

Meeting Notes

RULES ADVISORY COMMITTEE

Relating to Passage of HB 2546 and HB 2969
Oregon Indoor Clean Air Act: ORS § 433.835 - 433.875

*Revisions to OAR 333-15-0030 to -0085:
Implementation of Requirements for Smokefree Environments in Workplaces and Public
Places*

August 6, 2015 10:30 am – 12:00 pm
Portland State Office Building (PSOB), Room 1B

Attendees: Karen Girard (Oregon Health Authority), Heather Gramp (facilitator, Oregon Health Authority), Bruce Gutelius (Oregon Health Authority), Sara Hartstein (Benton County Public Health), Kim La Croix (Oregon Health Authority), Matt Minahan (NW Vapor Association), Tanya Phillips (Jackson County Public Health), Penny Pritchard (Deschutes County Public Health), Luis Rodriguez (American Cancer Society, Cancer Action Network), Jeff Ruscoe (for Leticia Mack, Oregon Health Authority) Susan Steward (Building Managers Association), Michael Tynan (Oregon Health Authority).

Welcome and Overview of Rulemaking Process

- The meeting was convened by Heather Gramp at 10:32 a.m. with a welcome, information about call-in, meeting recording and logistics.
- The purpose of the Rules Advisory Committee (RAC) meeting was shared, specifically, to address rulemaking for the passage of HB 2546 and HB 2969.
 - HB 2546 defined Inhalant Delivery Systems (IDS) and inhalants, and requires Oregon Health Authority (OHA) to promulgate rules governing the Indoor Clean Air Act (ICAA). It has also banned sales of IDS to minors under the age of 18.
 - This is one of two RACs. A second RAC will address the packaging and labeling requirements set forth in HB 2546.
- The role of the RAC was described.
 - Committee members were selected to provide expertise and advice in rule making. OHA staff in attendance have content expertise. Observers are welcome to attend, but may not participate in the discussion. The RAC is not tasked with reaching consensus; individual advice is taken, and OHA will write rules that best reflect the statute.
 - Two more meetings of this committee are scheduled for August 26 and September 11. The schedule can be changed to add or cancel more meetings as necessary. All will be notified if there are any changes.

Review of Agenda and Meeting Plan

- Heather Gramp reviewed the agenda for the current meeting, indicating that today the RAC will review draft rules on the ICAA; at a later RAC meeting, we will cover HB 2969 and smoke shops.
- After the last of these RAC meetings, there will be official proposed rules, which are then open to public comment. There will also be public hearings in Pendleton, Portland, Bend and Medford.
- Final rules will most appropriately serve the intent and purpose of the statute as determined by OHA, while taking in to account feedback and advisement. The law goes into effect, January 1, 2016.

Most of the time today will be spent on definitions. General provisions throughout will be covered. Throughout the ICAA there are references to “tobacco” and “smoke,” so many of the updates will be to include “inhalant delivery systems that aerosolize or vaporize.”

Overview of the Oregon Indoor Clean Air Act

- Karen Girard provided an overview of the ICAA. (See attached handout titled *The Oregon Indoor Clean Air Act*)
- Two bills passed during the 2015 legislative session that affect the ICAA. HB 2546 adds inhalant delivery systems to the ICAA and HB 2969 allows consumption of food and beverages, not including alcohol, in certified smoke shops. Both bills will be reviewed in the two RACs to incorporate new statute language into the rules.

Proposed Rule Language

- Kim La Croix introduced the process of reviewing draft rule language. In general, many amendments to the draft rules add “aerosolizing” and “vaporizing” where smoking is prohibited. During this meeting, we will walk through each individual proposed change line by line, starting with definitions.
- Definition of cigar bars: makes clear that smoking of cigars is allowed but smoking, vaporizing or aerosolizing of any other inhalant is prohibited.
- Definition of inhalant and inhalant delivery system: The definition comes straight from statute, without any modifications in rules.
 - Committee Questions:
 - Does “FDA approved for therapeutic purpose” refer to something similar to nicotine patches? *Answer: Yes.*
 - Will signs be created using these definitions? *Answer: Yes.*
- Definition of place of employment: changes in this definition are for grammar or clarity.
- Definition of smoking instrument: means any cigar, cigarette, pipe or other instrument used to smoke tobacco, marijuana or any other inhalant.
- Definition of enclosed area: Smoking is not allowed in an “enclosed area” in public places or places of employment. The definition of “enclosed area” was removed from the statute and

needs to be defined in administrative rules. The proposed definition for “enclosed area” is “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 or passageways.” The definition in the previous ICAA was “All space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways that extend from the floor to the ceiling.”

Committee Questions / Comments:

- The definition of “enclosed area” in the previous statute contained confusing language.
 - By defining “enclosed area” in rule, we have the opportunity to arrive at a definition that is clearer for businesses and employers.
 - The committee discussed examples of definitions of enclosed areas from Oregon Building Codes, Benton County and New York City.
 - Outside elevators away from building are considered an enclosed area.
 - The ‘other substances’ component of the ‘inhalant’ definition in HB 2546 could refer to water.
 - In 2014, OHA received 593 complaints. Of these, 89 were not valid, 245 were resolved by clarifying the law with the business, 251 had a site visit or follow up where no violation was found, 6 went to citation, and 2 went to hearing.
 - Exclusive of doors or passageways means that if something is a window, it is still a wall.
 - Matt Minahan noted that the vaping lobby stands firm that vaping is not smoking, studies show secondhand vaping is completely different. This lobby didn’t fight the ICAA, but will tend to fight the idea that it is just like smoking.
- Kim La Croix next covered General Provisions area of rules
 - Adding aerosolizing and vaporizing as an inhalant to the general provision in subsection 1. In subsection 2, adding those words and making it clear that employers must provide a place of employment that is free of aerosolizing and vaporizing, in addition to smoke.
 - Adding that the medical use of marijuana is permitted in a place of employment that administers medical marijuana (section 18 of HB 2546, page 9) – straight from statute.

Committee Questions / Comments:

- Is smoke defined anywhere in the legislation? *Answer: No.*
- Signs
 - Currently require the no smoking symbol. There is no universally known symbol for aerosolizing or vaporizing. The draft language removes the “no smoking” symbol and replaces it with text. Employers have to post signs that indicate that aerosolizing or vaporizing (in addition to smoking) within 10 feet of entryway or exit is prohibited.

- Page 6 – cigar bars and smoke shops must have signs that say that smoking cigars or tobacco products is allowed in the establishment and that aerosolizing or vaporizing is prohibited (section 18, pg 9 and section 14 where definition of cigar bar is amended).

Committee Questions / Comments:

- Recommendation to change the language to state clearly that only cigars are allowed. The current language is confusing.
- The Public Health Division will provide downloadable templates for new signs on OHA website for businesses to use. Some counties provide signs to local businesses. Businesses must have the signs up when the law goes into effect on 1/1/2016.

Committee Questions / Comments:

- How will businesses be notified of change and where signs are available? *Answer: PHD developed a communications plan to notify the public and affected businesses about the change in the law. Suggestions for specific outreach are more than welcome.*

- Ashtrays: Added aerosolizing or vaporizing language. Inhalant delivery system debris (e.g. packaging) was included similar to cigarette debris.

Committee Questions / Comments:

- Like the addition to the debris section.

- Outdoor Smoking Areas: Added to allowable outdoor smoking areas language for aerosolizing and vaporizing where smoke is allowed.

Committee Questions / Comments:

- What does “establish area” mean, do they post signs – how does that work? *Answer: The law does not preclude a business from establishing a smoking area, as long as that area does not violate the ICAA.*

Next Meeting Agenda:

Heather Gramp said that PHD staff will investigate some of the questions raised about enclosed area, and come to the next RAC meeting on August 26 with another draft of this definition.

HB 2969 and smoke shops rules changes will also be covered at the next RAC.

Process review and Final Questions

Heather Gramp asked RAC members whether the process was inclusive and worked for those present and on the phone. RAC members stated that there were no issues or complaints.

RAC members were thanked for their participation. The meeting was adjourned at 11:55 a.m.