

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 26, 2015 10:30 am – 12:00 pm
Portland State Office Building (PSOB), Room 1E

Attendees: Karen Girard (Oregon Health Authority), Heather Gramp (facilitator, Oregon Health Authority), Bruce Gutelius (Oregon Health Authority), Sara Hartstein (Benton County Health Department), Kim La Croix (Oregon Health Authority), Susan Miles (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), Leticia Mack (Oregon Health Authority), Carrie Nyssen (American Lung Association of the Mt. Pacific), Shannon O’Fallon (Oregon Department of Justice) Susan Steward (Building Owners and Managers Association), Michael Tynan (Oregon Health Authority).

Welcome and Overview of Rulemaking Process

- The meeting was convened by Heather Gramp at 10:33 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 also banned sales of IDS to minors under the age of 18.
 - Another 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 also 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.

Review of Agenda and Meeting Plan

- Heather Gramp recapped the previous meeting on August 6 (notes are available [online: https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/SmokefreeWorkplaceLaw/Pages/index.aspx](https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/SmokefreeWorkplaceLaw/Pages/index.aspx)).

- Majority of time in today's meeting will be spent on the definition of enclosed area and rules related to smoke shops.

Proposed Rule Language

Enclosed area

- Kim La Croix reviewed definition of enclosed area and showed pictures of examples of what structures may be affected.
- Enclosed area definitions of other jurisdictions were reviewed, including New York City, Benton County and City of Portland Building Code.
- Current definition of enclosed area in rule: all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary wall or windows, exclusive of doors or passage ways, that extend from the floor to the ceiling.
- Proposed definition of enclosed area: All space between a floor and a ceiling or roof that is enclosed on two or more sides by permanent or temporary walls or windows, exclusive of doors or passageways. If no ceiling or roof is present, "enclosed area" means all space that is encompassed by four or more sides by permanent or temporary walls or windows, exclusive of doors or passageways.

Committee Questions / Comments:

- There was discussion about gaps between the wall and ceiling. It was mentioned that the proposed definition may not make this clearer.
- There was discussion about whether the definition of "enclosed area" should include specifics on distance and perimeter, especially for very large spaces. Simplifying the definition and including language about a cover or roof would help. For example, it is then clear that a parking garage is enclosed. For spaces without a cover, two or more sides was suggested as a criteria to meet the definition of "enclosed."
- There was discussion about how the business community will experience these changes, if the rules go with the definition of cover or no cover and two sides. There will likely be resistance from some business owners, however, this is an opportunity to minimize exposure to secondhand smoke. The law is complaint-driven, and if rules are clear for site visits, there was no concern on the county enforcement side.
- The RAC discussed that in addition to the proposed definition, OHA should look at Benton County's definition, which covers issue about space and coverage, and comes from the Tobacco Control Legal Consortium. This may be a quality definition, but there were concerns voiced about calculating percentages. The RAC also offered that "three or more sides" might be an alternative.
- Shannon O'Fallon clarified that OHA has discretion to define enclosed area in rule but the broader context of ICAA must be looked at. If there is evidence to suggest that people smoking in an area with two walls is trapping smoke, then that is consistent with ICAA.

- Staff are still learning about the process for review if substantive changes are made, based on public input received during the public comment periods and hearings.
- OHA will work to get definitions as precise and clear as possible.

Smoke Shops

- The law previously didn't allow food or drink consumption in smoke shops. Employees were not able to eat or drink at work and customers could not bring in outside food or beverages for consumption on-site.
- HB 2969 allows consumption of food and non-alcoholic beverages in certified smoke shops but it does not allow for the sale of food, non-alcoholic or alcoholic beverages.

Committee Questions/Comments:

- There was discussion of some minor clarifications, such as redundancy in stating beverage and alcoholic beverage.
- There was discussion about intent and the need to clarify whether it is just for employees, or everyone in the smoke shop (the latter is the intent), and whether things like a water cooler are covered; the suggestion was that it should be exempt.
- Proposed rules do not allow aerosolizing or vaporizing of inhalants other than tobacco, per HB 2546.
- Proposed rules include language that signs should include wording to say that on-premises consumption of alcohol is not allowed.
- Proposed rules include language that smoke shops do not sell or offer food or beverages, including alcoholic beverages.

Complaint Response

- Proposed rules add "aerosolize and vaporize" language to where the rules refer to "smoke."
- New section on revocations states that smoke shop certifications may be revoked for substantial violations of any prohibitions.

Violations

- Proposed rules list all of the ICAA violations in the rest of rules, so here OHA is adding "aerosolize and vaporize" anywhere the rules refer to "smoking."

Penalties

- Clarification that entity can be fined up to \$500 per day for each violation.

Committee Questions/Comments:

- Is this defined or is it OHA discretion? *Answer: It is OHA discretion.*

Statement of Need and Fiscal Impact

Karen Girard provided an overview of the required "Statement of Need and Fiscal Impact" (SNFI) that OHA will file with the Secretary of State.

- A handout of the draft SNFI was provided.
- Reviewed draft statement about changes being made to rules and what the estimated fiscal impact may be.
 - There would be minimal cost to implement.
 - There may be an increase in initial complaints received by OHA as people become familiar with the law.
 - This law affects all places of employment and public places.
 - There are 24 certified smoke shops and 10 certified cigar bars in Oregon affected.
 - There are approximately 250 vapor retailers.

Committee Questions/Comments:

- Susan Steward clarified the name of the Building Owners and Managers Association.

Next Steps

Heather Gramp thanked the RAC for all of their input. During the last two meetings, we looked at enclosed area from many angles, and have enough information to make revisions and move forward with finalizing the proposed rules. We will submit the SNFI and notice of rulemaking hearing with the Secretary of State, along with the proposed rules.

Once filed, the RAC will receive the finalized proposed rules and notice of where the public hearings will be held and how/where to provide public comment.

Notices will go to legislators and all interested parties.

If feedback is received that leads OHA to make substantive changes to proposed rules, it is possible that another public comment period would be opened up.

Finalized rules would be filed with the Secretary of State and the rules would go into effect as early as January 1, 2016.

The September 11 meeting is canceled since the RAC was able to finish today.

RAC members were thanked for their participation. The meeting was adjourned at 11:32 a.m.