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RULES:

333-015-0025, 333-015-0030, 333-015-0035, 333-015-0040, 333-015-0045, 333-015-0056, 333-015-0057, 333-015-0058, 333-015-0059, 333-015-0061, 333-015-0066, 333-015-0069, 333-015-0070, 333-015-0075, 333-015-0078, 333-015-0085, 333-015-0220

AMEND: 333-015-0025

RULE TITLE: Oregon Indoor Clean Air Act: Authority and Purpose

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0025: The Authority and Purpose portion of the Indoor Clean Air Act (ICAA) rules is amended in order to reflect that ICAA statute (ORS 433.835 through 433.875) has been amended by Oregon Laws 2019, chapter 456 (OL 2019, ch. 456).

RULE TEXT:

(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 and 433.990(5) concerning smoke-free 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

STATUTES/OTHER IMPLEMENTED: ORS 433.835 -433.875, 433.990

AMEND: 333-015-0030

RULE TITLE: Oregon Indoor Clean Air Act: Definitions

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0030: The Definitions portion of the ICAA rules is amended in order to reflect that ICAA statute (ORS 433.835 through 433.875) has been amended by OL 2019, ch. 456, to remove definitions that are not included in rule, to add definitions that are used in rule, to update statutory references and to clarify definitions: Specifically:

- "Cigarillos" definition is removed as it is not used in rule
- "Employer" definition language is amended to use plain language
- "Extended period of time" is being removed as it is no longer in rule
- "Local Public Health Authority" is being amended to update the references ORS, as the number has changed
- "Rooms designated by the owner or entity in charge of a hotel or motel as rooms in which smoking is permitted" is removed as it is not used in rule
- "Smoking instrument" is being amended to replace "marijuana" with "cannabis" to mirror statutory language
- "Smoke shop" is being amended to reference statute rather than rule
- "Smoke Shop A" is added to be used in rules in order to clarify processes and procedures for businesses and OHA
- "Smoke Shop B" is added to be used in rules in order to clarify processes and procedures for businesses and OHA
- "Smoke Shop C" is added to be used in rules in order to clarify processes and procedures for businesses and OHA
- "Tobacco products" is added and has the statutory definition
- "These rules" is added to use plain language instead of repeated numbered rule references
- "Type A Certification" is added to be used in rules in order to clarify processes and procedures for businesses and OHA
- "Type B Certification" is added to be used in rules in order to clarify processes and procedures for businesses and OHA
- "Type C Certification" is added to be used in rules in order to clarify processes and procedures for businesses and OHA

RULE TEXT:

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) "Employer" means any entity or individual who engages an individual to perform work or services in a place of employment.

(7) "Enclosed area" has the meaning given that term in ORS 433.835.

(8) "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.

(9) "Entrance" means any point of ingress, including an accessibility ramp and stairs, to an enclosed area from a non-enclosed area.

(10) "Exit" means any point of egress, including an accessibility ramp and stairs, from an enclosed area to a non-enclosed area.

(11) "Gross revenue" means all receipts from the sale of product(s) less the amount of any rebates, refunds, or credits.

(12) "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.

(13) "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.

(14)(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.

(15) "Local Public Health Authority" or "LPHA" means the county government, unless a health district has been formed under ORS 431.443, 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.

(16) "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.

(17) "Noncommercial tobacco products" means unprocessed tobacco plants or tobacco by-products used for ceremonial or spiritual purposes by American Indians.

(18) "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 329A.250 or a facility providing adult day care as defined in ORS 410.490.

(19) "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.

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

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

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

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

(24) "Smoke shop" means a business that is certified with the Oregon Health Authority as a smoke shop under ORS 433.847(2)(a), (b), or (c).

(25) "Smoke shop A" means a business certified by the Authority as a smoke shop under ORS 433.847(2)(a).

(26) "Smoke shop B" means a business certified by the Authority as a smoke shop under ORS 433.847(2)(b).

(27) "Smoke shop C" means a business certified by the Authority as a smoke shop under ORS 433.847(2)(c).

(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) "Tobacco products" means:

(a) Bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other forms of tobacco, prepared in a manner that makes the tobacco suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking;

(b) Cigarettes as defined in ORS 323.010(1); or

(c) A device that:

(A) Can be used to deliver tobacco products to a person using the device; and

(B) Has not 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.

(31) "These rules" means OAR 333-015-0025 to 333-015-0090.

(32) "Type A Certification" means a smoke shop certification issued under ORS 433.847(2)(a).

(33) "Type B Certification" means a smoke shop certification issued under ORS 433.847(2)(b).

(34) "Type C Certification" means a smoke shop certification issued under ORS 433.847(2)(c).

(35) "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.

(36) "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: 333-015-0035

RULE TITLE: Oregon Indoor Clean Air Act: General Provision

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0035: The General Provision portion of the ICAA rules is amended to add "place of employment" to ICAA requirements, correct a numbering error, and clarify language already in this portion of the rules.

RULE TEXT:

- (1) No person shall smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument in a public place or place of employment 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(6) through (8).
- (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(5) through (8).
- (3) In providing a smoke, aerosol, or vapor free place of employment, an employer must ensure that:
 - (a) No person smokes, aerosolizes or vaporizes an inhalant within a place of employment.
 - (b) 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; and
 - (D) Ventilation intakes that serve an enclosed area.
- (4) 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; and
 - (d) Ventilation intakes that serve an enclosed area.
- (5) 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 of inhalants 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 at 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.
- (6) 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.

(7) The following areas are not required to be smoke-free:

(a) Smoke shops that are certified by the Authority under these rules;

(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 comply with rules set forth in OAR 333-015-0035(5).

(8) The medical use of marijuana is permitted in the place of employment of a licensee of a professional licensing board as described in ORS 475B.919.

(9) 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.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

AMEND: 333-015-0040

RULE TITLE: Oregon Indoor Clean Air Act: Signs

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0040: The Signs portion of the ICAA rules is amended to align with OL 2019, ch. 456 and to clarify where employers must post signs. Because the sign requirements for all three types of smoke shops are now aligned (OL 2019, ch. 456) and stated generally in the rules, sign requirements specifically for Type C smoke shop are being removed from rule.

RULE TEXT:

- (1) An employer or entity in charge, except in those places described in OAR 333-015-0035(5) through (8), must post signs prominently at each entrance and exit to the place of employment or public place.
 - (a) Signs must state that smoking, aerosolizing or vaporizing of inhalants is prohibited within 10 feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area.
 - (b) Signs may be used without the words "within 10 feet" if the signs specify a restriction greater than 10 feet or designate the entire premises as smoke, aerosol and vapor free.
- (2) Nothing in these rules shall prevent an employer or an entity in charge 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.
- (3) 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(5).
- (4) An employer 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.
- (5) In a cigar bar where smoking is allowed under OAR 333-015-0035(7), 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.
- (6) Smoke shops must 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;
 - (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 a smoke shop where cigarette smoking is not allowed under these rules;
 - (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

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

AMEND: 333-015-0045

RULE TITLE: Oregon Indoor Clean Air Act: Ashtrays

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0045: The Ashtrays portion of the ICAA rules is amended to clarify that receptacles that are intended for use or used for depositing cigarette or inhalant delivery system debris are prohibited within 10 feet of entrances/exits, windows that open, ventilation intakes and accessibility ramps.

RULE TEXT:

(1) Ashtrays and any receptacles intended to be used for or used for 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(7), ashtrays and any receptacles intended to be used for or used for smoking or depositing cigarette or inhalant delivery system debris are prohibited inside public places and places of employment.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

AMEND: 333-015-0056

RULE TITLE: Oregon Indoor Clean Air Act: Smoke Shop Application for Certification

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0056 (renumbered from OAR 333-015-0068): The Smoke Shops portion of the ICAA rules is amended to align with OL 2019, ch. 456 and to clarify the procedures for applying for, renewing and transferring certifications for certain categories of smoke shops. In addition, the Authority is splitting this OAR into five rules (OAR 333-015-0056 through 333-015-0061) to provide clearer processes and procedures. OAR 333-015-0056 is specific to applications for certification. Revisions clarify that businesses need to receive certification from the Authority in order to operate as certified smoke shops, updates language to align with OL 2019, ch. 456 and uses newly defined terms like "Type B certification" to differentiate and clarify the application process for the different categories of smoke shops.

RULE TEXT:

- (1) A business must be certified by the Authority prior to allowing smoking on the premises.
- (2) To obtain certification as a smoke shop, a business must agree to allow the Authority or LPHA to make unannounced inspections of the business to determine compliance with the Act.
- (3) Smoke shop certification is only valid for the business location authorized by the Authority.
- (4) Application Criteria:
 - (a) Type A Certification. A business may apply for smoke shop Type A Certification by submitting the following to the Authority:
 - (A) A complete application form prescribed by the Authority (available online or by calling the Tobacco Prevention and Education Program).
 - (B) 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 or beverages, including alcoholic beverages, for on-premises consumption;
 - (v) Does not allow on-premises consumption of alcoholic beverages;
 - (vi) Has a maximum seating capacity of no more than four persons;
 - (vii) 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 431A.175; and
 - (viii) Does not allow the smoking, aerosolizing or vaporizing of inhalants that are not tobacco products.
 - (C) Documentation of the business's sales, broken down by category of product;
 - (D) Evidence, such as photographs, of signs required under OAR 333-015-0040(5).
 - (E) A building map and photographs of the premises demonstrating that the business is a stand-alone business;
 - (F) A site map and photographs of the premises that denotes maximum seating capacity and includes a detailed seating chart; and
 - (G) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.
 - (b) Type B Certification. A business existing on December 31, 2008, may apply for smoke shop Type B Certification by submitting the following documentation to the Authority:
 - (A) A complete application form prescribed by the Authority (available online or by calling the Tobacco Prevention and Education Program).
 - (B) 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;
 - (C) A notarized, sworn statement attesting that both currently and 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 21 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 food or beverages, including alcoholic beverages for on-premises consumption; and
 - (v) Did not allow on-premises consumption of alcoholic beverages.
- (D) Documentation of the business's sales, broken down by category of product;
- (E) 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 subparagraph (4)(b)(E)(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;
- (F) Either of the following:
- (i) Documentation, such as a building map or photographs, demonstrating that the business currently 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;
- (G) Evidence, such as photographs, of signs required under OAR 333-015-0040(5).
- (H) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.
- (c) Type C Certification. A business certified by the Authority on or before December 31, 2012 as a smoke shop under ORS 433.835, as in effect immediately before June 30, 2011, may apply for smoke shop Type C Certification by submitting the following documentation to the Authority:
- (A) A complete application form prescribed by the Authority (available online or by calling the Tobacco Prevention and Education Program).
 - (B) A notarized, sworn statement attesting that the business:
 - (i) Was certified by the Authority on or before December 31, 2012 as a smoke shop under ORS 433.835, as in effect immediately before June 30, 2011;
 - (ii) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the business results from the sale of cigarettes;
 - (iii) Is primarily engaged in the sale of tobacco products and smoking instruments, with at least 75 percent of the gross revenues of the business resulting from such sales;
 - (iv) Does not:
 - (I) Sell or offer alcoholic beverages for on-premises consumption;
 - (II) Allow on-premises consumption of alcoholic beverages; or
 - (III) Offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises.
 - (v) Prohibits persons under 21 years of age from entering the premises; and
 - (vi) Is a stand-alone business with no other businesses or residential property attached to the premises.
 - (C) Documentation of the business's sales, broken down by category of product, including cigarette sales
 - (D) Evidence, such as photographs, of signs required under OAR 333-015-0040(5); and
 - (E) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or

these rules.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

ADOPT: 333-015-0057

RULE TITLE: Oregon Indoor Clean Air Act: Smoke Shop Application Review

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Adopt OAR 333-015-0057: Smoke Shop Application Review - In this rule, the Authority is clarifying that the Authority shall grant certification to a smoke shop applicant that satisfies the requirements for certification and that the Authority shall deny certification to an applicant that doesn't satisfy certification requirements. In addition, revisions include language to align with OL 2019, ch. 456 and newly defined terms like "Type B certification" to differentiate and clarify the certification process for the different categories of smoke shops.

RULE TEXT:

(1) The Authority may reject an application if the application is incomplete. An application may be considered incomplete if the application form is incomplete or any information or documents required under these rules is not submitted.

(2) Type A Certification Applications.

(a) The Authority shall grant a smoke shop Type A Certification if the applicant:

(A) Submits all of the documentation required under OAR 333-015-0056(4)(a), including the notarized sworn statement, and any other documentation required by the Authority;

(B) 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;

(C) Prohibits persons under 21 years of age from entering the premises;

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

(E) Does not sell or offer food or beverages, including alcoholic beverages, for on-premises consumption;

(F) Does not allow on-premises consumption of alcoholic beverages;

(G) Has a maximum seating capacity of no more than four persons;

(H) 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 431A.175;

(I) Prohibits smoking, aerosolizing or vaporizing of inhalants that are not tobacco products;

(J) Posts signs required under OAR 333-015-0040(5); and

(K) The proposed premises is a stand-alone business with no other businesses or residential property attached to the premises.

(b) The Authority shall deny an application for Type A Certification if it fails to satisfy any requirement in subsection (2)(a) of this rule.

(3) Type B Certification Applications.

(a) The Authority shall grant a smoke shop Type B Certification if the applicant:

(A) Submits all of the documentation required under subsection OAR 333-015-0056(4)(b), including the notarized sworn statement and completed application form, and any other documentation required by the Authority;

(B) The applicant is a business that has operated since 2008;

(C) Both currently and 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 21 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, for on-premises consumption.

(v) Did not allow on-premises consumption of alcoholic beverages.

(D) Either of the following:

(i) On December 31, 2008, the applicant business was a stand-alone business with no other businesses or residential property attached; or

(ii) On December 31, 2008, the applicant business 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.

(E) Either of the following:

(i) The applicant business presently is a stand-alone business with no other businesses or residential property attached; or

(ii) 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 or the applicant business is currently approved as a smoking lounge;

(F) Posted signs required under OAR 333-015-0040(5).

(b) The Authority shall deny an application for Type B Certification if it fails to satisfy any requirement in subsection (3)(a) of this rule.

(4) Type C Certification Applications.

(a) The Authority shall grant a smoke shop Type C Certification if the applicant:

(A) Submits all of the documentation required under OAR 333-015-0056(4)(c), including the notarized sworn statement, and any other documentation required by the Authority;

(B) The applicant business was certified by the Authority on or before December 31, 2012 as a smoke shop under ORS 433.835, as in effect immediately before June 30, 2011;

(C) The business is primarily engaged in the sale of tobacco products and smoking instruments, with at least 75 percent of the gross revenues of the business resulting from such sales;

(D) The applicant business allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the business results from the sale of cigarettes;

(E) Does not:

(i) Sell or offer alcoholic beverages for on-premises consumption;

(ii) Allow on-premises consumption of alcoholic beverages; and

(iii) Offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises.

(F) Prohibits persons under 21 years of age from entering the premises.

(G) Is a stand-alone business with no other business or residential property attached to the premises.

(H) Posted signs required under OAR 333-015-0040(5).

(b) The Authority shall deny an application for Type C Certification if it fails to satisfy any requirement in subsection (4)(a) of this rule.

(5) The Authority may refuse to issue or renew 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.

(6) Subject to ORS chapter 183, the Authority may refuse to issue or renew a certification to a smoke shop for a violation of any provision of ORS 433.835 to 433.875 or a violation of any rule adopted under ORS 433.835 to 433.875.

(7) If the Authority revokes the certification or denies the renewal of a smoke shop B or smoke shop C certification, the Authority may not issue a new smoke shop B or smoke shop C certification to the smoke shop.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

ADOPT: 333-015-0058

RULE TITLE: Oregon Indoor Clean Air Act: Smoke Shop Ongoing Requirements for Certification

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Adopt OAR 333-015-0058: Smoke Shop Ongoing Requirements for Certification - In this rule, the Authority is clarifying the requirements for maintaining smoke shop certification. The Authority is streamlining the process for smoke shops to submit required annual financial documentation, including the addition of a "sales report" requirement to ensure compliance with statutory financial requirements. The Authority is also formalizing the certification hold process, including a form and rationale for putting a business certification on hold (i.e for remodeling or location transfer).

RULE TEXT:

- (1) A smoke shop must meet the renewal criteria described in OAR 333-015-0059 at all times. The Authority may revoke certification if the smoke shop fails to meet the renewal criteria.
- (2) Each year, a smoke shop must submit to the Authority documentation of the smoke shop's gross revenue for the past calendar year demonstrating that at least 75 percent of the smoke shop's gross revenue for the past calendar year is derived from the sale of tobacco products or smoking instruments. The documentation must be received by the Authority by April 30. The documentation submitted must include:
 - (a) A notarized, sworn statement on an Authority-provided form (available online or by calling the Tobacco Prevention and Education Program) attesting:
 - (A) At least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments; and
 - (B) To the amount of sales in each product category, including cigarette sales for smoke shops B and smoke shops C that permit cigarette smoking on the premises.
 - (b) An aggregated sales report for the past calendar year identifying the amount of sales in each product category, including cigarette sales for smoke shops B and smoke shops C that permit cigarette smoking on the premises.
- (3) A smoke shop must maintain documentation on file at the certified location that demonstrates that at least 75 percent of the smoke shop's gross revenue for the past three calendar years is derived from the sale of tobacco products or smoking instruments. The Authority may inspect a smoke shop's financial records to determine compliance with the Act and these rules. The smoke shop shall make such documentation available to the Authority upon request or during an inspection.
- (4) A smoke shop must maintain current 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, or other contact information are incorrect, then the Authority may suspend the smoke shop's certification until correct contact information is provided.
- (5) Smoke shops B and smoke shops C may not allow the smoking of cigarettes unless at least 75 percent of its gross revenue is derived from the sale of cigarettes.
- (6) A smoke shop that ceases to operate at the certified location fails to meet ongoing certification requirements and certification shall be revoked. A smoke shop must notify the Authority immediately if the smoke shop will cease operating or is not operating.
- (7) A smoke shop may place a hold on its certification for up to six months by submitting a hold notification on a form provided by the Authority (available online or by calling the Tobacco Prevention and Education Program) to the Authority.
 - (a) The hold is effective only when receipt is confirmed and the hold is approved by the Authority.
 - (b) A smoke shop may only place a hold on its certification when it is remodeling its current certified location or it is transferring location.
 - (c) The Authority shall not act to revoke a certificate under section (6) of this rule during a valid hold on the certification. If the smoke shop fails to begin operating at the end of the hold period, the Authority may revoke the certification under

section (6) of this rule.

(d) The smoke shop may apply for one 6-month extension that the Authority may grant in its discretion.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

ADOPT: 333-015-0059

RULE TITLE: Oregon Indoor Clean Air Act: Smoke Shop Renewal of Certification

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Adopt OAR 333-015-0059: Smoke Shop Renewal of Certification - In this rule, the Authority is clarifying and streamlining the certification renewal process. The Authority is using a renewal application timeline similar to that of other state agencies such as the Oregon Liquor Control Commission (submission 60 days prior to expiration). In addition, revisions include language to align with OL 2019, ch. 456 and newly defined terms like "Type B certification" to differentiate and clarify the certification renewal process for the different categories of smoke shops. The Authority is also adding providing false and misleading information to the list of reasons to deny a renewal application or revoke a certification.

RULE TEXT:

- (1) Smoke shop Type B Certifications and Type C Certifications are effective for five years. To apply to renew a certification, the smoke shop must submit and the Authority must receive a complete application including any supporting documentation at least 60 days prior to the expiration of its current certification.
- (2) To renew certification, smoke shop B must submit the following to the Authority:
 - (a) A complete renewal application form prescribed by the Authority (available online or by calling the Tobacco Prevention and Education Program).
 - (b) A notarized, sworn statement attesting that the smoke shop currently:
 - (A) 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.
 - (B) Prohibits persons under 21 years of age from entering the premises;
 - (C) Does not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;
 - (D) Does not sell or offer food or beverages, including alcoholic beverages, for on-premises consumption.
 - (E) Does not allow on-premises consumption of alcoholic beverages;
 - (F) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the business results from the sale of cigarettes.
 - (c) Documentation of the business's sales, broken down by category of product;
 - (d) Either of the following:
 - (A) 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
 - (B) Documentation that the business 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 or a current certificate of occupancy and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;
 - (e) Evidence, such as photographs, of signs required under OAR 333-015-0040.
 - (f) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.
- (3) The Authority shall renew a Type B Certification if the applicant:
 - (a) Submits all of the information and documentation required by section (2) of this rule;
 - (b) 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;
 - (c) Prohibits persons under 21 years of age from entering the premises;
 - (d) Does not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;
 - (e) Does not sell or offer food or beverages, including alcoholic beverages, for on-premises consumption.
 - (f) Does not allow on-premises consumption of alcoholic beverages;
 - (g) Provides evidence of either of the following:

- (A) The business presently is a stand-alone business with no other businesses or residential property attached; or
 - (B) The business 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 or a current certificate of occupancy and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;
 - (h) Posts signs required under OAR 333-015-0040; and
 - (i) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the business results from the sale of cigarettes.
- (4) To renew certification, a smoke shop C must submit the following to the Authority at least 60 days prior to the expiration of its current certification:
- (a) A complete renewal application form prescribed by the Authority (available online or by calling the Tobacco Prevention and Education Program).
 - (b) A notarized, sworn statement attesting that the smoke shop currently:
 - (A) Is primarily engaged in the sale of tobacco products and smoking instruments, and derived at least 75 percent of its gross revenue from such sales;
 - (B) Prohibits persons under 21 years of age from entering the premises;
 - (C) Does not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;
 - (D) Does not sell or offer alcoholic beverages for on-premises consumption;
 - (E) Does not allow on-premises consumption of alcoholic beverages; and
 - (F) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the business results from the sale of cigarettes.
 - (c) Documentation of the business's sales, broken down by category of product, including cigarette sales;
 - (d) Evidence, such as photographs, of signs required under OAR 333-015-0040;
 - (e) 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; and
 - (f) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.
- (5) The Authority shall renew a smoke shop C if the business:
- (a) Submits all of the information and documentation required by section (4) of this rule;
 - (b) Is primarily engaged in the sale of tobacco products and smoking instruments, and derived at least 75 percent of its gross revenue from such sales;
 - (c) Prohibits persons under 21 years of age from entering the premises;
 - (d) Does not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;
 - (e) Does not sell or offer alcoholic beverages for on-premises consumption;
 - (f) Does not allow on-premises consumption of alcoholic beverages;
 - (g) Posts signs required under OAR 333-015-0040;
 - (h) Presently is a stand-alone business with no other businesses or residential property attached to the premises; and
 - (i) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the business results from the sale of cigarettes.
- (6) The Authority may revoke or refuse to renew a certification if a smoke shop:
- (a) Fails to meet certification renewal requirements described in this rule at any time;
 - (b) Fails to submit required documentation in accordance with OAR 333-015-0058;
 - (c) Fails to comply with or violates any requirement or obligation in the Act or these rules; or
 - (d) Ceases to operate.
- (7) If the Authority revokes or refuses to renew a Type B or Type C Certification, the Authority may not issue a new Type B or Type C Certification to the smoke shop.
- (8) The Authority may deny an application for smoke shop certification or revoke a smoke shop certification and

prohibit an applicant from reapplying for up to two years if the applicant:

(a) Provides information that is false or deliberately misleading; or

(b) Violates the Act or these rules.

(9) The Authority may reject a renewal application that is:

(a) Not timely submitted. The application must be received by the Authority at least 60 days prior to the expiration of the current certification.

(b) Incomplete. An application may be considered incomplete if the application form is incomplete or any information or documents required under these rules is not submitted.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

ADOPT: 333-015-0061

RULE TITLE: Oregon Indoor Clean Air Act: Transfer of Ownership or Location

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Adopt OAR 333-015-0061: Smoke Shop Transfer of Certification of Ownership or Location - In this rule, the Authority is clarifying its authority to reject incomplete or not "timely" submitted applications and is adding providing false and misleading information to the list of reasons to deny a transfer application or revoke a certification. In addition, revisions include language to align with OL 2019, ch. 456 and newly defined terms like "Type B certification" to differentiate and clarify the certification transfer process for smoke shops B and C.

RULE TEXT:

(1) A smoke shop B or smoke shop C may apply to transfer ownership. Smoking is not permitted on the premises of a smoke shop operating under different ownership until the Authority issues an updated certification to the new owner in accordance with this rule.

(2) To apply to transfer to a new owner, the smoke shop B or smoke shop C must submit the following documentation to the Authority:

(a) A completed application for transfer of ownership on a form provided by the Authority (available online or by calling the Tobacco Prevention and Education Program) identifying the new proposed owner of the smoke shop;

(b) Registration with the Oregon Secretary of State, Corporation Division where applicable; and

(c) A notarized, sworn statement attesting that the business will continue to meet the certification renewal requirements described in OAR 333-015-0059 under the new ownership.

(3) The Authority shall recognize a transfer of ownership of a smoke shop B or smoke shop C and issue an updated certification if the applicant complies with section (2).

(4) The Authority may deny a transfer of ownership of a smoke shop B or smoke shop C if:

(a) The applicant fails to satisfy section (2) of this rule;

(b) The proposed owner has a history of noncompliance with the Act or these rules; or

(c) The applicant provides information that is false or deliberately misleading.

(4) Within 120 days of the Authority issuing an updated certification under section (3) of this rule, the new owner must submit to the Authority updated financial documentation required in OAR 333-015-0058 for the first 90 days of operation under the updated certification, including but not limited to a sales report demonstrating that at least 75 percent of the smoke shop's gross revenue during the first 90 days of operation was derived from the sale of tobacco products or smoking instruments.

(5) A smoke shop B or smoke shop C may apply to transfer location. Smoking is not permitted on the premises of a smoke shop operating at a new location until the Authority issues an updated certification recognizing the new location in accordance with this rule.

(a) To apply to transfer location, the smoke shop must submit the following documentation to the Authority:

(A) A completed application for transfer of location on a form provided by the Authority (available online or by calling the Tobacco Prevention and Education Program);

(B)(i) 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; or

(ii) If the new location occupies more than 3,500 square feet, documentation demonstrating that the location where the shop was originally certified occupied more than 3,500 square feet and the square footage of the new location is no more than 110 percent of the square footage of the original certification location;

(C) A notarized, sworn statement attesting that:

(i) The smoke shop will cease to operate in the old location; and

(ii) The smoke shop, as operated in the new location meets the certification renewal requirements described in OAR 333-015-0059 as applicable;

(b) The Authority shall recognize a transfer of location of a smoke shop B or smoke shop C and issue an updated

certification if:

- (A) The smoke shop submits all of the documentation required by subsection (5)(a) of this rule to the Authority;
 - (B)(i) The new location does not occupy more than 3,500 square feet; or
 - (ii) The new location is no more than 110 percent of the square footage of the original smoke shop location if the new location occupies more than 3,500 square feet;
 - (C) The smoke shop ceases to operate in the original location; and
 - (D) The smoke shop, as operated in the new location meets the certification renewal requirements described in OAR 333-015-0059 as applicable.
- (6) The Authority may deny a transfer of location of a smoke shop B or smoke shop C if the applicant:
- (a) Fails to satisfy section (5) of this rule; or
 - (b) Provides information that is false or deliberately misleading.
- (7) A smoke shop A may not apply to transfer and must submit a new application under OAR 333-015-0056 to operate a new location or under new ownership.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

AMEND: 333-015-0066

RULE TITLE: Oregon Indoor Clean Air Act: Cigar Bars

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0066: The Cigar Bars portion of the ICAA rules is being amended to clarify by using the term "Authority," as defined in rule, when referring to OHA-Public Health Division, Tobacco Education and Prevention Program. In addition, the revocation rule for cigar bars has been moved from the revocation rule (OAR 333-015-0069) to the cigar bar rule.

RULE TEXT:

- (1) A business must apply to the Authority for certification before allowing cigar smoking on its premises.
- (2) A business must apply for certification on a form prescribed by the Authority and include the following information and documentation:
 - (a) A copy of the business's full on-premises liquor sales license issued by the Oregon Liquor Control Commission under ORS 471.175;
 - (b) A site map of the premises that denotes maximum seating capacity and includes a detailed seating chart;
 - (c) A copy of the business's certificate of occupancy and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;
 - (d) Using the form provided by the Authority, proof that all employees have read and signed a document explaining the dangers of exposure to secondhand smoke (this form is available online or by calling the Tobacco Prevention and Education Program); and
 - (e) Documentation demonstrating to the satisfaction of the Public Health Director that the cigar bar generated on-site retail sales of cigars of at least \$5,000 in the calendar year 2006.
- (3) Application Review:
 - (a) The Authority shall review application materials within 30 days of receipt and determine whether the application is complete.
 - (b) Within 10 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 compliance with section (2) of this rule. In lieu of denying an application, the Authority may request additional information from the applicant to determine compliance with section (2) of this rule.
 - (c) The Authority may deny an application for cigar bar 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 cigar bar certification or revoke a cigar bar certification and prohibit an applicant from reapplying for up to two years if the applicant or cigar bar:
 - (A) Provides information that is false or deliberately misleading; or
 - (B) Violates the Act or these rules.
- (4) Ongoing Requirements for Certification:
 - (a) If a cigar bar was certified before February 1, 2012, and has not provided the information or documentation required under section (2) of this rule, the cigar bar must furnish the missing information or documentation upon request by the Authority to remain certified.
 - (b) A certified cigar bar must meet the definition of a cigar bar, as defined in ORS 433.835(1) and OAR 333-015-0030(5), at all times. The Authority may revoke certification if the business no longer meets the definition of a cigar bar.
 - (c) A cigar bar must submit a completed form, as described in subsection (2)(d) of this rule, to the Authority by December 31 of each calendar year for every new employee hired during that year.
- (5) Cigar bar certification is only valid for the business location authorized by the Authority.
- (6) Certification may be revoked if a cigar bar ceases operation. The certificate holder must notify the Authority that the cigar bar is no longer in operation within 30 days of ceasing to operate.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

REPEAL: 333-015-0069

RULE TITLE: Oregon Indoor Clean Air Act: Revocation of Cigar Bar and Smoke Shop Certification

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Repeal OAR 333-015-0069: The Authority is repealing the Revocation of Cigar Bar and Smoke Shop Certification rule because rule changes incorporate the revocation language in other portions of the rules.

RULE TEXT:

The Authority may revoke the certification of a cigar bar or smoke shop and prohibit the business from reapplying for up to two years if the business violates the Act or these rules.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

AMEND: 333-015-0070

RULE TITLE: Oregon Indoor Clean Air Act: Oregon Health Authority Responsibilities

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0070: The Authority is streamlining the Oregon Health Authority Responsibilities rule. The rule is comprised of Authority statutory obligations.

RULE TEXT:

(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, certify cigar bars and smoke shops in accordance with these rules; and

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

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

AMEND: 333-015-0075

RULE TITLE: Oregon Indoor Clean Air Act: Complaint Response

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0075: The Authority is amending the Complaint Response rule to clarify that it is a violation of the ICAA to fail to cooperate with an inspection, and add language describing examples of failure to cooperate (e.g. engaging in harassing or threatening behavior).

RULE TEXT:

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.

(2) Second or Subsequent Complaint: 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.

(3) If a complainant has supplied their name and contact information, the Authority or the LPHA shall send a form letter to the complainant, notifying the complainant that the complaint has been received and is being investigated or that the place of employment or public place is not required to be smoke-free under ORS 433.835 through 433.850.

(4) 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 additional time to complete the remediation plan. An extension may be granted only by the Public Health Director or designee.

(5) 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 due 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.

(6) 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. The Authority may impose civil penalties for any violations.

(b) If an additional complaint is received more than three years of the date the remediation plan was created 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 (2) and (4) of this rule.

(7) Cooperation with Inspection:

(a) An employer or entity in charge of a public place must permit and cooperate with the Authority or the LPHA inspection of the place of employment or public place (or any portion thereof), to evaluate compliance with the Act and these rules.

(b) It is a violation to fail to permit or cooperate with Authority or LPHA inspection.

(c) For the purposes of this rule, "fail to cooperate" includes, but is not limited to interference, a threat, or harassment

that delays, impairs or obstructs the Authority or the LPHA from carrying out its inspection or other duties under the Act and these rules.

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

AMEND: 333-015-0078

RULE TITLE: Oregon Indoor Clean Air Act: Violations

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0078: The Authority is amending the Violations rule to clarify that the violations listed in the rule do not represent an exhaustive list of violations of the ICAA.

RULE TEXT:

(1) Violations of the ICAA include but are not limited to the following:

- (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 or any receptacles intended for use or used for depositing cigarette or inhalant delivery system debris 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 valid certification from the Authority.
- (f) Operating as a smoke shop without valid 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 or any receptacles intended to be used or used for depositing cigarette or inhalant delivery system debris 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 and 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, entity in charge of a public place, a cigar bar or smoke shop to:
 - (i) Permit or cooperate with the Authority or the LPHA inspection of all or any part of the premises;
 - (ii) Cooperate with the Authority or the LPHA to develop a remediation plan.
- (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, and ventilation intakes that serve an enclosed area.

(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 to the Public Health Director and credited to the Tobacco Use Reduction Account, as required by ORS 433.855(1)(c).
- (3) In addition to imposing civil penalties under OAR 333-015-0085, the Authority may initiate further legal action against an employer, entity in charge of a public place, a cigar bar or smoke shop including, but not limited to, requesting a court to enjoin further violations of the ICAA or these rules.

STATUTORY/OTHER AUTHORITY: ORS 433.855, ORS 431.155, ORS 433.860

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

AMEND: 333-015-0085

RULE TITLE: Oregon Indoor Clean Air Act: Penalties

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0085: The Authority is amending the Penalties rule to clarify that the penalty schedule is for common violations and does not represent an exhaustive list of penalties for violations of the ICAA.

RULE TEXT:

The Authority may impose a civil penalty of up to \$500 per day for any violation of the ICAA or these rules. The civil penalty amount for common violations is imposed 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).

STATUTORY/OTHER AUTHORITY: ORS 433.855

STATUTES/OTHER IMPLEMENTED: ORS 433.835 - 433.870

AMEND: 333-015-0220

RULE TITLE: Tobacco and Inhalant Delivery Systems Sales to Persons Under 21 Years of Age: Biennial Report

NOTICE FILED DATE: 09/26/2019

RULE SUMMARY: Amend OAR 333-015-0220: The Authority is amending the Annual Report rule to align with OL 2019, ch. 456. In addition, the Authority is streamlining the rule to include only statutory obligations.

RULE TEXT:

(1) Contents of Report: The Authority shall biennially submit a report to the Governor and to the appropriate committee or interim committee of the Legislative Assembly to which matters of public health are assigned. 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 biennium; and

(b) A description outlining the overall success the state has achieved during the previous biennium in reducing the availability of tobacco products and inhalant delivery systems to persons under 21 years of age.

(2) Public Comment Required: The biennial report shall be made public and public comment shall be obtained and considered before submitting the report to the Governor and Legislative Assembly.

STATUTORY/OTHER AUTHORITY: ORS 431A.183

STATUTES/OTHER IMPLEMENTED: ORS 431A.183