

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

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ARCHIVES DIVISION
SECRETARY OF STATE

Oregon Health Authority, Public Health Division
Agency and Division

333
Administrative Rules Chapter Number

Implementing changes to the definition of "enclosed area" under the Oregon Indoor Clean Air Act

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

In the Matter of:

Amending OAR chapter 333, division 15, relating to the implementation of the Oregon Indoor Clean Air Act (ICAA).

Statutory Authority:

ORS 433.855

Other Authority:

Statutes Implemented:

ORS 433.835

Need for the Rule(s):

In this rulemaking, the Oregon Health Authority (Authority) is proposing to discuss the definition of "enclosed area" to support clarity and ensure the rules are aligned with, and reflect the purpose of, the Oregon Indoor Clean Air Act (ICAA) statute.

The proposed rulemaking reviews the "enclosed area" definition to better reflect the purpose of the statute, and/or add clarity to the rules.

Documents Relied Upon, and where they are available:

1. Oregon Revised Statutes 433.835 through 433.875 and 433.990(5)
<http://www.oregonlaws.org/ors/433.835>
2. Oregon Administrative Rules 333-015-0030 through 333-015-0085
http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_333/333_015.html

Fiscal and Economic Impact:

For businesses that have established outdoor smoking or vaping areas that comply with the current definition of enclosed area in OAR 333-015-0030 or that comply with the original definition of enclosed area in ORS 433.835 prior to the passage of HB 2546 in 2015, there will be no impact since all areas that are considered non-enclosed under the current and original definitions will also be considered non-enclosed under the proposed definition.

Businesses that decide to adopt a business model that assumes some revenue derived from customer use of areas of their business for smoking or vaping, but do not currently have allowable non-enclosed places for smoking or vaping, may incur expenses to create non-enclosed places for smoking and vaping.

There are no data or studies that specifically address varying definitions of enclosed area. However, a review of the scientific literature on health and economic outcome studies of smokefree legislation from 2000 to early 2010 indicated that smokefree laws do not adversely affect business revenues or operating costs (Hahn, E Am J Prev Med 2010;39(6S1):S66 -S76).

Statement of Cost of Compliance:

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

The administrative rule revisions are predicted to minimally increase enforcement costs for the Oregon Health Authority and/or local public health authorities. The ICAA is a complaint-driven law; and there may be an increase in the number of complaints filed by employees and the public. State agencies 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. Recordkeeping and administrative activities are also increased in conjunction with the number of complaints and enforcement actions.

There is no estimated cost of compliance impact on the public.

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

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

The ICAA applies to all businesses except sole proprietorships, not open to the public and with no employees. Therefore, most of Oregon's small businesses (approximately 100,000) are subject to the rules.

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

Minimal additional reporting, recordkeeping and other administrative activities by private businesses are projected.

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

Some establishments may be required to change required signage or adapt expectations of staff duties to ensure compliance.

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

The 2017 Indoor Clean Air Act Rules Advisory Committee included representatives from the Northwest Vapor Association, Building Owners and Managers Association, Oregon Hookah Association, Oregon Restaurant and Lodging Association and the Association of Independent Restaurant and Bar Owners for Transparency.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

07-24-2017 5:00 p.m.	Brittany Hall	brittany.a.hall@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address