is required to be smoke, aerosol or vapor free under the provisions of ORS 433.835 through 433.850.

(b) If the Authority or the LPHA determines that the place of employment, or public place (or any portion thereof), is required to be smoke, aerosol or vapor free, the Authority or the LPHA shall send a letter ("initial response letter") to the place of employment, or public place named in the complaint within 10 business days after receipt of the complaint of violation. The letter shall contain notification that the employer, or public place was reported as being in violation of the Act or these rules, and information on whom to contact for further information and assistance with compliance.

(c) The Authority or the LPHA shall send a form letter to the complainant, if the complainant has supplied his or her name and contact information, notifying the complainant that the complaint has been received and is being investigated or that the place of employment is not required to be smokefree under ORS 433.835 through 433.850.

(2) Second or Subsequent Complaint:

(a) If the Authority or the LPHA receives additional complaint(s) about the site within five business days after the "initial response letter" was sent, the Authority or the LPHA shall send a form letter to the complainant if the complainant has supplied his or her name and contact information, notifying the complainant that the complaint has been received and the investigation process begun.

(b) If the Authority or the LPHA receives a second or subsequent complaint about the site more than five business days after the "initial response letter" was sent, a representative of the Authority or the LPHA shall make an unannounced site visit within 30 days of complaint receipt to determine whether the employer or public place is in violation of the Act or these rules.

(c) An employer, entity in charge of a public place, smoke shop or cigar bar must permit the Authority or the LPHA access to the place of employment, public place (or any portion thereof), or smoke shop or cigar bar, in order to determine compliance with the ICAA. Failure to permit the Authority or LPHA access is a violation and may result in the imposition of civil penalties under OAR 333-015-0085(1).

(3) Remediation Plan:

(a) If, after a site visit, the Authority or LPHA finds violations of the ICAA an employer or entity in charge of a public place, certified smoke shop or cigar bar, or his or her designee, must cooperate with the Authority or LPHA to develop a remediation plan. All remediation plans must be completed within 15 days of the site visit.

(b) In special circumstances, an employer or entity in charge may request in writing an extension of time in which to complete the remediation plan. An extension may be granted only by the Public Health Director or designee.

(4) Post-remediation plan follow-up site visit:

(a) The Authority or the LPHA shall make a follow-up visit within 30 days of the remediation plan completion date to confirm completion.

(b) If a violation of the ICAA is found during the follow-up site visit the Authority may impose civil penalties.

(5) Post-remediation plan complaints:

(a) If an additional complaint is received within three years of the date the remediation plan was entered into, the Authority or the LPHA shall make an unannounced site visit within 21 days of complaint receipt. If a violation is found the Authority may impose a civil penalty.

(b) If an additional complaint is received more than three years of the date the remediation plan was entered into and there is no evidence of other violations in that three-year period, the Authority or the LPHA shall make an unannounced site visit and must follow the procedures in sections (3) and (4) of this rule.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

333-015-0078

Violations

(1) The following are violations of the ICAA:

- (a) Smoking, aerosolizing, vaporizing or carrying a lighted smoking instrument or inhalant delivery systems in an area where smoking, aerosolizing, or vaporizing of inhalants is prohibited.
- (b) Cigar or cigarette butts in an area where smoking is prohibited.
- (c) Ashtrays intended for use in an area where smoking is prohibited.
- (d) Absence or insufficiency of signs that are required under these rules.
- (e) Operating a cigar bar without proper certification from the Authority.
- (f) Operating as a smoke shop without proper certification from the Authority.
- (g) Smoking of non-cigar tobacco products in a cigar bar.
- (h) Smoking, aerosolizing or vaporizing instruments intended for use in an area where smoking, aerosolizing or vaporizing of inhalants is prohibited.
- (i) Non-compliance with any of the cigar bar or smoke shop certification requirements set forth in the Act or these rules.
- (j) Smoking, aerosolizing or vaporizing of inhalants or carrying a lighted smoking instrument or inhalant delivery system within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or place of employment, or any portion of an accessibility ramp.
- (k) Ashtrays intended to be used for smoking within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or place of employment, or any portion of an accessibility ramp.
- (l) Tables or outdoor seating or dining areas not clearly marked as non-smoking, non-aerosolizing or non-vaporizing, within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or place of employment, or any portion of an accessibility ramp.
- (m) Failure of an employer or entity in charge to cooperate in developing a remediation plan.
- (n) Failure of an employer or entity in charge of a public place, a cigar bar or smoke shop to permit the Authority or the LPHA to inspect all or any part of the premises.
- (o) Failure of an employer to provide a smoke, aerosol, or vapor free place of employment by permitting smoking, aerosolizing or vaporizing of inhalants within 10 feet of the entrances, exits, windows that open, ventilation intakes that serve an enclosed area, and accessibility ramps.

(2) Notice of Violation:

- (a) If the Authority has evidence of violations of the ICAA or these rules the Authority may impose civil penalties against an individual, an employer, an entity in charge of a public place, a cigar bar or smoke shop, in accordance with OAR 333-015-0085.
- (b) A Notice of Violation must be issued in compliance with the notice and civil penalty provision in ORS chapter 183 and OAR 333-015-0085.
- (c) Payment of civil penalties shall be made by mail to the Public Health Director and credited to the Tobacco Use Reduction Account, as required by ORS 433.855(1)(c).

(3) Failure to Cooperate: In addition to imposing civil penalties under OAR 333-015-0085 the Authority may initiate further legal action against an employer or entity in charge of a public place, a cigar bar or smoke shop including, but not limited to, requesting a court to enjoin operation of the business or public place if the employer or entity in charge of a public for violations of the ICAA or these rules.

(4) Revocations: The Authority may revoke a smoke shop certification for a substantial violation of any of the prohibitions of OAR 333-015-0078.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

333-015-0085

Penalties

The Authority may impose a civil penalty of up to \$500 per day for each violation according to the following schedule:

- (1) \$500 for violations of OAR 333-015-0078(1)(a) (c), (e), (f), (g), (i) and (n).
- (2) \$300 for the first violation of OAR 333-015-0078(1)(b), (d), (h), (j), (k), (l), (m), and (o).
- (3) \$500 for the second violation of OAR 333-015-0078(1)(a), (c), (e), (f), (g), (i), and (n).
- (4) \$400 for the second violation of OAR 333-015-0078(1)(b), (d), (h), (j), (k), (l), (m) and (o).
- (5) \$500 for the third and any subsequent violations of OAR 333-015-0078(1)(a) through (o).

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870