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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 15-2020

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: COVID-19 and implementation of Governor's Executive Orders 20-07, 20-10, 20-12

EFFECTIVE DATE: 03/25/2020 THROUGH 09/20/2020

AGENCY APPROVED DATE: 03/25/2020

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NEED FOR THE RULE(S):

The Oregon Health Authority (Authority), Public Health Division, is temporarily adopting OAR 333-003-1000 thru 333-003-1040 to implement the Governor's Executive Orders 20-07, 20-10 and 20-12.

The Governor has declared an emergency due to the public health threat posed by the novel infectious coronavirus (COVID-19) and issued Executive Orders 20-07, prohibiting food service establishments from offering or allowing on-premises consumption of food or drink, 20-10, prohibiting elective, non-urgent medical procedures and non-essential visitation to conserve the supply of personal protection equipment and 20-12, requiring businesses to designate an employee or officer to establish, implement and enforce social distancing policies. Since all three of the Executive Orders are considered public health law, these rules are necessary to allow the Oregon Health Authority (Authority) and local public health authorities the ability to issue civil penalties and to enforce the Orders if necessary.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and all Oregonians that may be affected by the transmission of novel infectious coronavirus (COVID-19). These rules need to be adopted promptly because the Authority and local public health authorities do not currently have the ability to conduct enforcement in the event that facilities or individuals refuse to comply with the Governor's Executive Orders.

The Governor's Executive Orders 20-07, 20-10 and 20-12 were issued to help limit the spread of novel infectious coronavirus (COVID-19) in Oregon. Food service establishments have been ordered to close their dining rooms and provide only takeout or delivery services to the public. Health care facilities have been ordered to cancel all elective or non-urgent procedures and to limit non-essential visitations. Businesses have been ordered to designate an employee to enforce social distancing procedures. The Oregon Health Authority (Authority) and local public health authorities are

responsible for implementing public health law and currently do not have rules in place to implement and enforce these Orders.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Governor's Executive Orders 20-07, 20-10 and 20-12:

http://govsite-assets.s3.amazonaws.com/orgov/eo_20-07.pdf

http://govsite-assets.s3.amazonaws.com/orgov/eo_20-10.pdf

https://govsite-assets.s3.amazonaws.com/jkAULYKcSh6DoDF8wBM0_EO%2020-12.pdf

RULES:

333-003-1000, 333-003-1010, 333-003-1020, 333-003-1030, 333-003-1040

ADOPT: 333-003-1000

RULE SUMMARY: Adopt OAR 333-003-1000: Defines social distancing officer and local public health authority.

CHANGES TO RULE:

333-003-1000

Declared Emergency: Definitions

The following definitions apply to OAR 333-003-1000 to 333-003-1040:

(1) "Social distancing officer" means an employee or officer designated to establish, implement, and enforce social distancing policies.

(2) "Local public health authority" means:

(a) A county government;

(b) A health district formed under ORS 431.443; or

(c) An intergovernmental entity that provides public health services pursuant to an agreement entered into under ORS 190.010(5).

Statutory/Other Authority: ORS 401.168, ORS 413.042, ORS 433.441

Statutes/Other Implemented: ORS 401.990, ORS 431A.005, ORS 431A.010

ADOPT: 333-003-1010

RULE SUMMARY: Adopt OAR 333-003-1010: Establishes civil penalties for non-compliance with OAR 333-003-1000 to 333-003-1040 and the Governor's Executive Orders 20-07, 20-10 and 20-12. Executive Order 20-07 prohibits food service establishments from offering or allowing on-premises consumption of food or drink. Food service establishments may offer food or drink for off-premises consumption or delivery but social distancing of three feet is required between customers and employees when practical. Executive Order 20-10 prohibits elective, non-urgent medical procedures to conserve the supply of personal protection equipment, and non-essential visitation to hospitals. Executive Order 20-12 requires businesses to designate an employee or officer to establish, implement and enforce social distancing policies.

CHANGES TO RULE:

333-003-1010

Declared Emergency: Enforcement of Governors Executive Orders via Civil Penalties

(1) The Oregon Health Authority (Authority) or a local public health authority may impose civil penalties up to \$500 per day per violation on any person for violating any provision of the Governor's Executive Order No. 20-07, 20-10 or 20-12 available at: <https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx>, or any provision of OAR 333-003-1000 to OAR 333-003-1040. ¶

(2) Any civil penalties imposed by the Authority shall be imposed in accordance with ORS chapter 183.745. Civil penalties imposed by the local public health authority shall be imposed in a manner substantially equivalent to ORS chapter 183.745.

Statutory/Other Authority: ORS 401.168, ORS 413.042, ORS 433.441

Statutes/Other Implemented: ORS 401.990, ORS 431A.005, ORS 431A.010

ADOPT: 333-003-1020

RULE SUMMARY: Adopt OAR 333-003-1020: Prohibits onsite consumption of food or drinks and sets requirements for off-site consumption. Exempts certain establishments from the onsite consumption prohibition and establishes civil penalties. Sunsets upon expiration of the Executive Order or 180 days.

CHANGES TO RULE:

333-003-1020

Declared Emergency: Prohibition on On-Premises Consumption of Food or Drink; Civil Penalties

(1) Restaurants, bars, taverns, brew pubs, wine bars, cafes, food courts, coffee shops, clubs, or other similar establishments that offer food or drink may not offer or allow on-premises consumption of food or drink. This prohibition includes, but is not limited to:¶

(a) Both indoor and outdoor areas of an establishment.¶

(b) Continental breakfast operations, buffets, or other self-service operations.¶

(2) Establishments may only offer food or drink for off-premises consumption if the establishment:¶

(a) Implements social distancing protocols of at least three feet between customers while ordering, waiting, in line, and at any time on the premises.¶

(b) Implements social distancing protocols of at least three feet between staff whenever possible.¶

(c) Complies with ORS chapter 471 and any rules adopted thereunder when offering or selling alcoholic beverages for off-premises consumption.¶

(d) Designates a social distancing officer.¶

(3) Continental breakfast operations, buffets, and other self-service operations may only offer food or drink for off-premises consumption if they comply with section (2) of this rule and only staff are permitted to prepare and package food or drinks for off-premises consumption.¶

(4) Health care facilities, child care facilities, workplaces, essential government buildings, essential emergency response facilities, essential school-based food programs, and essential shelter and meal programs serving vulnerable populations are exempt from this rule.¶

(5) This rule is effective for 180 days unless the Governor's Executive Order 20-07 expires or is terminated by the Governor earlier.

Statutory/Other Authority: ORS 401.168, ORS 413.042, ORS 433.441

Statutes/Other Implemented: ORS 401.990, ORS 431A.005, ORS 431A.010, ORS 431A.015

ADOPT: 333-003-1030

RULE SUMMARY: Adopt OAR 333-003-1030: Establishes that non-compliance with OAR 333-003-1020 may serve as the basis for the Oregon Health Authority to take any enforcement or licensing action permitted under ORS chapter 624.

CHANGES TO RULE:

333-003-1030

Declared Emergency: Disciplinary Action for Violation of On-Premises Consumption Prohibition

(1) Violation of OAR 333-003-1020 constitutes a violation of the Oregon Food Sanitation Rules OAR 333-150-0000.

(2) Violation of OAR 333-003-1020 may serve as the basis for the Authority to take any enforcement or licensing action permitted under ORS chapter 624 against any food establishment as defined in OAR 333-150-0000(4)(q) regulated by the Authority, including but not limited to:

(a) Restaurants;

(b) Bed and breakfast facilities;

(c) Mobile food units;

(d) Commissaries;

(e) Warehouses;

(f) Vending machines;

(g) Traveler's accommodations; or

(h) Organizational camps.

(3) Any enforcement or licensing action taken under this rule shall be taken in accordance with ORS chapter 183. Statutory/Other Authority: ORS 433.441, ORS 413.042

Statutes/Other Implemented: ORS 401.990, ORS 431A.005, ORS 431A.010, ORS 624.020, ORS 624.041, ORS 624.355, ORS 624.415

ADOPT: 333-003-1040

RULE SUMMARY: Adopt OAR 333-003-1040: Requires that businesses designate a social distancing officer and to provide the name and contact information of the social distancing officer to the Oregon Health Authority upon request.

CHANGES TO RULE:

333-003-1040

Declared Emergency: Designation of Social Distancing Officer

Businesses required to designate a social distancing officer pursuant to a Governor's Executive Order or by rule shall immediately provide the name and contact information of the social distancing officer to the Authority upon request.

Statutory/Other Authority: ORS 413.042, ORS 433.441

Statutes/Other Implemented: ORS 401.990, ORS 431A.005, ORS 431A.010, ORS 431A.015, ORS 624.020, ORS 624.041, ORS 624.355, ORS 624.415