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ARCHIVES DIVISION

MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED

10/17/2017 4:11 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Standards for increasing the age to purchase tobacco products and inhalant delivery systems

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/30/2017 5:00 PM

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

CONTACT: Brittany Hall
503-449-9808
brittany.a.hall@state.or.us

800 NE Oregon St. Suite 930
Portland, OR 97232

Filed By:
Brittany Hall
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/27/2017

TIME: 10:00 AM

OFFICER: Jana Fussell

ADDRESS: Jackson County Health
Department

140 S. Holly Street

Room HHS1EDCTR1009

Medford, OR 97501

DATE: 11/28/2017

TIME: 1:30 PM

OFFICER: Brittany Hall

ADDRESS: Portland State Office
Building

800 NE Oregon St. Room 1A

Portland, OR 97232

NEED FOR THE RULE(S):

In this rulemaking, the Oregon Health Authority (Authority) is proposing amendments to comply with statutory changes from the passage of Senate Bill 754 (Oregon Laws 2017, chapter 701).

The proposed rulemaking:

1. Amends definitions in rules for reducing the sale of tobacco products and inhalant delivery systems to people under 21 to reflect the purpose of the statute.
2. Revises content of tobacco products and inhalant delivery system retailer notice to reflect the statute
3. Amends language in rules for the sale of tobacco products and inhalant delivery systems to reflect the increase in legal sales age for purchasing tobacco products or inhalant delivery systems from 18 to 21.
4. Amends language in the Indoor Clean Air Act rules to align certified smoke shop requirements with the statutory changes from the passage of Senate Bill 754.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

1. Oregon Revised Statutes 433.835 through 433.875 and 433.990(5):
https://www.oregonlegislature.gov/bills_laws/ors/ors433.html
2. Oregon Revised Statutes 431A.175 through 431A.183:
https://www.oregonlegislature.gov/bills_laws/ors/ors431a.html
3. Oregon Administrative Rules 333-015-0025 through 333-333-015-0070 and 333-015-0220 through 333-015-0220: http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_333/333_015.html
4. SB 754 (Oregon Laws 2017, chapter 701):
<https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB754>

FISCAL AND ECONOMIC IMPACT:

These proposed administrative rules are predicted to minimally increase costs for the Oregon Health Authority and local public health authorities. See below for further explanation. There is no predicted increase in costs for small businesses.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) 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 revise inspection protocols to reflect the increase in legal sales age of tobacco products and inhalant delivery systems from 18 to 21, as well as to reflect the new tiered system for issuing violations.

The Authority and local public health authorities 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 estimated cost of compliance impact on the public.

(2)(a) As of September 6, 2017, there are 23 certified smoke shops in Oregon, which are subject to specific changes in the rules.

As of September 6, 2017, there are an estimated 3,919 retailers that currently sell tobacco products or inhalant delivery systems in Oregon. This estimate is based on tobacco retailer inspection data and Oregon Health Authority's assessment of the tobacco retail environment.

(b) Minimal additional reporting, recordkeeping or other administrative activities by private businesses are projected.

(c) Tobacco retailers and certified smoke shops will be required to modify signs and protocols for selling tobacco products and inhalant delivery systems to ensure compliance. Costs will vary.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The 2017 Rules Advisory Committee on standards for increasing the age to purchase tobacco products and inhalant delivery systems from 18 to 21 included representatives from the Northwest Grocery Association, the Oregon Hookah Association, which represent small businesses, and an inhalant delivery system representative.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

333-015-0025, 333-015-0030, 333-015-0040, 333-015-0068, 333-015-0070, 333-015-0200, 333-015-0205, 333-015-0210, 333-015-0215, 333-015-0220

AMEND: 333-015-0025

RULE SUMMARY: The Authority and Purpose portion of the Indoor Clean Air Act (ICAA) rules needs to be amended in order to reflect that ICAA statute (ORS 433.835 through 433.875) has been amended by Oregon Laws 2017, chapter 701.

CHANGES TO RULE:

333-015-0025

Oregon Indoor Clean Air Act: Authority and Purpose ¶¶

(1) These rules are adopted pursuant to the authority granted to the Oregon Health Authority, Public Health Division, in ORS 433.835 through 433.875, as amended by Oregon Laws 2017, chapter 701, and 433.990(5) concerning smokefree places of employment and public places.¶¶

(2) The purpose of the Oregon Indoor Clean Air Act is to reduce the health hazard caused to persons by inhaling smoke from tobacco products or other inhalants.

Statutory/Other Authority: ORS 433.855, OL 2017, Ch. 701

Statutes/Other Implemented: ORS 433.835 -433.875, 433.990(5), OL 2017, Ch. 701

AMEND: 333-015-0030

RULE SUMMARY: The Definitions portion of the ICAA rules needs to be amended in order to align with the change in statute. Specifically, the definition of "act" now includes "as amended by Oregon Laws 2017, chapter 701, section 12."

CHANGES TO RULE:

333-015-0030

Oregon Indoor Clean Air Act: 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, as amended by Oregon Laws 2017, chapter 701, section 12 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 employers 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 persons respiratory system;¶

(b) Is inhaled for the purpose of delivering the nicotine, cannabinoid or other substance into a persons 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 employers 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.

Statutory/Other Authority: ORS 433.855

Statutes/Other Implemented: ORS 433.835

AMEND: 333-015-0040

RULE SUMMARY: The Signs portion of the ICAA rules needs to be amended to align with statute. Specifically, smoke shops certified under OAR 333-015-0068(5)(a) (b) and (c) are now required to post signs stating that:

- "It is unlawful to sell tobacco products or inhalant delivery systems to anyone under the age of 21;" and
- "On premises consumption of alcohol is prohibited."

Amendments also specify that smoke shops certified under OAR 333-015-0068(5)(a) and (b) are now required to post a sign stating that "anyone under the age of 21 is prohibited from entering the premises," as opposed to the previously required sign prohibiting anyone under 18 from entering.

CHANGES TO RULE:

333-015-0040

Oregon Indoor Clean Air Act: 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 certified under OAR 333-015-0068(5)(a) and (b), 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 21 is prohibited from entering the premises; ~~and~~ ¶

(c) It is unlawful to sell tobacco products or inhalant delivery systems to anyone under the age of 21; ¶

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

~~(e) Smoking, aerosolizing or vaporizing of inhalants that are not tobacco products is prohibited;~~ ~~(6); and~~ ¶

(f) On premises consumption of alcohol is prohibited. ¶

(6) In a smoke shop certified under OAR 333-015-0068(5)(c), 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; ¶

(c) It is unlawful to sell tobacco products or inhalant delivery systems to anyone under the age of 21; ¶

(d) Cigarette smoking is prohibited on the premises, in smoke shops where cigarette smoking is not allowed under

OAR 333-015-0068(7)(e):¶

(e) Smoking, aerosolizing or vaporizing of inhalants that are not tobacco products is prohibited; and¶

(f) On premises consumption of alcohol is prohibited.¶

(7) 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.

Statutory/Other Authority: ORS 433.855, OL 2017, Ch. 701

Statutes/Other Implemented: ORS 433.835 - 433.870, OL 2017, Ch. 701

AMEND: 333-015-0068

RULE SUMMARY: The Smoke Shops portion of the ICAA rules needs to be amended to reflect that, as part of their certification criteria, smoke shops certified under OAR 333-015-0068(5)(a) and (b) may not allow people under the age of 21 to enter. Amendments also specify that smoke shops certified under OAR 333-015-0068(5)(b) or (c) must continue to meet the renewal criteria described in subsection (8) of the rule, as opposed to the previous requirement to meeting the original criteria for smoke shop certification. Amendments also state that, if a certified smoke shop wishes to change its location or transfer its certification to another owner, it must meet the certification renewal requirements, as opposed to the previous requirement of meeting the original certification requirements.

CHANGES TO RULE:

333-015-0068

Oregon Indoor Clean Air Act: 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 ~~21~~ 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~~431.175 (as amended by Oregon Laws 2017, chapter 701, section 10); and ¶
 - (vii) Does not allow the smoking, aerosolizing or vaporizing of inhalants that are not tobacco products. ¶
 - (B) Documentation of the businesss sales, broken down by category of product; ¶
 - (C) Evidence, such as photographs, of signs prohibiting: ¶
 - (i) Persons under ~~21~~ 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 218 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 businesss 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 businesss 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: ¶

(i) Persons under 218 years of age from entering the premises; and ¶

(ii) On premises consumption of alcohol. ¶

(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 businesss sales, broken down by category of product, including cigarette sales; and ¶

(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) 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 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 renewal criteria for certification once certified described in section (8) of this rule. The Authority may revoke certification if the smoke shop ceases to meet the criteria for certification renewal criteria.¶

(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 shops 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 shops gross revenue is derived from the sale of tobacco products or smoking instruments; and¶

(B) Documentation of the smoke shops 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 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 shops mailing address, phone number, and other contact information are out of date, then the Authority may suspend the smoke shops 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
notarized, sworn statement attesting that the smoke shop currently: ¶

(i) Is 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) Prohibits persons under 21 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; and ¶
- (iv) Does not sell or offer food or beverages, including alcoholic beverages. On premises consumption of food and beverages, excluding alcohol, is permitted.¶
- (B) Documentation of the business sales, broken down by category of product; ¶
- (C) 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; ¶
- (D) Evidence, such as photographs, of signs prohibiting:¶
 - (i) Persons under 21 years of age from entering the premises; and¶
 - (ii) On premises consumption of alcohol.(c) To renew certification, a smoke shop certified under subsection (5)(c) of this rule must submit:¶
 - (A) A notarized, sworn statement attesting that the smoke shop currently: ¶
 - (i) Is primarily engaged in the sale of tobacco products and smoking instruments, and derives at least 75 percent of its gross revenue from the sale of cigarettes such sales; ¶
 - (ii) Prohibits persons under 18 years of age from entering the premises; ¶
 - (ii) Does not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises; and¶
 - (iv) Does not sell or offer on-premises consumption of alcoholic beverages.¶
 - (B) Documentation of the business sales, broken down by category of product, including cigarette sales; and ¶
 - (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) 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 ¶
 - (E) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.¶
- (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 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~~ certification renewal requirements described in subsection (8) of this rule 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 shops 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~~ certification renewal requirements described in section (8) of this rule 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 renewal requirements described in section (8) of this rule or fails to submit required documentation in accordance with subsection (7)(b) of this rule.

Statutory/Other Authority: ORS 433.855, OL 2017, Ch. 701

Statutes/Other Implemented: ORS 433.835 - 433.870, OL 2017, Ch. 701

AMEND: 333-015-0070

RULE SUMMARY: The Oregon Health Authority Responsibilities portion of the ICAA rules needs to be amended to reflect that ORS 433.847 (ICAA statute) has been amended by Oregon Laws 2017, chapter 701.

CHANGES TO RULE:

333-015-0070

Oregon Indoor Clean Air Act: 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 433.847 (as amended by Oregon Laws 2017, chapter 701)~~, 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.
Statutory/Other Authority: ORS 433.855, OL 2017, Ch. 701
Statutes/Other Implemented: ORS 433.835 - 433.870

AMEND: 333-015-0200

RULE SUMMARY: The Definitions portion of the Tobacco and Inhalant Delivery Systems Sales to Persons Under 21 rules needs to be amended to align with statute. Specifically, amendments remove the definition of "minor" and "smoking instrument," revise "tobacco products" to include a device that can be used to deliver tobacco products and revise "vending machine" to reflect ORS 167.402.

CHANGES TO RULE:

333-015-0200

Tobacco and Inhalant Delivery Systems Sales to ~~Minors~~Persons Under 21 Years of Age: Definitions ¶¶

(1) "Authority" means the Oregon Health Authority. ¶¶

(2) "Block grant" means the Substance Abuse Prevention and Treatment Block Grant pursuant to 42 USC 300x21e et seq. ¶¶

(3)(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. ¶¶

~~(4) "Minor" means an individual under 18 years of age. ¶¶~~

~~(5) "Outlet" means any location which sells at retail or otherwise distributes tobacco products or inhalant delivery systems to consumers including, but not limited to, locations that sell such products over the counter or through vending machines. ¶¶~~

~~(6) "Secretary" means the Secretary of the United States Department of Health and Human Services. ¶¶~~

~~(7) "Smoking instrument" means any cigar, cigarette, pipe or other instrument used to smoke tobacco, marijuana, cocaine or other inhalant as defined in ORS 433.835 and ORS 163.575. ¶¶~~

~~(8) "Tobacco product" means bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, shisha, hookah tobacco, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cutting and sweepings of tobacco prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and cigarettes, or a device that can be used to deliver tobacco products to a person using the device that has not been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose as defined in ORS 431A.175. ¶¶~~

~~(9) "Vending machine" means a mechanical, electronic or similar device that, upon the insertion of tokens, money or another form of payment, dispense tobacco products(s) or inhalant delivery systems(s) as defined in ORS 167.402.~~

Statutory/Other Authority: ORS 431.~~853~~A.175, 431A.183, OL 2017, Ch. 701

Statutes/Other Implemented: ORS 431.~~853~~A.175, 431A.183, OL 2017, Ch. 701

AMEND: 333-015-0205

RULE SUMMARY: The Notice Posting Requirement portion of the Tobacco and Inhalant Delivery Systems Sales to Persons Under 21 rules needs to be amended so that the notice no longer includes "smoking instruments" and "18" is changed to "21", as the age up to which the sale of tobacco products and inhalant delivery systems is prohibited.

CHANGES TO RULE:

333-015-0205

Tobacco and Inhalant Delivery Systems Sales to ~~Minors~~Persons Under 21 Years of Age: Notice Posting Requirement ¶

(1) An outlet must post a notice substantially similar to the notice described in section (2) of this rule in a location that is clearly visible to the seller and the purchaser. ¶

(2) Content of the Notice: NOTICE: The sale of tobacco products, ~~smoking instruments~~ and inhalant delivery systems to persons under 21~~18~~ years of age is prohibited by law. Any person who sells, or allows to be sold, a tobacco product, ~~smoking instrument~~ or inhalant delivery system to a person under 21~~18~~ years of age is in violation of Oregon law. ¶

(3) The Authority may impose a civil penalty for each violation of this rule that is not less than \$250 or more than \$1,000.

Statutory/Other Authority: ~~ORS 431.840, 431.845~~ORS 431A.175, 431A.183

Statutes/Other Implemented: ~~431.840, 431.845~~ORS 431A.175, 431A.183, OL 2017, Ch. 701

AMEND: 333-015-0210

RULE SUMMARY: The Location of Tobacco Products Within a Retail Store portion of the Tobacco and Inhalant Delivery Systems Sales to Persons Under 21 rules needs to be amended so that a tobacco retailer is prohibited from locating tobacco products or inhalant delivery systems in a location where they are accessible by people under 21, as opposed to the previous age requirement of 18.

CHANGES TO RULE:

333-015-0210

Tobacco and Inhalant Delivery Systems Sales to ~~Minors~~Persons Under 21 Years of Age: Location of Tobacco Products Within a Retail Store ¶

(1) A person having authority over the location of tobacco products or inhalant delivery systems in a retail store may not locate the tobacco products or inhalant delivery systems in a location where the tobacco products or inhalant delivery systems are accessible by store customers without assistance by a store employee. ¶

(2) This rule does not apply to a person if the location at which the tobacco products or inhalant delivery systems are sold is a store or other establishment at which persons under 21~~18~~ years of age are prohibited.

Statutory/Other Authority: ORS 163.575, 167.400, 167.402, 167.407, ~~431.840A.175~~, ~~431.85A.183~~

Statutes/Other Implemented: ~~ORS 431.853~~431A.183, OL 2017, Ch. 701

AMEND: 333-015-0215

RULE SUMMARY: The Enforcement portion of the Tobacco and Inhalant Delivery Systems Sales to Persons Under 21 rules needs to be amended to reflect that the Authority shall coordinate with law enforcement to ensure compliance with laws discouraging the sale of tobacco products and inhalant delivery systems to people under 21, as opposed to the previous age requirement of 18. Amendments also reflect the age change from 18 to 21 and the removal of the term "smoking instruments" when describing the procedures to be used when determining a random sample of retailers for conducting inspections.

CHANGES TO RULE:

333-015-0215

Tobacco and Inhalant Delivery Systems Sales to ~~Minors~~Persons Under 21 Years of Age: Enforcement ¶

(1) The Authority shall coordinate with law enforcement agencies to conduct random, unannounced inspections of wholesalers and retailers of tobacco products, ~~smoking instruments~~ or inhalant delivery systems to ensure compliance with, and to enforce, the laws of this state designed to discourage the sale of tobacco products; ~~smoking instruments~~ and inhalant delivery systems to ~~minors~~persons under 21 years of age. Nothing in these rules shall preempt local jurisdictions from passing ordinances to conduct unannounced inspections. ¶

(2) Random Sample Procedures: Random, unannounced inspections will be based on the following methodological procedures. ¶

(a) Cover a range of outlets, not to be preselected on the basis of prior violations, to measure overall levels of compliance as well as to identify violations; ¶

(b) Be conducted in such a way as to provide a probability sample of outlets in order to estimate the success of enforcement actions being taken throughout the state; ¶

(c) Use reliable methodological design and adequate sample design to reflect: ¶

(A) Distribution of the population of those under ~~21~~ throughout the state; and ¶

(B) Distribution of outlets throughout the state that are accessible to ~~minors~~persons under 21 years of age; and ¶

(d) Be conducted at times when ~~minors~~persons under 21 years of age are likely to purchase tobacco products; ~~smoking instruments~~ or inhalant delivery systems. ¶

(3) Targeted Inspections: The Authority may conduct targeted inspections of outlets where a compliance problem exists or is suspected. Information gained in targeted inspection will not be included in data used to determine rate of offense in random inspections. ¶

(4) Conducting Inspections: Inspections may take place: ¶

(a) Only in areas open to the public; ¶

(b) Only during the hours that tobacco products, ~~smoking instruments~~ or inhalant delivery systems are sold; and ¶

(c) No more frequently than once a month in any single outlet unless a compliance problem exists or is suspected.

For purposes of this rule, a "single outlet" refers to a specific address location of an outlet, regardless of ownership. ¶

(5) The Authority may use ~~minors~~persons under 21 years of age to complete inspections to determine compliance with these rules.

Statutory/Other Authority: ORS ~~431.85A.178, 431A.180, 431A.183~~

Statutes/Other Implemented: ORS ~~431.853A.178, 431A.180, 431A.183~~, OL 2017, Ch. 701

AMEND: 333-015-0220

RULE SUMMARY: The Annual Report portion of the Tobacco and Inhalant Delivery Systems Sales to Persons Under 21 rules needs to be amended to remove the reference to smoking instruments and change "minor" to "persons under 21 years of age" when referring to reducing the availability of tobacco products and inhalant delivery systems among a particular age group.

CHANGES TO RULE:

333-015-0220

Tobacco and Inhalant Delivery Systems Sales to ~~Minors~~Persons Under 21 Years of Age: Annual Report ¶

(1) Contents of Report: The Authority shall annually submit a report to the Oregon Legislature and to the Secretary, along with the state's application for block grant funding. The report shall include: ¶

(a) A description of the state's activities to enforce the laws described in OAR 333-015-0200 through OAR 333-015-0215 during the fiscal year preceding the fiscal year for which the state is seeking the grant; ¶

(b) A description outlining the overall success the state has achieved during the previous fiscal year in reducing the availability of tobacco products, ~~smoking instruments~~ and inhalant delivery systems to ~~individuals under the age~~ persons under 21 years of age, showing: ¶

(A) Results of the random and targeted unannounced inspections; ¶

(B) Results of over-the-counter and vending machine outlet inspections reported separately; ¶

(c) A description of how the unannounced inspections were conducted and the methods used to identify outlets; and ¶

(d) Strategies to be utilized by the state for enforcing such laws during the fiscal year for which the grant is sought. ¶

(2) Public Comment Required: The annual report shall be made public and public comment shall be obtained and considered before submitting the report to the Secretary.

Statutory/Other Authority: ORS 431.85A.183

Statutes/Other Implemented: ORS 431.853A.183, OL 2017, Ch. 701